

ORDINANCE NO. _____

AN ORDINANCE OF THE COUNTY OF PINELLAS ESTABLISHING A COUNTYWIDE INCLUSIONARY HOUSING PROGRAM; PROVIDING DEFINITIONS; DESCRIBING THE INTENT AND PURPOSE OF THE ORDINANCE; PROVIDING APPLICABILITY; PROVIDING ALTERNATIVE METHODS OF MEETING PROGRAM REQUIREMENTS; PROVIDING FOR DEVELOPMENT INCENTIVES; PROVIDING FOR ADMINISTRATION; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE PINELLAS COUNTY CODE; PROVIDING FOR OTHER MODIFICATIONS THAT MAY ARISE FROM REVIEW OF THE ORDINANCE AT THE PUBLIC HEARINGS AND WITH RESPONSIBLE AUTHORITIES; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Board of County Commissioners of Pinellas County is empowered under Chapter 125, Florida Statutes, to enact ordinances for the benefit of the safety, health and welfare of the people of the County; and

WHEREAS, the health, safety, and welfare of the present and future residents of Pinellas County depend on the availability of a range of housing choices affordable to persons and families of all income levels in all areas of Pinellas County; and

WHEREAS, increases in population coupled with the scarcity of developable raw land have contributed to housing issues, including the need for affordable housing; and

WHEREAS, current development patterns have resulted in a persistent shortage of affordable housing for moderate and low income residents; and

WHEREAS, the high cost of available housing and the short supply of affordable housing means that many employees and residents of Pinellas County in the moderate, low income, and very low income range cannot afford to live in Pinellas County and others can only afford to live in limited areas concentrated according to price and income level; and

WHEREAS, the uneven distribution of affordably priced housing results in additional stratification of housing according to price and income level; and

WHEREAS, it is in the best interests of the public health, safety, and welfare of the present and future residents of Pinellas County to reduce such economic stratification by adopting land use regulations that encourage development and integration of new housing for households of various income levels; and

WHEREAS, given the need for and the shortage of affordable housing, it is reasonable and necessary to require new housing development projects of twenty units or greater in size to include affordable housing units; and

WHEREAS, given the loss of affordable rental units including mobile homes, and an increase in the price of both rental and ownership housing, the Board authorized a housing nexus study to determine the nexus, if any, between new development and its impact on the need for affordable housing; and

WHEREAS, the housing nexus study recommends, inter alia, inclusionary housing requirements as a mechanism in addressing the need for affordable housing created by the development of new market rate housing; and

WHEREAS, the Board has recognized that a mix of regulatory requirements, including land use mechanisms such as inclusionary housing requirements and development incentives provide an equitable method of increasing and encouraging affordable housing development; and

WHEREAS, in accordance with Florida Statutes §125.01055, notwithstanding any other provision of law, a county may adopt and maintain in effect any law, ordinance, rule or other measure that is adopted for the purpose of increasing the supply of affordable housing using land use mechanisms such as inclusionary housing ordinances; and

WHEREAS, the Board has the legislative authority and discretion to determine applicability of the requirements of this ordinance and has determined applicability as set forth herein.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF PINELLAS COUNTY, in a meeting duly assembled this ____ day of _____, 2008, that:

SECTION 1. Definitions.

The following words, terms, and phrases, when used in this Ordinance shall have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning:

- (1) "adjusted for household size" means adjusted in a manner based upon a formula established by the United States Department of Housing and Urban Development or other such method approved by the Board.
- (2) "affordable housing plan" means a plan submitted by an applicant as part of a site development application (e.g. site plan, special exception, planned unit development, etc.) stating and fully describing the method by which the affordable housing requirements of the inclusionary housing program will be met.
- (3) "affordable housing price" means a sales price at which income eligible households can qualify for the purchase of affordable units. Qualification shall be based on standard mortgage underwriting and lending guidelines.
- (4) "affordable units" are housing units sold or rented to income eligible persons or households.
- (5) "agreement" or "affordable housing agreement" means the agreement between a developer and the local jurisdiction setting forth the manner in which inclusionary housing program requirements will be met.
- (6) "amenities" means those interior features which are not essential to the health and safety of the resident, but provide visual or aesthetic appeal, or are provided as conveniences rather than as necessities. Amenities shall in no way include items required by building codes or other local ordinances that are necessary to ensure the safety of the building and its residents.

