

2.12 Affordability Incentive Procedures (Proposed, Redlines)

1. **Purpose:** The purpose of this section is to encourage the development of affordable housing within the City of Denton. The City is committed to fostering an economically diverse community with opportunities for everyone. The City has prioritized supporting affordable housing, and the implementation of this Affordability Incentive Process recognizes the public benefits affordable housing contributes to local communities and businesses.
2. **Definitions:**
 - A. “Low Income Household” – Those households earning 80% or less of Denton County Area Median Income. The Area Median Income (AMI), also known as Income Limit, is established and annually updated by the Department of Housing and Urban Development (HUD). AMI includes the following Income Categories:
 1. Extremely Low-Income Households (ELIH), earning no more than 30% of AMI as determined by the most Recent [Income Limits set by HUD](#) for Denton County or Persons Experiencing Homelessness (PEH).
 2. Very Low-Income Households (VLIH), earning no more than 50% of the AMI as determined by the most Recent [Income Limits set by HUD](#) for Denton County.
 3. Low-Income and Moderate-Income households (LIMIH), earning no more than 80% of the AMI as determined by the most Recent [Income Limits set by HUD](#) for Denton County.
3. **Applicability:**
 - A. Any development which provides dwelling units for Low Income Households, in accordance with the qualifications in Subsection 2.12.6A may be eligible for one or more Affordability Incentives.
 - B. The Affordability Incentives may be utilized for the development of the following types of residential uses which include affordable units allocated for Low-Income Households at the percentages described in table 2.12-B:
 1. Multifamily Dwelling,
 2. Single-Family Detached Dwelling,
 3. Townhome,
 4. Duplex,
 5. Triplex,
 6. Fourplex,
 7. Tiny Home Development,
 8. Accessory Dwelling Unit, or
 9. Manufactured Home Development (HUD Code).
 - C. Duration of Affordability. Affordable housing units created by the Affordability Incentives Process shall remain affordable, as defined in Subsection 2.12.3.D, for ~~at least 30 years~~[the period defined in Table 2.12-B.](#)
 - D. Definitions for Affordability. To be deemed affordable for the purposes of this Section the sale or rental price of a dwelling unit shall be based on the Income Limits for the year the housing

unit is offered for sale or rent. The Income Limits for each Low-Income Household Income Category are as follows:

1. Extremely Low-Income Households (ELIH): Housing units allocated to this Income Category, if for rent, shall be rented at a monthly rate no higher than 30% of the monthly income for a household at the ELIH AMI as determined by the most Recent [Income Limits set by HUD](#) for Denton County or Persons Experiencing Homelessness (PEH). If for ownership, they shall be sold at price limits established by the City for the HOME Investment Partnerships Program.
2. Very Low-Income Households (VLIH): Housing Units allocated to this Income Category, if for rent, shall be rented at a monthly rate no higher than 30% of the monthly income for a household at VLIH AMI as determined by the most Recent [Income Limits set by HUD](#) for Denton County. If for ownership, they shall be sold at price limits established by the City for the HOME Investment Partnerships Program.
3. Low-Income and Moderate-Income households (LIMIH): Housing Units Allocated to this Income Category, if for rent, shall be rented at a monthly rate no higher than 30% of the monthly income for a household at LIMIH AMI as determined by the most Recent [Income Limits set by HUD](#) for Denton County. If for ownership, they shall be sold at price limits established by the City for the HOME Investment Partnerships Program.

E. Applicability of other Development Regulations. Affordability Incentive Program participation is the only process required for approval of Affordability Incentives. Participation in the Affordability Incentives Program does not remove the obligation to obtain any other approvals required by this DDC.

F. Criminal Offenses. It shall be a violation of this DDC, as such is defined in Section 1.6, for any person, firm, partnership or corporation to use a property that received an Affordability Incentive under this Section 2.12 in a manner that, prior to the expiration of the Duration of Affordability:

1. fails to provide the required number of affordable housing units as stipulated under the Agreement.
2. Converts the property to a use other than affordable housing as defined under this section.

4. **Procedure:**

A. **Step 1: Pre-Application Activities.**

1. Pre-Application Conference. A pre-application conference is recommended in accordance with Subsection 2.4.3.
2. Citizen Participation. Not required.

