

City Commission Policy 1103 - Administration and Implementation of the Inclusionary Housing Ordinance

DEPARTMENTS: Economic & Community Development Department; Planning Department; Growth Management Department; Public Works Department; Utilities

DATE ADOPTED: April 13, 2005

DATE OF LAST REVISION: August 20, 2008

1103.01 Authority: The City Commission

1103.02 Scope and Applicability: This policy shall be used in the administration and implementation of the inclusionary housing provisions in the Land Development Code under Section 9-111, Required improvements, Division 3, Article II, Subdivisions, Chapter 9; Section 9-152, Site plan review process, Division 2, Review and Approval, Article III, Site Plans, Chapter 9; and Article VI, Inclusionary housing, Chapter 9, of the City of Tallahassee Land Development Code.

1103.03 Policy Statement:

1. The developer of inclusionary housing shall not be precluded through the application or implementation of the inclusionary housing provisions of the Land Development Code from obtaining financial assistance for the inclusionary housing component of a new development in the form of loans, grants, or other assistance as may be available from the City, County, State of Florida, United States Department of Housing and Urban Development, quasi-governmental entities, private lenders, or other non-governmental organizations.
2. Homeowners' association or condominium association fees applied within a residential development that includes inclusionary housing units shall not be applied in a manner that distinguishes between inclusionary and non-inclusionary housing units. [Residents of inclusionary housing units shall pay an equal share of homeowners' association fees or similar costs as non-inclusionary housing units.]
3. Compliance with the inclusionary housing provisions of the Land Development Code shall constitute compliance with the minimum requirements for affordable housing in all Developments of Regional Impact with 50 or more residential units, and in all zoning districts that implement the Planned Development future land use category.

1103.04 Definitions: Words and terminology used here shall have the same meaning as defined within the Land Development Code. In addition, the following term, as used in the Policy is herewith defined:
Reserved

1103.05 Responsibilities:

1. **Determination of eligibility for purchase, rental, and occupancy of Inclusionary Units.** The Economic and Community Development Department shall verify eligibility of households to rent or purchase an inclusionary housing unit. For inclusionary rental units, the Economic and Community Development Department or its designee shall annually verify that each tenant household's income at the time of initial rental and annually thereafter is within the range established in the definition for "eligible households" as appears in the inclusionary housing provisions of the Land Development Code.
2. **Determination and collection of value of fee in-lieu of inclusionary Units.** The Growth Management Department shall establish the amount of fees owed to the City

when the applicant elects to pay a fee in-lieu of providing inclusionary housing unit(s). The Growth Management Department shall assure that the payment made by the applicant is for the correct amount. Should it be determined upon the construction and sale of housing units within the applicant's on-site development that the fee paid was insufficient, the Growth Management Department shall suspend any and all future permits until the balance of the required payment has been received. Should it be determined upon the construction and sale of housing units within the applicant's on-site development that the fee paid was in excess of that owed, the Economic and Community Development Department/Growth Management Department shall inform the City's Treasurer-Clerk who shall remit the excess balance, along with any associated interest accrued, to the applicant.

3. **Collection and disposition of inclusionary housing fees and bond monies.** Inclusionary housing in-lieu fees and developer financial responsibility bonds due at the time of development order approval shall be paid to the City Growth Management Department. The Growth Management Department shall furnish a receipt as proof of payment to the payer. Copies of the receipt shall be furnished to the City Utilities for authorization for utility service connection for the development. Copies of the receipt shall also be provided and maintained in the City's official file containing the development order.

Developer financial responsibility bonds shall be tendered in the form of irrevocable surety bonds, irrevocable letters of credit, or other alternative, irrevocable redeemable instrument acceptable to the City. The City shall retain the bond or other instrument for a period of three years, or other time period agreed upon by the applicant and the City. If, within a period of three years, or other time period agreed upon by the applicant and the City, the applicant provides documentation that the requirements for inclusionary housing or in-lieu comparables have been satisfied, the City shall release the bond or instrument to the applicant or their assigns. If after a period of three years, or other time period agreed upon by the applicant and the City, the applicant has not demonstrated compliance with the requirement, the bond or other instrument shall be forfeited and converted to currency and transferred to the Inclusionary Housing Trust Fund, and may thereafter be utilized for purposes of providing inclusionary housing as provided in this policy.

