

ORDINANCE NO. 2020-15

AN ORDINANCE AMENDING CHAPTER 110 (ZONING) TO AMEND PORTIONS OF ARTICLES AND SECTIONS CONTAINED THEREIN PERTAINING TO AFFORDABLE DWELLING UNITS.

BE IT ORDAINED, by the City Council of the City of Fairfax, Virginia, that Chapter 110, Article 3, §3.6 of the Code of the City of Fairfax, Virginia, is hereby amended as follows:

§ 3.6. DIMENSIONAL STANDARDS

The dimensional standards of §3.6 apply to all general district development. Methods of measurement and exceptions are found in §1.5.

§ 3.6.1. Residential districts

A. General provisions

RESIDENTIAL DISTRICTS DIMENSIONAL STANDARDS	RL	RM	RH	RT-6	RT	RMF
DENSITY (UNITS/ACRE), MAXIMUM	-	-	-	6	12	20
SITE AREA (ACRES), MINIMUM	-	-	-	3	0.4	0.5
LOT AREA/ UNIT, MINIMUM (SQ. FT.)	20,000	7,500	6,000	1,600 [3]	1,500	1,800
REQUIRED YARDS, MINIMUM (FT.) [1]						
Front	40	25	20	10	10	25
Side (street)	30	20	15	20	20	25
Side (interior)	15	12-10[2]	12-10[2]	0	0	25
Rear	25	25	25	20	20	35
LOT WIDTH, MINIMUM (FT.)						
Interior lots	100	75	60	18	18	--
Corner lots	125	95	80	18	18	--
HEIGHT, MAXIMUM (STORIES/FEET) [2]						
Adjacent to RL, RM or RH district	3/35	3/15-35[2]	3/15-35[2]	3/35	3/35	3/35
Not adjacent to RL, RM or RH district	3/35	3/35	3/35	3/35	4/45	4/45
BUILDING COVERAGE, MAXIMUM (%)		25	35	60	60	60
LOT COVERAGE, MAXIMUM (%)		40	50	80	80	80

NOTES:

[1] Special building line requirements apply where narrow right-of-way areas are found, see §1.5.12.F.

[2] Some exceptions apply. See §1.5.11.A.2(a).

[3] Or, an average of 1,800 square feet.

B. Affordable Dwelling Unit Development Regulations

RESIDENTIAL DISTRICTS DIMENSIONAL STANDARDS	RL	RM	RH	RT-6	RT	RMF
DENSITY (UNITS/ACRE), MAXIMUM	=	=	=	7.2	14.4	24
SITE AREA (ACRES), MINIMUM	=	=	=	3	0.4	0.5
LOT AREA/ UNIT, MINIMUM (SQ. FT.)	16,000	6,000	4,800	1,280 [3]	1,200	1,440
REQUIRED YARDS, MINIMUM (FT.) [1]						
Front	32	20	20	8	8	25
Side (street)	24	18	12	16	16	25
Side (interior)	12	10-8[2]	10-8[2]	0	0	25
Rear	20	20	20	15	15	35
LOT WIDTH, MINIMUM (FT.)						
Interior lots	80	60	48	16	16	--
Corner lots	100	76	64	16	16	--
HEIGHT, MAXIMUM (STORIES/FEET) [2]						
Adjacent to RL, RM or RH district	3/35	3/15-35[2]	3/15-35[2]	3/35	3/35	4/48
Not adjacent to RL, RM or RH district	3/35	3/35	3/35	3/35	4/45	5/60
BUILDING COVERAGE, MAXIMUM (%)		30	42	70	70	70
LOT COVERAGE, MAXIMUM (%)		48	60	90	90	90

NOTES:

[1] Special building line requirements apply where narrow right-of-way areas are found, see §1.5.12.F.

[2] Some exceptions apply. See §1.5.11.A.2(a).

[3] Or, an average of 1,440 square feet.

§ 3.6.2. Nonresidential districts

NONRESIDENTIAL DISTRICTS DIMENSIONAL STANDARDS	CL	CO	CR	CU	CG	IL	IH
DENSITY (UNITS/ACRE), MAXIMUM	RESERVED 20 (General) / 24 (Affordable Dwelling Unit)					=	=
LOT AREA, MIN. (SQ. FT.)	--	20,000	20,000	30,000	22,000	--	--
REQUIRED YARDS (FT.)							
Front and side (street)							
Maximum	--	--	93[1]	15	--	--	--
Minimum	20[1]	20[1]	20[1]	0	20	20	25
Side (interior), min. adjacent to a residential district	25	25	25	25	25	50	50
Side (interior), min. not adjacent to a residential district	12	0/10[2]	0/10[2]	0/10[2]	25	0	0
Rear, min. adjacent to a residential district	25	25	25	25	25	50	50
Rear, min. not adjacent to a residential district	0	0	0	0	25	0	0
BUILD-TO LINE, MANDATORY (PERCENT)	--	--	--	50	--	--	--
LOT WIDTH, MINIMUM (FT.)	--	--	--	--	150	--	--
BULK PLANE REQUIREMENTS (DEGREES)							
Front	--	--	--	--	--	--	--
Side (interior), adjacent to a residential district	--	45	45	45	45	45	45
Side (interior), not adjacent to a residential district	--	--	--	--	--	30	30
Rear, adjacent to a residential district	--	45	45	45	45	45	45
Rear, not adjacent to a residential district	--	--	--	--	--	30	30
HEIGHT, MAXIMUM (STORIES/FEET)	3/35	5/60	5/60	5/60	5/60	3/35	6/60
BUILDING COVERAGE, MAXIMUM (%)	25	50	60	80	--	50	50
LOT COVERAGE, MAXIMUM	50	85	85	100	90	90	90
FLOOR AREA, MAXIMUM (SQ. FT.)	17,500	--	--	--	--	--	--

NOTES:

[1] Special building line requirements apply where narrow right-of-way areas are found, see §1.5.12.F.1(a).

[2] No side (interior) yard is required, but if a building is not built to the lot line, a minimum 10 foot side (interior) yard shall be required.

BE IT ORDAINED, by the City Council of the City of Fairfax, Virginia, that Chapter 110, Article 3, of the Code of the City of Fairfax, Virginia, is hereby amended as follows:

§3.9. AFFORDABLE DWELLING UNITS

§3.9.1. Purpose and intent

Provisions of the city of Fairfax Zoning Ordinance regarding affordable dwelling units are hereby established to assist in the provision of affordable housing in the city. These provisions are designed to provide affordable housing in the city by: (a) promoting the development of a full range of housing choices; (b) encouraging the construction and continued existence of dwelling units that are affordable for purchase by households whose collective income is 70% or less of the area median income (“AMI”) of households in the Washington-Arlington-Alexandria, DC-VA-MD-WV Metropolitan Statistical Area (“WMSA”); and (c) encouraging the construction and continued existence of dwelling units that are affordable for rental by households whose collective income is 60% or less of AMI. For purposes of determining whether a household’s income qualifies for participation in the city’s Program, the income of a household shall include the income of all household members 18 years or older who are not full-time students. The city’s Program gives priority for affordable housing to households that have members who live and/or work in the city. The effective date of the City’s ADU Program shall be specified by the City Council upon the adoption of these provisions.

§3.9.2. General provisions

A. Administration

The administration of the city’s Program shall be undertaken in accordance with any rules, regulations and procedures that may be adopted and/or approved by the city council for the purpose of supporting and administering the provision of affordable dwelling units in the city. The city may appoint an agent for the purpose of administering the city’s Program and, if the city appoints an agent for such purposes, any reference herein to “the city” shall mean, if applicable, “the city or its agent.”