B. **Step 2: Application Submittal and Processing:**

1. Affordability Incentives Application. To apply for Affordability Incentives, the applicant must submit an Affordability Incentives Application. The application must include, but is not limited to:
 - a. Legal description of the subject property;
 - b. Identification of all the incentives that the project proposes to incorporate;

- c. Consent to modify the Agreement if the submitted project requires alteration through normal development review and approval process; and
 - d. Any other information specifically requested by the Director of Community Services or their designee.
2. Affordability Incentives Agreement. Prior to issuance of the building permit, the applicant must execute an Affordability Incentives Agreement (hereafter, the “Agreement”) in a form approved by the City Attorney. The Agreement must include, but is not to be limited to:
- a. Duration of Affordability, which shall be thirty years;
 - b. Evidence of compliance with incentive qualifications in Table 2.12 B,
 - c. The information required to be in the Affordability Incentives Application, as provided in Section 2.12.4.B.1;
 - d. Confirmation that the development shall not discriminate on the basis of race, color, national origin, age, religion, disability, familial status, sex, sexual orientation, or gender identity in the lease, use, or occupancy of the Development. Further the Development shall not deny admission to any person exclusively on the basis of such person receiving rental assistance payments under a local, state, federal or other housing assistance program, including, but not limited to, Section 8 of the United States Housing Act of 1937 as amended;
 - e. A recordable Security Interest that protects the City's interests in the event that a developer applies Affordability Incentives to the platting or building phases but fails to provide affordable housing for the Duration of Affordability, or to the AMI Income Categories as agreed;
 - ~~f. A Right of First Refusal clause that requires the City be offered the chance to buy the property if the applicant decides to sell the property prior to the end of the Duration of Affordability;~~
 - ~~g.f.~~ A default provision stating the conditions of default, which shall include, but not be limited to: failure to provide the required number of affordable housing units as stipulated under the Agreement or conversion of the property to a use other than for affordable housing as defined under this section before the expiration of the Duration of Affordability.; and
 - ~~h.g.~~ Language that requires documentation of a recorded agreement, lien, or covenant running with the land, binding all the assigns, heirs, and successors of the applicant. The recorded agreement, lien, or covenant shall secure the required affordability provisions prior to the building permit for a Single-Family Detached Dwelling, Townhome, Duplex, Triplex, Fourplex, Tiny Home Development, or Manufactured Home development or Multifamily Dwelling building permit. Additionally, the recorded agreement, lien, or covenant must include all provisions related

to the Agreement, including, but not limited to, Duration of Affordability, proposed incentives, minimum number of affordable housing units, required Income Categories, ~~the City's Right of First Refusal,~~ and remedies related to a failure to fulfill the terms of the agreement.

- C. **Step 3: Staff Review and Action.** In addition to traditional staff review, The Director or their designee (as applicable) shall review the draft Affordability Incentives Agreement, residential project, and proposed Affordability Incentives outlined in this Subchapter in conjunction with the City Attorney. No building permit shall be issued or land use approvals finalized, and no other permits shall be issued until the Affordability Incentives Agreement has been fully reviewed, approved, and executed by the City.
 - D. **Step 4: Scheduling and Notice of Public Meetings/Hearings.** Not required.
 - E. **Step 5: Post-Decision Actions and Limitations.** Post-decision actions and limitations in DDC Subsection 2.4.8 shall apply, with the following modifications:
 - 1. Monitoring Continued Affordability. The City of Denton Community Services Department shall be the responsible party to monitor the continued affordability of both rental and owner-occupied housing units.
 - 2. Resale of Affordable Homeownership Units. Affordable Housing units provided for under this Chapter may be sold or resold only to eligible households or a nonprofit organization through the end of the required Duration of Affordability.
 - 3. Conversion of Affordable Rental Units to Market Rate. Affordable Housing units provided for under this Chapter when sold or resold are still subject to the requirements in the Affordability Incentives Agreement in accordance to the recorded agreement, lien, or covenant running with the land, until the end of the affordability period specified. In the event that the terms of the agreement are not fulfilled, the City may pursue the remedies specified in the Affordability Incentives Agreement. ~~For Affordable Housing units to be sold or resold at market rate prior to the end of the required Duration of Affordability, the benefit provided through this section shall be accounted for as follows:~~
 - ~~a. Reimbursement shall be made to the City of Denton as reasonable compensation for the value of all incentives originally granted.~~
 - ~~i. 50 percent of net proceeds from the sale shall be paid to the City.~~
 - ~~ii. The City shall dedicate all such conversion payments towards future incentives offered through this section or other affordable housing initiatives as directed by City Council.~~
 - ~~b. A recorded agreement, lien, and covenant running with the land, binding all the assigns, heirs and successors of the applicant shall secure the conversion requirements in Subsection 2.12.4.E as outlined in 2.12.4.B.~~
5. **Approval Criteria.** In reviewing the Affordability Incentives Agreement application, the Director or their designee shall consider the general approval criteria in Subsection 2.4.5 and the following criteria:
- A. The proposal complies with the Affordability Incentive Qualifications outlined in Table 2.12-B,

