



**FARMERS
BRANCH**

NOT IN EFFECT

CITY OF FARMERS BRANCH ORDINANCE NO. 2952

AN ORDINANCE PROVIDING FOR RESIDENTIAL OCCUPANCY LICENSES; PROVIDING FOR VERIFICATION OF ALIENS' IMMIGRATION STATUS WITH THE FEDERAL GOVERNMENT CONSISTENT WITH FEDERAL LAW; CREATING OFFENSES; PROVIDING FOR ENFORCEMENT; PROVIDING FOR JUDICIAL REVIEW; PROVIDING A PENALTY; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, federal law prescribes certain conditions (found principally in Title 8, United States Code, Sections 1101, *et seq.*), that must be met before an alien may be lawfully present in the United States; and

WHEREAS, aliens not lawfully present in the United States, as determined by federal law, do not meet such conditions as a matter of law when present in the City of Farmers Branch; and

WHEREAS, pursuant to Title 8, United States Code Sections 1621, *et seq.*, certain aliens not lawfully present in the United States are not eligible for certain State or local public benefits, including licenses; and

WHEREAS, Title 8, United States Code, Section 1324(a)(1)(A), prohibits the harboring of aliens not lawfully present in the United States, including, as the courts of the United States have held, the provision of residential accommodations to such aliens; 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 is authorized to adopt regulations touching on aliens that are consistent with pertinent federal laws; and

WHEREAS, it is the intent of the City of Farmers Branch to enact regulations that are harmonious with federal immigration law and which aid in its enforcement; and

WHEREAS, it is not the intent of the City of Farmers Branch to alter, supplant, disrupt, or interfere with federal immigration law; and

WHEREAS, the provisions of this ordinance 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 has complied with all prerequisites for the passage of this Ordinance; and

WHEREAS, the meeting at which this Ordinance was adopted was properly posted in accordance with the Open Meetings Act, and this Ordinance was considered and approved in an open meeting of the City Council with opportunity for public comment regarding its terms and provisions; and

WHEREAS, the purposes of this Ordinance are to promote the public health, safety, and general welfare,

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

Section 1: Chapter 26, Businesses, Article III, Single-Family Rental Housing, of the Code of Ordinances, City of Farmers Branch, Texas, is hereby amended by adding the following as Section 26-79:

“Section 26-79. Citizenship or Immigration Status Verification

(A) Definitions

The following terms and phrases, when used in this section, shall have the meanings ascribed to them in this section, and shall be construed so as to be consistent with state and federal law, including federal immigration law:

- (1) “Alien” means any person not a citizen or national of the United States, as set forth in Title 8, United States Code, Section 1101(3), as amended.
- (2) “Lessor” means a person who leases or rents a single family residence as or on behalf of a landlord.
- (3) “Occupant” means a person, age 18 or older, who resides at a single family residence. A temporary guest of an occupant is not an occupant for the purposes of this section.

(B) Residential Occupancy Licenses

- (1) Prior to occupying any leased or rented single-family residence, each occupant must obtain a residential occupancy license.

- (2) It is the occupant's responsibility to submit an occupancy license application to the building inspector, pay a fee of \$5 to the City, and obtain a residential occupancy license. If there are multiple occupants seeking to occupy a single rental unit, each occupant must obtain his or her own residential occupancy license. Multiple applicants for occupancy of the same single family residence may designate one of their number as their agent to submit the required application forms, provided that each individual applicant signs his or her own application form. The building inspector may establish a procedure whereby an applicant (or designated agent) may submit the application form(s), signed by the applicant(s), via facsimile or website portal.
- (3) The lessor shall notify each prospective tenant of the requirements of paragraph (B)(2) of this section.
- (4) A residential occupancy license is valid only for as long as the occupant continues to occupy the single family residence for which the license was issued. Any relocation to a different leased or rented dwelling unit requires a new residential occupancy license.
- (5) An application for a residential occupancy license shall be made on a form furnished by the building inspector for such purpose. The form shall require the following information:
 - (a) full legal name of the occupant;
 - (b) mailing address of the occupant;
 - (c) address of the single family residence for which the occupant is applying, if different from the mailing address;
 - (d) name and business address of the lessor;
 - (e) date of lease or rental commencement;
 - (f) date of birth of the occupant;
 - (g) the occupant's country of citizenship;
 - (h) if the applicant is a United States citizen or national, a signed declaration that the applicant is a United States citizen or national; the form shall state that it is a crime under Title 18, United States Code, Section 1015(e), for a person to knowingly make any false statement or claim that he or she is, or at any time has been, a citizen or national of the United

States, with the intent to obtain on behalf of himself or herself, or any other person, any Federal or State benefit or service;

-or-

(i) if the applicant is not a United States citizen or national, an identification number assigned by the federal government that the occupant believes establishes his or her lawful presence in the United States (examples include, but are not limited to: resident alien card number, visa number, "A" number, I-94 registration number, employment authorization number, or any other number on a document issued by the U.S. Government). If the applicant does not know of any such number, he or she shall so declare. Such a declaration shall be sufficient to satisfy this requirement.

