

City of Gainesville

Department of Sustainable Development

Planning Division



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## Compliance Monitoring and Enforcement for Inclusionary Programs in Florida

### Discussion

There are approximately 30 enacted Inclusionary Zoning programs across cities and counties in the state of Florida (Grounded Solutions Network, 2019), with approximately 11 mandatory and 19 voluntary programs. Various mechanisms are enacted to guarantee adherence to the requirements of these programs. These are applied before construction, during occupancy, and upon the sale or re-leasing of affordable units. Compliance and enforcement methods can be legally binding, require financial guarantee, or incur civil or criminal penalties.

### Scope of Review

City staff have identified and reviewed 10 Florida cities and counties with voluntary or mandatory Inclusionary Zoning programs. These are:

1. Bonita Springs - Voluntary
2. Davie - Mandatory
3. Jupiter - Mandatory
4. Palm Beach County - Mandatory
5. Collier County - Voluntary
6. Tallahassee - Mandatory
7. Ft. Lauderdale - Voluntary
8. Marathon - Voluntary
9. St. Petersburg - Voluntary
10. Boynton Beach - Voluntary

## Compliance Monitoring

Several monitoring methods were in common among jurisdictions. These are:

### Agreements, Plans & Proposals:

All studied jurisdictions require a comprehensive agreement to be submitted prior to approval of inclusionary development. These generally require a package including at minimum:

- Identification of zoning district(s) or site plan
- Type of development and total number of units proposed, rented or owner-occupied
- Total number of additional units to be constructed with density bonus, separated by income level (where applicable)
- Final cost of purchase or rent
- Mechanisms to ensure continued affordability throughout the duration of the required affordability term

### Income Verification:

Most programs require that the owner or developer (or designated agent) collect and provide record of tenant/purchaser income to the jurisdiction. In some cases, the city/county provides forms or calculation worksheets to aid in identification and reporting. In one program (Collier County), a tax return qualifies as an acceptable method of income verification to be submitted for review by the jurisdiction.

### Restrictions & Covenants:

Most jurisdictions require a legally binding covenant be made between the owner and the city/county. These are notarized, set an applicability period, describe various restrictions and obligations imposed by the IZ program, set requirements for reporting, and otherwise inscribe the contents of the submitted agreement or plan. Entrance into a covenant is variably required prior to site plan approval, certificate of occupancy, issuance of building permits, or prior to the commencement of a new lease. Deed restrictions are a common method of ensuring that the City/County has final review and approval authority prior to transfer of ownership, and to ensure adherence to resale price limitations.

### Public Lists & Reporting:

Several jurisdictions require that the City or County maintain a public list of approved or completed inclusionary units. In some municipalities, this information is updated via required annual reports or affidavits submitted by the owner/developer or designee. Palm Beach County replaced annual reporting requirements with a real-time compliance determination process at or before lease execution, and requires notice be provided to Planning staff upon commencement of a lease, sale, exchange or transfer.

Bond/Surety Payment:

Boynton Beach and Tallahassee respectively require a surety payment and a bond payment/letter of credit be submitted and held by the municipality as an assurance. In Tallahassee, this bond payment/letter of credit is equivalent to the in-lieu fee, and is held in escrow for three years. In Boynton Beach, the surety payment is equivalent to 110% of the total cost to complete the workforce housing development. Release of surety greater than \$20,000 is subject to the approval of the City Commission. Surety less than \$20,000 may be released by the City Manager.

Other Methods:

Other methods used to ensure compliance with inclusionary zoning programs include:

- An “inclusionary housing incentive offer”, created by the city, which must be reviewed prior to site plan approval. These offers are calculated based on submitted information for each development project. (Davie)
- Utilization of a third-party Community Land Trust to administer the program, and an Authorized Non-Profit Housing Organization to administer conveyance of off-site workforce housing units. (Jupiter)
- Conduct site visits, authority to request rent rolls and unit ledgers (Palm Beach County)
- Random inspections (Collier County)
- Right of First Refusal on re-sales of affordable units (Boynton Beach)

**Noncompliance Remedies and Enforcement**Property and Legal Actions:

A majority of the inclusionary programs reviewed codified judicial remedies within the text of the program ordinance. Many of these had repercussions on the legal status of the property itself. These remedies include:

