

**ORDINANCE 2020-06****AN ORDINANCE AMENDING TITLE 11 (ZONING) AND TITLE 12 (SUBDIVISIONS) OF THE GENEVA MUNICIPAL CODE RELATED TO INCENTIVES FOR THE CREATION OF AFFORDABLE HOUSING WITHIN THE CITY OF GENEVA, ILLINOIS**

**WHEREAS**, the City Council passed Resolution 2014-76 on October 6, 2014 adopting the Homes for a Changing Region Plan for the Central Fox Valley Sub-region, including an affordable housing plan pursuant to Section 25 of the Affordable Housing Planning and Appeals Act (310 ILCS 67); and

**WHEREAS**, the City Council passed Resolution 2015-102 on October 5, 2015 amending the Map of Lands and Structures Appropriate for Affordable Housing on pages 74 and 75 of the Homes for a Changing Region Plan for the Central Fox Valley Sub-region; and

**WHEREAS**, one of the recommended housing strategies contained within the adopted Homes for a Changing Region Plan is to provide incentives that encourage the development of affordable housing in the City of Geneva; and

**WHEREAS**, the Illinois Municipal Code (65 ILCS 5/11-13-1) provides corporate authorities the power “to require the creation and preservation of affordable housing, including the power to provide increased density or other zoning incentives to developers who are creating, establishing, or preserving affordable housing”; and

**WHEREAS**, on August 26, 2019, the Committee of the Whole of the City Council directed staff to initiate amendments to the Geneva Municipal Code to provide incentives for the creation of affordable housing within the City of Geneva; and

**WHEREAS**, an application was duly filed by the City of Geneva with the Planning and Zoning Commission of the City of Geneva proposing text amendments to Chapter 2 (Definitions) of Title 11 (Zoning) of the Geneva City Code, the addition of Chapter 16 (Inclusionary Housing) to Title 11 (Zoning) of the Geneva Municipal Code, and text amendments to Chapter 4 (Public Open Spaces) of Title 12 (Subdivisions) of the Geneva Municipal Code, all related to incentives for the creation of affordable housing within the City of Geneva; and

**WHEREAS**, a notice of Public Hearing on the application was duly published on November 27, 2019 in the Daily Herald, a newspaper of general circulation in the City of Geneva, in the manner and form as provided for text amendment requests under Title 11 (Zoning) and Title 12 (Subdivisions) of the Geneva Municipal Code; and

**WHEREAS**, a Public Hearing on said application was held by the Planning and Zoning Commission on December 12, 2019 in the City Hall Council Chambers at 109 James Street, Geneva, Illinois; and

**WHEREAS**, at said Public Hearing, the application was presented to the Planning and Zoning Commission and the Planning and Zoning Commission received exhibits and testimony from City staff and the Public; and

**WHEREAS**, on December 12, 2019, after deliberation, the Planning and Zoning Commission unanimously recommended approval of text amendments to Chapter 2 (Definitions) of Title 11 (Zoning) of the Geneva City Code, the addition of Chapter 16 (Inclusionary Housing) to Title 11 (Zoning) of the Geneva Municipal Code, and text amendments to Chapter 4 (Public Open Spaces) of Title 12 (Subdivisions) of the Geneva Municipal Code, all related to incentives for the creation of affordable housing within the City of Geneva; and

**WHEREAS**, the City Council of the City of Geneva considered the entire record and the recommendations of Planning and Zoning Commission on January 6, 2020.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GENEVA, KANE COUNTY, ILLINOIS, as follows:**

**SECTION 1:** Title 11 (Zoning), Section 11-2-2 (Definitions Of Words And Terms), is hereby amended by adding the following terms and definitions, inserted in alphabetical order:

**AFFORDABLE HOUSING:** Residential housing that has a sales or rental amount that is within the means of an “eligible household” as defined herein. In the case of dwelling units “for sale”, housing that is affordable means housing in which mortgage, amortization, taxes, insurance, and condominium or association fees, if any, constitute no more than 30% of the gross annual household income for a household of the size that may occupy the unit. In the case of a “rental dwelling unit”, housing that is affordable means housing for which the rent and utilities constitute no more than 30% of the gross annual household income for a household of the size that may occupy the unit.

**AFFORDABLE HOUSING AGREEMENT:** Any agreement between the City of Geneva and a developer as required by Chapter 16 of this Title.

**AFFORDABLE UNIT:** A dwelling unit of affordable housing that satisfies the requirements of Chapter 16 of this Title.

**AREA MEDIAN INCOME (AMI):** The median income level for the Chicago Primary Metropolitan Statistical Area, as established and defined in the annual schedule published by the Secretary of the U.S. Department of Housing and Urban Development, and adjusted for household size.