- B. Number, distribution, and building design of affordable housing units within the project area,
- C. A proportional amount of affordable housing units scheduled to be completed at or prior to the construction of related market rate housing units, for mixed-income developments constructed in phases exceeding 12 months.
- D. The Development shall not discriminate on the basis of race, color, national origin, age, religion, disability, familial status, sex, sexual orientation, or gender identity in the lease, use, or occupancy of the Development. Further the Development shall not deny admission to any person exclusively on the basis of such person receiving rental assistance payments under a local, state, federal or other housing assistance program, including, but not limited to, Section 8 of the United States Housing Act of 1937 as amended.
- E. Uniformity of building design between affordable and market rate dwelling units. and
- F. Conformance with all other applicable standards in this DDC, except for deviations consistent with the requested Affordability Incentives.

6. Qualifications and Incentives.

A. Affordability Incentive Qualifications. To qualify for an Affordability Incentive(s), the residential development must have set aside for affordable units, as defined under Subsection 2.12.3.D, a portion of the unit total equal to or greater than the percentage provided in Table 2.12-B for the requested number of Affordability Incentives.

- 1. Residential developments qualifying under Table 2.12-B may access as many of the incentives as applicable.
- 2. For developments with 9 or fewer units, the development qualifies if one unit is set aside to be affordable for a household at the highest applicable income level.
- 1.—For developments with 19 or fewer units, the development qualifies if a minimum of 15% of units are set aside to be affordable for households at the highest applicable income level, and does not need to include units for lower income categories.
- 3.

TABLE 2.12-B: Number of Incentives Granted Per Percent of Units held Affordable				
Income Category	Percent of Units Affordable	Percent of Units Affordable	Percent of Units Affordable	Percent of Units Affordable
NUMBER OF INCENTIVES	3 or fewer	4 or 5	6 or 7	8 or 9
ELIH	5%	10%	15%	20%
VLIH	10%	15%	20%	25%
LIMIH	5%	10%	15%	20%
TOTAL PERCENT OF UNITS AFFORDABLE	20%	35%	50%	65%
DURATION OF AFFORDABILITY	30 years			

Table 2.12-B Minimum Percent of Units held Affordable to Qualify		
Income Category	Rental	Homeownership

<u>ELIH</u>	<u>5%</u>	<u>-</u>
<u>VLIH</u>	<u>10%</u>	<u>-</u>
<u>LIMIH</u>	<u>-</u>	<u>15%</u>
<u>TOTAL PERCENT OF UNITS AFFORDABLE</u>	<u>15%</u>	<u>15%</u>
<u>DURATION OF AFFORDABILITY</u>	<u>30 years</u>	<u>5 years</u>

- B. Affordability Incentives. Projects providing affordable units may request one or more of the following incentives, depending upon the income level of the targeted households and the percentage of affordable units set-aside as described in Table 2.12-B.
1. 20% reduction in minimum yard/setback requirements in the applicable zoning district in Section 3.2 – 3.5,
 - a. Townhome developments are not eligible for this incentive, but may instead receive a 20% reduction in open space requirements
 2. 20% deviation from building coverage requirements in the applicable zoning district in Section 3.2 – 3.5,
 3. 20% reduction in minimum lot width in the applicable zoning district in Section 3.2 – 3.5,
 4. 20% reduction in minimum lot depth in the applicable zoning district in Section 3.2 – 3.5,
 5. 20% reduction in minimum lot area in the applicable zoning district in Section 3.2 – 3.5,
 6. 20% increase in maximum building height in the applicable zoning district in Section 3.2 – 3.5, provided the development is still in compliance with Section 7.10.6,
 7. 20% reduction in minimum unit size for townhome, duplex, multifamily dwelling, and tiny home developments as defined in Subsection 5.3.3,
 8. For multifamily dwellings, a 10 point reduction in the Landscaping Area Point System (development must provide at least two Elements from Section A and one Element from Section B, regardless of reduction) in Table 7.E,
 9. A reduction or waiver in parking requirements from Table 7.9-I:
 - a. A reduction in parking requirements to not less than 1 parking space per affordable dwelling unit irrespective of the number of habitable rooms, or,
 - b. A reduction in parking requirements to not less than ½ parking space per affordable dwelling unit for dwelling units restricted to senior citizens, with senior being defined as those 62 years of age or older.
- C. Application within Multi-Lot Developments.
1. Within a multifamily development, the use of any incentive for any building(s) on the lot shall count as the use of that incentive for the entire property.
 2. For multi-lot developments, different incentives may be utilized on different lots; ~~however, the affordability percentage and duration for the entire development shall be based upon the lot with the highest number of incentives requested.~~