B. Applicability

1. The provisions of this Chapter requiring the provision of affordable dwelling units shall apply to any site, or any portion thereof, at one location which is the subject of a complete Land Use Application submitted after the effective date of the city’s Program, whenever such an application includes, upon approval, a total of 30 or more dwelling units. Any Affordable Dwelling Unit Development is allowed to apply the Affordable Dwelling Unit Development Regulations to that development as set forth in §3.9.3 of this Ordinance.
2. The provisions of the city’s Program shall apply to any Land Use Application approved by or on behalf of the city council before the effective date of the city’s Program in which the owner and/or Zoning Applicant agreed to provide affordable dwelling units or otherwise support the provision of affordable housing in the city as a consequence of the approval of such application. Notwithstanding the foregoing, an owner and/or Zoning Applicant’s obligation to provide affordable dwelling units or otherwise support the provision of affordable housing in the city with respect to any such application is limited to whatever the owner and/or Zoning Applicant agreed to and the city council approved.
3. An owner and/or Zoning Applicant may voluntarily provide affordable dwelling units in a development, including those with fewer than thirty (30) dwelling units, to which the Affordable Dwelling Unit Development Regulations would not otherwise apply in accordance with §3.9.3 of this Ordinance.
4. An owner and/or Zoning Applicant may provide Affordable Dwelling Units in accordance with §3.9.7 of this Ordinance.

C. Piecemeal land use applications

An owner and/or Zoning Applicant shall not avoid the requirements of this Article by submitting separate Land Use Applications for less than thirty (30) dwelling units at any one time. However, an owner and/or Zoning Applicant may submit a site plan or subdivision plat for less than thirty (30) dwelling units if the owner and/or Zoning Applicant agrees in writing that the next land use application or submission for the site or portion thereof shall meet the requirements of the city's Program when the total number of dwelling units in such development has reached thirty (30). The owner and/or Zoning Applicant for an application shall affirm, under oath, that they neither have nor have had any financial interest and/or participation in any prior application for land adjacent to the subject property. Prior to the approval of a site plan or subdivision, the owner and/or Zoning Applicant shall cause this written statement to be recorded among the land records of Fairfax County and indexed in the names of all owners of the site or portion thereof, as such terms are defined herein.

D. Affidavit

1. As part of the filing of a Land Use Application to which the city's Program applies, the owner and/or Zoning Applicant(s) shall submit an affidavit that includes:

- (a) The names of the owners of each parcel or portions thereof that comprise the site described in §3.9.2.E.1.
- (b) The city of Fairfax tax map number, parcel size, and zoning district classification for each parcel or part thereof that is included as part of the site in such application or submission.

E. Economic interests

1. For purposes of the city's Program, "site, or any portion thereof, at one location" shall include all adjacent land of the owner and/or Zoning Applicant, under common ownership and/or control of the owner and/or Zoning Applicant, including, but not limited to, land owned and/or controlled by separate partnerships, land trusts, corporations, or similar business entities in which the owner and/or Zoning Applicant (including members of the immediate family of the owner and/or Zoning Applicant) is a partner, beneficiary, or owns 1% or more of the stock of such forms of business entities.
2. Immediate family members shall include the owner's and/or Zoning Applicant's spouse, children, parents and siblings.
3. When a financial institution has acquired, or acquires, an equity interest in property solely by virtue of its agreement to provide financing, such equity interest shall not be considered by the city in making a determination of applicability of the city's Program to that property. However, the acquisition of a fee interest by such lending institution due to foreclosure or project participation shall be considered an ownership interest by the city in making a determination of applicability of the city's Program to that property.

F. Exemptions

Unless otherwise specified, the requirements of the city's Program shall not apply to the following:

1. Any Land Use Application approved before the effective date of the city's Program for a specific development that does not itself provide for Affordable Dwelling Units or any monetary contribution made to support the provision of Affordable Dwelling Units in the city.
2. Any Land Use Application filed in accordance with a rezoning approved before the effective date of the city's Program wherein the city council accepted a proffer in which the owner and/or Zoning Applicant agreed to provide Affordable Dwelling Units or other specific and express contributions to affordable housing, such as money dedicated to the city of Fairfax housing trust fund. Notwithstanding the fact that terms and conditions of the approval of any such application may differ from the provisions of the city's Program, any such development shall comply with the terms and conditions of the approval of such application.
3. To the extent it may differ from the provisions of the city's Program, any Land Use Application approved before the effective date of the city's Program in which the owner and/or Zoning Applicant agreed in a manner other than through the submission of a rezoning proffer to provide Affordable Dwelling Units or other specific and express contributions to affordable housing, such as money dedicated to the city of Fairfax 's housing trust fund. Notwithstanding the fact that terms and conditions of the approval of any such application may differ from the provisions

of the city's Program, any such development shall comply with the terms and conditions of the approval of such application and all other applicable provisions of the city's Program.

4. Any Land Use Application that does not seek to either change the dwelling unit type of any residential units existing on or approved for the site or increase the number of residential dwelling units permitted on the site that is the subject of that application.

§3.9.3 Development regulations

A. Dimensional standards

All Affordable Dwelling Unit Developments shall comply, if applicable, with the minimum requirements and the maximum density requirements of §3.6.1(B), which allows for modifications of certain dimensional standards for Affordable Dwelling Unit Developments.

B. Use types

For purposes of the city's Program, single-family detached homes, single-family attached homes, townhouses, and duplexes shall be deemed single-family uses. With respect to upper story residential/mixed use homes, those uses shall be deemed single-family uses when they are consistent with the definition of single-family uses listed above. When upper story residential/mixed use homes bear the characteristics of and are more similar to multifamily homes such as apartments, then those uses shall be deemed multifamily uses under the terms of the city's Program.

C. Single-family

1. Any additional single-family dwelling units an owner and/or Zoning Applicant is authorized to construct under the Affordable Dwelling Unit Development Regulations shall be deemed optional density under the terms of the city's Program. Regardless of whether any optional density increase is requested for a particular site, the provision of Affordable Dwelling Units shall be required in all single-family developments to which the city's Program applies.
2. All single-family residential developments, whether detached, attached, townhouse, duplex, or upper story residential/mixed use homes, to which the city's Program applies shall provide no less than 10 percent of the total single-family units in that development as Affordable Dwelling Units or a modification approved by city council shall be necessary in order to reduce the number of required single-family Affordable Dwelling Units, except where modified under § 6.19.

D. Multifamily

1. Any additional multifamily dwelling units an owner and/or Zoning Applicant is authorized to construct under the Affordable Dwelling Unit Development Regulations shall be deemed optional density under the terms of the city's Program. Regardless of whether any optional density increase is requested for a particular site, the provision of Affordable Dwelling Units shall be required in all multifamily developments to which the city's Program applies.
2. All multifamily residential developments to which the city's Program applies shall be required to provide no less than 6 percent of the total units in that multifamily development as Affordable Dwelling Units or a modification approved by city council shall be necessary in order to reduce the number of required multifamily Affordable Dwelling Units.
3. Different unit types (e.g., studio/efficiency, one-bedroom, two-bedroom, and three-bedroom) shall be provided throughout all multifamily developments to which the city's Program applies in approximate proportion to the ratio of units provided throughout the entire development to market-rate tenants. Compliance with the foregoing requirement shall be determined through the exercise of reasonable discretion by the zoning administrator.

E. Mixed unit types

In the event an Affordable Dwelling Unit Development includes both single-family residential units and multifamily residential units, no less than 10 percent of the single-family units shall be Affordable Dwelling Units and no less than 6 percent of the multifamily units shall be Affordable Dwelling Units or a modification approved

by city council shall be necessary in order to reduce the number of required single-family or multifamily Affordable Dwelling Units.