- Notice of Violation
- Injunctive relief via Special Magistrate, Administrative Hearing, or Circuit Court
- Rescission of the lease/sale if purchaser/tenant does not meet AMI criteria
- Reclassification of market rate unit to affordable unit
- Lien placed on property for failure to pay shared equity to the municipality upon property sale

Financial Penalties and Payments:

- Forfeiture of bond payment (Tallahassee)
- Penalty from surety payment (Boynton Beach)
- Citations
- Daily fines of \$500 for Notice of Violation noncompliance, or \$500 fine per violation
- Shared equity payment required for sale of property prior to conclusion of affordability term (Davie)

**Resources:**

- [Grounded Solutions Network GIS Map of Inclusionary Zoning Programs](#)
- [Grounded Solutions Network Florida Inclusionary Programs Table](#) (includes links to ordinances for each City/County)
- [Table of Inclusionary Zoning programs within 10 Florida Jurisdictions](#)
- [Palm Beach County 2023 Rents and Incomes Guidelines](#)
- [Palm Beach County WHP Lease Addendum to Verify Income](#)
- Tallahassee Recent Inclusionary Housing Agreement – [Canopy Planned Unit Development Agreement](#)

| City/County       | Program Name                                    | Program Type and Development Type                                   | Resale Restriction? | Compliance Monitoring  | Noncompliance Remedies/Enforcement   | Minimum Project Size   | Minimum Set-aside   | Target AMI  | Term of Affordability                           |
|-------------------|---|---|---------------------|--|--|--|---|---|---|
| Bonita Springs    | Affordable Housing Density Bonus Program        | Voluntary; Rental and For-Sale                                      | Yes                 | <b>Notarized Income Verification Form</b> submitted once every 10 years for rentals, first year of occupancy for owner-occupied units; <b>Public List</b> including all affordable units available; <b>Complaints</b>  | Notice of Violation (10 days to comply); Penalty from Bond Payment   | N/A  | 25% of additional bonus density units                                     | 80%   | 10 Years  |
| Davie             | Inclusionary Housing Program w/ Density Bonuses | Mandatory; Rental and For-Sale                                      | Yes                 | <b>Inclusionary Housing Plan</b> must be submitted prior to site plan approval; Declaration of <b>restrictive covenants</b> recorded prior to issuance of building permits; <b>public list</b> of affordable units; <b>inclusionary housing incentive offer</b> must be reviewed as condition of approval  | If unit is sold or non-homesteaded, shared Equity must be paid to the Town; Lien on Property for 2022-6795   | 100 units  | 20%; 15% in TOC   | 50-120%   | 15 Years  |
| Jupiter           | Workforce Housing Requirements                  | Mandatory; Rental and For-Sale                                      | Yes                 | <b>Recorded Covenant, workforce housing plan</b> must be submitted upon site plan approval; <b>public list</b> of affordable units; <b>Third-party Community Land Trust</b> organization may administer program; <b>Authorized Non-Profit Housing Organization</b> to administer conveyance of off-site workforce housing units  | Notice of Violation, Financial Penalty   | 10 Units   | 6% Total Project Units; 12% if applying for a land use amendment/rezoning | Three tiers of housing provided to 61-80%, 81-100%, and 101-120%  | Minimum 30 Years for Rentals; 99 Years For-Sale |
| Palm Beach County | Workforce Housing Program                       | Mandatory; Rental and For-Sale                                      | Yes                 | <b>Restrictive Covenant, Notice</b> prior to commencement of leasing, and no later than 5 days after occupancy; <b>Notice</b> upon change of ownership/possession within 30 days; <b>Rental Calculation Worksheet, Lease Addendum</b> submitted to Planning Department by <b>developer or designee</b> ; County provides established rents and incomes per AMI group and housing type; Planning may conduct <b>site visits, request rent rolls, unit ledgers</b> | <b>Notice of Violation</b> , 10 days to comply; <b>special magistrate injunction</b> extending affordability period by time out of compliance; action brought to <b>Circuit Court</b> ; <b>rescission</b> of a lease/sale; <b>reclassification</b> of market rate unit to WHP unit | 10 Units   | 2.5-34% (varies)  | 60-140%   | 30 Years for Rentals, 15 Years For-Sale         |
