

ORDINANCE NO. 6786-11

AN ORDINANCE TO AMEND AND REORDAIN CHAPTER 40, TAXATION, OF THE CODE OF THE CITY OF NEWPORT NEWS, VIRGINIA, ARTICLE II., REAL ESTATE TAXES, DIVISION 3., EXEMPTION OR DEFERRAL FOR ELDERLY AND DISABLED PERSONS, SECTION 40-46, DEFINITIONS; SECTION 40-47, AUTHORIZED; SECTION 40-48, ADMINISTRATION; RULES AND REGULATIONS OF CITY MANAGER; SECTION 40-49, GENERAL PREREQUISITES TO GRANT; AFFECT OF RESIDENCY IN HOSPITAL, NURSING HOME, ETC.; PRORATION; SECTION 40-50, APPLICANT'S AFFIDAVIT AND CERTIFICATE OF DISABILITY; MANAGER'S CERTIFICATION TO TREASURER; SECTION 40-52, AMOUNT OF DEFERRAL; PAYMENT OF DEFERRED TAXES; SECTION 40-53, NULLIFICATION UPON CHANGE IN STATUS AND TO REPEAL SECTION 40-51, AMOUNT OF EXEMPTION.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Newport News, Virginia:

1. That Chapter 40, Taxation, of the Code of the City of Newport News, Virginia, Article II., Real Estate Taxes, Division 3., Exemption or Deferral for Elderly and Disabled Persons, Section 40-46, Definitions; Section 40-47, Authorized; Section 40-48, Administration; rules and regulations of city manager; Section 40-49, General prerequisites to grant; affect of residency in hospital, nursing home, etc., proration; Section 40-50, Applicant's affidavit and certificate of disability; manager's certification to treasurer; Section 40-52, Amount of deferral; payment of deferred taxes; and Section 40-53, Nullification upon change in status, be, and the same hereby is, amended and reordained, and that Section 40-51, Amount of exemption, is hereby repealed, as follows:

**CHAPTER 40**

**TAXATION**

**ARTICLE II. REAL ESTATE TAXES**

**DIVISION 3. DEFERRAL FOR  
ELDERLY AND DISABLED PERSONS**

**Sec. 40-46. Definitions.**

For the purpose of this division, the following words and phrases shall have the meanings respectively ascribed to them by this section:

*Affidavit.* The real estate tax deferral affidavit provided for in this division.

*Deferral.* Deferral from the real estate tax of the city according to the provisions of this division.

*Dwelling.* The full-time residence of the person or persons claiming deferral under this division.

*Permanently and totally disabled.* A person is permanently and totally disabled if such person is so certified as required in section 40-50(c) and is found by the city manager to be unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment or deformity which can be expected to result in death or can be expected to last for the duration of such person's life.

*Property.* Real property and, in addition, mobile homes assessed pursuant to section 40-220.3.

*Taxable year.* The fiscal year, from July 1 until June 30, for which a deferral is claimed under this division. In the case of mobile homes assessed pursuant to section 40-220.3, the taxable year shall be January 1 until December 31, for which a deferral is claimed under this division.

**Sec. 40-47. Authorized.**

Real estate tax deferral is provided for qualified property owners who are eligible according to the terms of this division who are age sixty-five (65) or older or who are permanently and totally disabled. Property owners who are both permanently and totally disabled and over sixty-five (65) years of age may claim deferral under both age and disability. Persons qualifying for deferral are deemed to be bearing an extraordinary real estate tax burden in relation to their income and financial worth.

**Sec. 40-48. Administration; rules and regulations of city manager.**

The deferral provided for in this division shall be administered by the city manager according to the provisions of this division, provided that the city manager may designate another officer, employee or constitutional officer to perform these duties. The city manager is hereby authorized and empowered to prescribe, adopt, promulgate and enforce such rules and regulations, in conformance with the provisions of this division, including the requirement of answers under oath, as may be reasonably necessary to determine qualifications for deferral as specified in this division. The city manager may require the production of certified tax returns and appraisal reports to establish income or financial worth.

