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ORDINANCE 2023-02 - AN ORDINANCE OF THE CITY OF LAKE WORTH BEACH, FLORIDA, AMENDING CHAPTER 23 SECTION 23.2-39 “AFFORDABLE/WORKFORCE HOUSING PROGRAM,” PROVIDING FOR CLARIFICATION ON COMBINATION OF INCENTIVES, QUALIFICATIONS FOR AFFORDABILITY AND PARTICIPATION IN OTHER ENTITY PROGRAMS AND PROVIDING FOR ADDITIONAL AFFORDABILITY BUY DOWN PROVISIONS; AND PROVIDING FOR SEVERABILITY, CONFLICTS, CODIFICATION AND AN EFFECTIVE DATE

WHEREAS, as provided in Section 2(b), Article VIII of the Constitution of the State of Florida, and Section 166.021(1), Florida Statutes, the City of Lake Worth Beach (the “City”), enjoys all governmental, corporate, and proprietary powers necessary to conduct municipal government, perform municipal functions, and render municipal services, and may exercise any power for municipal purposes, except as expressly prohibited by law; and

WHEREAS, as provided in Section 166.021(3), Florida Statutes, the governing body of each municipality in the state has the power to enact legislation concerning any subject matter upon which the state legislature may act, except when expressly prohibited by law; and

WHEREAS, the City wishes to amend Chapter 23, Article 2 “Administration,” to amend, Section 23.2-39 – Affordable/Workforce Housing Program to provide for additional buy down options for the affordable/workforce housing program within the City of Lake Worth Beach; and

WHEREAS, the City of Lake Worth Beach, Florida (the “City”), is a duly constituted municipality having such power and authority conferred upon it by the Florida Constitution and Chapter 166, Florida Statutes; and

WHEREAS, the Planning and Zoning Board, in its capacity as the local planning agency, considered the proposed amendments at a duly advertised public hearing; and

WHEREAS, the Historic Resources Preservation Board, in its capacity as the local planning agency, considered the proposed amendments at a duly advertised public hearing; and

WHEREAS, the City Commission finds and declares that the adoption of this ordinance is appropriate, and in the best interest of the health, safety and welfare of the City, its residents and visitors.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF LAKE WORTH BEACH, FLORIDA, that:

Section 1: The foregoing “WHEREAS” clauses are ratified and confirmed as being true and correct and are made a specific part of this ordinance as if set forth herein.

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Section 2: Chapter 23 “Land Development Regulations,” Article 2 “Administration,” Section 23.2-39 “Affordable/Workforce Housing Program” is hereby amended to read as follows:

Sec. 23.2-39. – Affordable/Workforce Housing Program.

- a) *Intent.* The Affordable/Workforce Housing Program is intended to implement Objective 3.1.2 of the city comprehensive plan future land use element and provisions therein regarding affordable and workforce housing. The Affordable/Workforce Housing Program provides for a density bonus and a reduction in overall housing unit areas for developments that incorporate residential units with restrictive covenants that meet the requirements of the program.

- b) *Purpose.* The purpose of the Affordable/Workforce Housing Program is to encourage the inclusion of affordable and workforce housing units within both residential and mixed-use projects as well as planned developments of all types to provide for broader and more accessible housing options within the City. The Affordable/Workforce Housing Program offers the following as “Program Incentives”;
 - 1. Tier One: may apply to all development projects consistent with the provisions of this section
 - (a) Up to a fifteen percent (15%) increase in overall project density;
 - (b) Up to a fifteen percent (15%) reduction in the gross area requirements based on unit type;
 - (c) Up to a twenty five percent (25%) reduction in required parking, provided that each residential dwelling unit is provided at least one (1) parking space. This reduction may not be combined with other parking reduction provisions of these LDRs;
 - (d) Any additional density and/or other benefits provided under this tier shall require that those units benefiting from the provisions be restricted as affordable/workforce housing meeting the requirements of this section through a restrictive covenant.
 - (e) Additional financial incentives may be considered on a case by case basis by the applicable decision-making entity if the project provides more affordable/workforce units that the minimum required.
 - 2. Tier Two: applies to all projects utilizing other city incentive and/or bonus program(s)
 - (a) For all projects utilizing any other city incentive or bonus program(s), fifteen percent (15%) of the total number of dwelling units within the project must be restricted as affordable/workforce dwelling units meeting the requirements of this section through a restrictive covenant.
 - ~~(b) Any combination of Tier One incentives with other city incentive and/or bonus program(s) related to density, intensity and/or height shall require that all units benefiting from these increases and/or incentives~~

