

ORDINANCE 2022-12 - AN ORDINANCE OF THE CITY OF LAKE WORTH BEACH, FLORIDA, AMENDING CHAPTER 23 "LAND DEVELOPMENT REGULATIONS," ARTICLE 1 "GENERAL PROVISIONS," DIVISION 2 "DEFINITIONS," SECTION 23.1-12 "DEFINITIONS," ADDING A NEW DEFINITIONS "ANNUAL GROSS HOUSEHOLD INCOME," "GROSS RENT" AND "OVERALL HOUSING EXPENSE;" AND ARTICLE 2 "ADMINISTRATION," DIVISION 3 "PERMITS," ADDING A NEW SECTION 23.2-39 "AFFORDABLE/WORKFORCE HOUSING PROGRAM," PROVIDING FOR AN AFFORDABLE/WORKFORCE HOUSING PROGRAM WITHIN THE CITY OF LAKE WORTH BEACH; 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 Land Development Regulations," Article 1 "General Provisions," Division 2 "Definitions," Section 23.1.12 definitions, to add definitions and to define "Annual Gross Household Income," "Gross Rent" and "Overall Housing Expense;" and

WHEREAS, the City wishes to amend Chapter 23, Article 2 "Administration," to establish a new section, Section 23.2-39 – Affordable/Workforce Housing Program to establish an 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.

Section 2: Chapter 23 “Land Development Regulations,” Article 1 “General Provisions,” Division 2 “Definitions,” Section 23.1-12 “Definitions,” is hereby amended by adding thereto new definitions “Annual Gross Household Income,” “Gross Rent” and “Overall Housing Expense” to read as follows:

Annual Gross Household Income: Total gross income of all wage-earning residents residing within a single dwelling unit.

Gross Rent: Total all-inclusive dollar amount required from a lessee by a lessor for a single dwelling unit.

Median Household Income: Gross income for 4 people, also known as Area Median Income, published annually for Palm Beach County by the U.S. Department of Housing and Urban Development.

Overall Housing Expense: Total homeowner expenses for mortgage, mortgage insurance, property insurance and taxes.

Section 3: Chapter 23 “Land Development Regulations,” Article 2 “Administration,” is hereby amended by adding thereto a new Section 23.2-39 “Affordable/Workforce Housing Program” 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, and the entire project is affordable/workforce housing meeting the requirements of this section. 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 than 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 be restricted as affordable/workforce dwelling units meeting the requirements of this section through a restrictive covenant.

c) Application and Review Process.

1. Application. All development proposals seeking increased density of up to fifteen percent (15%) and/or reductions in overall unit sizes of up to fifteen percent (15%) shall submit an affordable/workforce housing program application as provided by the department of community sustainability. The application shall accompany the standard City of Lake Worth Beach Universal Development Application for the development proposal. The affordable/workforce housing program application shall include all of the following:
 - (a) A project fact sheet with building specifications including the number of additional units, unit types and unit sizes proposed.
 - (b) The affordability criteria for each unit proposed to be included in the project.
 - (c) Draft restrictive covenant should the City's version not be submitted.

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

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

(a) Is the award calculated correctly, consistent with the density and unit size reduction(s) that are allowed under the Affordable/Workforce Housing Program, including that the affordable/workforce housing unit type mix be reflective of the overall unit type mix for the entire project;

(b) Do the proposed income restrictions meet the intent of the Affordable/Workforce Housing Program;

(c) Do the proposed annual rents and/or mortgage costs meet the intent of the Affordable/Workforce Housing Program; and

(d) Do the proposed restrictive covenants to maintain affordability meet the intent of the Affordable/Workforce Housing Program?

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

1. For a studio unit, the annual gross household income shall not exceed forty five percent (45%) of area median income and minimum household size is one (1) person, not to exceed two (2) people.

2. For a one-bedroom unit, the annual gross household income shall not exceed sixty five percent (65%) of the area median income and minimum household size of one (1) person, not to exceed two (2) people.
 3. For a two-bedroom unit, the annual gross household income shall not exceed eighty five percent (85%) of the area median income and minimum household size of two (2) people, not to exceed two (2) people per bedroom.
 4. For a three-bedroom unit, the annual gross household income shall not exceed one hundred and five percent (105%) of the area median income and minimum household size of three (3) people, not to exceed two (2) people per bedroom.
 5. For a four or more-bedroom unit, the annual gross household income shall not exceed one hundred and twenty five percent (125%) of the area median income and minimum household size of four (4) people, not to exceed two (2) people per bedroom.
 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, the income restrictions may adhere to the following guidelines singularly or in combination.
 - 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 (20) 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 be reflected in the City's adopted annual Schedule of Fees and Charges. Any required penalty payment shall be made within ten (10) days of notification from the city of the calculated payment based on the report or failure to submit the report and the annual penalty value as adopted by the city.

