ORDINANCE-3871

AN ORDINANCE TO AMEND CITY CODE SECTIONS 16-44, 16-46, 16-51, 16-52, 16-53 AND 16-56 AND ADD SECTION 16-51.1 PERTAINING TO WORKFORCE HOUSING

Sections Amended: §§ 16-44, 16-46, 16-51, 16-52, 16-53 and 16-56

Section Added: § 16-51.1

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF VIRGINIA BEACH, VIRGINIA THAT:

That Sections 16-44, 16-46, 16-51, 16-52, 16-53 and 16-56 of the City Code are hereby amended and Section 16-51.1 is hereby added and reordained to read as follows:

ARTICLE VIII. WORKFORCE HOUSING

DIVISION 1. GENERAL PROVISIONS

Sec. 16-44. Definitions; explanatory material.

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Developer. The developer of workforce housing who sells or rents a workforce housing unit pursuant to the provisions of this article. The term includes other persons or entities, such as homebuilders, who purchase workforce housing units for the purpose of selling such units pursuant to the provisions of this article, but does not include any person who resells a workforce housing unit pursuant to section 16-49.

Director. The director of the department of housing and neighborhood preservation or ~~his~~ their designee.

Discounted sales price. The consideration paid to the developer for a workforce housing unit; provided, however, that in the case of a resale, the discounted sales price is the difference between the initial sales price and the amount of funds provided by the city, as evidenced by a promissory note, to help buy down the eligible buyer's first mortgage.

Eligible buyer. A household whose workforce housing application has been approved and who meets the requirements of section 16-46. Such requirements include, among other things, the household's gross annual income, financial assets and liabilities, and location in which an adult, non-dependent household member lives and works. In order to qualify to purchase a workforce housing unit, a household's annual gross income must generally be between eighty (80) percent and one hundred twenty (120) percent of AMI.

Eligible renter. A household whose workforce housing application has been approved and who meets the requirements of section 16-51. Such requirements include, among other things, the household's gross annual income~~,~~ and financial assets~~, and location in which an adult, non-dependent household member lives and works~~. In order to qualify to rent a workforce housing unit, a household's annual gross income must generally be between forty (40) percent and ninety (90) percent of AMI or, where the building contains an elevator, between forty (40) percent and one hundred (100) percent of AMI.

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Workforce housing or workforce housing unit. Dwellings or dwelling units, whether single-family dwellings, duplexes, semi-detached dwellings, townhouses or multiple-family dwelling units, approved by the city council pursuant to article 21 of the city zoning ordinance. Such housing is generally affordable to households with working members ~~who live or work in the City of Virginia Beach~~.

Workforce housing application. An application submitted to the city or to a rental property owner or manager that provides the necessary information to determine if a household qualifies for the workforce housing program. Participation in the program is contingent upon approval of this application.

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DIVISION 2. SALE AND OWNERSHIP OF WORKFORCE HOUSING

Sec. 16-46. Eligibility requirements for buyers of workforce housing units.

(a) In order to be deemed an eligible buyer of a workforce housing unit, a household shall meet the following criteria:

    (1) At least one adult, non-dependent member of the household to be shown on the deed of trust note as a borrower or other obligor shall, at the time of application to the workforce housing program, live or work full-time in the City of Virginia Beach, or must have a bona fide offer of full-time employment within the City of Virginia Beach commencing within three (3) months of the time of application;
    (2) No member of the household shall own or have a controlling interest in any other real property;
    (3) The household's combined annual gross income shall, at the time of application, be between eighty (80) percent and one hundred twenty (120) percent of area median income, adjusted for household size; and

(4) The net worth (assets less liabilities) of the household shall not exceed fifty (50) percent of the sales price of the workforce housing unit being financed. The following items shall not be included in determining the net worth of a household:

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DIVISION 3. RENTAL OF WORKFORCE HOUSING

Sec. 16-51. Eligibility requirements for renters of workforce housing units; verification.

(a) In order to be deemed ~~an~~ eligible to rent a workforce housing unit, a household's ~~shall meet the following criteria:~~ gross annual income shall, at the time of application, be between forty percent (40%) and ninety percent (90%) of area median income, or, where the building contains an elevator, between forty percent (40%) and one hundred percent (100%) of area median income, adjusted for household size, The tenant income eligibility criteria shall be determined in accordance with the income and asset calculation rules utilized under Section 42 of the Internal Revenue Code and applicable Treasury regulations, as such rules may be amended from time to time.

