

## Inclusionary Housing Ordinance

### ORDINANCE NO. 04-O-90AA

**AN ORDINANCE OF THE CITY OF TALLAHASSEE, FLORIDA, AMENDING THE CITY OF TALLAHASSEE LAND DEVELOPMENT CODE, CREATING NEW REQUIREMENTS FOR INCLUSIONARY HOUSING IN SUBDIVISIONS AND SITE PLANS; PROVIDING FOR A FEE IN-LIEU OF CONSTRUCTING INCLUSIONARY HOUSING; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the City of Tallahassee intends to implement policies 1.2.4, 1.2.5, and 1.2.6 of the Housing Element of the *Tallahassee-Leon County Comprehensive Plan*, which require the City to adopt an ordinance that ensures the implementation of a developer-provided affordable housing contribution for new development located within census tracts where family income is above the county-wide median and in all Target Planning Areas, (TPAs), Critical Planning Areas (CPAs) and Developments of Regional Impact (DRIs) within the City; and

**WHEREAS**, the City of Tallahassee intends to implement objective 2.1. of the land use element of the *Tallahassee-Leon County Comprehensive Plan*, which requires the city to provide for future mixed residential areas which will accommodate growth and provide a wide choice of housing types, densities, and prices; and

**WHEREAS**, the City of Tallahassee intends to implement objective 2.1. of the Housing Element of the *Tallahassee-Leon County Comprehensive Plan*, which requires the City to devise and implement a coordinated housing strategy that produces or contributes to the production of at least 15 housing units a year which are affordable for purchase by very low or low income family households, and that this shall be accomplished, in part, through inclusionary zoning for new residential construction or the payment of a fee in lieu; and

**WHEREAS**, the City of Tallahassee intends to implement policy 2.1.5 of the housing element of the *Tallahassee-Leon County Comprehensive Plan*, which authorizes the city to provide development incentives, including density bonuses, in exchange for the production of affordable housing; and

**WHEREAS**, the City of Tallahassee intends to implement policy 2.1.14 of the land use element of the *Tallahassee-Leon County Comprehensive Plan*, which authorizes the city to provide density bonuses of up to 25% above the limit otherwise established by future land use classification, in exchange for the construction of affordable housing; and

**WHEREAS**, the City of Tallahassee intends to implement objective 2.1.8 of the housing element of the *Tallahassee-Leon County Comprehensive Plan*, which requires the City to adopt regulations that provide for the ability to develop a variety of costs and rents within a single planned development to avoid the concentration of low and moderate income residents; and

**WHEREAS**, the City of Tallahassee is concerned that new developments within the City include housing affordable to workforce families, that is, families earning low and moderate incomes (70% to 100% of the Metropolitan Statistical Area median income); and

**WHEREAS**, approximately half of the families in the Tallahassee metropolitan area earn less than \$57,700 annually, based on the most recent economic data. According to the Florida Department of Labor, approximately 38% percent of the metropolitan area labor force is employed in government jobs; about 11% in retail; 10% in education and health care; 8% in hospitality (restaurants and hotels); and, 5% in other services. These are all sectors where most employees may fall within the low and moderate income levels. This is particularly true in the hospitality and service sectors. Being able to afford housing is a challenge for people working in these fields. It is also a critical public policy issue and the City of Tallahassee seeks to ensure that nurses and other health care professionals, teachers, public safety and emergency responders can afford to live within the community they serve; and

**WHEREAS**, the growing demand for housing affordable to workforce families has not been adequately addressed by the local market. The average new house price in Leon County for the year ending December 31, 2003 was over \$190,000 and over \$200,000 in the northeast quadrant of Leon County. Analysis of the Realtor's Multiple Listing Services for the period of February 2003 to February 2004 reveals very few new housing units on the market affordable to working families, particularly within the northeastern part of the City; a review of houses for sale in the *Tallahassee Democrat* this summer also supports this finding. The City of Tallahassee proposes to respond to the challenge of providing housing for the people that our community depends on; and

**WHEREAS**, the City of Tallahassee finds it reasonable that new developments with 50 or more owner-occupied residential units in the City include no less than 10% housing as owner-occupied housing affordable to working families; and

**WHEREAS**, the City of Tallahassee also finds it reasonable to provide a range of options for developers of new developments with 50 or more owner-occupied residential units to respond to the need for workforce housing, including rental housing, off-site affordable housing, and an in-lieu fee; and

**WHEREAS**, the City of Tallahassee finds it reasonable to provide affordable housing for working families in those portions of the City where income levels are above the area median (primarily, the northern and eastern portions of the City); and

**WHEREAS**, the City of Tallahassee is willing to offer a variety of incentives, including density bonuses, and considerable flexibility in the design and arrangement of the housing within the development, while safeguarding compatibility with neighboring property; and

