



City of Farmers Branch

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CITY OF FARMERS BRANCH

ORDINANCE NO. 2892

AN ORDINANCE AMENDING CHAPTER 26, BUSINESSES, ARTICLE IV APARTMENT COMPLEX RENTAL, MANDATING A CITIZENSHIP CERTIFICATION REQUIREMENT PURSUANT TO 24 CFR 5 ET SEQ.; PROVIDING FOR ENFORCEMENT; PROVIDING A PENALTY; PROVIDING A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE; AND DECLARING AN EMERGENCY.

WHEREAS, in response to the widespread concern of future terrorist attacks following the events of September 11, 2001, landlords and property managers throughout the country have been developing new security procedures to protect their buildings and residents; and

WHEREAS, the Fair Housing Act prohibits discrimination because of race, color, religion, sex, national origin, disability, and familial status in most housing related transactions and further makes it unlawful to indicate any preference or limitation on these bases when advertising the sale or rental of a dwelling; and

WHEREAS, the U.S. Department of Housing and Urban Development regulations stipulate that rental tenants must submit evidence of citizenship or immigration status consistent with 24 CFR 5, et seq.; and

WHEREAS, the Fair Housing Act does not prohibit distinctions based solely on a person's citizenship status; and

WHEREAS, 24 CFR 5, et seq. provides for a uniform and non-discriminatory certification process for citizenship and immigration status; and

WHEREAS, the HUD certification process has been in place for many years, and is currently in use; and

WHEREAS, the City was previously dismissed from the *Walker* litigation upon agreeing to participate in HUD's Section 8 housing program; and

WHEREAS, the HUD certification process for citizenship and immigration status applies to HUD's Section 8 program; and

WHEREAS, the City Council finds and determines that the benefits and protections provided through the HUD citizenship and immigration status certification processes would also benefit the City; and

WHEREAS, the City of Farmers Branch is authorized to adopt ordinances pursuant to its police power to protect the health, safety, and welfare of its citizens; and

WHEREAS, the City of Farmers Branch has determined that it is a necessity to adopt citizenship and immigration certification requirements for apartment complexes to safeguard the public, consistent with the provisions of 24 CFR 5, et seq.; and

WHEREAS, the City intends to adopt these provisions on a pilot basis for apartment complex rentals; and

WHEREAS, Section 26-118 of the Code of Ordinances provides for an appeal process that provides adequate due process; and

WHEREAS, the City will evaluate the success of these provisions within 180 days of the date this Ordinance goes into effect to consider their revision and/or

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expansion, including but not limited to the coverage of single family rental units and non-rental residential units; and

WHEREAS, the provisions adopted herein shall be applied uniformly and in a nondiscriminatory manner, and the application of these provisions must not differ based on a person's race, religion, or national origin; and

WHEREAS, the City of Farmers Branch is authorized by law to adopt the provisions contained herein, and has complied with all the prerequisites necessary for the passage of this Ordinance; and

WHEREAS, all statutory and constitutional requirements for the passage of this Ordinance have been adhered to, including but not limited to the Texas Open Meetings Act; and

WHEREAS, the purposes of this Ordinance are to promote the public health, safety, and general welfare of the citizens of the City of Farmers Branch.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FARMERS BRANCH, TEXAS:

That the following ordinance shall be approved and passed into law and duly codified in the City's Code of Ordinances:

Section 1: That all matters stated hereinabove are found to be true and correct and are incorporated into the body of this Ordinance by reference as if copied in their entirety.

Section 2: Chapter 26, Businesses, Article IV, Apartment Complex Rental, is hereby amended as follows:

A. Section 26-116(d)(3) is hereby amended by the addition of the following:

"(c) Proof of compliance with the provisions of 26-116(f)."

B. Section 26-116, License Standards, is hereby amended by the addition of the following:

"(f). Citizenship or Immigration Status Verification

(1) Definitions

The following definitions, consistent with 24 CFR 5.504, are hereby adopted as part of this subsection:

Citizen means a citizen or national of the United States.