**CERTIFICATE OF QUALIFICATION:** A certificate establishing a qualified household’s eligibility to purchase or lease an affordable unit based on income eligibility as set forth in Chapter 16 of this Title.

**ELIGIBLE HOUSEHOLD:** A household with an income at or below 80% AMI for for-sale units and at or below 60% AMI for rental units, based on the size of the household as set forth in Chapter 16 of this Title.

**HOUSING PROVIDER:** An entity approved by the City of Geneva to develop, manage or own affordable units.

**INCLUSIONARY HOUSING PLAN:** A plan submitted as part of development application that details a development’s compliance with the affordable housing requirements of Chapter 16 of this Title.

MARKET RATE UNIT: All dwelling units in a residential development that are not affordable units as defined herein.

**SECTION 2:** Title 11 (Zoning) is hereby amended by adding Chapter 16 (Inclusionary Housing) as follows:

#### TITLE 11 - ZONING

##### CHAPTER 16 - INCLUSIONARY HOUSING

- SECTION 1: PURPOSE AND INTENT
- SECTION 2: DEVELOPMENTS ELIGIBLE FOR INCENTIVES
- SECTION 3: GENERAL REQUIREMENTS
- SECTION 4: AFFORDABLE HOUSING INCENTIVES
- SECTION 5: AFFORDABILITY CONTROLS
- SECTION 6: INCLUSIONARY HOUSING PLAN
- SECTION 7: AFFORDABLE HOUSING AGREEMENT AND DOCUMENTS
- SECTION 8: IMPLEMENTATION
- SECTION 9: ENFORCEMENT

##### SECTION 1: PURPOSE AND INTENT

To encourage and provide incentives for the creation of affordable housing within the City of Geneva, Illinois. See Resolution 2014-76 adopted on October 6, 2014 and Resolution 2015-102 adopted on October 5, 2015 regarding the City's affordable housing policies.

##### SECTION 2: DEVELOPMENTS ELIGIBLE FOR INCENTIVES

- A. The affordable housing incentives provided in this Chapter shall apply to proposed residential developments in any of the following instances:
  1. A development consisting of new residential construction or new mixed-use construction with a residential component.
  2. A development consisting of the renovation or reconstruction of over 50% of the total square footage on an existing residential structure and that increases the number of residential units from the number of units in the original structure.
  3. A development that will change the use of an existing building in whole or in part from nonresidential to residential.
  4. A development that includes the conversion of a multiple-family rental property to condominiums.
- B. Residential developments undertaken in phases, stages, or otherwise constructed in distinct parts by one or more developers, but which are located within the same planned unit development or subdivision, or which are otherwise approved as a whole, shall be considered a single residential development.

##### SECTION 3: GENERAL REQUIREMENTS

To receive affordable housing incentives, eligible developments that include affordable housing units must meet the following requirements:

## A. Affordability

### 1. For-Sale Affordable Units:

The affordable units within a residential development which are 'for-sale' to third parties shall be sold only to individuals who meet the financial requirements of an eligible household and whose primary residence shall be said affordable unit. All affordable units must be sold to households whose incomes do not exceed 80% AMI adjusted for household size. If a household's gross income increases above the maximum eligible household income level for a household of its size, the household may continue to own and occupy the affordable unit. Subletting of affordable units shall not be permitted.

### 2. Rental Affordable Units:

The affordable units within a residential development which are 'for rent' shall be leased only to tenants who meet the financial requirements for an eligible household and whose primary residence shall be said affordable unit. All affordable units must be leased to households whose incomes do not exceed 60% AMI adjusted for household size. If a household's gross income increases above the maximum eligible household income level for a household of its size, the household may continue to lease and occupy the affordable unit, and renew said lease. Subletting of affordable units shall not be permitted.

### 3. Certificate Of Qualification:

The City, or a qualified not-for-profit housing agency recognized by the City, shall issue a certificate of qualification to any household whose income has been verified as meeting the AMI threshold requirements set forth herein.

## B. Number of Affordable Units:

The number of affordable units constructed within the residential development shall be no less than 15 percent of the total number of dwelling units to be constructed within the proposed residential development. In the event that the calculation of the number of required affordable units results in a fraction, then a fraction of 0.5 or more shall be rounded up, and a fraction of less than 0.5 shall be rounded down.

## C. Location Of Affordable Units:

Affordable units shall be dispersed among the market rate units and throughout the residential development.