98 ~~be restricted as affordable/workforce dwelling units meeting the~~
99 ~~requirements of this section through a restrictive covenant.~~

100 3. Tier One and Tier Two Combination: applies to all projects that combine the Tier
101 One Incentives with other available city incentives

102 (a) For all projects combining a Tier One density incentive with other City incentive
103 and/or bonus program(s) related to density, all units benefitting from the
104 additional density incentive under Tier One shall be restricted as
105 affordable/workforce dwelling units meeting the requirements of this section
106 through a restrictive covenant in addition to the units required to be restricted
107 under (Tier Two) other city incentive and/or bonus program(s).

108
109 c) *Application and Review Process.*

110
111 1. *Application.* All development proposals seeking increased density of up to
112 fifteen percent (15%) and/or reductions in overall unit sizes of up to fifteen
113 percent (15%) shall submit an affordable/workforce housing program
114 application as provided by the department of community sustainability. The
115 application shall accompany the standard City of Lake Worth Beach Universal
116 Development Application for the development proposal. The
117 affordable/workforce housing program application shall include all of the
118 following:

119
120 (a) A project fact sheet with building specifications including the number of
121 additional units, unit types and unit sizes proposed.

122
123 (b) The affordability criteria for each unit proposed to be included in the project.

124
125 (c) Draft restrictive covenant should the City's version not be submitted.

126
127 (d) Any other additional information (d) ensure the timely and efficient evaluation
128 of the project by city staff to ensure that the requirements of the
129 Affordable/Workforce Housing Program are being met.

130
131 (e) Intent to meet the requirements of the Affordable/Workforce Housing
132 Program through participation in another entity's program, including
133 relevant program criteria and restrictive covenant.

134
135 2. *Review/decision.* The development review official shall review the application
136 along with the zoning approvals otherwise required of the development
137 proposal under these LDRs. Development applications that require further
138 review or approval by a decision-making board shall also include the
139 development review official's recommendation regarding the award of
140 additional density and/or unit size reduction under the Affordable/Workforce
141 Housing Program. Any decision on the award shall be made by the planning
142 and zoning board, the historic resources planning board, or the city commission
143 as applicable. A decision on an award may be appealed under the procedures
144 applicable to the development application with which it is associated. No waiver
145 or variance may be granted regarding the award. The award of bonus density,

146 height or intensity under the Affordable/Workforce Housing Program shall be
147 based on the following criteria:

- 148
- 149 (a) Is the award calculated correctly, consistent with the density and unit size
150 reduction(s) that are allowed under the Affordable/Workforce Housing
151 Program, including that the affordable/workforce housing unit type mix be
152 reflective of the overall unit type mix for the entire project;
- 153
- 154 (b) Do the proposed income restrictions meet the intent of the
155 Affordable/Workforce Housing Program;
- 156
- 157 (c) Do the proposed annual rents and/or mortgage costs meet the intent of the
158 Affordable/Workforce Housing Program; and
- 159
- 160 (d) Do the proposed restrictive covenants to maintain affordability meet the
161 intent of the Affordable/Workforce Housing Program?
- 162

163 d) *Qualifying income restrictions.* The following provisions outline the required
164 income limits and overall percentage of household income to qualify units as being
165 affordable/workforce under the Affordable/Workforce Housing Program. All
166 income values shall be based on the then current area (County) median household
167 income published annually by the US Department of Housing & Urban
168 Development. Whether with a rental unit or for a fee simple, for sale unit, the
169 overall housing expense (rent, mortgage, property taxes, and insurances) for the
170 unit shall not exceed thirty percent (30%) of the income limit provided for each unit
171 type, based upon the number of bedrooms.

