

ORDINANCE NO. 23-17

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AMENDING THE LAND DEVELOPMENT REGULATIONS BY AMENDING ARTICLE 4.7, "FAMILY/WORKFORCE HOUSING", SECTION 4.7.7, "FOR SALE HOUSING UNITS"; SECTION 4.7.8, "RESALE AND SUBSEQUENT RENTALS OF AFFORDABLE UNITS"; SECTION 4.7.9, "GENERAL PROVISIONS;" TO REMOVE DEED RESTRICTIONS FOR CERTAIN PROPERTIES; PROVIDING A CONFLICTS CLAUSE, A SEVERABILITY CLAUSE, AND AUTHORITY TO CODIFY; PROVIDING AND EFFECTIVE DATE; AND FOR OTHER PURPOSES.

WHEREAS, pursuant to LDR Section 1.1.6, the Planning and Zoning Board reviewed the proposed text amendment at a public hearing held on _____ and voted ____ to ____ to recommend that the changes be approved; and

WHEREAS, pursuant to Florida Statute 163.3174(4)(c), the Planning and Zoning Board, sitting as the Local Planning Agency, has determined that the change is consistent with and furthers the goals, objectives and policies of the Comprehensive Plan; and

WHEREAS, the City Commission of the City of Delray Beach adopts the findings in the Planning and Zoning Staff Report; and

WHEREAS, the City Commission of the City of Delray Beach finds the ordinance is consistent with the Comprehensive Plan.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AS FOLLOWS:

Section 1. That Article 4.7, "Family/Workforce Housing", Section 4.7.7, "For Sale Housing Units" of the Land Development Regulations of the City of Delray Beach, Florida, is hereby amended to read as follows:

Section 4.7.7 For Sale Housing Units

- a. With the exception of workforce housing units sold as part of the Delray Beach Community Land Trust, All deeds shall include the restrictive covenants applicable to workforce housing units. All sales contracts shall state that the unit is part of a workforce housing program and subject to Section 4.7 of the Land Development Regulations of the City. All deeds to buyers of workforce housing units shall contain

restrictive covenants providing that the Community Land Trust shall have the right of first refusal to purchase the workforce housing unit on the same terms and conditions as a prospective buyer. The restrictive covenant shall give the Community Land Trust fifteen (15) business days to enter into a contract to purchase the property on the same terms and conditions as the prospective buyer.

- b. All purchasers of workforce housing units shall be very low, low or moderate income households; provided, however, in exceptional circumstances when persons in households above the moderate income level are displaced due to redevelopment or catastrophic events, the persons so affected shall also be eligible for workforce housing. Under these circumstances, the Density Bonus Allocations under Section 4.74 shall be for moderate income households.
- c. Owners of workforce housing units shall be required to occupy the unit unless evidence is presented indicating that the owner is unable to continuously occupy the unit due to illness or incapacity.
- d. Closing costs and title insurance shall be paid pursuant to the custom and practice in Palm Beach County at the time of opening of escrow. No charges or fees shall be imposed by the seller on the purchaser of a workforce housing unit which are in addition to or more than charges imposed upon purchasers of market rate units, except for administrative fees charged by the City/CRA, or their designee.
- e. Sales prices for workforce housing units will be calculated on the basis of:
 - i. The sales price of a new structure for low and very low households may not exceed the maximum price established by the Community Improvement Department under the approved Local Housing Assistance Plan (LHAP).
 - ii. For moderate income households, the maximum price shall be established by the Community Improvement Department based on a formula that considers the prevailing mortgage interest rates, as approved by the City Commission by resolution.
- f. No workforce housing units shall be offered for sale to the general public until all requirements of this chapter are met.
- g. All Restrictive Covenants shall meet the requirements of this Article and are subject to approval of the City Attorney.