Evidence of citizenship or eligible status means the documents which must be submitted to evidence citizenship or eligible immigration status.

Head of household means the adult member of the family who is the head of the household for purpose of determining income eligibility and rent.

Noncitizen means a person who is neither a citizen nor national of the United States.

(2) The owner and/or property manager shall require as a prerequisite to entering into any lease or rental arrangement, including any lease or rental renewals or extensions, the submission of evidence of citizenship or eligible immigration status for each tenant family consistent with subsection (3).

(3) Evidence of citizenship or eligible immigration status.

Each family member, regardless of age, must submit the following evidence to the owner and/or property manager.

i. For U.S. citizens or U.S. nationals, the evidence consists of a signed declaration of U.S. citizenship or U.S. nationality. The verification of the declaration shall be confirmed by requiring presentation of a United States passport or other appropriate documentation in a form designated by the Immigration and Customs Enforcement Department ("ICE") as acceptable evidence of citizenship status.

ii. For all other noncitizens, the evidence consists of:

a. A signed declaration of eligible immigration status;

b. A form designated by the Immigration and Customs Enforcement Department ("ICE") as acceptable evidence of immigration status; and

c. A signed verification consent form.

(4) General.

i. The owner and/or property manager shall request and review original documents of eligible citizenship or immigration status. The owner and/or property manager shall retain photocopies of the documents for its own records and return the original documents to the family. Copies shall be retained by the owner and/or property manager for a period of not less than two (2) years after the end of the family's lease or rental.

ii. For each family member, the family shall be required to submit evidence of citizenship or immigration status only once during continuous occupancy. The owner and/or property manager is prohibited from allowing the occupancy of any unit by any family which has not submitted the required evidence of citizenship or eligible immigration status under this Section.

iii. These provisions shall be applied uniformly and in a nondiscriminatory manner. The owner and/or property manager's application of these provisions must not differ based on the person's race, color, religion, sex, national origin, disability, or familial status .

iv. These provisions shall not impair any existing lease or rental agreement, and shall apply only to a lease or rental agreement or extension entered into after the effective date of this ordinance.

v. A rebuttable presumption is hereby created that the tenant is either a citizen or a documented alien upon the tenant presenting either signed Declaration of U.S. Citizenship or U.S. Nationality and a United States passport or other appropriate documentation in a form designated by ICE as acceptable evidence of citizenship status, or by a non-citizen presenting a signed Declaration of Eligible Immigration Status and a form designated by ICE as acceptable evidence of immigration status."

Section 3: If any section, paragraph, subdivision, clause or phrase of this Ordinance shall be adjudged invalid or held unconstitutional, the same shall not affect the validity of this Ordinance as a whole or any part of any provision thereof other than the part so decided to be invalid or unconstitutional. The sole intention of this Ordinance and the exercise of the police power of the City is for the purposes of assisting the United States Government in its enforcement of the Federal Immigration Laws and not an attempt or effort to

promulgate new and additional Immigration Laws or to conflict in any manner with the Federal Government's promulgation and enforcement of Immigration Laws.

Section 4: Penalty: That any person violating any of the provisions of this ordinance shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in a sum not to exceed \$500 and a separate offense shall be deemed committed upon each day during or on which a violation occurs or continues.

Section 5: The City shall distribute a copy of this Ordinance to the owner and/or property manager of all existing apartment complexes in the City. The ordinance shall become effective on the 12th day of January, 2007, sixty (60) days from the date of approval.

Section 6. The fact that the present ordinances and regulations of the City of Farmers Branch, Texas are inadequate to properly safeguard the health, safety, morals, peace and general welfare of the public creates an emergency which requires that this ordinance become effective as provided for herein, and it is accordingly so ordained.

ATTEST:

Cindee Peters, City Secretary

APPROVED:

Bob Phelps, Mayor

APPROVED AS TO FORM:

John F. Boyle, Jr., City Attorney

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