- (7) "annual gross income" means annual income as defined in 24 Code of Federal Regulations. part 5; annual income as reported under the census long form for the recent available decennial census; or adjusted gross income as defined for purposes of reporting under Internal Revenue Service Form 1040 for individual federal annual income tax purposes; or annual income as defined by the Department of the Treasury for Mortgage Revenue Bond programs; or other such methods approved by the Board. Annual gross income shall be calculated by annualizing verified sources of income to be received by all members of the household during the twelve (12) months following the effective date of the determination.
- (8) "applicant" or "developer" means any person, firm, partnership, association, joint venture, corporation, or any entity or combination of entities which seeks local government issued permits and approvals for a residential housing development.
- (9) "Board" means the Board of County Commissioners of Pinellas County, Florida.
- (10) "development agreement" means an agreement entered into between the local government and a developer pursuant to Sections 163.3220-163.3243 Florida Statutes.
- (11) "District I" means the area of Pinellas County North of Ulmerton Road.
- (12) "District II" means the area of Pinellas County South of Ulmerton Road and West of 49th Street.
- (13) "District III" means the area of Pinellas County South of Ulmerton Road and East of 49th Street.
- (14) "HUD" means the United States Department of Housing and Urban Development.
- (15) "inclusionary housing unit" means an affordable housing unit constructed as a component of a residential housing development or alternatively provided as specified in an affordable housing agreement and meeting the requirements of the inclusionary housing program.
- (16) "income eligible person" or "income eligible household" means one or more natural persons or a household that has a total annual gross household income that does not exceed applicable affordable housing income limits based on a percentage of the median annual income, adjusted for family size.
- (17) "local jurisdiction" means the county or a municipal government within the geographical boundaries of Pinellas County responsible for land use regulation and building code enforcement.
- (18) "market rate units" means all units in a residential housing development that are not subject to affordable housing unit requirements as defined herein.
- (19) "median annual income" or "area median income" means the median gross annual income adjusted for household size for (a) the Tampa/St. Petersburg metropolitan statistical area, as published annually by HUD, or Pinellas County, whichever amount is

greatest; or (b) the area within a three mile radius from the center of the development if located in an employment center.

- (20) "off-site" means outside of the boundaries of a residential housing development.
- (21) "percent" means a one-hundredth part.
- (22) "Pinellas housing trust fund" means a trust fund established by Pinellas County Ordinance 06-28 to support the development and preservation of affordable housing.
- (23) "program" means the Pinellas Inclusionary Housing Program as set forth herein.
- (24) "program administrator" means the official, department director, employee or agent responsible for general inclusionary housing program monitoring and oversight as designated by the Board.
- (25) "redevelopment" means development activity when it occurs on a parcel of land that currently contains a legally permitted or legally nonconforming building, or that contained such a structure on or after September 14, 1982. Redevelopment shall include the reconstruction, conversion, structural alteration, relocation or enlargement of an existing building and/or accessory uses, and may include rebuilding on vacant property where structures have been demolished.
- (26) "residential housing development" or "development" means a housing or mixed-used development that includes residential housing, at one location or site, including all dwelling units for which permits have been applied for or approved.

SECTION 2. Pinellas Inclusionary Housing Program.

The Pinellas Inclusionary Housing Program is created for the purpose of enhancing the public welfare and to assure that the need for affordable housing resulting from new housing development and redevelopment is ameliorated by production of residential units affordable to low and moderate income households. Implementation of the program is in accordance with Florida Statutes §125.01055.

Local jurisdictions shall adopt procedures necessary to implement the Program within one year following adoption of this Ordinance.

SECTION 3. Applicability.

The provisions of this Ordinance shall apply to all residential housing developments, including redevelopment projects, of twenty (20) or more dwelling units in size to be constructed in Pinellas County. Developments shall not be segmented or phased in a manner to avoid compliance with these provisions. Additionally, and for the purposes of this section, two or more developments shall be aggregated and considered as one development subject to the requirements herein if they are no more than ¼ mile apart and any two of the following criteria are met:

- (1) The proposed developments are being developed by an applicant or entity that share or include common owners, common principals, common partners, common officers and common members or are mutually controlled by a common applicant(s), including

separate corporations, companies, all partnerships, and joint ventures, or any other legal entity. Common ownership and/or interest will be presumed where an immediate family member of an applicant(s) owns 10 percent or more of the stock or interest in another development falling within the purview of this section.