4. **Oversight of the Inclusionary Housing Trust Fund.** The Economic and Community Development Department shall oversee the Inclusionary Housing Trust Fund. All disbursements from this fund shall be approved by the director the Economic and Community Development Department or his/her designee according to City Policy.
5. **Maintenance of residential lots provided in-lieu of inclusionary units.** The Economic and Community Development Department shall maintain and dispose of all residential lots provided in-lieu of inclusionary units. The Economic and Community Development Department shall assume responsibility for the development of these lots with inclusionary units.
6. **Maintenance and disposition of residential units if purchased by the City.** The Economic and Community Development Department or its designee shall maintain and dispose of all inclusionary housing units purchased by the City. As a condition of sale/transfer, these housing units shall be maintained as inclusionary housing units.
7. **Assisting the inclusionary housing provider and eligible households in the marketing of available inclusionary housing units.** The Economic and Community Development Department or its designee may assist sellers and landlords of inclusionary housing units and eligible households seeking inclusionary housing opportunities through providing information on availability of inclusionary housing opportunities and eligible

households. When inclusionary housing units are offered for resale on the market after a period of ownership of no less than three years from the date of original purchase, the Economic and Community Development Department or designee retains the right to arrange and facilitate the purchase of these units by eligible households.

8. **The City maintains right of first resale purchase of City-assisted inclusionary housing units.** The City or its designee shall maintain the right to purchase any inclusionary unit wherein the City or its designee provided direct financial assistance to the developer, builder, or owner of that unit, including any waivers or reductions of utility fees or charges. If the City or its designee purchases an inclusionary unit pursuant to this provision from the developer or builder prior to first sale to an eligible household, the purchase price shall not exceed the sales price proposed for an eligible home owner pursuant to the criteria established by the inclusionary housing provisions of the Land Development Code. If the City or its designee purchases an inclusionary unit at any time subsequent to its first sale to an eligible household, the purchase price shall not exceed the Average Sales Price at time of resale or the initial sales price of the house inflated over the period of ownership at a rate no more than 2% per annum for that period plus 50% of the value of any eligible improvements made to the property, whichever is greater. In those instances where units are purchased by the City or its designee, they shall be maintained for sale or purchase to other eligible households at prices or rents at or below the Maximum Purchase Price or maximum affordable rent, as defined in the inclusionary housing provisions of the Land Development Code in accordance with subsections 1103.063 and 1103.064, below. Eligible improvements, as defined below, will include all eligible improvements as evidenced by receipts for each eligible improvement or a cost estimate for each eligible improvement discounted by the percentage resulting from subtracting the Consumer Price Index, South Urban, all items, not seasonally adjusted, as published by the U.S. Department of Labor, Bureau of Labor Statistics (CPI), at the end of the month of completion of such eligible improvement from the latest available CPI available at the time of execution of transfer of the property or the Property ceases to be the Grantee's homestead. Eligible improvements will include each capital improvement that increases the value of the home and has a value in excess of \$5,000. Eligible improvements will not include maintenance and repair items such as but not limited to, interior or exterior painting, new appliances, window treatments, plumbing repairs, nor will it include luxury items such as but not limited to, swimming pools, spas, and specialty items. The annual date of the CPI index will that date closest to the completion of the improvement as evidenced by receipts or certificates of occupancy for such eligible improvement.
9. **Penalty for violation. The Economic and Community Development Department shall be responsible for citation of any violations of the inclusionary housing provisions of the Land Development Code.** When necessary to ensure compliance, the Economic and Community Development Department shall inform other Departments, such as the City Attorney's Office and the Growth Management Department, to take appropriate action, as described below.
10. **Establishment of a designee agency.** The City may establish one or more agencies to act on its behalf with regard to the administration of any part of this policy.
11. **Establishment of a fast-track review/assistance team for inclusionary housing developments.** The City shall offer technical assistance and expertise to assist the developer to complete the application and review process quickly and successfully, including, assistance with the design of the development and inclusionary housing units. This team is composed of, at a minimum, the following staff: a planner from the Planning Department, a development coordinator from the Growth Management Department, an environmental permitting specialist from the Growth Management Department, a member of the Public Works Department staff, a development coordinator from the City Utilities,

and a housing specialist or planner from the Economic and Community Development Department.