F. Fractional units

When the percentage requirements set forth in the city's Program yield a fractional unit, any such fraction shall be rounded down from .49 and below so that no additional Affordable Dwelling Unit shall be required and any such fraction shall be rounded up from .50 and above so that one additional Affordable Dwelling Unit shall be required.

G. Voluntary affordable dwelling units

For a development to which the City's Program does not apply, an owner and/or Zoning Applicant may, at his or her discretion, voluntarily agree to provide the number of Affordable Dwelling Units that would be required for that development if the city's Program applied thereto. In the event an owner and/or Zoning Applicant agrees to voluntarily provide such Affordable Dwelling Units in accordance with the city's Program, the development in which such Affordable Dwelling Units are provided may utilize the Affordable Dwelling Unit Development Regulations.

H. Limits on permits in developments containing affordable dwelling units

At any time after the issuance of a building permit for an Affordable Dwelling Unit (or permits for groups of Affordable Dwelling Units) but before the issuance of the first zoning permit for use and occupancy of an Affordable Dwelling Unit, the owner and/or Zoning Applicant must send a notice of availability to the city advising that a particular Affordable Dwelling Unit (or group of Affordable Dwelling Units) is now or will be completed and ready for sale or rental. The city's Affordable Dwelling Unit Administrative Regulations (see § 2(D)) regarding the notice of availability shall specify its form and the office to which it must be submitted.

1. No zoning permit for use and occupancy may be issued until the declaration of covenants referenced in §3.9.3.I is recorded.
2. No zoning permit for use and occupancy may be issued until the rents or sales prices for the Affordable Dwelling Units are approved by the city.

I. Developer's covenants

Affordable dwelling unit covenants, which are applicable to Affordable Dwelling Units and which run in favor of and are in the form prescribed by the city, shall be recorded simultaneously with the recordation of the final subdivision plat or, in the case of a condominium, recorded simultaneously with the condominium declaration. The covenants must be recorded and delivered to the city before the Control Period may begin and shall meet the requirements as set forth by the city's Program. (See, e.g., §3.9.8). Prior to the approval of a site plan or subdivision, the owner and/or Zoning Applicant shall cause the affordable dwelling unit covenants to be recorded among the land records of Fairfax County and indexed in the names of all owners of the site or portion thereof, as such terms are defined herein. In the event neither a site plan nor a subdivision plat is required by a particular situation, the affordable dwelling unit covenants shall be recorded before the approval of a zoning permit for use and occupancy.

§3.9.4 Procedures for Affordable Dwelling Units offered for sale

A. Sales of Affordable Dwelling Units regulated by the city

The sale of affordable dwelling units shall be regulated by the city. The city may adopt reasonable rules and regulations to assist in the regulation and monitoring of the sale and resale of affordable dwelling units, which may include, among other things, giving a priority to persons who live or work in the city.

B. Exclusive right of city to purchase Affordable Dwelling Units

The city or its designee shall have the exclusive right to purchase up to one-third of the for-sale Affordable Dwelling Units in a development within ninety (90) days after a dwelling unit is completed and ready for purchase. The remaining two-thirds of such units shall be offered for sale exclusively for a ninety-day period to persons who qualify to purchase such units under the city's Program. The sales of Affordable Dwelling Units shall be administered in accordance with the provisions of the city's Affordable Dwelling Unit Development Regulations.

C. Affordable Dwelling Unit cost factors

A schedule of city-wide cost factors and the cost calculation formula used to determine sales prices shall be established initially and may be amended periodically by the city, based upon a determination of all ordinary, necessary and reasonable costs required to construct the various affordable dwelling unit prototype dwellings by private industry in the city, after consideration by the city of written comments from the public and other information which may be available, such as the area's current general market and economic conditions.

D. Sales price review

The city may conduct a review of affordable dwelling unit sales prices on an annual basis to determine if the price needs an adjustment.

E. No economic loss

The sales prices for Affordable Dwelling Units within a development shall be established such that the owner and/or Zoning Applicant shall not suffer economic loss as a result of providing the required Affordable Dwelling Units. "Economic loss" shall mean that result that would occur if the owner and/or Zoning Applicant of a development were to fail to recoup the cost of construction and certain allowances as may be determined by the city manager for the Affordable Dwelling Units, exclusive of the land acquisition cost and costs voluntarily incurred, but not authorized, under the city's Program, upon sale of an Affordable Dwelling Unit.

F. Timeline for who can purchase an Affordable Dwelling Unit

The timeline for who can purchase an Affordable Dwelling Unit under the city's Program and when such purchases can be made is set forth in the city's Affordable Dwelling Unit Administrative Regulations (see 3(B-F)).

G. Requirements for certificate of qualification

In order to secure the approval of a certificate of qualification, an individual or household must establish satisfaction of the applicable requirements, which are set forth in the city's Affordable Dwelling Unit Administrative Regulations (see 3(A), including, but not limited to, the requirement that the individual or household must be a first-time homebuyer in accordance with the definition of that term as set forth in the city's Affordable Dwelling Unit Administrative Regulations.

H. Sales price limits for Affordable Dwelling Units

No Affordable Dwelling Unit in the city may be sold without the city first determining a reasonable and affordable maximum price at which each such unit may be sold.

I. Request for approval of proposed maximum sales price

On or before the date of issuance of a zoning permit for use and occupancy of an Affordable Dwelling Unit offered for sale, the owner of the Affordable Dwelling Unit shall submit to the city a request for the approval of a proposed maximum sales price for that unit in accordance with Section 3(B) of the city's Affordable Dwelling Unit Administrative Regulations.

J. City may request additional information

After the owner of a for-sale Affordable Dwelling Unit submits a justification and documentation to the city regarding the proposed maximum sales price, the city may, in its sole discretion, request additional information or documentation from said owner.

K. City may establish reasonable criteria

The city may establish reasonable criteria and guidelines to apply in its determination of a reasonable and affordable proposed maximum sales price for any Affordable Dwelling Unit under the provisions of the city's Program.

L. City acts within 60 days

Upon submission to the city of all requested information related to an owner's proposed maximum sales price, the city shall, within 60 days:

1. Determine a reasonable and affordable maximum sales price for the Affordable Dwelling Unit; and
2. Inform the owner in writing of the city's determination.

M. Order of priority for buyers of Affordable Dwelling Units

The order of priority for prospective buyers of units under the city's Program shall be the number of priority points each household has on the date of the city's determination of a reasonable and affordable maximum sales price in accordance with the priority point system set forth in the city's Affordable Dwelling Unit Administrative Regulations.