**WHEREAS**, the Tallahassee-Leon County Comprehensive Plan Evaluation and Appraisal Report (EAR) issued in 1997 explored several community planning issues, focusing on four issues in particular: the Urban Service Area; the Southern Strategy Area; infill/redevelopment; and, housing. The EAR documented a significant "spatial mismatch"

between the north/northeastern portions of the community and the south/southwestern portions. This was shown to be true in terms of both land use patterns and socioeconomic characteristics, with income distributions becoming more unequal (the north and northeast growing more affluent and south and southwest, poorer). Consistent with these observations was the finding that rather than being evenly dispersed throughout the community, almost all of the “affordable housing” opportunities within the urban area were to be found in the south/southwest and very little “affordable housing” existed in the north/northeast. The EAR found that the concentration of affordable housing units within limited areas of the community can have negative social and economic impacts, such as “pockets of poverty”, neighborhoods and blighted areas often associated with high crime rates and low investment in property maintenance and development. The chart below provides information on sales of “affordable” housing units in 1990 and 1995, documenting the severe geographic polarization of affordable housing opportunities.

**Residential Detached Units Sold By Quadrant  
1990 & 1995**

	Total	# Affordable*	% Affordable
NE '90	865	70	8%
NW '90	540	229	42%
SE '90	210	145	69%
SW '90	125	110	88%
<b>All Areas '90</b>	<b>1740</b>	<b>554</b>	<b>32%</b>
NE '95	1527	73	5%
NW '95	929	391	42%
SE '95	393	210	53%
SW '95	228	192	84%
<b>All Areas '95</b>	<b>3,077</b>	<b>866</b>	<b>28%</b>

\*Note: For 1990, a sales price of less than \$62,456. For 1995, less than \$73,187. This figure represents 2.5 times the upper limit of the household low-income level for the area; a number used extensively in the Comprehensive Plan.

; and

**WHEREAS**, according to the *Tallahassee Democrat*, “Boomtown for Builders,” March 7, 2004, and the Tallahassee Board of Realtors, this geographic trend of high-priced housing on the “northside” and the lowest-priced housing on the “southside” continues to date, with the average closing price of a single family house in the northeast part of the community in 2003 being well over \$200,000 while the average in the southwest being under \$100,000; and

**WHEREAS**, the EAR found that the City's inclusionary housing policy was a commendable approach in response to the issues of insufficient supply of affordable homeownership housing and geographic overconcentration of affordable housing, but insufficient to meet community needs as measured by the number of affordable units produced (less than a dozen), fee in-lieu revenues obtained (less than \$450,000), and continued skewed geographic distribution of affordable housing; and

**WHEREAS**, the City of Tallahassee hereby addresses the issues outlined above as follows.

**BE IT ENACTED BY THE PEOPLE OF THE CITY OF TALLAHASSEE, FLORIDA, AS FOLLOWS:**

**SECTION 1:** This ordinance shall be known as the City of Tallahassee Inclusionary Housing Ordinance. The findings stated above are adopted and incorporated herein by reference.

**SECTION 2:** Section 9-111, Required improvements, Division 3, Chapter 9, City of Tallahassee Land Development Code is amended as follows:

(1) *Affordable housing.* In subdivision developments of 50 units or more, affordable on-site housing units shall be provided pursuant to Article VI, Inclusionary Housing, herein. ~~policy 1.2.4 of the housing element of the Comprehensive Plan.~~

**SECTION 3:** Section 9-152, Site plan review process, Division 2, Review and Approval, Article III, Site Plans, Chapter 9 of the City of Tallahassee Land Development Code is hereby amended as follows:

**Sec. 9-152. Site plan review process.**

(b) *Submittal requirements.*

(1) The applicant shall submit to the land use administrator a detailed statement of objectives indicating:

- a. The general purpose of the development;
- b. The density, number and type of dwelling units to be constructed;
- c. The method and time schedule of development and improvements to be made as part of the project; ~~and~~
- d. The type and square footage of nonresidential development including floor area ratios, pervious and impervious surface areas, and other standards as may be required; and

- e. For any site plan including 50 or more residential units, the applicant shall include a statement indicating whether the residential units are intended to be owner occupied or rental units. For those site plans with 50 units or more intended to be owner occupied, affordable on-site housing units shall be provided pursuant to Article VI, Inclusionary Housing, in this Chapter.

...

SECTION 4: Chapter 9, Subdivisions and Site Plans, Tallahassee Land Development Code, shall be amended by creating Article VI, Inclusionary Housing, as follows:

**ARTICLE VI. INCLUSIONARY HOUSING**

Sec. 9-240. Purpose and intent. The regulations and requirements of this article are intended to:

- (a) Promote the health, safety and general welfare of the citizens of the City of Tallahassee through the implementation of the goals, objectives and policies of the Tallahassee-Leon County Comprehensive Plan Housing Element;
- (b) Increase affordable home ownership opportunities within the City,
- (c) Stimulate the private sector production of housing available to families within the range of 70% to 100% of the area median income;
- (d) Facilitate and encourage development that includes a range of housing opportunities through a variety of residential types, forms of ownership, and home sales prices; and;
- (e) Encourage the even and widespread distribution of affordable housing opportunities throughout all portions of the community, including within new developments in fastest growing areas of the community.