- (6) Upon receipt of the completed application and the payment of the application fee as set forth above, the building inspector shall immediately issue a residential occupancy license. The building inspector shall not deny a residential occupancy license to any occupant who submits a completed application and pays the application fee.
- (7) The information provided on an application may be disclosed to the federal government according to paragraph (D) of this section, pursuant to Title 8, United States Code, Section 1373.

(C) Offenses

- (1) It shall be an offense for a person to be an occupant of a leased or rented single family residence without first obtaining a valid occupancy license permitting the person to occupy that single family residence.
- (2) It shall be an offense for a person to knowingly make a false statement of fact on an application for a residential occupancy license.
- (3) It shall be an offense for a person to create, possess, sell, or distribute a counterfeit residential occupancy license.
- (4) It shall be an offense for a lessor to lease or rent a single family residence without obtaining and retaining a copy of the residential occupancy license of any and all known occupants.
- (5) It shall be an offense for a landlord to fail to maintain at the landlord's residence or regular place of business a copy of the residential occupancy license of each known occupant of a leased or rented single-family residence, or to fail to make such copy available for inspection by the Building Inspector during regular business hours.

- (6) It shall be an offense for a lessor to lease a single family residence without including in the terms of the lease a provision stating that occupancy of the premises by a person, age 18 or older, who does not hold a valid residential occupancy license constitutes an event of default under the lease.
- (7) It shall be an offense for a landlord or any agent of a landlord with authority to initiate proceedings to terminate a lease or tenancy to knowingly permit an occupant to occupy a single family residence without a valid residential occupancy license. It is a defense to a prosecution under this paragraph that the landlord or agent has commenced and diligently pursued such steps as may be required under the applicable law and lease provisions to terminate the lease or tenancy.

(D) Enforcement

The building inspector shall enforce the requirements of this section as follows.

- (1) Promptly after issuance of a residential occupancy license to any occupant who has not declared himself or herself to be either a citizen or a national of the United States in accordance with paragraph (B)(5)(h) of this section, the building inspector shall, pursuant to Title 8, United States Code, Section 1373(c), verify with the federal government whether the occupant is an alien lawfully present in the United States. The building official shall submit to the federal government the identity and status information contained on the application for the residential occupancy license, along with any other information requested by the federal government.
- (2) If the federal government reports the status of the occupant as an alien not lawfully present in the United States, the building inspector shall send the occupant, at the address of the single family residence shown on the application for residential occupancy license, a deficiency notice. The deficiency notice shall state that on or before the 60th day following the date of the notice, the occupant may obtain a correction of the federal government's records and/or provide additional information establishing that the occupant is not an alien not lawfully present in the United States. If the occupant provides such additional information, the building inspector shall promptly submit that information to the federal government. The occupant may also submit information directly to the federal government.
- (3) If the federal government notifies the building inspector that it is unable to conclusively verify or ascertain the immigration status of the occupant, or that the federal government's determination of immigration status is tentative, the building inspector shall take no further action until final verification from the federal government concerning the immigration status of the occupant is received. The building inspector shall not attempt to make

an independent determination of any occupant's lawful or unlawful presence in the United States. If the federal government notifies the building inspector that more information is required before the federal government can issue a final verification of the occupant's immigration status, or that the occupant may contest the federal government's determination of status, the building inspector shall notify the occupant accordingly.

- (4) No earlier than the 61st day after a deficiency notice has been sent to an occupant, the building inspector shall again make an inquiry to the federal government seeking to verify or ascertain the citizenship or immigration status of the occupant. If the federal government reports that the occupant is an alien who is not lawfully present in the United States, the building inspector shall send a revocation notice to both the occupant and the lessor. The revocation notice shall revoke the occupant's residential occupancy license effective 15 days after the date of the revocation notice.
- (5) If a landlord or the landlord's agent commits an offense under paragraph (C)(7) of this section, the building inspector shall suspend the landlord's rental license.
- (6) During the period of suspension, the landlord shall not collect any rent, payment, fee, or any other form of compensation from, or on behalf of, any occupant or tenant in the single family residence.
- (7) The suspension shall terminate one day after the landlord or the landlord's agent submits to the building inspector a sworn affidavit of the owner or agent stating that each and every violation of paragraph (C)(7) of this section on which revocation was based has ended. The affidavit shall include a description of the specific measures and actions taken to end the violation.
- (8) The suspension of a landlord's rental license may be appealed to the city council pursuant to Section 26-78.
- (9) The terms of this section shall be applied uniformly, and enforcement procedures shall not differ based on a person's race, ethnicity, religion, or national origin.