- N. Notification to city of proposal to sell Affordable Dwelling Unit to a qualified buyer
Once the city has determined a reasonable and affordable maximum sales price for an Affordable Dwelling Unit, the owner of that Affordable Dwelling Unit must, within 60 days of the date of said determination, inform the city in writing whether it wishes to sell the unit to an applicant to purchase an Affordable Dwelling Unit who has qualified for participation in the city's Program in accordance with the following:
1. If the owner of an Affordable Dwelling Unit decides to sell such Affordable Dwelling Unit and informs the city in writing, then the city or its designee shall have the right of first refusal to purchase such unit at an all cash closing within sixty (60) days;
 2. The city may assign its right to purchase such unit to either its agent and/or a nonprofit selected by the city for such purposes;
 3. In the event the city, its agent or a designated nonprofit does not exercise its right of first refusal within the 60-day period set forth above, the owner shall offer the unit to only applicants that possess a certificate of qualification at no more than the maximum sales price set by the city; and
 4. In the event the city, its agent or a designated nonprofit does not exercise its right of first refusal within the 60-day period set forth above, the owner may, at any time before the owner has sold said unit to an applicant who has qualified to participate in the city's Program, sell the unit to the city, its agent or a designated nonprofit at a lower price that may be mutually agreed upon by the owner and the city, its agent or a designated nonprofit.
- O. Unit must be used as an Affordable Dwelling Unit
Any Affordable Dwelling Unit sold under the terms and conditions of the city's Program shall be used by the owner of that unit as an Affordable Dwelling Unit in accordance with the terms and conditions of the city's Program until such time as the applicable 30-year control period has expired in accordance with §3.9.8.B. Once an Affordable Dwelling Unit has been established in accordance with the city's Affordable Dwelling Unit Ordinance, no interest in such unit may be transferred by the owner by deed, gift, or in any other manner without the approval of the city.
- P. Sale documents must be approved by the city
Any and all documents related to the sale of any Affordable Dwelling Unit under the terms and conditions of the city's Program shall be approved by the city prior to the consummation of any such sale in order to ensure that the transaction is being carried out in accordance with the city's Affordable Dwelling Unit and that any such Affordable Dwelling Unit remains as an Affordable Dwelling Unit.
- Q. City must verify prospective owner's income, employment and any additional qualification
The city shall be responsible with respect to any for-sale Affordable Dwelling Unit for verifying the gross household income, employment of any applicant seeking to purchase an Affordable Dwelling Unit. The city shall also be responsible for verifying any qualification that applies to any priority that such applicant has received under the terms of the city's Program.
- R. Unit resales during Control Period
Units offered for resale during any Control Period shall be offered in accordance with the city's Program.
- S. Initial sale of Affordable Dwelling Unit after the Control Period expires
The initial sale of an Affordable Dwelling Unit after the expiration of any Control Period shall be transacted in accordance with the city's Program.
- T. City entitled to half of sales price
In all instances, whether or not the city, its agent or a designated nonprofit elects to purchase such unit, the seller shall pay the housing trust fund equity share, as defined in the city's Affordable Dwelling Unit Regulations (see § 3(K)(4)(C), to promote affordable housing in the city of Fairfax.

- U. Eligible lenders for Affordable Dwelling Units offered for sale
Eligible lenders for Affordable Dwelling Units offered for sale shall be defined and regulated by the city's Affordable Dwelling Unit Administrative Regulations (see 3(L)).

§3.9.5 Procedures for Affordable Dwelling Units offered for rent

The rental rates of any Affordable Dwelling Unit provided pursuant to the city's Program shall be determined and controlled by the city consistent with the provisions of the city's Affordable Dwelling Unit Ordinance in accordance with the following:

- A. Maximum rental rate calculations
The city will determine maximum rental rate calculations in accordance with the city's Affordable Dwelling Unit Administrative Regulations with the limitation that the maximum rental rate for Affordable Dwelling Units shall be established such that the owner and/or Zoning Applicant shall not suffer economic loss as a result of providing rental Affordable Dwelling Units.
- B. Annual review
The city shall review Affordable Dwelling Unit rental prices annually in order to assure that such rental prices approved by the city are fair and reasonable. In conducting this review of Affordable Dwelling Unit rental prices, the city shall take into account changes in various cost elements as indicated by the U. S. Department of Commerce's Composite Construction Cost Index and/or such other comparable index or indices that may be selected by the city. The city may also take into account, when reasonable and appropriate, any changes in rental prices approved by public agencies in nearby localities when the city deems the applicable circumstances to be reasonably comparable to those found in the city.
- C. Quarterly statements
The landlord/owner of any Affordable Dwelling Unit rental unit(s) shall provide quarterly statements to the city in accordance with the city's Affordable Dwelling Unit Administrative Regulations.
- D. Verifications
The landlord/owner of any Affordable Dwelling Unit rental unit shall be responsible for providing verifications to the city regarding an Affordable Dwelling Unit tenant household's income, employment, and possession of a certificate of qualification.
- E. Affordable Dwelling Units must be used as Affordable Dwelling Units
Any Affordable Dwelling Unit leased under the terms and conditions of the city's Affordable Dwelling Unit Ordinance shall be used as an Affordable Dwelling Unit in accordance with the terms and conditions of the city's Program until such time as the applicable 30-year Control Period expires.
- F. Approval of documents by the city
Any and all documents related to the lease of any Affordable Dwelling Unit under the terms and conditions of the city's Program shall be approved by the city prior to the execution of any such lease agreement in order to ensure that the transaction is being carried out in accordance with the city's Affordable Dwelling Unit Program and that any such Affordable Dwelling Unit remains as an Affordable Dwelling Unit.
- G. Subletting not allowed
No affordable dwelling unit leased under the terms and conditions of the city's Program shall be sublet for any purpose.
- H. City must approve all Affordable Dwelling Unit leases
Any lease agreement for an Affordable Dwelling Unit shall be approved in advance by the city.
- I. Designation by applicant households of purchase and/or rental units
Each applicant household seeking to participate in the city's Program shall signify on its application for such participation whether it wishes to be considered for rental and/or ownership of an Affordable Dwelling Unit under the city's Program. If such an applicant household indicates on the application that it wishes to be considered solely

for rental of an Affordable Dwelling Unit, then such applicant household shall be evaluated only with respect to Affordable Dwelling Units that become available for rental under the terms of the city's Program. If such an applicant household indicates on the application that it wishes to be considered solely for ownership of an Affordable Dwelling Unit, then such applicant household shall be evaluated only with respect to Affordable Dwelling Units that become available for ownership under the terms of the city's Program. If such an applicant household indicates on the application that it wishes to be considered for both rental and ownership of an Affordable Dwelling Unit, then such applicant household shall be evaluated with respect to Affordable Dwelling Units that become available for both types of Affordable Dwelling Units and for which such applicant qualifies under the terms of the city's Program.

J. Proof of qualification of applicants

All applicant households seeking to rent an Affordable Dwelling Unit through the city's Program, including existing Affordable Dwelling Unit tenants, shall be required to apply each year for such participation by filing the applicable application for a certificate of qualification with the city. The landlord/owner shall verify the income of all households seeking to participate in the city's Program and shall be responsible for determining whether any such applicant household meets the criteria for such participation.

K. Eligible lenders for rental Affordable Dwelling Units

Eligible lenders for Affordable Dwelling Units offered for rent shall be defined and regulated by the city's Affordable Dwelling Unit Administrative Regulations.

L. Exclusive right of city to lease Affordable Dwelling Units

The city or its designee shall have the exclusive right to lease up to one-third of the for-lease Affordable Dwelling Units in a development within ninety (90) days of a dwelling unit being completed and ready for lease. The remaining two-thirds of such units shall be offered for lease exclusively for a ninety-day period to persons who qualify to lease such units under the city's Program. The lease of Affordable Dwelling Units shall be administered in accordance with the provisions of the city's Affordable Dwelling Unit Administrative Regulations (see 4(C)(1)).

§3.9.6 Designation of Affordable Dwelling Units on plats, plans, land use applications, or other applicable zoning permits

A. For-sale units

All site plans, subdivision plats, land use applications, or other applicable zoning permits for developments that include for-sale Affordable Dwelling Units under the provisions of the city's Program shall identify:

1. The specific number of for-sale units that are to be provided as Affordable Dwelling Units under the provisions of the city's Program;
2. The specific lots or units that will be for-sale Affordable Dwelling Units under the city's Program;
3. The mixture of Affordable Dwelling Unit and market-rate units based on the number of bedrooms; and
4. The number of bedrooms and the dimensions of the living spaces, including bedrooms, bathrooms, kitchens, living rooms, dining rooms, and any other rooms, and the total square footage of all units that will be for-sale units, whether affordable or market-rate units.