**Sec. 9-241. Definitions.**

In addition to the definitions and rules of construction in section 1-2 of this Code, the following words, terms and phrases, when used in this section, shall have the meanings ascribed to them as set forth below, except where the context clearly indicates a different meaning:

- (a) Area Median Income (AMI). The median family income for the Tallahassee Metropolitan Statistical Area, as published by the US Bureau of the Census and the US Department of Housing and Urban Development, unless otherwise specified.
- (b) Eligible households. Eligible households shall be defined as those households composed of residents of the City earning 70% - 100% of MSA or county-wide median family income, adjusted for size, based upon the most recently published Census or HUD data. In addition: 1) households earning less than 70% of the area median family income but able to secure a first institutional mortgage wherein the lender is satisfied that the household can afford

principal and interest mortgage payments in excess of 27% of its income, shall be deemed eligible households for purposes of owner-occupied housing provided pursuant to requirements of this ordinance; and, 2) households earning less than 70% of the area median family income but willing to pay rents in excess of 27% of its income, shall be deemed eligible households for purposes of rental housing provided pursuant to requirements set out in this article.

(c) Fee in-lieu. The fee paid by the developer/owner of any primary development as an alternative to providing required inclusionary housing for sale within the primary development.

(d) Inclusionary Unit. A newly constructed dwelling unit offered to an eligible household at or below MASP.

(e) Market-rate Unit. A dwelling unit in a Residential Development that is not an Inclusionary Unit.

(f) Maximum Affordable Rent. The maximum monthly rent that may be charged for an inclusionary rental unit provided in lieu of owner-occupied inclusionary housing provided within the primary development.

(g) Maximum affordable sales price ("MASP"). The initial maximum sales price of an inclusionary housing unit at the time of the effective date shall be \$159,378. Thereafter, the MASP shall be reviewed no less than once every twelve months by the City Commission, and reset, if necessary. The City Commission review shall consider analysis of housing economic information, including supply-side factors, demand-side factors, and financing factors, not limited to the following: consideration MASP computed through the formula used to set the initial MASP; FHA single-family home mortgage limits; CPI, area median income, prevailing mortgage rates, FHFC first-time home buyers bond limit, construction materials costs, and other information as may be deemed relevant.

(h) Metropolitan Statistical Area (MSA). A geographic entity defined by the federal Office of Management and Budget for use by federal statistical agencies, based on the concept of a core area of a city with 50,000 or more inhabitants, or the presence of an Urbanized Area, as defined by the Office of Management and Budget, and a total population of at least 100,000, plus adjacent communities having a high degree of economic and social integration with that core. The Tallahassee MSA consists of the City of Tallahassee, Leon County, Gadsden County, Jefferson County, and Wakulla County, Florida, and all inclusive local governments.

(i) Off-Site Unit. An Inclusionary Unit that will be built at a different location than the primary development.

(j) On-Site Unit. An inclusionary unit that will be built as part of the primary development.

(k) Primary development. A subdivision or site plan including 50 or more housing units intended for sale and owner-occupancy, required to provide inclusionary housing within its physical confines or to provide those in-lieu comparables as authorized by this section.

(l) Selected census tracts. Those census tracts where the median family income is greater than the Countywide median, based upon the most recently published Census or HUD data.

**Sec. 9-242. Applicability.**

(a) The requirements of this section shall apply to new development within the urban services area, located within selected census tracts as defined herein, Critical Planning Area (CPA) and Target Planning Area (TPA) zoning districts, and Developments of Regional Impact (DRIs) with 50 or more residential dwelling units intended for owner occupancy. Developments subject to the requirements of this section providing no less than 10% and as much as 100% of the total number of residential dwelling units in the primary development as inclusionary housing units shall be eligible for development incentives as provided in accordance with Section 9-246.

(b) Developments not subject to (a) above, and located within selected census tracts that provide no less than 10% and as much as 100% of the total number of residential dwelling units in the primary development as inclusionary housing units shall be eligible for those development incentives as provided in accordance with Section 9-246.

(c) For the purposes of this section, two or more developments shall be aggregated and considered as one development, if they are no more than 1/4 mile apart and any two of the following criteria are met:

- (1) There is a common interest in two or more developments;
- (2) The developments will undergo improvements within the same five-year period;
- (3) A master plan exists, submitted to a governmental body, addressing all developments;
- (4) All developments share some infrastructure or amenities; or,
- (5) A common advertising scheme addresses all development.