Section 2. That Article 4.7, “Family/Workforce Housing”, Section 4.7.8, “Resale and Subsequent Rentals of Affordable Units” of the Land Development Regulations of the City of Delray Beach, Florida, be amended to read as follows:

Section 4.7.8 Resale and Subsequent Rentals of Affordable Units

To maintain the availability of workforce housing units which may be constructed pursuant to the requirements of this program, the following resale conditions shall be imposed on the workforce housing units and included in the deed or restrictive covenant and recorded in the Public Records of Palm Beach County:

- a. All workforce housing units shall remain affordable for a period of no less than forty (40) years commencing from the date of initial occupancy of the unit, subject to the limits set forth in this section and Section 4.7.9.
- b. All workforce housing units must be rented or sold to eligible households. There shall be no provisions for releases from the sale or rental of workforce units to eligible households. Workforce housing units may be resold to non-eligible households only when the restriction expires.
- c. Deed restrictions or restrictive covenants and/or bylaws designed to ensure continued affordability shall be embodied in legally binding agreements meeting the requirements of this Article, which shall be approved by the City Attorney prior to recording. Notwithstanding the foregoing, workforce housing units sold as part of any Delray Beach Community Land Trust sale shall not contain resale restrictions other than those contained in the ground lease recorded as part of the original sale.
- d. Workforce housing unit resales shall be limited to households of the same category relative to income.
- e. The sales price of workforce housing units may not exceed the upper limit of affordability for the income category to which the unit was originally assigned.
- f. Transfers of title under the following circumstances shall be allowed, and are not subject to the restrictions included in this program:
 - i. Transfers upon death of owner.
- g. No resales of workforce housing units shall be completed until the requirements of this chapter are met.

Section 3. That Article 4.7, “Family/Workforce Housing”, Section 4.7.9, “General Provisions” of the Land Development Regulations of the City of Delray Beach, Florida, be amended to read as follows:

Section 4.7.9 General Provisions

- a. If not located offsite, all workforce housing units constructed or rehabilitated under this program shall be situated within the development so as not to be in less desirable locations than market-rate units in the development and shall, on average, be no less accessible to public amenities, such as open space, as the market-rate units.
- b. Workforce housing units, if located within a market rate unit development or located offsite, shall be integrated with the rest of the development and shall be compatible in exterior design, appearance, construction, and quality of materials and contain comparable HVAC systems and appliances with market rate units and provide them as standard features. All workforce housing units shall contain comparable square footage to the corresponding market-rate unit.
- c. The developer shall endeavor to provide workforce housing units that include unit types in the same proportion as the market rate housing unit types. The following conditions must be met:
 - i. The proportion of 1 bedroom workforce units to total workforce units may not exceed the proportion of 1 bedroom market rate units to total market rate units.
 - ii. The proportion of 2 bedroom workforce units to total workforce units may not exceed the proportion of 2 bedroom market rate units to total market rate units.
 - iii. The proportion of 3 bedroom workforce units to total workforce units must meet or exceed the proportion of 3 bedroom market rate units to total market rate units, unless 4+ bedroom workforce units are provided.
 - iv. The proportion of 4+ bedroom workforce units to total workforce units must meet or exceed the proportion of 4+ bedroom market rate units to total market rate units.
 - v. If the development contains a mix of different types of units, (e.g. condominium, townhouse, detached, etc.), the proportion of workforce units of each type to total workforce units must be approximately the same as the proportion of market rate units of each type to total market rate units.
 - vi. If the development includes both for sale and for rent units, the proportion of for rent workforce units to for sale workforce units must not exceed the proportion of for rent market rate units to for sale market rate units; provided however if the workforce housing units are funded under Florida Housing Finance Corporation's Housing Credit or SAIL Programs, the proportionality requirement herein stated shall not apply if the development provides at least twenty percent (20%) of the "for sale" units as workforce housing units.