1103.06 Procedures:

1. **Eligibility for inclusionary units.**
 - a. General eligibility. No household may occupy an inclusionary unit unless the City or its designee has first verified the household's eligibility. If the City or its designee maintains a list or identifies eligible households, initial and subsequent occupants will be selected first from the list of identified households, to the maximum extent possible. Eligibility verification shall include review of documents that demonstrate the prospective renter's or owner's total income, such as income tax returns, W-4, or W-2 tax forms for the previous calendar year, documentation of employment along with pay stubs from their current employer, and submit such information on a form approved by the City or City's agent/designee.
 - b. Occupancy. Any household who occupies a rental inclusionary unit or purchases an inclusionary unit must occupy that unit as a principal residence.
2. **Limitations and restrictions on eligibility and rent.** The City Commission hereby establishes that rental inclusionary housing units be restricted to occupancy by eligible households and rented at a rate not exceeding the maximum affordable rent for a period of no less than 10 years; thereafter, these units may be rented to any person and at any rent.
3. **Limitations and restrictions on eligibility and sales price.** The City Commission hereby establishes that owner-occupied inclusionary housing units be restricted to purchase by eligible households for a period of no less than 10 years from the date of sale to the original eligible household; thereafter, these units may be sold to any person and at any price.
 - a. General. Owners of inclusionary housing units that must sell their unit before the termination of the 10-year period of sales price limitation may do so. Notice of intent to sell owner-occupied housing after ownership of less than 10 years shall be provided in writing to the City Economic and Community Development Department or other specified assigns or designated agency no less than two weeks prior to offering the unit for sale.
 - b. Remuneration of direct assistance to the City. At the time of sale, or at such point in time as is previously established in contract between the seller and the City, the seller shall remit to the City the total amount of any direct financial assistance provided to them by the City for purposes of enabling purchase of the inclusionary housing unit, including, but not limited to "down-payment assistance." For purposes of this provision, the amount of remittance shall be equivalent to the "face-value" of the assistance at the time it was provided and shall not include any interest.
 - c. Sales within three years of the initial date of purchase. All such sales of inclusionary housing units within three years of the initial date of purchase shall be to another eligible household, as defined in the inclusionary housing provisions in the Land Development Code. Electively, the City or their assigns/designated agency may purchase such housing units for purpose of recycling housing to other eligible households. The sales price shall not exceed the Average Sales Price at the time of resale or the initial sales price of the

house inflated over the period of ownership at a no more than 2% per annum for that period plus 50% of the value of any improvements made to the property, whichever is greater.

- d. Sales within the period of three to ten years from the initial date of purchase. Units sold after three years of the initial date of purchase but before the termination of the 10-year period of sales price limitation may be sold to any purchaser; however, the City or their assigns/designated agency shall have first right to consummate such sale to another eligible household as well as to purchase such housing units for purpose of recycling housing to other eligible families at affordable sales prices. The sales price shall not exceed the Average Sales Price at the time of resale or the initial sales price of the house inflated over the period of ownership at a no more than 2% per annum for that period plus 50% of the value of any improvements made to the property, whichever is greater.
 - e. Sales after ten years from the initial date of purchase. Units sold after 10 years from the date of original purchase may be sold to any person at any price.
 - f. Assets acquired by the City. Units acquired from buy-back by the City or their assigns/designated agency should be kept as affordable housing stock, and sold to other eligible households, as may be available. If it is not possible to resell such units to eligible households at or below the Maximum Purchase Price, these units should be sold to other households that the City has recognized as requiring assistance, at as low a price as practicable. Should that not be possible, the City or its assigns/designated agency may sell these units to any person at any price. The revenues from all sales of units bought back by the City or their assigns/designated agency shall be placed in the Inclusionary Housing Trust Fund.
4. **Rental units.** Rental units will be offered to eligible households at a rent of less than or equal to the amount equal to 100% of High HOME Rent for the Tallahassee Metropolitan Statistical Area, as established by HUD, and published periodically. The owner or managing entity in control of the rental inclusionary housing units shall annually furnish the Economic and Community Development Department or its designee information to be used for the purpose of certifying the eligibility of tenant. The property owner must obtain and review documents that demonstrate the prospective renter's total income, such as income tax returns, W-4, or W-2 tax forms for the previous calendar year, documentation of employment along with pay stubs from their current employer, and submit such information on a form approved by the City or City's agent/designee.
- a. **Selection of Tenants.** The owners of rental inclusionary units may fill vacant units by selecting income-eligible households from a waiting list prepared by the City or their designee. In those instances where the rent for inclusionary rental housing is less than or equal to the amount equal to 100% of High HOME Rent for the Tallahassee Metropolitan Statistical Area, as established by HUD, the Section 8 Housing Choice Voucher Waiting List can be used for this purpose. Alternatively, owners may fill vacant units through their own selection process, so long as rents do not exceed 100% of High HOME Rent and provided that rents they publish notices of the availability of these units according to guidelines established by the City. These guidelines may require the owner to identify or describe available units offered for rent to eligible households, state income requirements, indicate where applications are available, state when the application period opens and closes and contact information for additional information. The guidelines can also designate specific newspapers and other media in which a unit's availability may be advertised.