**Sec. 9-243. Vested Rights.**

Those provisions set out in this article requiring of new development the provision of inclusionary housing units or in in-lieu comparables shall not apply to the development of any property authorized by and consistent with any of the following development orders approved or prior to the effective date of the inclusionary housing ordinance or in application prior to the effective date of the inclusionary housing ordinance and subsequently approved without major modification during the application period: preliminary plat approval; site plan approval; PUD concept plan approval; Development Agreement, approved pursuant to Chapter 163, Florida Statutes; or, DRI Development Order approval. In those instances where the property owner of a vested property applies for a new development order, that if approved, would constitute a major

modification of the previous development order, that property may lose its vested status as it relates to the provisions of this Article. Any modification to a previously approved development order resulting in the addition of 50 or more dwelling units than previously allowed in the development order approved prior to April 13, 2005 (the adoption date of this ordinance), that were not previously mitigated, shall be subject to the provisions of this article for the increased number of residential dwelling units. Determination as to whether a change to the development order would be constitute a major modification shall be made by the Director of the Growth Management Department or his/her designee, based upon applicable criteria in this code and Chapter 163, Florida Statutes, as may be applicable. Any property owner may instead request that the City Commission make this determination or may appeal staff's determination to the City Commission for reconsideration. In rendering its determination as to vested rights status, the City Commission shall consider staff's recommendation and whether the affected property already complies with this ordinance; has been "built out" in terms of residential development capacity; or, substantially complies with this article. If the City Commission determines that the property substantially complies with this article, it shall also specify those inclusionary housing requirements that thereafter apply to its further development, if any.

#### **Sec. 9-244. Exemptions.**

The following shall be exempt from the requirements of this article:

(a) Multifamily and multi-unit residential units constructed for rental purposes shall not be subject to requirements to provide inclusionary housing; however, multifamily and multi-unit residential units constructed for rental purposes may be provided to satisfy certain requirements for inclusionary housing, as provided herein; condominium residential units intended for owner-occupancy are not exempt and shall be subject to these regulations;

(b) Nursing homes, residential care facilities, assisted care living facilities, and retirement homes;

(c) Dormitories and group quarters, as defined by the US Census;

(d) Manufactured homes shall not be subject to requirements to provide inclusionary housing and may not be provided to satisfy any requirements set forth herein.

(e) All developments within the Southern Strategy Area, as established in the Tallahassee-Leon County Comprehensive Plan, except for that included within Critical Planning Area (CPA) and Target Planning Area (TPA) zoning districts, or Developments of Regional Impact (DRIs); and,

(f) All developments within areas designated Lake Protection on the future land use map.

#### **Sec. 9-245. Requirements for Inclusionary Housing.**

The following requirements shall apply:

(a) Number of inclusionary units required. Subdivisions and site plans including 50 or more dwelling units shall provide a minimum of 10% of the units at prices no greater than the MASP. For purposes of this section accessory apartment units shall not be construed as a dwelling or residential unit, either for purposes of determining the number of inclusionary units required or the number of inclusionary units provided.

(b) Calculation of Required Number of Units. The following standards shall be utilized in the calculation of number of inclusionary units required to be provided:

(1) Density Bonus Units: For purposes of calculating the number of inclusionary units required by this section, any additional units provided through use of the density bonus incentives of this article will not be counted in determining the required number of inclusionary units.

(2) Fractional Unit Requirements: In determining the number of whole inclusionary units required, any fractional requirement shall be rounded up to the nearest whole number.

(c) Location of inclusionary units. Required inclusionary housing units shall be provided within the primary development, at an alternative location within the same census tract or, in a contiguous selected census tract, so long as the off-site location is within the urban service area; the option of providing inclusionary housing at an off-site location shall not be available for developments within TPA or CPA zoning districts, nor within DRJs.

(d) Waiver of inclusionary housing requirements. The City Commission may grant waivers of requirements for inclusionary housing if the Commission finds the following:

(1) The application of the requirement would produce a result inconsistent with the goals and objectives of the Tallahassee-Leon County Comprehensive Plan pertaining to the development of the community; or,

(2) If the primary development is part of a larger development, that development furthers the intent of this section through means other than strict compliance with the regulations set out in this section.

(e) Developer financial responsibility. At the time of the approval of any site plan or preliminary plat for any primary development required to provide on-site or off-site, owner-occupied or rental, inclusionary housing units, or buildable lots, as authorized by this section, the applicant shall post a bond equivalent to the fee in-lieu of providing the required inclusionary housing. The City shall retain the bond money in escrow in an interest-bearing account for a period of no less than three years, or other time period agreed upon by the applicant and the City, or until the City has documented that the required inclusionary housing or in-lieu comparables have been provided. Upon documentation that the inclusionary housing requirement has been met in part or in full, the City shall remit that portion of the bond money and interest proportionally equivalent to portion of the inclusionary housing requirement satisfied 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 shall be forfeited and the bond money and interest shall be transferred to the Inclusionary Housing Trust Fund, and may thereafter be utilized for purposes of providing inclusionary housing. In those instances where the applicant has agreed in advance to pay a fee in-lieu of all or a portion of the required inclusionary housing, no bond shall be required to be posted for that amount of the requirement to be satisfied through payment of the fee in-lieu. This provision shall not be available for developments within TPA or CPA zoning districts, nor within DRIs.