B. Rental units

All site plans, subdivision plats, land use applications, or other applicable zoning permits for developments that include rental Affordable Dwelling Units under the provisions of the city's Program shall identify:

1. The specific number of units that are to be provided as rental Affordable Dwelling Units under the provisions of the city's Program;
2. The number of bedrooms and the dimensions of the living spaces, including bedrooms, bathrooms, kitchens, living rooms, dining rooms, and any other rooms, and the total square footage of all units that will be rental units, whether affordable or market-rate units;
3. The specific lots or units which are rental Affordable Dwelling Units on approved plans, provided, however, that, upon the request of the landlord/owner of an

Affordable Dwelling Unit, a unit designated as an Affordable Dwelling Unit on a site plan, subdivision plat, or other Land Use Application may be undesignated as an Affordable Dwelling Unit so long as another Affordable Dwelling Unit that is substantially equivalent is designated in lieu thereof, and further provided, however, that the specific locations of affordable dwelling units in a development may change from those locations shown on a site plan, as long as the approved ratios of affordable dwelling units to market-rate units and conditions relating to those affordable dwelling units stay the same; and

4. For all multifamily developments, the number of Affordable Dwelling Units by bedroom count and the number of market-rate units by bedroom count, which notation shall be a condition of approval of the approved site plan or building plan.

C. Multiple Section developments

For multiple section developments where all the required Affordable Dwelling Units are not to be provided in the first section of the development, the site plan and/or record subdivision plat for the first section and all subsequent sections shall contain a notation identifying in which section(s) the affordable dwelling units will be or have been provided and a total of all Affordable Dwelling Units for which such site plan(s) and/or subdivision plat(s) have been approved.

D. Qualifications for bedrooms

The number of bedrooms provided in an Affordable Dwelling Unit shall be determined by the city's zoning administrator after reviewing, among other things, the plans submitted to the city for the particular development, the size and functionality of the living space in such units, and the existence of windows, closets, and doors providing privacy from other areas in the Affordable Dwelling Units.

E. Specifications for prototype Affordable Dwelling Units

The city may, at its discretion, administratively establish specifications for prototypical Affordable Dwelling Units based on the numbers of bedrooms in various dwelling unit types. In the event the city establishes such specifications, every Affordable Dwelling Unit provided under the city's Program shall satisfy all specified requirements for the applicable dwelling unit type. In addition, all Affordable Dwelling Unit developments shall satisfy the Affordable Dwelling Unit Development Regulations set forth in § 3.6.1 and §3.6.2 of this Ordinance.

F. Comparability of units

Any Affordable Dwelling Units provided under the provisions of the city's Program shall be comparable with respect to the number of bedrooms for the unit when compared to equivalent market rate units in the same development. In general, dwelling dimensions of a multifamily ADU shall be comparable to equivalent market rate units in the same development.

G. Similarity and compatibility of units

Affordable Dwelling Units shall be similar to and compatible with the dwelling unit types and architectural styles of market-rate units provided in the same development, provided, however, that the requirement of similarity and compatibility of Affordable Dwelling Units with market rate units may be achieved, if permitted in the underlying zoning district, by the provision of single-family attached, duplex, or townhouse Affordable Dwelling Unit in a development comprised of homes whose size would otherwise make that determination of similarity and compatibility infeasible. If permitted by the Zoning Ordinance, the use of single-family attached, duplex, or townhouse Affordable Dwelling Unit, which would provide homes for no more than three Affordable Dwelling Unit households, may, in comparison to one market-rate unit household, serve to provide the compatibility required by this section.

H. Interspersion of units

Affordable Dwelling Units shall be interspersed among market-rate units in the same development in order to assure that the Affordable Dwelling Units are reasonably spread throughout the development and throughout each section of any multiple-section development and are not concentrated in the same building, area, or on the same floor of any building in that development.

I. Zoning permits for use and occupancy of Affordable Dwelling Unit Developments

In Affordable Dwelling Unit Developments that are required by the city's Program, zoning permits for use and occupancy for no more than 60% of the market-rate dwelling units in that development shall be issued prior to the issuance of zoning permits for use and occupancy for at least 50% of the Affordable Dwelling Units in that development. Zoning permits for use and occupancy for no more than 85% of the market-rate dwelling units in such developments shall be issued until after zoning permits for use and occupancy have been issued for 100% of the Affordable Dwelling Units in that development.

§3.9.7 State and federal affordable housing programs

- A. Full satisfaction of city's Program requirements with equivalent units
A development that provides the same number or more equivalent Affordable Dwelling Units under a local, state or federal housing program as the number and type of Affordable Dwelling Units required under the terms of the city's Affordable Dwelling Unit shall be deemed to satisfy the requirements of the city's Affordable Dwelling Unit Program so long as that development complies with all of the terms and conditions of said local, state or federal housing program.
- B. Partial satisfaction of city's Program if fewer units provided
In the event a development provides fewer equivalent Affordable Dwelling Units under a state or federal housing program than the number of Affordable Dwelling Units required under the terms of the city's Program, then said development must provide additional Affordable Dwelling Units in compliance with all of the terms and conditions of the city's Program to make up the shortage.
- C. Rents and sales prices
The rents and sales prices for Affordable Dwelling Units provided pursuant to federal, state or local programs shall be in accordance with the rules and regulations governing such programs and these units shall be marketed in accordance with such rules and regulations provided that rents and sale prices shall not exceed those set pursuant to the terms of the city's Program.
- D. Designation of Affordable Dwelling Units on plats, plans, land use applications, or other applicable zoning permits
Any development that relies, in whole or in part, on the provisions of this Section to satisfy the requirements of the city's Program shall be required to comply with the provisions of §3.9.6 with respect to all Affordable Dwelling Units provided in that development.

§3.9.8 Miscellaneous provisions

- A. Control Periods for Affordable Dwelling Units
Any Affordable Dwelling Unit created under the city's Program shall have a Control Period of thirty (30) years. For rental Affordable Dwelling Units, the Control Period for an Affordable Dwelling Unit shall commence on the date on which a zoning permit for use and occupancy is approved by the city for that particular unit. As to for-sale Affordable Dwelling Units, the Control Period shall commence on the date of the deed conveying the Affordable Dwelling Unit to the owner.
- B. Affordable Dwelling Units converted to market-rate units
In the event the city approves a request to convert an Affordable Dwelling Unit to a market-rate unit, a different market-rate unit that is substantially similar to the former Affordable Dwelling Unit in the same development must be converted to an Affordable Dwelling Unit. The thirty (30) year Affordable Dwelling Unit term will not start to run again for the newly created Affordable Dwelling Unit until that unit is occupied as an Affordable Dwelling Unit. With respect to the thirty (30) year term, if such a conversion is approved by the city, the city will credit the newly created Affordable Dwelling Unit for any time it was previously occupied as an Affordable Dwelling Unit.
- C. Relocation assistance

1. At the conclusion of the thirty (30) year period described above, the landlord/owner of an Affordable Dwelling Unit shall provide relocation assistance to the tenants of any rental Affordable Dwelling Unit at the time of the expiration of the affordability restrictions. The landlord/owner of any such Affordable Dwelling Unit shall, no later than one year prior to the expiration of the affordability restrictions required by the city's Program, submit a relocation assistance plan ("RAP") to the city for approval. The RAP shall, at a minimum, include a contribution of 50% of the reasonable market costs that will be incurred by the tenant of each such Affordable Dwelling Unit in moving the tenant's physical property from the subject property. The landlord/owner submitting the RAP to the city shall provide the tenant of such Affordable Dwelling Unit with a copy of the proposed RAP in order to enable the tenant to provide comments to the city regarding the proposed RAP.
2. The city shall act on the landlord's/owner's proposed RAP within sixty (60) days of the filing of such plan.
3. If the landlord/owner of an Affordable Dwelling Unit fails to submit a RAP to the city no later than one year prior to the expiration of the thirty (30) year affordability period, or fails to secure the approval of such RAP by the city manager no later than six (6) months prior to the expiration of the thirty (30) year affordability period, the period of required affordability under the city's Program shall be extended one (1) day for every day the landlord/owner has been late in submitting or securing the approval of such RAP as set forth above.
4. Upon approval of a RAP for an Affordable Dwelling Unit, the approved RAP shall be presented by the landlord/owner to the tenant of such unit no less than six (6) months prior to the conclusion of the thirty (30) year affordability period.