## D. Phasing Of Construction:

Affordable units shall be constructed concurrently with the market rate units within the residential development. Building and occupancy permits for market rate units shall be issued only if building and occupancy permits, respectively, for the required affordable units have been issued in accordance with the following schedule:

<u>Market Rate Units (% of total units)</u>	<u>Affordable Units (% of total units)</u>
Up to 50%	At least 30%
Up to 75%	At least 60%
100%	100%

E. Exterior Appearance:

The exterior appearance of the affordable units in any residential development shall be compatible with the market rate units in the development. External building materials and finishes shall be substantially the same in type and quality for affordable units as the market rate units.

F. Interior Appearance And Finishes:

Affordable units may differ from market rate units with regard to interior finishes and gross floor area, provided that:

1. The bedroom mix of affordable units shall be equal in proportion to the bedroom mix of the market rate units.
2. The differences between the affordable units and the market rate units shall not include improvements related to energy efficiency, including mechanical equipment and plumbing insulation, windows, and heating and cooling systems.

SECTION 4: AFFORDABLE HOUSING INCENTIVES

A. Cost Offsets:

1. Fees. An applicant that fully complies with the requirements of this Chapter, including any rules or regulations promulgated hereunder, shall, upon written request to the City, receive a waiver or partial waiver of building permit fees, demolition fees, plan review fees, sewer and water connection fees, and cash contributions (when required in lieu of park and school land dedications in accordance with Title 12 (Subdivisions), Section 4 (Public Open Spaces) of the Geneva Municipal Code), for the affordable units constructed within the residential development. Customary fees shall apply to market rate units.
2. Tax Increment Financing (TIF) Assistance Funds. TIF funds can be available for eligible projects located within an established TIF district. The City Council, as part of the overall consideration of the development, will evaluate the eligibility of obtaining TIF funds.
3. Property Contribution. The City may assist in offsetting a portion of the cost of building affordable units by selling City-owned property below fair market value or donating property to a development containing affordable housing. The City Council, as part of the overall consideration of the development, will evaluate the potential for a property contribution.

B. Density Bonus:

1. A density bonus shall be provided that is equal to one (1) market rate unit for each affordable unit required under Section 3A of this Chapter; provided, however, that the maximum number of dwelling units in a residential development shall not exceed 115 percent of the total number of dwelling units otherwise authorized under the applicable

zoning district regulations. For illustration purposes, a proposed residential development that would allow 20 units shall provide three (3) affordable units in the development and would be permitted to construct three (3) additional market rate units for a total of 23 units in the development [20 units x 1.15 = 23 units].

2. In implementing this density bonus, the following requirements of the Zoning Ordinance may be varied without additional justification provided, however, that any modification of said bulk regulations shall not violate or be contrary to considerations of public health, safety and welfare of the inhabitants of the residential development or the community at large:
  - a. Minimum lot area
  - b. Minimum lot frontage
  - c. Maximum lot coverage
  - d. Minimum setbacks

#### SECTION 5: AFFORDABILITY CONTROLS

All affordable units developed in accordance with this Chapter shall be subject to the restrictions in this Section 5.

- A. For-Sale Affordable Units. Affordable units shall be offered for sale in conformance with the following principles:
  1. The sale of affordable units to the first purchaser shall be governed by the following:
    - a. Affordable units shall be offered for sale at no more than the maximum price that is affordable to an eligible household based on household size in accordance with Section 3A, using the limits established annually by the Illinois Housing Development Authority (IHDA).
    - b. The property shall be subject to a deed restriction or other suitable instrument limiting the maximum sale price of the property for a period of fifteen (15) years from the date of the first sale, and specifying the conditions under which title to the property may be transferred to an entity other than an eligible household, including but not limited to transfer of title to heirs.
    - c. The purchaser shall execute a promissory note in favor of the City in an amount equal to the difference between the purchase price for the affordable unit and its fair market value as determined by a licensed appraiser. Said promissory note shall be non-interest bearing and shall be secured by a mortgage on the property. The City shall subordinate the mortgage to that of the primary lender. (Said promissory note shall be due upon sale of the affordable unit after the initial fifteen-year period if the property is sold at market value in accordance with subsection A(3)(b) of this Section).
  2. Subsequent sales of Affordable Units during the first fifteen (15) years following the initial sale shall be governed by following, unless the property owner is granted a waiver by the City Council based upon supporting market-related evidence of undue hardship on the owner of the affordable unit:

- a. The maximum sale price shall be the initial sale price plus 1) appreciation in the property's value, but not to exceed any increases in the IHDA affordability limit since the last sale of the property; 2) an allowance for the cost of repair and/or replacement of heating, electrical, plumbing, roofs, and structural elements necessary to address safety of the occupants or integrity of the structure.
  - b. The seller shall receive any of the affordable unit's appreciation in value based on the sale price as determined in subsection A(2)(a) of this Section.
  - c. The purchaser shall execute a promissory note in favor of the City in an amount equal to the difference between the purchase price for the affordable unit and its fair market value as determined by a licensed appraiser. Said promissory note shall be non-interest bearing and shall be secured by a mortgage on the property. The City shall subordinate the Mortgage to that of the primary lender. (Said promissory note shall be due upon sale of the affordable unit after the initial fifteen-year (15) period if the property is sold at market value in accordance with subsection A(3)(b) of this Section).
3. Subsequent sales of affordable units after the initial fifteen-year (15) period shall be governed by either (a) or (b) as follows:
- a. Resale as an Affordable Unit. If the sale price does not exceed the initial sale price plus 1) appreciation in the property's value, but not to exceed any increase in the IHDA affordability limit since the last sale of the property; and 2) an allowance for the cost of repair and/or replacement of heating, electrical, plumbing, roofs, and structural elements necessary to address safety of the occupants or integrity of the structure, then the property shall be sold as an affordable unit in accordance with subsection A(2) of this Section.
  - b. Resale at Market Value. The full amount of the promissory note shall be payable to the City and shall be deposited into a fund devoted to providing affordable housing. In the event the amount of the promissory note is in excess of the difference between market value and the purchase price paid by the seller, with allowances granted to the seller for any increase in the IHDA affordability limit since the last sale of the property and for the cost of repair and/or replacement of heating, electrical, plumbing, roofs and structural elements necessary to address safety of the occupants or integrity of the structure, then the excess amount shall be forgiven by the City. Once the promissory note is paid and/or forgiven in accordance with this section, all restrictions of this ordinance applicable to the affordable unit, including its designation as such, shall cease.
- B. For-Rent Affordable Units. The maximum gross rent (including an allowance for utilities not provided with the rent) for affordable units offered for rent shall be calculated using the gross rent limits established annually by the IHDA on the basis of thirty percent (30%) of gross monthly income at sixty percent (60%) of AMI, based on household size in accordance with paragraph C of this Section. The net rent charged by the owner shall not exceed the maximum gross rent minus an allowance for any utilities to be paid separately by the tenant. All affordable units shall be offered at not more than the maximum rent calculated in accordance with this paragraph in perpetuity or as long as permissible by law.

- C. Household Size. In calculating the maximum sale and rental prices of affordable units, the following relationship between the number of bedrooms per unit and household size shall apply:

<u>Size of units:</u>	<u>Affordable for:</u>
Efficiency units:	1-person household
One-bedroom units:	2-person household
Two-bedroom units:	3-person household
Three-bedroom units:	4-person household
Four-bedroom and larger units:	5-person households and larger

- D. Sale or Rental to Housing Providers. Every affordable unit provided under this Chapter shall be offered for sale or rental to an eligible household as a primary resident, except for units purchased by housing providers. Housing providers designated by the City of Geneva shall have the right, but not the obligation, to purchase any for-sale affordable units, but only for the purpose of reselling to an eligible household.

#### SECTION 6: INCLUSIONARY HOUSING PLAN

The developer shall submit an inclusionary housing plan together with any application for a residential development that outlines the development's compliance with each of the requirements of this Chapter. The inclusionary housing plan shall specifically contain, as a minimum, the following information regarding the residential development:

- A. A general description of the residential development.
- B. The total number of market rate units and affordable units in the residential development.
- C. The number of bedrooms in each market rate unit and each affordable unit.
- D. The square footage of each market rate unit and each affordable unit.
- E. The general location of each affordable unit within the residential development.
- F. The pricing schedule for each affordable unit and each market rate unit.
- G. The phasing and construction schedule for each market rate unit and each affordable unit.
- H. Documentation and plans regarding the exterior and interior appearances, materials, and finishes of the residential development and each of its units.
- I. A description of the marketing plan that the applicant proposes to utilize and implement to promote the sale of affordable units within the residential development.

#### SECTION 7: AFFORDABLE HOUSING AGREEMENT AND DOCUMENTS

Prior to issuance of a building permit for any residential development in which affordable units are to be provided, the developer shall enter into an Affordable Housing Agreement with the City. Said agreement shall set forth the commitments and obligations of the developer, including but not limited to the number, timing, and location of the required affordable units, to ensure that the provision of this Chapter are met. The applicant shall execute any and all documents deemed necessary by the City, including without limitation, restrictive covenants and other related instruments, to ensure the continued affordability of the affordable units in accordance with this Chapter.