(f) *Fee in-lieu of providing inclusionary units.* As an alternative to providing inclusionary housing units, the owner/developer may pay a fee in-lieu to the City. The fee rate shall be as follows:

- for those developments where the median sales price of housing units is equal to the Maximum Affordable Sales Price (MASP) up to 110% of MASP: \$10,000 per required unit not constructed;
- for those developments where the median sales price of housing units is greater than 110% of MASP and less than or equal to 175% of MASP: \$15,000 per required unit not constructed;
- for those developments where the median sales price of housing units is greater than 175% of MASP and less than or equal to 225% of MASP: \$20,000 per required unit not constructed; and,
- for those developments where the median sales price of housing units is greater than 225% of MASP: \$25,000 per required unit not constructed.

This provision shall not be available for developments within TPA or CPA zoning districts, nor within DRIs.

(g) *Multifamily rental housing in-lieu of providing inclusionary units.* As an alternative to providing inclusionary owner-occupancy housing units, the owner/developer may provide 1½ multifamily rental units per each owner-occupancy unit not otherwise provided. Rental units provided in lieu of owner-occupancy units shall be provided on-site within the primary development, at an alternative location within the same census tract or, in an adjacent selected census tract, so long as the off-site location is within the urban service area. Rents charged for these rental units shall not exceed the current US HUD's High HOME rent limit by bedroom size in the Tallahassee Metropolitan Statistical Area (MSA). The option of providing off-site multifamily rental housing in-lieu of providing inclusionary units shall not be available for developments within TPA or CPA zoning districts, nor within DRIs.

(h) *Residential lots in-lieu of providing inclusionary units.* As an alternative to providing inclusionary owner-occupancy housing units, the owner/developer may provide to the City or its designated agent, one residential lot per each owner-occupancy unit not otherwise provided. Lots so provided shall be located on-site within the primary development and each lot shall have sufficient area devoid of environmental constraint to allow construction of a

residential unit thereupon. The City or its designated agency shall assume responsibility for the development of all lots so provided with inclusionary units.

(i) Establishment of the required number of inclusionary units at time of plan approval. The number and location of inclusionary units required in conjunction with a particular primary development will be determined at the time of preliminary plat or site plan approval. Any of the following changes in the location of any on-site inclusionary housing unit after preliminary plat or site plan approval shall constitute a major modification to the original development order and shall be reviewed accordingly: 1) relocation contiguous to vacant property outside the primary development; 2) relocation contiguous to property outside the primary development developed with less intensive residential use; or 3) relocation contiguous to property inside the primary development, developed with less intensive residential use and not previously intended as the location of inclusionary housing. Determination as to whether the contiguous property is considered less intensive residential use shall be made by the Land Use Administrator.

#### **Sec. 9-246. Incentives for Provision of Inclusionary Housing.**

The following incentives shall be available to developments constructing the required number of inclusionary housing units within the primary development:

(a) Additional Development Density. Any development providing inclusionary housing pursuant to this section shall be entitled to a 25% increase in allowable density above that otherwise established by the zoning district in which the development is located. The density bonus provided herein shall only be effectuated consistent with Policy 2.1.14 of the Land Use Element of the Tallahassee-Leon County Comprehensive Plan. To qualify for this bonus, the applicant must include a narrative in the development application describing how the design and orientation of the development seeking the density bonus is compatible with the surrounding land use character, particularly with any low density residential neighborhoods. This narrative shall address building size and massing, site layout and design, architectural characteristics, and landscaping, as well as any other aspects of development that the applicant deems appropriate.

(b) Design Flexibility. The developer of inclusionary housing developments shall be eligible to obtain greater flexibility in development design through application of the following:

(1) Choice of Housing Type. Inclusionary housing units required by this section as well as any provided through density bonus incentive may be provided as single family, duplex, townhouse units, or cluster development within the RP-1, RP-2, and RP-MH zoning districts, and as single family, duplex, triplex, or townhouse units or as units intended for owner occupancy in a condominium, or multifamily residential structure, in other zoning districts provided that the height, setbacks, massing and exterior appearance of the inclusionary units are consistent with other residential units within the development in which they are located.

(2) Alleviation of Setback and Lot Size Requirements Internal to the Development. Housing units (inclusionary and “non-inclusionary”) shall not be subject to yard setback requirements, except for yards adjacent to boundary of the primary development and other property. Housing units (inclusionary and “non-inclusionary”) shall not be subject to minimum lot size requirements, except where lots are located adjacent to property outside of the primary development.

(3) Alleviation of Buffering and Screening Requirements Internal to the Development. Inclusionary housing units shall not be subject to requirements for the provision of buffering and screening for purpose of mitigating incompatibility within the primary development. Where adjacent to property outside of the primary development, inclusionary housing units shall be subject to those buffering and screening requirements as set out in this Code as may be applicable.