- (2) The developments will undergo development and/or improvements within the same five year period.
- (3) A master plan exists submitted to a governmental body addressing two or more of the developments.

SECTION 4. Requirements.

- (1) A portion of an applicable residential housing development's units shall be inclusionary housing units developed for, offered to, and leased, rented or sold to income eligible households as follows:
 - a. Rental housing developments shall meet one of the following affordability requirement options or an equivalent combination:
 - 1. A minimum of five percent (5%) of the total number of units shall be affordable to persons or households that have a total annual gross income that does not exceed sixty percent (60%) of the median annual income adjusted for family size.
 - 2. A minimum of ten percent (10%) of the total number of units shall be affordable to persons or households that have a total annual gross income that does not exceed eighty percent (80%) of the median annual income adjusted for family size.
 - 3. A minimum of twenty percent (20%) of the total number of units shall be affordable to persons or households that have a total annual gross income that does not exceed one hundred twenty percent (120%) of the median annual income adjusted for family size.
 - b. Homeowner housing developments shall meet one of the following affordability requirement options or an equivalent combination:
 - 1. A minimum of five percent (5%) of the total number of units shall be affordable to persons or households that have a total annual gross income that does not exceed eighty percent (80%) of the median annual income adjusted for family size.
 - 2. A minimum of ten percent (10%) of the total number of units shall be affordable to persons or households that have a total annual gross income that does not exceed one hundred twenty percent (120%) of the median annual income adjusted for family size.
 - 3. A minimum of twenty percent (20%) of the total number of units shall be affordable to persons or households that have a total annual gross

income that does not exceed one hundred fifty percent (150%) of the median annual income adjusted for family size.

- (2) Where the application of this formula results in a fraction, that fraction shall be rounded up.
- (3) All inclusionary housing units shall remain affordable for the applicable period of affordability defined below:
 - a. Affordable rental units shall remain affordable for a period of no less than thirty (30) years and enforced by a land use restriction that shall be recorded in the public records of Pinellas County prior to the issuance of a Certificate of Occupancy.
 - b. Affordable for-sale units shall remain affordable for a period of not less than twenty (20) years and subject to resale restriction procedures defined below.
- (4) Owners of rental inclusionary housing units or their agent shall certify the annual gross income of tenants prior to initial occupancy and on an annual basis thereafter during the period of affordability.
- (5) All inclusionary housing units shall be produced before or concurrently with the market rate units in the residential housing development. In phased projects, required affordable housing units shall be constructed first, or provided proportionately within each phase of the development.
- (6) All inclusionary housing units shall be integrated throughout the residential housing development and must be comparable to the market rate units in number of bedrooms, exterior appearance and overall quality of construction. An applicant may request a reduction in square footage and/or amenities of the inclusionary housing units, when compared to the market rate units in the development, in an affordable housing plan.
- (7) Residential housing developments which have a zoning or land use designation that allows both single-family and multi-family developments may satisfy the affordable housing unit requirement in both or either the single-family or multi-family portion of the development.

SECTION 5. Affordability and resale of for-sale units.

- (1) **Affordability.** The owner of a homeowner housing development subject to an affordable housing agreement shall sell the inclusionary housing units only to income-eligible persons or households.
- (2) **Affordability Period.** All inclusionary homeowner units shall remain affordable for a period of no less than twenty (20) years commencing on the date of sale. If a unit is sold during the affordability period, the minimum twenty (20) year affordability period shall restart at the time of resale. The initial sale and any subsequent sale to an income eligible purchaser shall be subject to the recordation of documents to enforce the affordability period and resale, requirements described in this section. Legal documents may include an interest-bearing note, a mortgage, and a regulatory agreement or other affordability covenant. To the extent possible, affordability and resale requirements shall be

designed to be compatible with conventional mortgage financing programs, including secondary market requirements.