- 172
- 173 1. For a studio unit, the annual gross household income shall not exceed forty five
174 percent (45%) of area median income and minimum household size is one (1)
175 person, not to exceed two (2) people.
- 176
- 177 2. For a one-bedroom unit, the annual gross household income shall not exceed
178 sixty five percent (65%) of the area median income and minimum household
179 size of one (1) person, not to exceed two (2) people.
- 180
- 181 3. For a two-bedroom unit, the annual gross household income shall not exceed
182 eighty five percent (85%) of the area median income and minimum household
183 size of two (2) people, not to exceed two (2) people per bedroom.
- 184
- 185 4. For a three-bedroom unit, the annual gross household income shall not exceed
186 one hundred and five percent (105%) of the area median income and minimum
187 household size of three (3) people, not to exceed two (2) people per bedroom.
- 188
- 189 5. For a four or more-bedroom unit, the annual gross household income shall not
190 exceed one hundred and twenty five percent (125%) of the area median income
191 and minimum household size of four (4) people, not to exceed two (2) people
192 per bedroom.
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6. For fee simple ownership, the limits provided above may be increased by fifteen (15%) based on unit type and shall include the overall housing expense.

7. Alternatively, if participating in another entity's program, the income restrictions may adhere to the following guidelines singularly or in combination, predicated that the restrictions meet the requisite criteria of the alternative program selected.
 - a. "Affordable Housing Eligible Households" means a household with an annual gross household income at or less than eighty percent (80%) of the Area Median Income, calculated as percentages of the Median Family Income for Palm Beach County, as published annually by the US Department of Housing and Urban Development.

 - b. "Workforce Housing Eligible Households" means a household with an annual gross household income within the following income categories: Moderate (80%-100%) and Middle (101%-140%) of the Area Median Income, calculated as percentages of the Median Family Income for Palm Beach County, as published annually by the US Department of Housing and Urban Development.

- e) *Additional restrictions.* The following requirements outline the restrictive covenant that shall be recorded and maintained on each unit awarded under the Affordable/Workforce Housing Program.
 1. The restrictive covenant shall be in a legal form acceptable to the department of community sustainability and the city attorney's office or as otherwise provided by the city and shall require each unit awarded be maintained at the awarded level of affordability, in accordance with the Affordable/Workforce Housing Program, for a minimum of twenty-five (2025) years.

 2. The restrictive covenant shall include the more restrictive program requirements, which shall govern the project if other affordable/workforce housing incentives are combined with use of the Affordable/Workforce Housing Program.

 3. The restrictive covenant shall require an annual report of the project's compliance with the restrictive covenants and the requirements of the Affordable/Workforce Housing Program be provided to the City or its designee for evaluation, review and approval. Should the annual report not be submitted or should it demonstrate the project is not meeting the requirements of the Affordable/Workforce Housing Program, the project owner shall pay the city, as a penalty, an amount no less than fifteen dollars (\$15) per square foot for each unit that did not comply with the program's requirements for the previous year, or portion thereof. If the report is not submitted, the penalty payment will be calculated as though no units met the requirements of the Affordable/Workforce Housing Program for the reporting period. The per square foot penalty value may increase based on the annual U.S. Consumer Price Index (CPI) and shall

242 be reflected in the City's adopted annual Schedule of Fees and Charges. Any
243 required penalty payment shall be made within ten (10) days of notification from
244 the city of the calculated payment based on the report or failure to submit the
245 report and the annual penalty value as adopted by the city.
246

- 247 4. The restrictive covenant shall provide for extension of the affordability period,
248 as set forth in this section. If the property is qualified through its participation in
249 another entity's affordability program, a separate restrictive covenant may be
250 utilized to provide for the extension of the affordability period in accordance
251 with the terms of this section.
252

253 f) *Financial incentives.* The following are parameters for financial incentive values
254 based on unit type, which may be utilized to ensure more than the required fifteen
255 percent (15%) of the dwelling units available after the density increase incentive
256 remain affordable for a guaranteed twenty-five (25) year period as governed
257 through a covenant and/or deed restriction. Values may be paid through utilization
258 of Sustainable Bonus Incentive Values, Transfer Development Right Values or
259 cash payments from the City from the Affordable/Workforce Housing Program
260 Trust Fund, Sustainable Bonus Incentive Trust Account or the Transfer
261 Development Rights Trust Account or other legally approved funding source(s).
262