(c) Expedited Review. The developer of an inclusionary housing development shall be eligible for expedited development review. The developer shall inform the Growth Management Department at the pre-application stage that the development will include inclusionary housing; thereafter, the Growth Management Department shall expedite the review of the application to the fullest extent permitted by law and shall notify other reviewing departments/agencies that the application is required to receive expedited review. Expedited applications are to be reviewed prior to other applications filed on the same date or in the same application period, except for other applications including inclusionary housing or affordable housing, pursuant to Chapter 420.9076, Florida Statutes. Any development order application not directly pertaining to or required for the development of inclusionary housing units shall not be entitled to expedited review.

The Director of the Growth Management Department shall serve as the City’s liaison to expedite the review and approval process. This provision shall apply to site and development plan applications, subdivision applications, environmental permits, as well to individual building permits for individual inclusionary units.

(d) Deviations to Development Standards for Primary Developments Incorporating Inclusionary Housing. The developer of inclusionary housing seeking deviation(s) to development standards not addressed in subparagraph 2, Design Flexibility, above, shall submit a request for the deviation(s), along with the development application, to the entity with authority to approve the development application. There shall be no fee charged to the developer of inclusionary housing for requested deviations in conjunction with the development of the inclusionary housing. Deviations requested pursuant to this section shall not be required to comply with requirements of Section 9-233 of this Chapter for the granting of a deviation. Instead, requests for deviation under this section shall be subject to demonstrate compliance with the following criteria:

(1) The request for deviation shall specify the standard(s) to be deviated, the extent of deviation, and where the deviation will apply (requests for deviations to setbacks should be expressed in terms of linear feet and, requests for deviations to lot sizes should be expressed in square footage; requests may provided on a graphic plan);

(2) The deviation shall not result in an increase in gross residential density for the development in excess of the density bonus provided by this section;

(3) The deviation shall not result in conditions detrimental to the public's health, safety, or welfare; and,

(4) The granting of this deviation shall be consistent with the intent and purpose of this section and the Tallahassee-Leon County Comprehensive Plan.

Upon a finding in the affirmative, the entity with authority to approve the application shall grant the requested deviation(s).

(e) *Transportation Concurrency Exemption.* Within any and all developments wherein inclusionary units are provided under this article, any inclusionary units provided, less than or equal to the requirement for inclusionary units, as well as any provided electively through density bonus, shall be exempt from Transportation concurrency requirements.

(f) *Additional incentives.* A developer of inclusionary housing may request additional incentives. The City Commission may grant such additional incentives through approval of a development agreement pursuant to Section 163.3220, *Florida Statutes* ("163 Development Agreement") or Planned Unit Development Concept Plan, so long as the Commission finds the following:

(1) The application of the incentive would not produce a result inconsistent with the goals and objectives of the *Tallahassee-Leon County Comprehensive Plan*; and,

(2) The provision of the incentive furthers the intent of this section.

#### **Sec. 9-247. Compliance Procedures.**

(a) *General.* Approval of an Inclusionary Housing Plan and implementation of an approved Inclusionary Housing Agreement is a requirement of any site plan and preliminary plat subject to the requirements of the inclusionary housing section. An Inclusionary Housing Plan is not required where the requirements are satisfied by provision of residential lots or payment of a fee in-lieu of provision of inclusionary units. The Inclusionary Housing Plan must include:

(1) A site plan that includes the location of the inclusionary units (or lots or areas set aside for inclusionary units), setbacks and lot sizes for inclusionary housing units and other proposed development;

(2) The structure type of inclusionary units (may be a range of types) to be provided;

(3) The proposed tenure (owner-occupancy or rental) of inclusionary units to be provided;

(4) The structure size (may be a size range) of the inclusionary units to be provided;

(5) The mechanisms that will be used to assure that the units remain affordable, per City Commission Policy, such as resale and rental restrictions, and rights of first refusal and other documents;

(6) For inclusionary units to be provided off-site: the location (including parcel identification number(s)), structure type of inclusionary units and, proposed tenure; and,

(7) Any other information as may be necessary to demonstrate that the development complies with the provisions of this section.

(b) *Pertinent Information to be Recorded.* The method of compliance with this section, including, as applicable, the number and location of inclusionary housing units, shall be established within the final development order and incorporated through appropriate annotation on the approved site plan or preliminary plat and in an inclusionary housing letter of agreement, signed by all parties, and recorded by the Leon County Clerk of Courts. Where inclusionary requirements are satisfied through the provision of units off-site, the development orders for the primary and off-site development may be issued concurrently or sequentially; however, the site plans or preliminary plats for both developments shall reflect the method the compliance and shall as well be incorporated through appropriate annotation in an inclusionary housing letter of agreement, signed by all parties, and recorded by the Leon County Clerk of Courts.