~~(1) At least one adult, non-dependent member of the household occupying the unit shall, at the time of application to the workforce housing program, live or work full-time in the City of Virginia Beach, or must have a bona fide offer of full-time employment within the City of Virginia Beach commencing within three (3) months of the time of application;~~

~~(2) No member of the household shall own or have a controlling interest in any other real property;~~

~~(3) The household's gross annual income shall, at the time of application, be between forty (40) percent and ninety (90) percent of area median income, or, where the building contains an elevator, between forty (40) percent and one hundred (100) percent of Area Median Income, adjusted for household size; and~~

~~(4) The net worth of the household shall not exceed fifty (50) percent of the total of rent payments for a period of twelve (12) months. The following items shall not be included in determining the net worth of a household:~~

~~a. The present value of insurance policies, retirement plans, furniture or household goods; and~~

~~b. Any income-producing assets needed as a source of income to meet the minimum qualifying requirements for eligible renter status.~~

(b) Before a household may enter into a rental agreement for a workforce housing unit, the property owner or manager of the unit shall verify that such household meets the foregoing eligibility requirements. All property owners or managers of workforce housing units for rent shall maintain a list of households it has screened and determined to be eligible renters.

(c) Property owners or managers shall also maintain documentation on each household currently occupying a workforce housing unit for rent. At a minimum, such documentation shall include:

~~(1) Verification of residency or work requirements for eligibility purposes;~~
(~~2~~1) Composition of the household; and
(~~3~~2) Annual gross income for the household and each of the household members whose income is included in determining eligibility.

(d) Property owners or managers shall ensure that all persons living in a workforce housing rental unit are listed on the rental agreement. It shall be a condition of the rental agreement for any such unit that the city may inspect the records of the property owner or manager to ensure compliance with eligibility requirements and may, at reasonable times, enter any workforce housing rental unit to verify that it is occupied by an eligible renter.

(e) Property owners or managers shall, upon renewal of a rental agreement, but no less often than annually, verify that the occupants of a workforce housing unit for rent continue to meet applicable eligibility standards.

(f) If a property owner or manager determines that a household occupying a workforce housing unit for rent no longer meets applicable eligibility requirements, such property owner or manager shall:

(1) Require the household to vacate the unit upon the expiration of the current rental agreement; or
(2) Allow the household to continue to occupy the unit upon expiration of the current rental agreement ~~at~~ up to the market-based rental price and make the next comparable market-based rental unit available to an eligible renter at a rental price deemed affordable under the standards prescribed in this article.

The household shall be removed from the list of eligible renters and shall not thereafter be eligible to rent a workforce housing unit for such period of time as applicable the household meets applicable eligibility requirements.

(g) For development that is financed under a federal or state affordable housing program with affordability restrictions that are at least as restrictive as the Workforce Housing Program, property owners or managers may follow the rules under the federal or state housing program for verifying eligibility for initial and continued occupancy, including the treatment of households that become over-income during their tenancy, to the extend such rules differ from subsections (a), (b), (e), or (f) of this section, with respect to the workforce housing units within the development that are subject to such federal or state program.

Sec. 16-51.1 Rental Occupancy Requirements.

(a) A workforce housing unit shall be rented and occupied as the principal residence of the eligible renter at all times.

(b) It shall be a condition of the rental agreement that an eligible renter may not assign the rental agreement or sublet the Workforce Housing Unit or any part thereof or give accommodation to any roomer, lodger, or other person not on the rental Agreement.

Sec. 16-52. Rental property compliance agreement.

(a) A property owner desiring to rent property under the workforce housing program shall enter into a compliance agreement with the city. The terms of such agreement shall be prescribed by the city and shall set forth the terms and conditions of the owner's participation in the workforce housing program, including, but not limited to, occupancy and rent requirements, including maximum rents, means of preserving the long-term affordability of workforce housing rental units, and such other terms and conditions as are, in the judgment of the director, reasonable and necessary to ensure compliance with applicable provisions of this article and the goals of the workforce housing program. All workforce housing rental units shall be rented in conformity with the income and rent limitations specified in the compliance agreement for a period of not less than fifty (50) years. Notwithstanding the foregoing, in order to satisfy the requirements of a project's affordable housing mortgage lender with respect to affordability restrictions that are intended to survive a foreclosure of such lender's financing, the director is authorized to adjust the target area median income set-aside and the percentage of income-restricted units within the project, or other income and rent limitations that will apply following such a foreclosure, as set forth in the compliance agreement, provided that (i) such adjusted target is no higher than the maximum area median income or rent limitation otherwise permitted under this article, (ii) such adjusted target is no lower than sixty (60) percent of area median income, adjusted for household size, and (iii) the percentage of income-restricted units within the project is no lower than the minimum number otherwise required under Article 21, Section 2106 of the City Zoning Ordinance, with such minimum required percentage being no greater than twenty percent (20%).