4. The restrictive covenant shall provide for extension of the affordability period, as set forth in this section.

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

1. For a studio dwelling unit, a one-time payment of \$40,000 or 50% percent of the area median income, whichever is greater;
2. For a one-bedroom dwelling unit, a one-time payment of \$60,000 or 75% percent of the area median income, whichever is greater;
3. For a two-bedroom dwelling unit, a one-time payment of \$80,000 or 100% percent of the area median income, whichever is greater;
4. For a three-bedroom dwelling unit, a one-time payment of \$100,000 or 125% percent of the area median income, whichever is greater;
5. For a four or more-bedroom dwelling unit, a one-time payment of \$120,000 or 150% percent of the area median income, whichever is greater;

- 288 6. For a fee simple ownership dwelling unit, an additional one-time payment of
289 \$25,000 may be provided; and
290
291 7. Payments shall be made at time of dwelling units receiving a final certificate of
292 occupancy or certificate of completion.
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294 g) Affordability extension(s). The City shall have the express right, in its sole
295 discretion, to extend the affordability deed restrictions and covenants for another
296 period of no less than twenty-five (25) years) through the provision of a then current
297 economic incentive payment based on unit size.
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- 299 1. The City shall provide formal notice of intent to extend affordability of units a
300 minimum of six (6) months prior to the expiration of the affordability deed
301 restrictions and covenants.
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303 2. The City's notice shall include the number and type of units having affordability
304 extended and the economic incentive to be provided for those units.
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306 3. The affordability extension may not exceed the original number and type of
307 units governed by the Affordable/Workforce Housing Program.
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309 4. There shall be no limit on the number of affordability extensions the city may
310 fund for a project.

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312 5. The extension incentive payment shall follow the parameters as set forth in f)
313 of this section based on the values established for the year that the extension
314 is authorized.
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316 h) Policies and Procedures. The city's director for community sustainability is hereby
317 authorized to establish policies and procedures including covenants, accountability
318 and reporting to ensure effective implementation of the Affordable/Workforce
319 Housing Program and clarify the requirements and procedures as set forth herein.
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321 i) Trust Fund. There is hereby established an Affordable/Workforce Housing
322 Program Trust Fund. The trust fund will be a separate line item in the City's budget.
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- 324 1. Payments required by the Affordable/Workforce Housing Program due to non-
325 compliance with restrictive covenants shall be paid into the trust fund.
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327 2. Funds in the trust fund will be used to fund the financial incentives and the
328 affordability extensions under the Affordable/Workforce Housing Program.
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330 3. At least once each fiscal period, the city manager shall present to the city
331 commission a report on funds held in the trust fund, including any accrued
332 interest, and any proposed use thereof. Monies, including any accrued interest,
333 not assigned in any fiscal period shall be retained in the trust fund until the next
334 fiscal period.
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j) *In Lieu Payment Provision.* In some instances, projects including Density, Intensity and/or Height Bonuses may not be appropriate for participation in the Program. In these cases, the project may pay an in lieu of payment based on the following provisions:

1. The fee shall be calculated on fifteen percent (15%) of the gross area of the bonuses requested for the project.
2. The fee shall be a one-time payment of \$50 or 0.0625% of the area median income, whichever is greater, per gross square foot.
3. Projects eligible for an in lieu of payment may include the following:
 - i. Single or multiple use projects that do not include a residential use;
 - ii. Mixed use projects that include residential and fewer than 25 residential units;
 - iii. Residential only projects that include fewer than 15 residential units;
 - iv. Any project that includes a residential use(s) and all of the dwelling units are for sale, home ownership such as condominiums, townhouses and/or single-family residences of which none are deed restricted as affordable/workforce housing.
4. Fee payment shall be due prior to issuance of any building permits related to the project.

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

1. Individual residential dwelling units in the Single Family Residential (SF-R) and Single Family/Two Family Residential (SF/TF) Zoning Districts unless units are part of a project requesting additional densities under the provisions of one of the city's incentive programs.
2. Projects within the Public (P), Public Recreation and Open Space (PROS), Beach and Casino (BAC), Conservation (C) and Industrial Park of Commerce (I-POC) Zoning Districts.

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

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

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

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

The passage of this ordinance on first reading was moved by Vice Mayor McVoy, seconded by Commissioner Stokes, and upon being put to a vote, the vote was as follows:

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

The Mayor thereupon declared this ordinance duly passed on first reading on the 20th day of September, 2022.

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

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 _____, 2022.

LAKE WORTH BEACH CITY COMMISSION

By: _____
Betty Resch, Mayor

ATTEST:

Melissa Ann Coyne, City Clerk