(E) Judicial Review

- (1) Any landlord or occupant who has received a deficiency notice or a revocation notice may seek judicial review of the notice by filing suit against the building inspector in a court of competent jurisdiction in Dallas County, Texas.
- (2) In the event that such a suit is filed prior to or within 15 days after the date of the revocation notice, if any, revocation is automatically stayed until final conclusion of judicial review.

- (3) The landlord or occupant may seek judicial review of the question of whether the building inspector complied with the provisions of this ordinance or other relevant provisions of federal, state, or local law, or the question of whether the occupant is lawfully present in the United States, or of both such questions.
- (4) In a suit for judicial review in which the question of whether the occupant is lawfully present in the United States is to be decided, that question shall be determined under federal law. In answering the question, the court shall be bound by any conclusive determination of immigration status by the federal government. A determination is conclusive if, under federal law, it would be given preclusive effect on the question.
- (5) The court shall take judicial notice of any verification of the citizenship or immigration status of the occupant previously provided by the federal government. The court may, and at the request of a party shall, request the federal government to provide, in automated, documentary, or testimonial form, a new verification of the citizenship or immigration status of the occupant pursuant to Title 8, United States Code, Section 1373(c). The most recent determination of the immigration status of an individual by the federal government shall create a rebuttable presumption as to the individual's immigration status.

(F) Construction

The requirements and obligations of this section shall be implemented in a manner fully consistent with federal law regulating immigration and protecting the civil rights of all citizens, nationals, and aliens.”

Section 2: Chapter 26, Businesses, Article III, Single-Family Rental Housing, of the Code of Ordinances, City of Farmers Branch, Texas, is hereby amended by adding the following as paragraph (f) of Section 26-78, Appeals to the City:

“(f) This section does not apply to any decision or order of the building inspector issuing a deficiency notice or a revocation notice with respect to a residential occupancy license pursuant to Sections 26-79(D)(2) or 26-79(D)(4). Any such decision or order may be appealed only through a suit for judicial review pursuant to Section 26-79(E).”

Section 3: Chapter 26, Businesses, Article IV, Apartment Complex Rental, of the Code of Ordinances, City of Farmers Branch, Texas, is hereby amended by adding the following as Section 26-119:

“Section 26-119. Citizenship or Immigration Status Verification

(A) Definitions

The following terms and phrases, when used in this section, shall have the meanings ascribed to them in this section, and shall be construed so as to be consistent with state and federal law, including federal immigration law:

- (1) “Alien” means any person not a citizen or national of the United States, as set forth in Title 8, United States Code, Section 1101(3), as amended.
- (2) “Apartment” means a dwelling unit within an apartment complex.
- (3) “Landlord” means the owner of an apartment.
- (4) “Lessor” means a person who leases or rents an apartment as or on behalf of a landlord.
- (5) “Occupant” means a person, age 18 or older, who resides at an apartment. A temporary guest of an occupant is not an occupant for the purposes of this section.

(B) Residential Occupancy Licenses

- (1) Prior to occupying any leased or rented apartment, each occupant must obtain a residential occupancy license.
- (2) It is the occupant’s responsibility to submit an occupancy license application to the building inspector, pay a fee of \$5 to the City, and obtain a residential occupancy license. If there are multiple occupants seeking to occupy a single apartment, each occupant must obtain his or her own residential occupancy license. Multiple applicants for occupancy of the same apartment may designate one of their number as their agent to submit the required application forms, provided that each individual applicant signs his or her own application form. The building inspector may establish a procedure whereby an applicant (or designated agent) may submit the application form(s), signed by the applicant(s), via facsimile or website portal.
- (3) The lessor shall notify each prospective tenant of the requirements of paragraph (B)(2) of this section.
- (4) A residential occupancy license is valid only for as long as the occupant continues to occupy an apartment within the same apartment complex as the apartment for which the license was issued. Any relocation to a leased or rented single-family residence or to an apartment within a different apartment complex requires a new residential occupancy license.