- 263 1. For a studio dwelling unit, a one-time payment of \$40,000 or 50% percent of
264 the area median income, whichever is greater;
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266 2. For a one-bedroom dwelling unit, a one-time payment of \$60,000 or 75%
267 percent of the area median income, whichever is greater;
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269 3. For a two-bedroom dwelling unit, a one-time payment of \$80,000 or 100%
270 percent of the area median income, whichever is greater;
271
272 4. For a three-bedroom dwelling unit, a one-time payment of \$100,000 or 125%
273 percent of the area median income, whichever is greater;
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275 5. For a four or more-bedroom dwelling unit, a one-time payment of \$120,000 or
276 150% percent of the area median income, whichever is greater;
277
278 6. For a fee simple ownership dwelling unit, an additional one-time payment of
279 \$25,000 may be provided; and
280
281 7. Payments shall be made at time of dwelling units receiving a final certificate of
282 occupancy or certificate of completion.
283

284 g) *Affordability extension(s).* The City shall have the express right, in its sole
285 discretion, to extend the affordability deed restrictions and covenants for another
286 period of no less than twenty-five (25) years) through the provision of a then current
287 economic incentive payment based on unit size. The affordability extension shall
288 be available to the City pursuant to this subsection regardless of whether the

289 original affordability period was under the Affordable/Workforce Housing Program
290 or another entity's program.

- 291
- 292 1. The City shall provide formal notice of intent to extend affordability of units a
293 minimum of six (6) months prior to the expiration of the affordability deed
294 restrictions and covenants.
 - 295
 - 296 2. The City's notice shall include the number and type of units having affordability
297 extended and the economic incentive to be provided for those units.
 - 298
 - 299 3. The affordability extension may not exceed the original number and type of
300 units governed by the Affordable/Workforce Housing Program.
 - 301
 - 302 4. There shall be no limit on the number of affordability extensions the city may
303 fund for a project.
 - 304
 - 305 5. The extension incentive payment shall follow the parameters as set forth in f)
306 of this section based on the values established for the year that the extension
307 is authorized.
 - 308
 - 309 6. Financial incentives and buy-down options, if part of the original approval, may
310 each also be extended by mutual agreement of the City and the property
311 owner(s) and payment by the City under the provisions of those sections at the
312 time of the extension.
 - 313
 - 314 7. If the original affordability period was under another entity's program, upon the
315 City's notice of intent to extend affordability the covenant and/or deed restriction
316 may be extended as-is or may be amended to comply with the provisions of the
317 Affordable/Workforce Housing Program instead of the other entity's program,
318 consistent with the provisions in the original recorded covenant and/or deed
319 restriction providing for the affordability extension.

320

321 h) Additional Buy Down Provisions for Affordability. The following are parameters for
322 additional buy down values based on unit type, which may be utilized to reduce
323 the individual unit type household income limits by an additional fifteen percent
324 (15%) in order to provide expanded affordability for a guaranteed twenty-five (25)
325 year period as governed through a covenant and/or deed restriction. Values will
326 be paid as cash payments from the City from the Affordable/Workforce Housing
327 Program Trust Fund or other legally approved funding source(s).

- 328
- 329 1. For a studio dwelling unit, a one-time payment of \$40,000 or 50% percent
330 of the area median income, whichever is greater;
 - 331
 - 332 2. For a one-bedroom dwelling unit, a one-time payment of \$60,000 or 75%
333 percent of the area median income, whichever is greater;
 - 334
 - 335 3. For a two-bedroom dwelling unit, a one-time payment of \$80,000 or 100%
336 percent of the area median income, whichever is greater;

- 337
- 338 4. For a three-bedroom dwelling unit, a one-time payment of \$100,000 or
- 339 125% percent of the area median income, whichever is greater;
- 340
- 341 5. For a four or more-bedroom dwelling unit, a one-time payment of \$120,000
- 342 or 150% percent of the area median income, whichever is greater;
- 343
- 344 6. For a fee simple ownership dwelling unit, an additional one-time payment
- 345 of \$25,000 may be provided; and
- 346
- 347 7. Payments shall be made at time of dwelling units receiving a final certificate
- 348 of occupancy or certificate of completion.
- 349

350 i) *Policies and Procedures.* The city's director for community sustainability is hereby
351 authorized to establish policies and procedures including covenants, accountability
352 and reporting to ensure effective implementation of the Affordable/Workforce
353 Housing Program and clarify the requirements and procedures as set forth herein.
354

355 j) *Trust Fund.* There is hereby established an Affordable/Workforce Housing
356 Program Trust Fund. The trust fund will be a separate line item in the City's budget.
357