**SECTION 8: IMPLEMENTATION**

The Director of Community Development or the Director's designee shall develop appropriate forms that are consistent with this Chapter and necessary or convenient to effect its efficient and effective administration. Said forms shall be made available to the public.

**SECTION 9: ENFORCEMENT**

The provisions of this Chapter shall apply to all agents, successors, and assignees of the developer. The City of Geneva may institute injunction, mandamus, or any other appropriate legal action or proceedings for the enforcement of this Chapter. In addition, any person, firm, or entity, whether as principal, agent, employee or otherwise, violating or causing the violation of any of the provisions of this Chapter, shall be guilty of a misdemeanor, and upon conviction thereof shall be punishable for each offence by the payment of \$750.00 per day. Such person, firm, or entity shall be deemed to be guilty of a separate offense for each and every day during which any portion of any violation of this Chapter is commenced, continued, or permitted by such person, firm, or entity, and shall be punishable as herein provided.

**SECTION 3:** Title 12 (Subdivisions) Chapter 4 (Public Open Spaces) Section 12-4-5-7 (Methodology for Calculating Dedications and Contributions) is hereby deleted in its entirety and replaced with the following language:

Park acreage requirement shall be calculated by multiplying the number of housing units in each size/type category by the total population multiplier for each category. The resulting products shall be multiplied by the land multiplier for parks. The final product shall be the park acreage required for the proposed subdivision or development.

School acreage requirements shall be calculated by multiplying the number of housing units in each size/type category by each student multiplier for each school category. The number of students for each school category shall then be multiplied by the land multiplier to each school type. The resulting products for all school categories shall be the total school acreage required for the proposed subdivision or development.

The amount of cash contribution in lieu of land shall be determined by multiplying the required acreage for parks and schools by the established fair market value as set forth in section 12-4-5-5 of this chapter.

Existing housing units that are part of a proposed subdivision or planned unit development that are proposed to remain in place shall not be counted for the purpose of calculating dedications and contributions. Existing housing units that are part of a proposed subdivision or planned unit development that are proposed to be demolished/removed shall be credited in the calculation of dedications and contributions. The methodology, density formula, and fair market value contained in this chapter shall be used to determine the amount of land and/or cash contribution to be credited.

Housing units that are proposed to be age restricted shall be exempt from the dedications and contributions required for the school district if the subdivider can provide evidence that persons under fifty-five (55) years of age would not be permitted to reside in the subdivision or planned unit development. In the event that a subdivision or planned unit development

should remove an age restriction, the school district may petition to receive dedications and/or contributions in accordance with the methodology, density formula, and fair market value contained in this chapter, as amended from time to time. Age restricted subdivisions or planned unit developments shall not be exempt from the dedications and contributions required for the park district.

Affordable housing units, in accordance with Chapter 16 (Inclusionary Housing) of Title 11 (Zoning) of the Geneva Municipal Code, upon written request to the City, may not be counted for the purpose of calculating dedications and contributions.

**SECTION 4:** The preambles set forth at the beginning of this Ordinance are incorporated herein by this reference and shall constitute substantive provisions of this Ordinance.

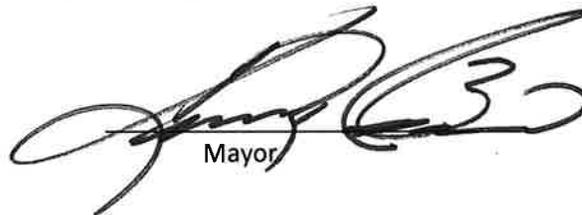
**SECTION 5:** Title 11 (Zoning) and Title 12 (Subdivisions) of the Geneva Municipal Code, as heretofore and hereinabove amended, shall otherwise remain in full force and effect.

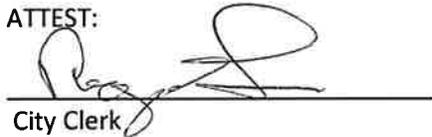
**SECTION 6:** This Ordinance shall be in full force and effect upon its passage and approval as required by law. Consent is hereby given for publication of this Ordinance in pamphlet form.

**PASSED** by the City Council of the City of Geneva, Kane County, Illinois, this 6<sup>th</sup> day of January, 2020.

AYES: 10 NAYS: 0 ABSENT: 0 ABSTAINING: 0 HOLDING OFFICE: 10

Approved by me as Mayor of the City of Geneva, Kane County, Illinois this 6<sup>th</sup> day of January, 2020.

  
Mayor

ATTEST:  
  
City Clerk