

2019 Legislature Provides Guidance for Inclusionary Housing Ordinances

By: Jaimie Ross

Inclusionary housing ordinances are increasingly being considered for adoption by local governments as evidence mounts and consensus is reached that workforce housing need is growing and it is in the best interests of both employers and their workforce that residential developments provide a balance of market rate and below market rate housing. In the Chamber of Commerce 2030 Report Survey, the need for affordable housing is the one issue that was raised in every one of Florida's 67 counties¹. But while local governments are aware that inclusionary zoning ordinances are in operation in parts of Florida, there has been reticence to adopt inclusionary housing policies due to push-back from the homebuilding industry and uncertainty about legal parameters.

The Florida Legislature has now provided more clarity and perhaps the level of comfort that will enable counties and municipalities to add inclusionary housing policies to their toolkit of land use policies for increasing the production of affordable workforce housing. The new statutory language is identical in the sections applying to counties and to municipalities. Section 125.01055 is for counties; Section 166.04151 is for municipalities. The new language is shown in italics.

125.01055 Affordable housing.

(1) 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.

(2) An inclusionary housing ordinance may require a developer to provide a specified number or percentage of affordable housing units to be included in a development or allow a developer to contribute to a housing fund or other alternatives in lieu of building the affordable housing units.

However, in exchange, a county must provide incentives to fully offset all costs to the developer of its affordable housing contribution. Such incentives may include, but are not limited to:

(a) Allowing the developer density or intensity bonus incentives or more floor space than allowed under the current or proposed

future land use designation or zoning; (b) Reducing or waiving fees, such as impact fees or water and sewer charges; or (c) Granting other incentives.

(3) Subsection (2) does not apply in an area of critical state concern, as designated in s. 380.0552.

While this new statutory clarity in regard to developer benefits should be helpful, there are some even more critical elements

to keep in mind. First and foremost is the term of affordability. An inclusionary housing ordinance that delivers developer benefits in exchange for required affordable workforce housing but fails to require that the housing stay affordable long-term is not an ordinance worth adopting. Failure to provide long term affordability will create a windfall to the lucky owner of the affordable home when the land use restriction agreement expires. The local government will have given away valuable incentives and find that it has nothing to

show for it. Inclusionary housing policies are not simple to craft, but they are essential for large scale developments, and to prevent gentrification in areas of redevelopment. The Florida Housing Coalition has over twenty years of expertise with inclusionary housing ordinances. We can provide education to local governments and community stakeholders and assist in the drafting of inclusionary ordinances and the policies needed for implementation that comply with the new statutory framework. **HNN**



¹ http://www.flchamber.com/wp-content/uploads/2018/06/ES_FLChamber2030_Mar18_9x12_reduced.pdf

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