- (5) An application for a residential occupancy license shall be made on a form furnished by the building inspector for such purpose. The form shall require the following information:
- (a) full legal name of the occupant;
 - (b) mailing address of the occupant;
 - (c) address of the apartment for which the occupant is applying, if different from the mailing address;
 - (d) name and business address of the lessor;
 - (e) date of lease or rental commencement;
 - (f) date of birth of the occupant;
 - (g) the occupant's country of citizenship;
 - (h) if the applicant is a United States citizen or national, a signed declaration that the applicant is a United States citizen or national; the form shall state that it is a crime under Title 18, United States Code, Section 1015(e), for a person to knowingly make any false statement or claim that he or she is, or at any time has been, a citizen or national of the United States, with the intent to obtain on behalf of himself or herself, or any other person, any Federal or State benefit or service;
- or-
- (i) if the applicant is not a United States citizen or national, an identification number assigned by the federal government that the occupant believes establishes his or her lawful presence in the United States (examples include, but are not limited to: resident alien card number, visa number, "A" number, I-94 registration number, employment authorization number, or any other number on a document issued by the U.S. Government). If the applicant does not know of any such number, he or she shall so declare. Such a declaration shall be sufficient to satisfy this requirement.
- (6) Upon receipt of the completed application and the payment of the application fee as set forth above, the building inspector shall immediately issue a residential occupancy license. The building inspector shall not deny a residential occupancy license to any occupant who submits a completed application and pays the application fee.

- (7) The information provided on an application may be disclosed to the federal government according to paragraph (D) of this section, pursuant to Title 8, United States Code, Section 1373.

(C) Offenses

- (1) It shall be an offense for a person to be an occupant of a leased or rented apartment without first obtaining a valid occupancy license permitting the person to occupy that apartment.
- (2) It shall be an offense for a person to knowingly make a false statement of fact on an application for a residential occupancy license.
- (3) It shall be an offense for a person to create, possess, sell, or distribute a counterfeit residential occupancy license.
- (4) It shall be an offense for a lessor to lease or rent an apartment without obtaining a copy of the residential occupancy license of any and all known occupants.
- (5) It shall be an offense for a person responsible for the management of an apartment complex to fail to maintain on the premises of the apartment complex a copy of the residential occupancy license of each known occupant of the apartment complex, or to fail to make such copy available for inspection by the Building Inspector during regular business hours.
- (6) It shall be an offense for a lessor to lease an apartment without including in the terms of the lease a provision stating that occupancy of the premises by a person, age 18 or older, who does not hold a valid residential occupancy license constitutes an event of default under the lease.
- (7) It shall be an offense for a landlord or any agent of a landlord with authority to initiate proceedings to terminate a lease or tenancy to knowingly permit an occupant to occupy an apartment without a valid residential occupancy license. It is a defense to a prosecution under this paragraph that the landlord or agent has commenced and diligently pursued such steps as may be required under the applicable law and lease provisions to terminate the lease or tenancy.

(D) Enforcement

The building inspector shall enforce the requirements of this section as follows.

- (1) Promptly after issuance of a residential occupancy license to any occupant who has not declared himself or herself to be either a citizen or a national of the United States in accordance with paragraph (B)(5)(h) of this section, the building inspector shall, pursuant to Title 8, United States Code, Section 1373(c), verify with the federal government whether the occupant is an alien lawfully present in the United States. The building official shall submit to the federal government the identity and status

information contained on the application for the residential occupancy license, along with any other information requested by the federal government.

- (2) If the federal government reports the status of the occupant as an alien not lawfully present in the United States, the building inspector shall send the occupant, at the address of the apartment shown on the application for residential occupancy license, a deficiency notice. The deficiency notice shall state that on or before the 60th day following the date of the notice, the occupant may obtain a correction of the federal government's records and/or provide additional information establishing that the occupant is not an alien not lawfully present in the United States. If the occupant provides such additional information, the building inspector shall promptly submit that information to the federal government. The occupant may also submit information directly to the federal government.
- (3) If the federal government notifies the building inspector that it is unable to conclusively verify or ascertain the immigration status of the occupant, or that the federal government's determination of immigration status is tentative, the building inspector shall take no further action until final verification from the federal government concerning the immigration status of the occupant is received. The building inspector shall not attempt to make an independent determination of any occupant's lawful or unlawful presence in the United States. If the federal government notifies the building inspector that more information is required before the federal government can issue a final verification of the occupant's immigration status, or that the occupant may contest the federal government's determination of status, the building inspector shall notify the occupant accordingly.
- (4) No earlier than the 61st day after a deficiency notice has been sent to an occupant, the building inspector shall again make an inquiry to the federal government seeking to verify or ascertain the citizenship or immigration status of the occupant. If the federal government reports that the occupant is an alien who is not lawfully present in the United States, the building inspector shall send a revocation notice to both the occupant and the lessor. The revocation notice shall revoke the occupant's residential occupancy license effective 15 days after the date of the revocation notice.
- (5) If a landlord or the landlord's agent commits an offense under paragraph (C)(7) of this section, the building inspector shall suspend the landlord's apartment complex license.
- (6) During the period of suspension, the landlord shall not collect any rent, payment, fee, or any other form of compensation from, or on behalf of, any occupant or tenant in the apartment complex.
- (7) The suspension shall terminate one day after the landlord or the landlord's agent submits to the building inspector a sworn affidavit of the owner or agent stating that each and every violation of paragraph (C)(7) of this section on which revocation was