- (3) Resale Procedure. During the affordability period, resale of inclusionary homeowner units shall be limited to buyers that meet income eligibility requirements applicable at the time of initial sale. If the initial owner or any subsequent owner of a for-sale inclusionary unit intends to sell the unit at a time that the unit is subject to affordability restrictions, the owner shall notify the program administrator in writing of the intent to sell, prior to taking steps to market the unit.
- (4) Resale Price. The resale price of a homeownership inclusionary unit shall not exceed a maximum price equal to the original purchase price, plus 3.0% of the purchase price compounded annually, plus the value of eligible improvements, minus the value of any deferred maintenance.

SECTION 6. Applicant Incentives.

Developments that meet the affordable housing requirements of the program by on-site construction of inclusionary units shall be entitled to a density bonus of up to fifty percent (50%) of what is permitted on the Future Land Use Map or Zoning Atlas, whichever is more restrictive subject to local land development regulations and consistent with local comprehensive plan provisions. A density bonus must be reviewed by the jurisdiction's local planning agency and approved by the governing body of the local government where the development is located. The number of inclusionary units required shall be calculated on the total number of units in the development, including density bonus units, and based on the affordability percentage formula selected per Section 4 above. (Example 1: a 20 unit ownership development plus a 50% density bonus equals 30 units, applying the 10% affordability requirement results in an inclusionary unit requirement of 3 units affordable to income eligible buyers below 120% of median income; Example 2: a 20 unit rental development plus a 50% density bonus equals 30 units, applying the 5% affordability requirement results in an inclusionary unit requirement of 2 units affordable to income eligible buyers below 60% of median income).

Additional incentives provided for and defined by the applicable local jurisdiction's land development code, affordable housing plan, or comprehensive plan may apply. Additional incentive examples include: waivers and/or modifications of setbacks, parking and amenity requirements, and eligible development fee reductions. An applicant may apply or seek from a local jurisdiction any other benefits or other incentives which would assist in making the construction of the inclusionary housing units more feasible and economically justifiable for the applicant.

SECTION 7. Applicant Alternatives.

The intent of the program is that affordable units be included on-site as an integrated part of a housing development. However, alternative methods of meeting program requirements may be

proposed by an applicant in an affordable housing plan subject to approval by the local jurisdiction. The density bonus incentive provided in Section 6 above is not applicable to alternative methods of providing affordable units described below.

- (1) An alternative affordable housing plan must meet plan submittal requirements and criteria as established in Program rules. An alternative affordable housing plan must establish the restraints or hardships caused by building the inclusionary units on-site and provide an alternative method of affordable housing provision that meets or exceeds the requirements of this Ordinance.
- (2) Alternative methods of providing affordable units shall be documented in an affordable housing agreement executed prior to the issuance of site plan approval. Alternative methods of providing affordable units may include one or more of the following in order of priority:
 - a. Off-site development of affordable housing units. An equal or greater number of required affordable housing units constructed on another site owned or controlled by an applicant located in Pinellas County and within the district of the subject development. However, Applicant can seek a waiver of the same district requirement herein from the local jurisdiction if Applicant can establish a viable alternative site outside that district. The affordable housing units must be constructed before or simultaneously with development of the on-site market rate units.
 - b. Land in lieu. Land in lieu of construction may be accepted provided the site is readily developable, sufficient in size, environmentally sound, located in Pinellas County and within the same district as the subject development, and suitably zoned, to accommodate an equal or greater number of affordable housing units required. However, Applicant can seek a waiver of the same district requirement herein from the local jurisdiction if Applicant can establish a viable alternative site outside that district.
 - c. Fee in lieu. Payment of a fee in lieu of construction may be made to the local jurisdiction. In lieu fees collected shall be deposited either into the Pinellas housing trust fund or into a separate special revenue fund established by the local jurisdiction and used exclusively for affordable housing projects and programs. In lieu fees deposited in a housing trust fund shall be expended within five years of deposit. The fee in lieu of construction for each required inclusionary housing unit shall be based on an analysis of legally justified linkage fees for residential developments. The total payment amount shall be calculated based on an inclusionary unit requirement equal to 10% of the total units. Payment of the fee shall be made in full prior to the issuance of certificates of occupancy.
 - d. Equal or greater contribution. An applicant proposed contribution of equal or greater value to the alternative requirements set forth above and found to further the goals of this Ordinance.