- b. Notification of vacancy. The owners of rental inclusionary units shall notify the City or its designee of any vacancy of rental inclusionary units.
 - c. Annual Report. The owner shall submit to the City's Economic and Community Development Department or its designee an annual report summarizing the occupancy of each inclusionary unit for the year, demonstrating the continuing income-eligibility of the tenant. The City may require additional information pertaining to the efficiency and effectiveness of the rental aspect of the inclusionary housing strategy. In the case that the City utilizes a designee to administer some or all of aspects of the inclusionary housing strategy pertaining to monitoring renter eligibility and occupancy status, the designee(s) shall forward all reports as required by this section to the City's Economic and Community Development Department for annual review.
 - d. Subsequent rental to income-eligible tenant. The owner shall apply the same rental terms and conditions to tenants of inclusionary units as are applied to all other tenants, excepting any that would preclude compliance with the inclusionary housing provisions of the Land Development Code (for example, rent levels, occupancy restrictions and income requirements) or with other applicable government subsidy programs. Discrimination against persons receiving housing assistance is prohibited.
 - e. Changes in tenant income. If, after moving into a rental inclusionary unit, a tenant's household income exceeds the limit for that unit, the tenant household may remain in the unit as long as the household income does not exceed 140% of the income limit. Once the tenant's income exceeds 140% of the income limit, the following shall apply: The tenant shall be given one year's notice to vacate the unit. If within that year, another unit in the development is vacated, the owner may, at the owner's option, allow the tenant to remain in the original unit and raise the tenant's rent to market-rate and designate the newly vacated unit as an inclusionary rental unit affordable at the income-level previously applicable to the unit converted to market rate. The newly vacated unit must be comparable in size (for example, number of bedrooms, bathrooms, square footage, etc.) as the original unit.
 - f. Conversion of rental to owner-occupied units. Rental units provided to implement inclusionary housing requirements may be converted to be sold as owner-occupied units. These owner-occupied units shall be sold to eligible households and the sales price restricted to the Maximum Purchase Price, as provided by the inclusionary housing provisions of the Land Development Code and subject to those term periods and limitations established for owner-occupied inclusionary housing units, and the restrictions upon the sales price and eligible household income of homeowners set forth herein, including that converted owner-occupied inclusionary housing units be restricted to being sold to eligible households at the sales price established by the inclusionary housing provisions of the Land Development Code for a period of years equal to 10 minus the number of years it had been rented to eligible households at no greater than the maximum affordable rent.
5. **Inclusionary housing units unable to be sold on the market.** In those instances where a property developer has endeavored in good faith to consummate the first sale of an inclusionary housing unit to an eligible household by marketing the unit for sale for a period of no less than 180 days, the property owner may sell the unit to City or its designee at its originally listed price, so long as that price meets the inclusionary housing provisions of the Land Development Code and the Average Sales Price (ASP) of all the

units within the development are not above the ASP established by the inclusionary housing provisions of the Land Development Code and is supported by an appraisal by an independent real estate appraiser licensed to do business in the state of Florida.

6. **Phasing of required inclusionary units for developments of more than 100 units allowed.** Developments of more than 100 dwelling units wherein the development requires final approval in two or more site plans or preliminary plats, may meet the requirements for each phase, plat, or site plan separately so long as at the time of the approval of the initial master plan development order (e.g., PUD, DRI) the applicant posts a bond equivalent to the fee in-lieu of 100% of the inclusionary housing requirement for the entire development.
7. **Disposition of In-Lieu Fees.**
 - a. Inclusionary housing in-lieu fees shall be transferred to the Inclusionary Housing Trust Fund. The Inclusionary Housing Trust Fund shall be used exclusively for either of the following purposes:
 - i. The construction of low- or moderate-income housing within selected census tracts, as defined in the inclusionary housing provisions of the Land Development Code, zoning districts that implement the Planned Development future land use category, or within DRIs with 50 or more residential units; or,
 - ii. Monetary assistance to eligible households, as defined in the inclusionary housing provisions of the Land Development Code, in terms of reducing downpayment or "cash required at closing" for housing located within selected census tracts.
 - b. For purposes of implementing the inclusionary housing provisions of the Land Development Code, the following activities shall be considered as examples of appropriate uses of fee in-lieu revenues:
 - i. Purchase land and/or buildings for other affordable housing within selected census tracts, zoning districts that implement the Planned Development future land use category, or within DRIs with 50 or more residential units that would be provided to persons that meet the eligibility criteria for inclusionary housing;
 - ii. If approved by the City Commission, payment in full or part of any fees imposed by the City, directly attributable to the development of inclusionary housing units.
 - iii. Provide settlement expense, down payment and mortgage write-down assistance to eligible persons or households;
 - iv. Purchase and/or rehabilitation of rental housing units for conversion to homeownership within selected census tracts, zoning districts that implement the Planned Development future land use category, or within DRIs with 50 or more residential units that would be provided to persons that meet the eligibility criteria for inclusionary housing;
 - v. Purchase and/or rehabilitation of owner-occupied units within selected census tracts, zoning districts that implement the Planned Development future land use category, or within DRIs, with 50 or more residential units