**Sec. 40-49. General prerequisites to grant; effect of residency in hospital, nursing home, etc.; proration.**

- (a) Deferral shall be granted to persons subject to the following provisions:
  - (1) The title to the property, which is the principal residence and for which deferral is claimed, is held or partially held on July 1 of the taxable year, by the person or persons claiming deferral for said principal residence.
  - (2) The head of the household occupying the dwelling, which is his or her principal residence, and owning title or partial title thereto, is either permanently and totally disabled or sixty-five (65) years of age or older on December 31 of the calendar year immediately preceding the taxable year.
  - (3) Subject to subparagraph (5), of this section, the total combined income received from all sources during the preceding calendar year by (i) owners of the dwelling who use it as their principal residence, (ii) owners' relatives who live in the dwelling, and (iii) non-relatives of the owner who live in the dwelling, except for bona fide tenants or bona fide paid caregivers of the owner, shall not exceed the greater of \$50,000, or the income limits based upon family size for the respective metropolitan statistical area, annually published by the Department of Housing and Urban Development for qualifying for federal housing assistance pursuant to § 235 of the National Housing Act (12 U.S.C. § 1715z). Any amount up to \$10,000 of income of each relative who is not the spouse of an owner living in the dwelling and each non-relative who is not the bona fide tenant or bona fide paid caregiver of an owner living in the dwelling and who does not qualify for the deferral provided by subparagraph (5) hereof is hereby excluded from the total combined income calculation. In addition, ten thousand dollars (\$10,000.00) of income, from whatever source, shall be excluded from the income of any owner who is permanently disabled.
  - (4) The net combined financial worth, as determined by the city manager, including the present value of all equitable interests, as of December 31 of the immediately preceding calendar year, of the owners, and of the spouse of any owner, excluding the value of the dwelling and the land, not exceeding one acre, upon which it is situated shall not exceed \$200,000. The value of the owner's furnishings that are located in the dwelling are also excluded from the determination of the net combined financial worth. Such furnishings shall include furniture, household appliances and other items typically used in a home.
  - (5) Notwithstanding subparagraph (3) of this section, if a person qualifies for a deferral under this article, and if the person can prove by clear and convincing evidence that

the person's physical or mental health has deteriorated to the point that the only alternative to permanently residing in a hospital, nursing home, convalescent home or other facility for physical or mental care is to have a relative move in and provide care for the person, and if a relative does then move in for that purpose, then none of the income of the relative or of the relative's spouse shall be counted towards the income limit, provided the owner of the residence has not transferred assets in excess of \$10,000 without adequate consideration within a three-year period prior to or after the relative moves into such residence.

(b) The fact that persons who are otherwise qualified for tax deferral pursuant to this division reside in hospitals, nursing homes or other facilities for physical or mental care for extended periods of time shall not be construed to mean that the real estate for which tax deferral is sought does not continue to be the sole dwelling of such person during such extended periods of other residence so long as such real estate is not used by or leased to others for consideration.

(c) A change in ownership of the subject property to a spouse which results solely from the death of the qualifying individual or a sale of such property shall result in a prorated deferral for the then current taxable year if such application for deferral was properly and timely filed and approved. Such prorated portion shall be determined by multiplying the amount of the deferral by a fraction wherein the number of complete months of the year such property was properly eligible for such deferral is the numerator and the number twelve (12) is the denominator.

(d) For the purposes of this division, income shall mean total gross income from all sources, without regard to whether a tax return is actually filed. Income shall not include life insurance benefits or receipts from borrowing or other debt.