**Sec. 9-248. Appeals of Subdivision and Development Orders for Developments With On-Site Inclusionary Housing.**

(a) *Appeals.* Appeal of a decision by the City Commission to approve, approve with conditions, or deny a subdivision final plat, or any other development order authorizing the development of inclusionary housing shall be considered by the Circuit Court. A party with standing shall have the right to seek review in Circuit Court by petition for writ of certiorari within 30 days from final action on any application.

(b) *Attorney's Fees and related costs.*

(1) In any civil litigation resulting from the City's approval of inclusionary housing as part of a development order, the prevailing party may receive his or her reasonable attorney's fees and costs from the nonprevailing party. For the purposes of this section, civil litigation shall include administrative proceedings before the Tallahassee-Leon County Planning Commission, the Division of

Administrative Hearings, Leon County Circuit Court, and any appellate proceedings before the First District Court of Appeal and Florida Supreme Court.

(2) The attorney for the prevailing party shall submit a sworn affidavit of his or her time spent on the case and his or her costs incurred in the civil litigation for all the motions and hearings, including appeals, to the circuit court having jurisdiction or the administrative law judge who presided over the civil litigation.

(3) The circuit court having jurisdiction or administrative law judge may award the prevailing party the sum of reasonable costs incurred in the action plus a reasonable legal fee for the hours actually spent on the case as sworn to in an affidavit.

(4) Any award of attorney's fees or costs, to the extent allowed by law, shall become a part of the judgment or final order and subject to execution as the law allows.

#### **Sec. 9-249. Monitoring and Sunset Review.**

The inclusionary housing implementation provisions in this Code shall be monitored to ensure effective and equitable application. Prior to October 1, 2006, the City Manager will present a status report to the City Commission on the implementation of Ordinance No. 04-O-90AA, as codified. Ordinance No. 04-O-90AA shall stand repealed and no longer be effective on October 1, 2007, unless the City Commission conducts a review prior to October 1, 2007 and saves the ordinance from repeal by passing a resolution extending the term of the ordinance, as codified.

#### **Sec. 9-250. Administration.**

The housing provisions of this section shall be administered jointly by the Department of Neighborhood and Community Services and the Growth Management Department, or their successors in interest, in consultation with the Tallahassee-Leon County Planning Department. These Departments shall be authorized to provide interpretations regarding the implementation and administration of this section.

**SECTION 5: Conflicts.** All ordinances or parts of ordinances in conflict herewith be and the same are hereby repealed.

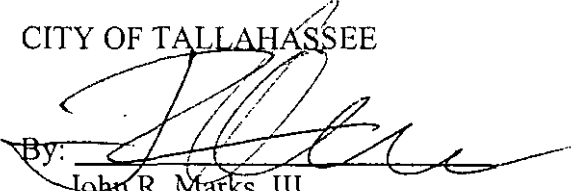
**SECTION 6: Severability.** If any provision or portion of this ordinance is declared by any court of competent jurisdiction to be void, unconstitutional, or unenforceable, then all remaining provisions and portions of this ordinance shall remain in full force and effect.

**SECTION 7: Effective Date.** This ordinance shall become effective immediately upon its passage, but compliance with the provisions herein shall not be required prior to October 1, 2005. Any person applying for a site plan or preliminary plat meeting the criteria herein may voluntarily comply with the provisions herein, and shall be entitled to take advantage of the incentives provided herein at any time after passage.

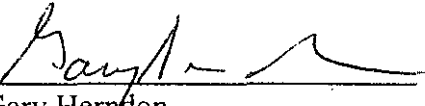
**INTRODUCED** in the City Commission on the 13<sup>th</sup> day of October, A.D., 2004.

**PASSED** by the City Commission on the 13<sup>th</sup> day of April, A.D., 2005.

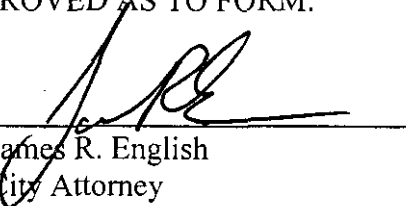
CITY OF TALLAHASSEE

By:   
John R. Marks, III  
Mayor

ATTEST:

By:   
Gary Herndon  
City Treasurer-Clerk

APPROVED AS TO FORM:

By:   
James R. English  
City Attorney

**AFFIDAVIT OF DISTRIBUTION**

STATE OF Florida )

COUNTY OF Leon )

I, April Spooner, being duly sworn on oath says he/she is and during all times herein stated has been the publisher of the publisher's designated agent in charge of the publication known as

The Tallahassee Democrat ("Publisher")

and has full knowledge of the facts herein stated as follows:

The ad for The City of Tallahassee ("Advertiser") was distributed to Publisher's full circulation on the 3 day of April, 2005.