that would be provided to persons that meet the eligibility criteria for inclusionary housing;

- vi. Provision of funds to match other state, federal, or other non-governmental homeownership programs that expand homeownership for eligible households within zoning districts that implement the Planned Development future land use category or DRIs with 50 or more residential units; and,
 - vii. Contracting with nonprofit developers for development of housing units to be sold at prices established by the inclusionary housing provisions of the Land Development Code or rented at or below maximum affordable rent to eligible households within selected census tracts, zoning districts that implement the Planned Development future land use category, or within DRIs with 50 or more residential units.
8. **Use of a combination of compliance methods.** Where in-lieu comparables may be provided to comply with the inclusionary housing requirements, the developer/applicant may utilize a combination of compliance methods, including provision of any portion of the required number of inclusionary housing units and provision of one or more in-lieu comparable compliance method, so long as the method of compliance is approved by the entity with authority to grant development order approval.
9. **Restrictions on resale price and rental rates of inclusionary housing imposed by other than the.** In those instances where the owner, developer, or resident of any unit receives assistance from entities other than the City, the resale sales price or rental rate of an inclusionary housing unit may be further restricted through contractual requirement or obligation imposed by the lender, underwriter, or other party to the contractual agreement, for purposes of maintaining the unit as affordable housing stock for other eligible households. Applicable restrictions, if any, shall be specified in the terms of the contract. It shall not be the obligation of the City to monitor and enforce such terms.
10. **Expedition of review of inclusionary housing applications.** Any application including inclusionary housing shall have a brightly colored cover sheet affixed to it (all copies of the application) that specifies in no less than 3-inch bold face lettering that the application includes inclusionary housing and is to be expedited. In addition, this cover sheet shall specify the date the application was taken into the official review section; what the legally established deadlines are for that application (such as any dates for publishing notice, meeting/hearing dates, agenda item due dates, permit issuance dates); and contact information for staff (from the Planning and the Economic and Community Development Departments) able to provide technical assistance regarding inclusionary housing requirements. In addition, upon receipt of any such applications, the Growth Management Department shall inform the Department director (or chief of staff) of all other applicable development review Departments/Agencies of the application that will be coming to their staff review and that this review shall be expedited. This information is to be conveyed via e-mail followed by hard-copy memorandum.
11. **Penalty for violation.** The City may institute any appropriate legal actions or proceedings necessary to ensure compliance with the inclusionary housing provisions of the Land Development Code, including:
- a. Actions to revoke, deny or suspend any permit, including a building permit, certificate of occupancy, or discretionary approval;

- b. Actions to recover from any violator of the inclusionary housing provisions of the Land Development Code civil fines, restitution to prevent unjust enrichment from a violation and/or enforcement costs, including attorneys fees;
- c. Revocation of business license;
- d. Eviction or foreclosure; and
- e. Any other appropriate action for injunctive relief or damages.

Failure of any official or agency to fulfill the requirements of the inclusionary housing provisions of the Land Development Code shall not excuse any person, owner, household or other party from the requirements set forth in the Land Development Code.

1103.07 Exceptions: Waivers of some or all of the requirements of the inclusionary housing provisions of the Land Development Code may be granted by the City Commission, pursuant to the provisions for waiver, provided in the inclusionary housing provisions of the Land Development Code.

1103.08 Effective Date: This Policy shall become effective upon adoption of the inclusionary housing ordinance by the City of Tallahassee, as amended from time to time.

REVISIONS:

August 20, 2008