D. No proffers allowed for Affordable Dwelling Units, Affordable Dwelling Unit-related contributions of land or other property interests, or monetary contributions to the city of Fairfax housing trust fund
No Affordable Dwelling Unit, Affordable Dwelling Unit-related contribution involving the dedication of land or other property interests, or monetary contribution to the city of Fairfax housing trust fund will be accepted by the city council as part of a proffered condition in conjunction with any rezoning application acted upon by the city council after the effective date of the city's Program. Any such Affordable Dwelling Unit, Affordable Dwelling Unit-related contribution involving the dedication of land or other property interests, or monetary contribution to the city's housing trust fund shall be provided either as part of an owner and/or Zoning Applicant's compliance with the requirements of the city's Program or through a request for modifications under §6.19.

E. Condominium conversions

In the event the owner of an Affordable Dwelling Unit wishes to convert such unit to condominium ownership, such conversion may take place only after the owner has submitted and the city has approved a plan to ensure the continued provision of Affordable Dwelling Units on the site. Any such plan must ensure the provision of affordable rental or for-sale units under the terms of the Affordable Dwelling Unit Program for the balance of the thirty (30) year affordability period or provide a cash-in-lieu contribution that meets the approval of the city council under §6.19.

1. The owner of an Affordable Dwelling Unit may elect to sell any Affordable Dwelling Unit that are converted to condominiums under the regulations of §3.9.4. Any plan for the sale of Affordable Dwelling Units after being converted to condominiums must provide the tenants of any such Affordable Dwelling Units the right to purchase any such condominium unit before such unit may be sold to any other person who qualifies to purchase such Affordable Dwelling Unit under the terms of the city's Program.
2. The owner of Affordable Dwelling Units may elect to rent those Affordable Dwelling Units that are converted to condominiums under the regulations of §3.9.5. Any plan for the rental of Affordable Dwelling Units after being converted to condominiums must provide that all Affordable Dwelling Units in the development will be transferred to the owner of the Affordable Dwelling Units before the conversion and that all covenants applicable to the Affordable Dwelling Units remain in full force and effect after the conversion.

BE IT ORDAINED, by the City Council of the City of Fairfax, Virginia, that Chapter 110, Article 5, §5.5 of the Code of the City of Fairfax, Virginia, is hereby amended as follows:

§5.5. DIRECTOR OF COMMUNITY DEVELOPMENT AND PLANNING

§5.5.1. Designation

The director of community development and planning, as appointed by the city manager, shall administer and enforce these zoning regulations, except as otherwise specified. In the performance of his or her duties, the director may request the assistance of any appropriate officer or agency of the city.

§5.5.2. Powers and duties

A. General

The director shall have powers and duties as may be described elsewhere in this chapter.

B. Recommendations

The director shall be responsible for making recommendations regarding the following:

1. Text amendments (§6.3);
2. Map amendments (rezoning) (§6.4);
3. Certificates of appropriateness, major (§6.5);
4. Planned development reviews (§6.6); ~~and~~
5. Special use reviews (§6.7); and
6. Affordable dwelling unit modifications (§6.19).

C. Final decisions

The director shall be responsible for making final decisions regarding the following:

1. Certificates of appropriateness, minor (§6.5).

BE IT FURTHER ORDAINED, by the City Council of the City of Fairfax, Virginia, that Chapter 110, Article 6, of the Code of the City of Fairfax, Virginia, is hereby amended as follows:

§6.1. SUMMARY OF REVIEW AUTHORITY

The following table summarizes review and approval authority under this chapter.

PROCEDURE		DIRECTOR OF COMMUNITY DEVELOPMENT AND PLANNING	DIRECTOR OF PUBLIC WORKS	ZONING ADM.	PLANNING COMMISSION	CITY COUNCIL	BOARD OF ARCHITECTURAL REVIEW	BOARD OF ZONING APPEALS	REF.
Text Amendments		Review			<Review>	<Decision>			§6.3
Map Amendments (Rezoning)		Review			<Review>	<Decision>			§6.4
Certificates of Appropriateness	Minor	Decision							§6.5
	Major	Review				Decision*	Decision		
Planned Development Reviews		Review			<Review>	<Decision>			§6.6
Special Use Reviews		Review				<Decision>			§6.7
Site Plan Reviews			Review	Decision					§6.8
Sign Permits				Decision					§6.9
Tree Removal Permits				Decision					§6.10
Floodplain Permits			Review	Decision					§6.11
Erosion/Sediment Control Permits			Review	Decision					§6.12
Chesapeake Bay Preservation Reviews			Review	Decision					§6.13
Stormwater Permit			(VSMP Authority) Decision						§6.14
Temporary Use Permits				Decision					§6.15
Administrative Adjustments				Decision					§6.16
Special Exceptions				Review		<Decision>*		<Decision>	§6.17
Variances				Review		<Decision>*		<Decision>	§6.18
Affordable Dwelling Unit		Review				<Decision>			§6.19

Modifications							
Written Interpretations			Decision				§6.1920
Zoning Permits			Decision				§6.2021
Administrative Appeals						<Decision>	§6.2122
Appeals to City Council					<Decision>		§6.2223
Appeals to Court							§6.2324

<Public Hearing Required>

* Alternative City Council approval procedure available. The board of zoning appeal approves all special exceptions in the RL, RM and RH districts.

§6.2. COMMON REVIEW PROCEDURES

§6.2.1. Pre-application meeting

- A. Before submitting an application required by this chapter, each Zoning Applicant may hold a pre-application meeting with the zoning administrator, the director of community development and planning, or other applicable review official(s), or with decision-making bodies (separately or jointly) to discuss the procedures, standards and regulations required for development approval in accordance with this chapter. There shall be no discussion of proffers at any pre-application meeting.
- B. No official action shall be taken at such meeting and no commitments shall be made by the city or any agency thereof at such meeting.
- C. A pre-application meeting shall be required for each of the following:
 - 1. Map amendments (rezoning) (§6.4);
 - 2. Planned development reviews (§6.6);
 - 3. Special use reviews (§6.7);
 - 4. Site plan reviews (§6.8);
 - 5. Certificates of appropriateness (§6.5); ~~and~~
 - 6. Special exceptions (§6.17); ~~and~~
 - 7. Affordable Dwelling Unit modifications (§6.19).

....

§6.2.4. Application processing

....

G. Decisions

Unless specifically provided elsewhere, all final decisions by decision-making bodies, including map amendments (rezoning), text amendments, planned development reviews, special use reviews, special exceptions, variances, affordable dwelling unit modifications, administrative appeals and appeals to city council, shall require an affirmative vote. Tie votes shall be considered denials of any requested change.

....

§6.2.5. Notice and public hearings

A. Summary of notice requirements

Notice shall be required for applications as shown below, except as otherwise specified. Unless otherwise stated, all notice requirements shall be the city's responsibility.