| Collier County    | Affordable Housing Density Bonus Program        | Voluntary; Rental and For-Sale                                      | Yes                 | AHDB Agreement; <b>Income Verification</b> (can be most recent tax return) and <b>Certification</b> Forms, valid for 90 days prior to occupancy w/ 30 day extension; <b>random inspections</b> by City to verify occupancy;  | <b>Notice of Violation</b> , 10 days to comply; citation; max <b>\$500 fine</b> per violation; max <b>60 days imprisonment</b> in county jail; <b>revocation</b> of certificate of occupancy   | N/A  | 10%   | 50-140%   | 30 Years  |
| Tallahassee       | Inclusionary Housing                            | Mandatory; For-Sale (Rentals may offset For-Sale Unit Requirements) | Yes                 | <b>Bond payment</b> or letter of credit equivalent to fee in-lieu to be retained for minimum <b>3 years in escrow</b> ; <b>Inclusionary Housing Letter of Agreement</b> ; housing provisions administered by Department of Neighborhood and Community Services, Growth Management Department, and Tallahassee-Leon County Planning Department  | <b>Forfeit of bond payment</b> ; civil litigation before Planning Commission, Division of Administrative Hearings, Circuit Court   | 50 Units SF; 1.5x MF unit may replace SF unit; one residential lot may replace SF unit | 10%   | 70-100% AMI; 10% of units may be priced at "maximum purchase price", set annually; average price of all IZ units \$159,379, subject to revision | N/A   |
| Ft Lauderdale     | Affordable Housing Incentives                   | Voluntary; Rental and For-Sale                                      | Yes                 | <b>Affordable Housing Development Plan/Agreement; Restrictive Covenants, Deed Restriction</b> (specifying City must approve of Title Transfers), <b>Income Verification</b> for Rental Tenants; <b>Annual Affidavit</b>  | N/A  | N/A  | 10%   | 80-100%   | 30 Years  |
| Marathon          | Density Bonus Program                           | Voluntary; Rental and For-Sale                                      | Yes                 | Written Proposal, Project Plans, Concept Meeting; Annual Income Qualification, lease or employment verification  | Notice of Violation, Revocation of Permits   | 5 units  | N/A   | 160%  | 50 Years  |
| St. Petersburg    | Workforce Housing Density Bonus Program         | Voluntary; Rental and For-Sale                                      | Yes                 | <b>Workforce Housing Bonus Density Agreement</b> ; Restrictive/protective <b>covenants, deed restrictions</b> ; Written approval from City prior to title transfer; <b>Annual Report</b> from owner;   | Code Enforcement Hearing, Daily Fines of <b>\$500</b> ; <b>Injunctive relief</b> ; <b>imprisonment</b> up to 60 days; <b>revocation/suspension</b> of permits or licenses  | N/A  | 50% of equivalent market-rate units                                       | Multiples of six, wherein 1st unit = 80%, 2nd-3rd = 120%, 4th - 5th = 80% 6th = 120%  | 30 Years  |
| Boynton Beach     | Workforce Housing Program                       | Voluntary; Rental and For-Sale                                      | Yes                 | <b>Restrictive Covenant, Deed Restriction; Income qualification</b> records to be available on site, applied for and approved before COO issued; <b>annual report</b> sent to Community Improvement Division; City has <b>Right of First Refusal</b> for sales; <b>Surety Payment</b> equal to 110% workforce housing provision costs  | injunctive relief, rescission of sale/lease, penalty paid from surety payment  | N/A  | 10-20%  | 80-120%   | 15 Years  |

**Notes:**

- **Davie** Inclusionary Housing Incentive Offer prepared by the Town 14 days prior to first presentation before Planning and Zoning Board
- **Palm Beach County** 2023 Rents and Incomes: [https://discover.pbcgov.org/pzb/planning/PDF/Projects/Housing/WHPREnts\\_Incomes.pdf](https://discover.pbcgov.org/pzb/planning/PDF/Projects/Housing/WHPREnts_Incomes.pdf)
- **Palm Beach County** WHP Lease Addendum to verify income: <https://discover.pbcgov.org/pzb/planning/PDF/Projects/Housing/LeaseAddendumForm.pdf>
- **Tallahassee** Recent Inclusionary Housing Agreement - Canopy Planned Unit Development: [https://www.boarddocs.com/fla/ta/gov/Board.nsf/files/AY5T5B74A519/\\$file/1%20-](https://www.boarddocs.com/fla/ta/gov/Board.nsf/files/AY5T5B74A519/$file/1%20-)