

*ADOPTION OF AN AMENDMENT TO
CHAPTER 4 (TAXATION AND FINANCE)
OF THE 1976 CODE OF THE COUNTY OF FAIRFAX, VIRGINIA*

At a regular meeting of the Board of Supervisors of Fairfax County, Virginia, held in the Board Auditorium of the Government Center at Fairfax, Virginia, on Tuesday, June 21, 2011, the Board after having first given notice of its intention so to do, in the manner prescribed by law, adopted an amendment regarding Chapter 4 (Taxation and Finance) of the 1976 Code of the County of Fairfax, Virginia, said amendment so adopted being in the words and figures following, to-wit:

*BE IT ORDAINED BY THE BOARD OF SUPERVISORS OF FAIRFAX
COUNTY, VIRGINIA:*

That Chapter 4 (Taxation and Finance), is amended by adding a new Article numbered 27 relating to the classification and designation of certain property as being exempt from real and personal property taxes; penalties, as follows:

**Article 27. Real and Personal Property Tax Exemptions of Property Acquired From
Existing Tax Exempt Organizations Providing Affordable Housing**

Section 4-27-1. Definitions.

(a) *General definitions.* The following words and phrases when used in this Article shall, for the purposes of this Article, have the meanings respectively ascribed to them in this Section, except in those instances where the context clearly indicates a different meaning:

County means the County of Fairfax, Virginia.

Director means Director of the Department of Tax Administration or the deputies or designated agents of the Director.

Application means the information submitted to the Director pursuant to this article.

Affordable Housing For Low Income housing means housing certified by the Director of the Department of Housing and Community Development as having rent restrictions necessary to accommodate residents with gross household income below the median gross household income for the Washington DC Metropolitan Statistical Area (MSA) as published by U.S. Department of Housing and Urban Development (HUD) on an annual basis, adjusted by bedroom size.

Exemption Year means the year that the property tax exemption is approved by the Board of Supervisors. The exemption will be prorated in the first year from the date of approval or the date of acquisition as long as the acquisition date is in the exemption year, whichever is earlier.

Approved exemptions shall continue until such time as the ownership or the use of the property changes making the property ineligible for tax relief pursuant to this Article.

Section 4-27-2. Continuation of Property Tax Exemptions; Change of Legal Ownership.

Any organization that wants the Board of Supervisors to consider designating that organization as being exempt from property taxation shall meet those minimum criteria set forth in Section 4-27-3 and shall submit the information required in Section 4-27-4 in the form of an application to the Director.

The Director shall prepare such application forms and all information submitted on such forms shall be accurate and complete when submitted to the Director. The Director may require additional information and/or clarifications concerning any such application, and pursuant to Virginia Code §§ 58.1-3110 and 58.1-3111, the Director may summon taxpayers and other persons for the purpose of determining whether property should be exempted or whether taxes should be assessed. The Director is also authorized to conduct periodic audits in the future of all approved exemption applicants to ensure continued compliance with this Article. As part of such audit, the exemption applicant may be required to resubmit any of the documentation as specified in Section 4-27-4 as may be required by the Director. The Department of Housing and Community Development shall provide assistance to the Director as may be necessary.

If the Director determines that any application or applications are complete and meet the minimum criteria set forth in Section 4-27-3, then the Director shall submit this information to the Board of Supervisors for its consideration at public hearing as required by Virginia Code § 58.1-3651. The Director shall also provide for consideration by the Board of Supervisors an estimate of the applicant's property tax expenditure as a percentage of the applicant's revenue.

Section 4-27-3. Minimum criteria for property tax exemption by designation of the Board of Supervisors.

The Board shall not consider any application from any organization under Article 27 of this ordinance unless that organization is qualified for designation pursuant to Virginia Constitution, Article X, § 6(a)(6) and that organization also meets these minimum criteria:

(1) The property, for which exemption is requested by a new applicant, already was exempt by designation or classification by the Virginia General Assembly on or before January 1, 2011, for the sole purpose of providing affordable housing in Fairfax County and still had tax exempt status at the time of sale to the new applicant;

(2) The new applicant acquired the property to own, operate and use the property in the same manner and for the same purposes as the former exempt property owner;

(3) Notwithstanding, the new applicant shall own, operate and use the property for charitable purposes as Affordable Housing within Fairfax County as defined in Section 4-27-1 of this ordinance.