- vii. Notwithstanding Section 4.7.9 c. i., ii., iii., iv. and v. above, in the Southwest 10th Street Overlay District at least 75% of the workforce housing units shall be 3 bedroom units offered for initial sale in an amount not to exceed \$225,000.00 and 25% of the workforce housing units may be 2 bedroom units offered at the low income affordability rate.
- d. The construction schedule for workforce housing units shall be consistent with or precede the construction of market rate units.
- e. There shall be no lot premiums charged on the workforce housing units.
- f. All fractional bonus densities shall be rounded down.
- g. The City of Delray Beach, its successors and assigns may enforce the covenants. No amendments to the covenants shall be made unless by written instrument approved by the City.
- h. No efficiency or studio type units shall be allowed under the family/workforce housing program.
- i. The total number of one bedroom units in any qualifying project shall not exceed 30% of the total number of units in the project, including both family/workforce units and market rate units.
- j. Except as otherwise provide in section 4.7.8(c), Workforce Housing Units constructed according to this policy shall be protected for subsequent resale or rental to Workforce Households whose income does not exceed the applicable AMI by deed restrictions or by other equivalent and effective methods. Conversions of rental units to owner occupied units or vice versa shall require the subsequent rental or sale to be for the same workforce housing income category.
- k. Workforce Housing Units constructed according to this policy shall only be rented or sold as a primary residence.
- l. Except as otherwise provide in section 4.7.8(c), A deed restriction on a form acceptable to the City Attorney shall be recorded in the Public Records of Palm Beach County. In addition to other restrictions therein contained, said deed restriction shall prohibit any subletting or assignment of the respective Workforce Housing Unit to a tenant(s) or purchaser(s) whose income exceeds the percent of the AMI under which the unit is originally approved. For the purpose of this section, household income is determined by the cumulative income of all tenants or purchasers under one roof. In addition, said deed restriction shall limit the maximum permitted resale price to the initial sale price of the Workforce Housing Units, increased at the same rate as the Palm Beach County median income has increased from the initial date of purchase. Prior to

the closing on any sale, resale or prior to any rental of any workforce housing unit, the City shall be notified of the sale, resale or rental.

- m. For both sale and rental of Workforce Housing Units, affordability and occupancy restrictions shall remain in effect for 40 years and shall apply to any replacement structure or structures constructed if a structure containing a Workforce Housing Unit or Units is demolished or destroyed, provided that if demolition or destruction of a structure containing Workforce Housing Units occurs 35 years after recording of the restrictions and said demolition or destruction was unintentional, restrictions on the units in the structure shall terminate on demolition or destruction.
- n. Nothing requires a workforce household to vacate a rental workforce housing unit or sell a workforce housing unit if the tenant(s) or purchaser (s) income later exceeds AMI.
- o. Workforce housing rental units shall be marketed continuously as workforce housing units. In the unlikely event that, notwithstanding the marketing efforts outlined in a specific Covenant agreement, the total number of occupied workforce housing units does not equal 100% of the workforce units required for the project and , as to workforce units which have remained vacant for 45 days or more due to a lack of Eligible Occupants, those units may be rented to non-eligible occupants at market rents; provided that the Developer shall pay to the Delray Beach Housing Trust Fund (DBHTF) at the end of each calendar year any rents actually received from the non-eligible occupants of the workforce units for that year in excess of the rents that would have been received from Eligible Occupants for such workforce units based on workforce rents at the time of the signing of the lease (“Excess Rental Payment”). Excess Rental Payments shall accrue only for periods in which the required 100% is not satisfied. No later than 20 days following the end of the month, the Developer shall provide the DBHTF with a monthly statement highlighting those units which require Excess Rental Payments. No later than 30 days following the end of the year, the Developer shall provide the DBHTF with an annual statement and shall submit the amounts due to the DBHTF within thirty(30) days following written notice from the DBHTF of its approval of each annual statement. The workforce units rented to non-eligible occupants will be considered Workforce Housing Units for the purposes of complying with this Ordinance, but only until the next vacant unit is rented to an eligible candidate, at which time the non-eligible unit will cease to be considered a Workforce Housing Unit. If less than 100% of the total number of workforce units required for the project are occupied with workforce eligible occupants, then each subsequent vacant unit shall be marketed to workforce eligible applicants pursuant to an approved marketing and advertising plan until all required workforce units are rented to eligible occupants.

Section 4.
repealed.

All ordinances or parts of ordinances in conflict herewith be, and the same are hereby

Section 5. Should any section or provision of this Ordinance or any portion thereof, any paragraph, sentence, or word be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remainder of this Ordinance.

Section 6. Specific authority is hereby given to codify this Ordinance.

Section 7. This Ordinance shall become effective immediately upon adoption.

PASSED AND ADOPTED in regular session on second and final reading on this the _____ day of _____, 2017.

ATTEST

Cary Glickstein, Mayor

City Clerk

First Reading _____

Second Reading _____