SECTION 8. Waiver.

The governing body of the local jurisdiction may grant a waiver or partial waiver of inclusionary housing requirements if it finds an applicant has provided economic information and other evidence necessary to demonstrate that:

- (1) The new residential development does not increase the need for affordable housing. In instances of redevelopment, applicant shall have the burden of establishing that the proposed development is not creating a higher demand of goods and services than already exists regardless of whether the development results in the same number of units or households previously existing at the site of the proposed redevelopment; or
- (2) Incentives provided for in Section 6 are not feasible for on-site development without the waiver or partial waiver; and
- (3) No alternative method listed in Section 7 (2) (a) – (d) can be met.

SECTION 9. Exemptions.

The following developments shall be exempt from this Ordinance:

- (1) Developments of less than twenty (20) residential units;
- (2) Nursing homes, assisted care living facilities, group homes, and retirement homes;
- (3) Hotels and motels;
- (4) School dormitories; and
- (5) Structures constructed prior to the adoption of this Ordinance that have been destroyed by fire, flood, earthquake or other act of nature, provided the reconstructed site does not increase the number of residential units.

SECTION 10. Enforcement and Monitoring.

- (1) The local jurisdiction responsible for site plan approval is designated as the enforcing authority and may suspend or revoke any building permit or approval upon finding a violation of any provision of this Ordinance. The provisions of this Ordinance shall apply to all agents, successors and assigns of an applicant. No building permit or certificate of occupancy shall be issued, nor any development approval granted, if the requirements of this Ordinance are not met.

Prior to final site plan, plat, or building permit approval for the first residential unit on the property subject to the requirements of this Ordinance, an affordable housing agreement shall be entered into by the local jurisdiction and the residential housing development owner. The agreement shall set forth the method and terms by which a residential housing development owner shall comply with the development, sale, and rental requirements of this Ordinance. The agreement shall further state the methodology for determining a unit's initial and ongoing rent or sales and resale price(s), any resale restrictions, occupancy requirements, development incentives, and other matters related to the development and retention of the affordable housing units.

- (2) The program administrator is designated as the monitoring authority and shall be responsible for certifying the eligibility of buyers and tenants. In the event it is determined that inclusionary housing units required by this ordinance have been sold or rented to a buyer or renter not meeting eligible household requirements, the monitoring authority may take appropriate legal action to recover damages in an amount equal to payment of in lieu fees at either the time of construction or at the time of the ineligibility determination, whichever is greater. The fee collected by the program administrator shall be deposited in the housing trust fund. Legal and administrative costs recovered by the program administrator are not subject to housing trust fund deposit requirements.
- (3) The monitoring authority shall have the right to inspect, at any time during normal business hours, the books and records of the rental housing development owner as they pertain to the income qualifications of tenants of the affordable housing units.
- (4) The County shall be entitled to reimbursement of its costs, including reasonable attorneys' fees, of enforcing the provisions of this article. By submitting an application for a development approval requesting incentives, developers agree to pay such cost and consent to the County's placement of a lien on the subject property in connection with such costs.

SECTION 11. Areas Embraced and Authority

This ordinance shall be effective in the incorporated, as well as the unincorporated, areas of the County; however, any incorporated area may elect to opt out of this ordinance by adopting an ordinance in conflict herewith.

SECTION 12. Severability.

If any section, subsection, sentence, clause, phrase or provision of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such holding shall not be construed to render the remaining provisions of this Ordinance invalid or unconstitutional.

SECTION 13. Modifications.

Modifications that may arise from review of the Ordinance at the public hearings and with responsible authorities.

SECTION 14. Codification.

The provisions of this Ordinance shall be included and incorporated in the Pinellas County Code, as an addition or amendment thereto, and shall be appropriately numbered to conform to the uniform numbering system of the Pinellas County Code.

SECTION 15. Filing of Ordinance; Effective Date.

Pursuant to Section 125.66, Florida Statutes, the Clerk of the Board shall file a certified copy of this Ordinance with the Department of State within ten (10) days after enactment by the Board. This Ordinance shall become effective twelve months following the date of filing of the Ordinance with the Department of State.

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