(4) The organization (new applicant) seeking tax exemption under this Article is operated on a non-profit basis and has qualified for federal income tax exemption pursuant to 26 U.S.C. §§ 501(c)(3) or 501(c)(4).¹

(5) Except for reasonable salaries and reimbursements paid to its officers and employees for services actually rendered, no part of the income of the organization inures to the benefit of any individual person or any other organization; and,

(6) Any exemption considered and approved by the Board of Supervisors shall become effective as defined in Section 4-27-1. However, in the event the exemption applicant owes Fairfax County any delinquent taxes, the Director shall deny the otherwise approved exemption until such time as the delinquency has been paid.

Section 4-27-4. Application requirements for consideration of property tax exemption by designation of the Board of Supervisors.

Any application submitted to the Director shall include the following information:

(1) In furtherance of Section 4-27-3(3), the new applicant must obtain written certification from the Fairfax County Director of the Department of Housing and Community Development that attests to compliance with the Affordable Housing requirements as specified in Section 4-27-1 of this ordinance. The new applicant shall submit rent roll documentation to the Director of the Department of Housing and Community Development in order to substantiate compliance with the Affordable Housing requirement, and shall submit the same for re-verification in the future upon request. Once satisfied that the rental structure complies with the requirements of this Article, the Director of the Department of Housing and Community Development shall provide certification to the new applicant and to the Director of the

¹ Sections 501(c)(3) and (4) of the U.S. Internal Revenue Code provide an income tax exemption for certain non-profit charitable organizations and non-profit civic associations.

Department of Tax Administration. An exemption application under this ordinance shall not be deemed complete without this certification:

(2) Copies of the current articles of incorporation, charter, and by-laws and other documents establishing the organization and describing its purpose, and a statement showing the current officers and the agent of the organization. If the organization is operating under a fictitious name, then the application should include copies of all fictitious name certificates;

(3) A statement listing all of the property owned by the organization, and all the property owned by the organization for which exemption is sought. Such list or lists should include (i) the addresses of the real property, (ii) the real property tax map descriptions, (iv) a list of personal property, which shows a description of the personal property, its acquisition cost and its age, and (v) the uses being made of all properties owned by the organization for which exemption is sought;

(4) A statement from the immediate previous owner that provides the year in which the Virginia General Assembly granted them exemption by designation or classification;

(5) Documentation from appropriate federal authorities showing that the new applicant has been designated by the federal government as exempt from federal income taxation pursuant to 26 U.S.C. §§ 501 (c)(3), or 501(c)(4);

(6) A statement of whether the organization holds a current annual alcoholic beverage license for serving alcoholic beverages that has been issued by the Virginia Alcoholic Beverage Control Board to such organization for use on such property, and, if so, then the application shall include a copy of any such alcoholic beverage license and a statement explaining when and under what conditions the organization serves alcoholic beverages;

(7) Copies of all income tax returns filed by the organization for the previous calendar year with the Internal Revenue Service of the United States Department of the Treasury, including, without limitation, Form 990, Form 990-EZ, Form 990-PF, and Form 990-T (hereinafter collectively referred to as "Federal Form 990"), together with copies of any attachments, exhibits, schedules, and statements that accompanied all such income tax returns. The Director may require the submission of returns for additional years as he may deem necessary to review. In the event that such applicant was not required to file a Federal Form 990 in a prior year, then the applicant shall provide the Director with information that would have been included in a Federal Form 990.

(8) For each officer, director, trustee, key employee, employee, or independent contractor whose compensation is listed on any Federal Form 990 filed by the applicant, the application shall include a statement that (i) describes the services provided by each such officer, director, trustee, key employee, employee, or contractor and (ii) explains why such compensation was reasonable. In the event that the applicant was not required to file a Federal Form 990, then the applicant shall provide the Director with comparable information, as may be requested, showing any compensation provided to a director, trustee, key employee, employee, or independent contractor and a statement explaining why such compensation was reasonable.

(9) A copy of the most recent annual report for the applicant, and if no such report was prepared, then an explanation of why no annual report was prepared;

(10) A copy of the most recent financial audit report for the applicant, and if no such report was prepared, then an explanation of why no financial report was prepared;

(11) A statement describing whether the applicant provides services for the common good of the public, with special emphasis on what benefits and services the applicant provides to residents of Fairfax County, Virginia;

(12) A statement describing why the requested property tax exemption is necessary to the local operation of the applicant;

(13) A statement describing whether a substantial part of the activities of the applicant involves carrying on propaganda or otherwise attempting to influence legislation and whether the applicant participates in, or intervenes in, any political campaign on behalf of any candidate for public office; and,

(14) Any other information required by Virginia Code § 58.1-3651 and any other information that may be required by the Director pursuant to Section 4-27-2.

This amendment shall become effective upon adoption.

GIVEN under my hand this 21st day of June, 2011.


NANCY VEHRS

Clerk to the Board of Supervisors