based has ended. The affidavit shall include a description of the specific measures and actions taken to end the violation.

- (8) The suspension of a landlord's rental license may be appealed to the city council pursuant to Section 26-118.
- (9) The terms of this section shall be applied uniformly, and enforcement procedures shall not differ based on a person's race, ethnicity, religion, or national origin.

(E) Judicial Review

- (1) Any landlord or occupant who has received a deficiency notice or a revocation notice may seek judicial review of the notice by filing suit against the building inspector in a court of competent jurisdiction in Dallas County, Texas.
- (2) In the event that such a suit is filed prior to or within 15 days after the date of the revocation notice, if any, revocation is automatically stayed until final conclusion of judicial review.
- (3) The landlord or occupant may seek judicial review of the question of whether the building inspector complied with the provisions of this ordinance or other relevant provisions of federal, state, or local law, or the question of whether the occupant is lawfully present in the United States, or of both such questions. The landlord or occupant may seek judicial review of the question of whether the building inspector complied with the provisions of this ordinance or other relevant provisions of federal, state, or local law, or the question of whether the occupant is lawfully present in the United States, or of both such questions.
- (4) In a suit for judicial review in which the question of whether the occupant is lawfully present in the United States is to be decided, that question shall be determined under federal law. In answering the question, the court shall be bound by any conclusive determination of immigration status by the federal government. A determination is conclusive if, under federal law, it would be given preclusive effect on the question.
- (5) The court shall take judicial notice of any verification of the citizenship or immigration status of the occupant previously provided by the federal government. The court may, and at the request of a party shall, request the federal government to provide, in automated, documentary, or testimonial form, a new verification of the citizenship or immigration status of the occupant pursuant to Title 8, United States Code, Section 1373(c). The most recent determination of the immigration status of an individual by the federal government shall create a rebuttable presumption as to the individual's immigration status.

(F) Construction

The requirements and obligations of this section shall be implemented in a

manner fully consistent with federal law regulating immigration and protecting the civil rights of all citizens, nationals, and aliens.”

Section 4: Chapter 26, Businesses, Article IV, Apartment Complex Rental, of the Code of Ordinances, City of Farmers Branch, Texas, is hereby amended by adding the following as paragraph (f) of Section 26-118, Appeals to the City:

“(f) This section does not apply to any decision or order of the building inspector issuing a deficiency notice or a revocation notice with respect to a residential occupancy license pursuant to Sections 26-119(D)(2) or 26-119(D)(4). Any such decision or order may be appealed only through a suit for judicial review pursuant to Section 26-119(D)(9).”

Section 5: Penalty

Upon conviction, any person committing any act or omission declared to be an offense under the provisions of this ordinance shall be fined in a sum not to exceed \$500. A separate offense shall be deemed committed upon each day during or on which a violation occurs or continues.

Section 6: Severability

The terms and provisions of this ordinance are severable and are governed by Section 1-12 of the Code of Ordinances, City of Farmers Branch, Texas, as amended. If the application of this ordinance to any person, entity, or circumstance is invalid, the invalidity does not affect other applications of the ordinance that can be given effect without the invalid application, since the same would have been enacted by the City Council without regard to any such invalid application.

Section 7: Effective Date

This ordinance shall become effective on the 15th day after the date on which a final and appealable judgment is rendered by the United States District Court for the Northern District of Texas in the action styled *Villas at Parkside Partners d/b/a Villas at Parkside, et al. v. City of Farmers Branch*, Civil Action No. 3:06-CV-2371-L (consolidated with Civil Actions Nos. 3:06-CV-2376-L and 3:07-CV-0061-L). The city secretary is directed to, within 15 days after such a judgment is rendered, publish notice of the date on which this ordinance will take effect in the official city newspaper and on the city's website.

This ordinance applies only to leases or tenancies that commence on or after its effective date.

ATTEST:

APPROVED:

Cindee Peters, City Secretary

Bob Phelps, Mayor

APPROVED AS TO FORM:

City Attorney