By: A. Spooner

Subscribed and sworn to before me  
This 10<sup>th</sup> day of April, 2005. Notary Seal:

Katie Knight  
Notary Public




2005 MAY -4 AM 8:42

CITY TREASURER-CLERK

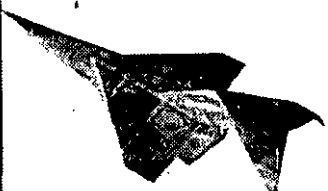
**FRIDAY**  
**Tallahassee-Leon**  
**County Civic Center**  
**Authority Board Ad Hoc**  
**Hotel Committee meet-**  
**ing: 8:30 a.m. Meeting**  
**room C, lower level, Civic**  
**Center, 505 W. Pensacola**  
**St. 487-1691.**

■ Please send items to Amaura Harris Canty, c/o Government Calendar, Tallahassee Democrat, P.O. Box 990, Tallahassee, FL 32302; e-mail aharris@tallahassee.com; or fax 599-2295. Deadline for submissions is 3 p.m. Thursday.




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**69th  
 Annual Meeting**  
 Monday - April 4th, 2005  
 Leon County  
 Fair Grounds  
 Building 2  
 Registration 5pm  
 Food 5:30-7pm  
 Meeting 7pm

For Tallahassee-Leon and  
 Wakulla Credit Union  
 Members and their Families!  
 Member ID required for voting



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 Federal Credit Union**

[www.tlfcu.org](http://www.tlfcu.org)

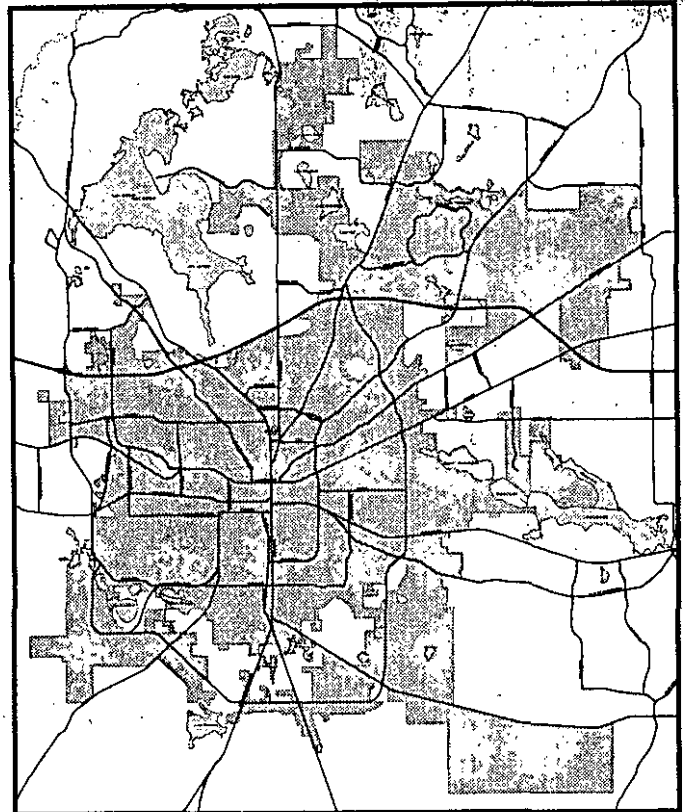
AN ORDINANCE OF THE CITY OF TALLAHASSEE, FLORIDA, AMENDING THE CITY OF TALLAHASSEE LAND DEVELOPMENT CODE, CREATING NEW REQUIREMENTS FOR INCLUSIONARY HOUSING IN SUBDIVISIONS AND SITE PLANS; PROVIDING FOR A FEE IN-LIEU OF CONSTRUCTING INCLUSIONARY HOUSING; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

The proposed ordinance satisfies requirements for adoption of regulations to implement the inclusionary housing strategy set out in the Comprehensive Plan by providing homeownership opportunities for low to moderate income households in new residential development and providing incentives to developers in exchange for providing such housing. This is the third public hearing to consider adoption of this ordinance. Previous public hearings were held by the City Commission on October 27, 2004 and December 15, 2004. The ordinance is applicable to the area shown in the map below located inside the Tallahassee City Limits.

All interested parties are invited to be present their comments at the public hearing at the time and place set out above. Speakers are requested to limit their comments to 3 minutes.

Anyone wishing to appeal the action of the City Commission with regard to this matter will need a record of the proceedings and should ensure that a verbatim record is made. In accordance with Section 286.26, Florida Statutes, persons needing a special accommodation to participate in this proceeding should contact the City Treasurer-Clerk's Office, at least 3 days prior to the proceeding. Telephone 891-8130; 1-800-955-8771 (TDD), or 1-800-955-8700 (Voice), or 711 via Florida Relay service.

Copies of said ordinance may be reviewed in the office of the Tallahassee-Leon County Planning Department, 4th Floor, City Hall, 300 S. Adams Street, Tallahassee, Florida 32301 and on the Planning Department's Web site at [www.tal.gov/city/planning/tlcpdhp.html](http://www.tal.gov/city/planning/tlcpdhp.html). Further information is available from the Planning Department at (850) 891-8600.



APRIL 3, 2005

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