DEVELOPMENT REVIEW TYPE		PUBLISHED	MAILED	POSTED	REFERENCE
Text amendments	Affecting more than 25 parcels	■			§6.3
	Decreasing density	■	■		
	Affecting 25 or fewer parcels	■	■		
Map amendments (rezoning)	Affecting more than 25 parcels	■	■		§6.4
	Decreasing density	■	■	■	
	Affecting 25 or fewer parcels	■	■	■	

DEVELOPMENT REVIEW TYPE		PUBLISHED	MAILED	POSTED	REFERENCE
Planned development reviews	Affecting more than 25 parcels	■			\$6.6
	Affecting 25 or fewer parcels	■	■	■	
Special use reviews		■	■	■	\$6.7
Special exceptions		■	■	■	\$6.17
Variances		■	■	■	\$6.18
Affordable Dwelling Unit Modifications		■	■	■	\$6.19
Administrative appeals		■			\$6.2422
Appeals to city council		■			\$6.2223

....

§6.19. AFFORDABLE DWELLING UNIT MODIFICATIONS

§6.19.1. Applicability

- A. For single-family and multifamily Affordable Dwelling Unit developments and any residential component of a mixed use Affordable Dwelling Unit Development, modifications to the requirements of the city's Program may be allowed by the city council with the approval of a separate application for such modifications under the provisions of the city's Program.

§6.19.2. Pre-application meeting

Zoning Applicants requesting modifications to the requirements of the city's Program shall hold a pre-application meeting in accordance with §6.2.1.

§6.19.3. Application requirements

Applications for modifications to the requirements of the city's Program shall be submitted in accordance with §6.2.3.

- A. Support for city's goal to provide Affordable Dwelling Units
The Zoning Applicant shall provide the city with sufficient justification regarding how the proposed modification supports the city's goal of providing Affordable Dwelling Units throughout the city. The Zoning Applicant shall provide sufficient justification explaining why the proposed modification is necessary and preferable to the application of the requirements of the city's Program to the proposed development with no modification.
- B. Cash contributions to the city's housing trust fund
Any request to modify the provisions of §3.9.3.C, §3.9.3.D, or §3.9.3.E shall include, but need not necessarily be limited to, a cash contribution to the city of Fairfax housing trust fund and/or the dedication of land or other property rights to the city to support the provision of affordable housing in the city. In the event a dedication of land or other property rights is proposed, the Zoning Applicant and the city must agree on the cash value of such dedication or rights in order for that type of modification to be allowed. If such modification based on the provision of a cash contribution or the dedication of land or other property rights is requested, any such contribution or dedication shall be the equivalent of the owner and/or Zoning Applicant's obligation to provide affordable dwelling units themselves and the following criteria shall apply to any such payment or contribution:
1. Any cash contributions made in lieu of the provision of affordable dwelling units in conjunction with a modification request shall be a per unit cash contribution of 100% of the construction cost of a prototypical affordable dwelling unit based on the numbers of bedrooms in various dwelling unit types.
 2. All cash contributions made in conjunction with a modification request shall be calculated in terms of current dollars, adjusted by the consumer price index, at the time the contribution is actually received by the city.

3. All cash contributions made in conjunction with a modification request shall be paid to the city before the first zoning permit for use and occupancy is issued for any part of the development.

§6.19.4. Notice and hearings

The city shall hold all required public hearings and give notice in accordance with §6.2.5.

§6.19.5. Action by the director of community development and planning

The director of community development and planning, in consultation with the city manager and the city's agent, if any, shall review each application for modifications to the requirements of the city's Program in accordance with the approval considerations of §6.19.7, and distribute the application to appropriate agencies and reviewers. Prior to the approval of any such modification by city council, the director of community development and planning, after consulting with the city manager and the city's agent, if any, shall provide a recommendation regarding the proposed modification.

§6.19.6. Action by city council

After receiving the recommendation from the director of community development and planning in consultation with the city manager, the city council shall review the proposed modification to the requirements of the city's Program, in a public hearing and in accordance with the approval considerations of §6.19.7, and approve, approve with modifications or conditions, table or defer, or disapprove the requested modification.

§6.19.7. Approval considerations

An application for such modifications may be approved upon a finding by the city council that the proposed alternative will positively impact the city's goal of providing a broad range of affordable housing opportunities throughout the city. In determining whether to approve a request for a modification to the requirements of the city's Program, the city council shall consider the following:

- A. The number of Affordable Dwelling Units regulated by the provisions of the city's Program and other types of affordable housing that exist or are in the process of being provided in the city;
- B. The extent to which existing Affordable Dwelling Units in the city have remained on the market unoccupied by persons who satisfied the provisions of this Article;
- C. The extent to which public facilities and services are available or will be available within a reasonably foreseeable period of time to accommodate the densities in those developments in the city that include or will include Affordable Dwelling Units;
- D. Existing unique or unusual site constraints that would result in potential adverse impacts on environmental resources on the subject property or nearby or adjacent parcels, including, but not limited to, difficult soil or drainage conditions;
- E. Unusual costs associated with the development of the site; and
- F. The extent to which the proposed modification would support a specific program or goal of the city in providing Affordable Dwelling Units.

§6.19.8. Limitation on Reduction of Affordable Dwelling Units

The number of required Affordable Dwelling Units for any particular single-family or multifamily development, or any residential component of a mixed-use development, under the provisions of the city's Program shall not be reduced by more than 50%. However, multifamily Affordable Dwelling Unit developments that are specifically designed and intended primarily for college and/or university student residents and multifamily components of mixed-use Affordable Dwelling Unit developments that are specifically designed and intended primarily for college and/or university student residents, may request modifications of more than 50% of the number of required Affordable Dwelling Units.

§6.19.9. Transfer of Affordable Dwelling Unit modification approvals

Affordable dwelling unit modification approvals, and any attached conditions, run with the land and are not affected by changes in tenancy or ownership.

§6.19.10. Appeals to court

Final decisions by the city council on modifications to the requirements of the city's Program may be appealed within 30 days of the decision in accordance with §6.23.

....

[the existing 6.19 through 6.23 will need to slide one number back]

§6.20. ZONING PERMITS

§6.20.1. Applicability

- A. Zoning permits shall be reviewed in accordance with the provisions of §6.20.
- B. No building permit shall be issued prior to the approval of a zoning permit. It shall be unlawful to move, construct, or alter, or to commence moving, constructing or altering, except for making ordinary repairs, any building or other structure on a site, including an accessory structure, until the zoning administrator has issued a zoning permit.
- C. It shall be unlawful to use any land or building, or to change tenancy or ownership or any use, or to change the type of use of land, or to change the type of use or type of occupancy of any building; or to extend any use on any lot, until the zoning administrator has issued a zoning permit for such intended use.
- D. It shall be unlawful to undertake any land-disturbing activity until the zoning administrator has issued a zoning permit for such work.
- E. Zoning permits are not required for permitted temporary uses (*See* §3.5.6) or for tree removal (*See* §6.10).

....

BE IT FURTHER ORDAINED, by the City Council of the City of Fairfax, Virginia, that Chapter 110, Article 8, §8.3, of the Code of the City of Fairfax, Virginia, is hereby amended as follows:

§ 8.3. REMEDIES AND PENALTIES

....

§ 8.3.6. Civil penalties

- A. Violation of the provisions of this chapter, whether by act or omission, shall be punishable by a civil penalty of \$200 per day and each day that a violation remains uncorrected after receiving notice of the violation from the city shall constitute a separate offense of this chapter. In addition, repeat violations, meaning violations of the same section that are repeated after resolution of the initial violation, shall be subject to the following penalties:
1. \$500 for the second violation,
 2. \$500 for the third violation and
 3. \$500 for each additional violation to a maximum \$2,500.
- B. The following provisions shall apply whenever any person violates any provision of the city's Program, participates in the violation of any provision of the city's Program, permits any violation of any provision of the city's Program, or fails to comply with any of the requirements of the city's Program:
1. Any landlord/owner of an Affordable Dwelling Unit who fails to submit executed and complete affidavits, certifications, or any other documentation required by or under the city's Program shall be fined from two hundred dollars (\$200.00) per day per unit, up to a maximum of two thousand five hundred dollars (\$2,500.00) per day per unit, until such time as the required affidavit, certification, or documentation is filed with the city, but any such fine will apply only after written notice and a ten-day compliance period is provided. Any fines levied under the provisions of this paragraph shall become liens against the real property and shall accumulate interest at the judgment rate of interest.
 2. Tenants of Affordable Dwelling Units who fail to submit executed and complete affidavits, certifications, or other documentation required by or under the city's Program shall be subject to lease termination and/or eviction procedures.
- C. The violation by any person of any other provision of the City's program, whether by act or omission, shall be punishable in accordance with the terms of Section 8.3.6(A).
- D. The designation of a particular violation of this chapter as a civil penalty shall preclude criminal prosecution or sanctions, except for any infraction also resulting in injury or death to any person or persons.