**Sec. 40-50. Applicant's affidavit and certificate of disability; manager's certification to treasurer.**

(a) Effective with the tax year beginning July 1, 2009 and thereafter, with the exception of certain situations set forth in subsection (b) below, the person or persons claiming a deferral for the forthcoming taxable year shall annually file a real estate tax deferral affidavit with the city manager or his designee between January 1 and August 31. With the exception of certain situations set forth in subsection (b) below, failure to file a properly completed real estate tax deferral affidavit by August 31 shall disqualify any otherwise qualified applicant, for the receipt of real estate tax deferral. If the deferral is sought for a mobile home, the affidavit must be filed between April 1 and June 30, and with the exception of certain situations as set forth in subsection (b) below, failure to file a properly completed real estate tax deferral affidavit by June 30 shall disqualify any otherwise qualified applicant, for the receipt of real estate tax deferral.

(b) Affidavits for real estate tax deferral may be submitted outside the January 1 to August 31 filing period, until October 31 of the tax year for which deferral is sought, in cases of (1) first

time applicants, or (2) where the city manager determines that the failure to grant the deferral would serve to create an extreme hardship for the applicant.

(c) The affidavit required by this section shall set forth, in a manner prescribed by the city manager, the names of the related persons occupying the dwelling for which deferral is claimed, their gross combined income and their total combined net worth.

(d) If the applicant is under sixty-five (65) years of age, the affidavit shall have attached thereto a certification by the social security administration, veterans administration or the railroad retirement board, or if such person is not eligible for certification by any of these agencies, a sworn affidavit by two (2) medical doctors licensed to practice medicine in the Commonwealth of Virginia, to the effect that such person is permanently and totally disabled as defined in section 40-46. The affidavit of at least one (1) of such doctors shall be based upon a physical examination of such person by such doctor. The affidavit of one (1) of such doctors may be based upon medial information contained in the records of the civil service commission which is relevant to the standards for determining permanent and total disability as defined in section 40-46.

(e) If, after audit and investigation, the city manager determines that the applicant is qualified for deferral, the manager shall so certify to the treasurer of the city who shall deduct the amount of the deferral from the claimant's real estate tax liability.

**Sec. 40-51. Reserved.**

**Sec. 40-52. Amount of deferral; payment of deferred taxes.**

(a) The person or persons qualifying for and claiming deferral shall be relieved of real estate tax liability levied on the qualifying dwelling and land up to an amount equal to one hundred (100) percent of the liability, the amount to be deferred to be elected by the claimant.

(b) The accumulated amount of taxes deferred shall be paid, without penalty or interest, to the treasurer of the city by the vendor immediately upon the sale or transfer of title of the dwelling or from the estate of descendant within one (1) year after the death of the last owner thereof who qualified for tax deferral under the provisions of this division. Such deferred real estate taxes shall constitute a lien upon the real estate as if they had been assessed without regard to the deferral permitted by this division; provided, that such liens shall, to the extent that they exceed in the aggregate ten (10) percent of the price for which such real estate may be sold, be inferior to all other liens of record.

**Sec. 40-53. Nullification upon change in status.**

(a) Changes in respect to income, financial worth, ownership of property or other factors occurring during the taxable year for which an affidavit is filed and having the effect of exceeding or violating the limitations and conditions provided for in this division shall nullify any relief of real estate tax liability for the full tax year for which the tax was relieved.

(b) A change in ownership of the subject property to a spouse which results solely from the death of a qualifying individual, or a sale of such property, shall result in a prorated deferral for the then current taxable year, if such application for deferral was properly and timely filed and approved. Such prorated portion shall be determined by multiplying the amount of the deferral by a fraction wherein the number of complete months of the year such property was properly eligible for such deferral is the numerator and the number twelve (12) is the denominator.

2. That Section 40-51, Amount of exemption be, and the same hereby is, repealed.
3. That this ordinance shall be in effect on and after July 1, 2012.

PASSED BY THE COUNCIL OF THE CITY OF NEWPORT NEWS ON MAY 10, 2011

Mabel Washington Jenkins, MMC  
City Clerk

McKinley L. Price, DDS  
Mayor

A true copy, teste:

City Clerk