- 358 1. Payments required by the Affordable/Workforce Housing Program due to non-
- 359 compliance with restrictive covenants shall be paid into the trust fund.
- 360
- 361 2. Funds in the trust fund will be used to fund the financial incentives and the
- 362 affordability extensions under the Affordable/Workforce Housing Program.
- 363
- 364 3. At least once each fiscal period, the city manager shall present to the city
- 365 commission a report on funds held in the trust fund, including any accrued
- 366 interest, and any proposed use thereof. Monies, including any accrued interest,
- 367 not assigned in any fiscal period shall be retained in the trust fund until the next
- 368 fiscal period.
- 369

370 k) *In Lieu Payment Provision.* In some instances, projects including Density, Intensity
371 and/or Height Bonuses may not be appropriate for participation in the Program. In
372 these cases, the project may pay an in lieu of payment based on the following
373 provisions;

- 374 1. The fee shall be calculated on fifteen percent (15%) of the gross area of the
- 375 bonuses requested for the project.
- 376 2. The fee shall be a one-time payment of \$50 or 0.0625% of the area median
- 377 income, whichever is greater, per gross square foot.
- 378 3. Projects eligible for an in lieu of payment may include the following:
- 379 i. Single or multiple use projects that do not include a residential use;
- 380 ii. Mixed use projects that include residential and fewer than 25
- 381 residential units;
- 382 iii. Residential only projects that include fewer than 15 residential units;
- 383 iv. Any project that includes a residential use(s) and all of the dwelling
- 384 units are for sale, home ownership such as condominiums,

385 townhouses and/or single-family residences of which none are deed
386 restricted as affordable/workforce housing.

387 4. Fee payment shall be due prior to issuance of any building permits related
388 to the project.

389
390 I) *Exemptions.* Projects in specific locations are exempt from the requirements of
391 this section due to their maximum allowed density and/or to their allowed uses.

392 1. Individual residential dwelling units in the Single Family Residential (SF-R)
393 and Single Family/Two Family Residential (SF/TF) Zoning Districts unless
394 units are part of a project requesting additional densities under the
395 provisions of one of the city’s incentive programs.

396 2. Projects within the Public (P), Public Recreation and Open Space (PROS),
397 Beach and Casino (BAC), Conservation (C) and Industrial Park of
398 Commerce (I-POC) Zoning Districts.

399

400 **Section 4:** Severability. If any section, subsection, sentence, clause, phrase or
401 portion of this Ordinance is for any reason held invalid or unconstitutional by any court of
402 competent jurisdiction, such portion shall be deemed a separate, distinct, and
403 independent provision, and such holding shall not affect the validity of the remaining
404 portions thereof.

405

406 **Section 5:** Repeal of Laws in Conflict. All ordinances or parts of ordinances in
407 conflict herewith are hereby repealed to the extent of such conflict.

408

409 **Section 6:** Codification. The sections of the ordinance may be made a part of
410 the City Code of Laws and ordinances and may be re-numbered or re-lettered to
411 accomplish such, and the word “ordinance” may be changed to “section”, “division”, or
412 any other appropriate word.

413

414 **Section 7:** Effective Date. This ordinance shall become effective 10 days after
415 passage.

416

417 The passage of this ordinance on first reading was moved by _____, seconded by
418 _____, and upon being put to a vote, the vote was as follows:

419

420 Mayor Betty Resch

421 Vice Mayor Christopher McVoy

422 Commissioner Sarah Malega

423 Commissioner Kimberly Stokes

424 Commissioner Reinaldo Diaz

425

426 The Mayor thereupon declared this ordinance duly passed on first reading on the
427 ____ day of _____, 2023.

428

429

430 The passage of this ordinance on second reading was moved by
431 _____, seconded by _____, and upon being put to a vote,

432 the vote was as follows:

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Mayor Betty Resch
Vice Mayor Christopher McVoy
Commissioner Sarah Malega
Commissioner Kimberly Stokes
Commissioner Reinaldo Diaz

The Mayor thereupon declared this ordinance duly passed on the _____ day of _____, 2023.

LAKE WORTH BEACH CITY COMMISSION

By: _____
Betty Resch, Mayor

ATTEST:

Melissa Ann Coyne, City Clerk