§ 8.3.7. Criminal penalties

- A. Any violation of the following provisions, or any provision of proffers accepted pursuant thereto shall be deemed a misdemeanor and, upon conviction, shall be fined not more than \$1,000 for each offense:
1. §3.7.2, Historic overlay districts;
 2. §3.9, Affordable dwelling units, for falsely swearing to an affidavit, as specified in §8.3.7.F;
 23. §4.6, Signs, only as applied to signs placed in the right of way or on public property;
 34. §4.15, Floodplains;
 45. §4.16, Storm drainage facilities;

56. §4.18, Chesapeake Bay preservation; and
67. §6.8, Site plan review.

- B. Failure to remove or abate a zoning violation within the time period established by the court shall constitute a separate misdemeanor offense punishable by a fine of not more than \$1,000; and
- C. Failure to remove or abate a zoning violation during a succeeding 10-day period shall constitute a separate misdemeanor offense punishable by a fine of not more than \$1,500; and
- D. Continued failure during any succeeding 10-day period shall constitute a separate misdemeanor offense for each 10-day period punishable by a fine of not more than \$2,000.
- E. The remedy provided for in this §8.3 shall be in addition to any other remedies provided by law; however, the designation of a particular violation of this chapter as a civil penalty shall preclude criminal prosecution or sanctions, except for any infraction also resulting in injury or death to any person or persons.
- F. Any landlord/owner or tenant of an Affordable Dwelling Unit who shall falsely swear to or who executes an affidavit or certification required by or under the city's Program, knowing the statements therein are false, shall be guilty of a misdemeanor.
 - 1. Fines levied against landlords/owners of Affordable Dwelling Units under the provisions of this Section shall become liens against the real property and shall accumulate interest at the judgment rate of interest.
 - 2. Tenants of Affordable Dwelling Units who shall falsely swear to or who execute an affidavit or certification required by the city's Program knowing the statements contained in that affidavit or certification to be false shall also be subject to lease termination and/or eviction procedures as provided under the terms of the city's Program (see ADU Administrative Regulations § 4(F)(2)(f)).
 - 3. Owners of individual Affordable Dwelling Units who falsely swear that they continue to occupy any such Affordable Dwelling Unit as their primary place of domicile shall forfeit any right they may have had to occupy such Affordable Dwelling Unit as their primary place of domicile, the city shall have an exclusive right to purchase any such Affordable Dwelling Unit and the owners shall be required to sell any such Affordable Dwelling Unit to the city at a cash closing as set forth herein within 60 days or as soon thereafter as possible after the city learns of any such false affirmation. In such event, the owner of such Affordable Dwelling Unit shall offer to sell the Affordable Dwelling Unit in question to the city for a price not to exceed the control price of the unit at that time as established herein. The control price shall be determined by the original selling price, plus any increase in the United States Department of Labor's Consumer Price-Urban Area Index, plus the lesser of the current fair market value or the actual original cost of certain improvements made after the owner's purchase of the Affordable Dwelling Unit and the date of resale.

§8.3.8. Other penalties, remedies and powers

In addition to all other actions and penalties authorized in this article, the city attorney is authorized to institute injunctive, abatement or any other appropriate judicial or administrative actions or proceedings to prevent, enjoin, abate, or remove any violations of this chapter. After due notice to the owner of the violation, the city may also issue a citation for violation of this chapter requiring the presence of the violator in municipal court. In the event a fine is levied against any such violator, any such fine(s) shall become a lien against the real property pursuant to this Section, and shall accumulate interest at the judgment rate of interest.

§8.3.9. Other violations of the city's Program

Any person who violates the city's Program in a manner not specified above in this Section may be fined from \$100.00 per day per unit, up to a maximum of two thousand five-hundred dollars (\$2,500.00) per incident, until such time as the situation is brought into conformance with the applicable requirements. In the event a fine is levied against a landlord/owner of an Affordable Dwelling Unit, any such fine(s) shall become a lien against the real property and shall accumulate interest at the judgment rate of interest.

§8.3.910. Continuation of previous enforcement actions

Nothing in this chapter prohibits the continuation of previous enforcement actions, undertaken by the city pursuant to previous valid ordinances and laws.

§8.3.4011. Remedies cumulative

The remedies and penalties established in this chapter are cumulative, and the city may exercise them in any combination or order.

§8.3.4-12. Persons subject to penalties

The landlord/owner or tenant of any building, structure, premises, or part thereof, and any architect, builder, contractor, or agent, or other person who commits, participates in, assists in, or maintains such violations may each be found guilty of a separate offense and be subject to penalties, remedies and enforcement actions.

BE IT ORDAINED, by the City Council of the City of Fairfax, Virginia, that Chapter 110, Article 9, of the Code of the City of Fairfax, Virginia, is hereby amended as follows:

DEFINITIONS

Affordable Dwelling Unit : The term “Affordable Dwelling Unit” shall mean an affordable dwelling unit for which the rental and/or sales price will be controlled in accordance with the provisions of the city’s Program.

Affordable Dwelling Unit Development : The term “Affordable Dwelling Unit Development” shall mean any development resulting from a Land Use Application that includes a total of 30 or more dwelling units and, therefore, is required to provide affordable dwelling units or any development that voluntarily agrees to provide Affordable Dwelling Units.

Affordable Dwelling Unit Development Regulations: The term “Affordable Dwelling Unit Development Regulations” shall mean those provisions in Section 3.6.1(B) of this Ordinance pertaining to Affordable Dwelling Unit Developments.

Control Period: The term “Control Period” shall mean the period during which an Affordable Dwelling Unit is subject to the terms and conditions of the City’s Program.

The city’s Program: The term “the city’s Program” shall mean the provisions of the city of Fairfax’s Zoning Ordinance pertaining to affordable dwelling units, and all rules, regulations and other administrative provisions applicable thereto, including, but not limited to, the city’s Affordable Dwelling Unit Administrative Regulations.

The city’s Affordable Dwelling Unit Administrative Regulations: The term “the city’s Affordable Dwelling Unit Administrative Regulations” shall mean those administrative regulations adopted by the city council under which the provisions of the city’s Zoning Ordinance pertaining to affordable dwelling units are regulated.

Land Use Application: The term “Land Use Application” shall mean any rezoning, special use permit, special exception, site plan, planned development, final subdivision plat, preliminary subdivision plat, or other applicable zoning permit.

Zoning Applicant: The term “Zoning Applicant” shall mean any applicant for a Land Use Application in the city.

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This ordinance shall be effective on June 23, 2020.

PUBLIC HEARING: June 23, 2020

ENACTED: June 23, 2020

W. L. ...

Mayor

6/30/20

Date

ATTEST:

Melinda ...

City Clerk

VOTE:

Councilmember DeMarco	Aye
Councilmember Lim	Aye
Councilmember Miller	Aye
Councilmember Passey	Aye
Councilmember Stehle	Aye
Councilmember Yi	Aye