(b) The compliance agreement required by subsection (a), together with the affordability terms applicable to the development, including, but not limited to, the number, type, and location of workforce housing units, the income and rent limitations applicable thereto, and the duration of such restrictions, shall be in a form satisfactory to the city attorney and shall be recorded in the land records of the Clerk of the Circuit Court of the City of Virginia Beach prior to the issuance of the first certificate of occupancy for any workforce housing unit in the development. Such agreement shall run with the land and shall be binding upon the owner and all successors, assigns, mortgages, and other parties in interest for a period of not less than fifty (50) years from the date of initial occupancy of the first workforce housing unit in the development.

(c) Notwithstanding the provisions of subsections (a) and (b), if an extended use regulatory agreement, as defined in Section 42(h)(6)(B) of the Internal Revenue Code, in favor of the Virginia Housing Development Authority or other state housing finance agency, is recorded in the land records of the Clerk of the Circuit Court of the City of Virginia Beach against the property that is the subject of an application under article 21 of the city zoning ordinance, the owner shall nonetheless be required to record the compliance agreement in the aforesaid land records in accordance with subsection (a). Such compliance agreement shall set forth the affordability restrictions applicable to the development, including, without limitation, the specific percentage of units within the development that are subject to income restrictions and the applicable area median income levels for such units, together with such other terms and conditions as may be required by this article and article 21 of the city zoning ordinance. In the event of any conflict between the terms and conditions of the compliance agreement and the extended use regulatory agreement, the extended use regulatory agreement shall control for so long as the extended use regulatory agreement remains in effect. The compliance agreement shall survive the expiration or termination of the extended use regulatory agreement, including, without limitation, any early termination upon a foreclosure or other event described in Section 42(h)(6)(E) of the Internal Revenue Code. Upon the expiration or termination of the extended use regulatory agreement, the affordability restrictions set forth in the compliance agreement—including the specific percentage of units within the development that are subject to income restrictions and the applicable area median income levels for such units—shall remain in full force and effect for the remainder of the original fifty (50) year term of the compliance agreement. The owner shall provide the director with a true copy of the recorded extended use regulatory agreement and any amendments thereto.

(d) No substantial modification of a recorded compliance agreement shall be effective unless approved by the city council, upon recommendation of the director, and such modification is recorded in the land records of the Clerk of the Circuit Court of the City of Virginia Beach. Notwithstanding the foregoing, if an extended use regulatory agreement, as defined in Section 42(h)(6)(B) of the Internal Revenue Code, is recorded pursuant to subsection (c) above, then city council approval will not be required unless such modification reduces the affordability requirements for the development below the levels required by the compliance agreement between the property owner and the city.

(~~b~~e) Property owners or managers shall, upon request of the director, provide a copy of their most current tenant selection policy or criteria.

(~~c~~f) Any material failure to comply with the terms of a compliance agreement shall subject the owner to a liquidated damages penalty in the amount of fifty dollars ($50.00) per unit for each day such noncompliance continues, unless the director waives such penalty, in whole or in part, based upon his determination that the owner has taken timely corrective action to cure such noncompliance. Liquidated damages collected by the city shall be deposited into the workforce housing revolving fund.

Sec. 16-53. Rental procedures.

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(c) Any household desiring to rent a workforce housing rental unit shall submit to the property ~~manager~~ owner or manager an application for determination of its eligibility to rent a workforce housing unit. Such application shall contain such information concerning the ~~residency, employment, gross~~ income and ~~net worth~~ assets for each member of the household as may be necessary to determine the eligibility of such household. The property owner or his designee shall determine the eligibility of the household and shall promptly notify the director of its determination.

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DIVISION 4. ADDITIONAL PROVISIONS

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Sec. 16-56. Violations.

(a) The following tables list certain violations of the Workforce Housing ("WFH") Program requirements and the penalties for their violation. Where more than one penalty is prescribed, they shall be deemed cumulative, such that any or all applicable penalties may be imposed:

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Table 2 (rentals of workforce housing units):

Program Violation	Penalties
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Falsification of eligibility requirements such as income, ~~residency, employment~~ or persons who will be occupying the unit, etc.	Permanent loss of eligibility for the WFH program.
	Must move from the units within 60 days from date of written notice of being in violation of program
	Must pay market rate rent on the unit until the unit is vacated
Failure to occupy WFH unit as primary residence	Immediately reoccupy WFH unit.
	If unable to reoccupy unit, the following penalties apply:

	1. Permanent loss of eligibility for the WFH program.
	2. Must move from the unit within 60 days.
	3. Required to pay market rate rent on unit after receiving notice of violation until unit is vacated
Failure to list all persons living in the household on lease; allowing person or persons not listed on lease to move in after lease is signed	1. Permanent loss of eligibility for the WFH program.
	2. Must move from the WFH unit.
	3. Required to pay market rate rent until household is in compliance or moves from the unit.
	4. Unauthorized persons must immediately move from WFH unit.

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Adopted by the Council of the City of Virginia Beach, Virginia on the 18th day of August, 2026.