MODEL ADMINISTRATIVE REVIEW POLICY TO IMPLEMENT FLORIDA'S LIVE LOCAL ACT

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DISCUSSION

The Live Local Act is a Florida law[1] that preempts Florida local government planning and land use regulation authority for a multifamily residential or a mixed-use residential development which meets an affordability standard.[2]

For qualifying development proposals, the act provides alternate standards for some of the local government's land development regulations governing land use,[3] density,[4] intensity,[5] height,[6] and parking.[7] The act also requires a local government to decide whether a development proposal meets the act's standards through an administrative (as opposed to a quasi-judicial) process.[8]

The act does not include specific detail on several of its provisions, including its affordability standard. Some critics of the act have called it one-size-fits-all affordable housing legislation that is not suitable for a state as geographically, economically, and ecologically diverse as Florida.[9] Regardless, the act's impact on a community, on real estate developers, and on residents seeking affordable housing depends on how a local government incorporates the act into its local development review processes.

The act requires every Florida local government that implements the act to have its own policy containing the local government's procedures and expectations for administrative review of whether a development proposal meets the act's standards.[10] Authoring this policy is an opportunity for a local government to clarify issues on which the act is silent and to address local land use issues.

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[1] Chapter 2023-17, Laws of Florida is the Live Local Act. This *Model Administrative Review Policy to Implement Florida's Live Local Act* relates to only a subset of the the act: those provisions preempting local government planning and land use regulation authority for development proposals that meet an affordability standard. These provisions exist in two places within Florida Statutes. In Florida Statutes sections 125.01055(7)–(8) are provisions that apply to counties. In Florida Statutes sections 166.04151(7)–(8) are provisions that apply to cities. In addition to the act—which created these provisions—Chapter 2024-188, Laws of Florida amended some of these provisions.

[2] Fla. Stat. §§ 125.01055(7)(a); 166.04151(7)(a).

[3] *Id*. at §§ 125.01055(7)(a); 166.04151(7)(a).

[4] *Id*. at §§ 125.01055(7)(b); 166.04151(7)(b).

[5] *Id*. at §§ 125.01055(7)(c); 166.04151(7)(c).

[6] *Id*. at §§ 125.01055(7)(d); 166.04151(7)(d).

[7] *Id*. at §§ 125.01055(7)(f); 166.04151(7)(f).

[8] Fla. Stat. §§ 125.01055(7)(e); 166.04151(7)(e).

[9] Mike Seemuth, *Florida's Live Local Act Has People Picking Sides*, GOV'T LAW GRP. (Jan. 29, 2024), https://www.govlawgroup.com/floridas-live-local-act-has-people-picking-sides/.

[10] Fla. Stat. §§ 125.01055(7)(e); 166.04151(7)(e).

This *Model Administrative Review Policy to Implement Florida's Live Local Act* is a guide for a city or a county to author the administrative review policy the act requires every city and county to have. This guide does not discuss all relevant parts of the Live Local Act. For example, the act has provisions related to development bonuses, military bases, and airports that this guide does not address. This document is educational. A local government should consult with its attorney to understand the Live Local Act and to author its administrative review policy.

This document has three parts. This part, **Discussion**, describes one part of the Live Local Act and introduces both the model administrative review policy and an example land use restriction agreement. The second part is the **Model administrative review policy**. The third part, **Example land use restriction agreement**, is an example of an agreement between a landowner and a local government to facilitate a development meeting the act's affordability standard over 30 years.

The Live Local Act affordability standard

The Live Local Act only allows a multifamily development or a mixed-use residential development that meets the act's alternate standards for land use, density, intensity, height, and parking when the development proposal meets the act's affordability standard.

While the act includes a part of the affordability standard, that act incorporates by reference into the affordability standard the definition of "affordable" from the State Housing Strategy Act.[11] This is the affordability standard including relevant language from the State Housing Strategy Act:

> [A]t least 40 percent of the residential units in a proposed multifamily development are rental units that, for a period of at least 30 years, are affordable … . [For] mixed-use residential projects, at least 65 percent of the total square footage must be used for residential purposes.[12]
>
> [Affordable means] monthly rents or monthly mortgage payments including taxes, insurance, and utilities do not exceed 30 percent of that amount which represents…[13]
>
> [the greater of, one,] 120 percent of the median annual adjusted gross income for households within the state, or[, two,] 120 percent of the median annual adjusted gross income for households within the metropolitan statistical area

[11] *Id*. at §§ 125.01055(7)(a); 166.04151(7)(a); 420.0001.

[12] *Id*. at §§ 125.01055(7)(a); 166.04151(7)(a).

[13] *Id*. at § 420.0004(3).

> (MSA) or, if not within an MSA, within the county in which the person or family resides … .[14]

To evaluate whether a development proposal meets the affordability standard, therefore, a local government must know how the amount of monthly rental payments—including utilities—will relate to the appropriate median annual adjusted gross income over 30 years.

The act further requires a local government to monitor whether a project that has met the affordability standard at the time of permitting continues to meet the affordability standard over the following 30 years.

> If at any point during the development's affordability period the development violates the affordability period requirement provided in [the affordability standard], the development must be allowed a reasonable time to cure such violation. If the violation is not cured within a reasonable time, the development must be treated as a nonconforming use.[15]

The act does not provide procedures for a local government to monitor monthly rent amounts for compliance with the affordability standard, does not provide a standard for determining whether the time to cure a violation of the affordability standard is reasonable, and does not provide a standard for treatment as a nonconforming use.[16]

Live Local Act development standards

If a development proposal meets the affordability standard, the Live Local Act provides standards for land use, density, intensity, height, and parking that the development proposal must also meet.

Land use

The act allows "multifamily and mixed-use residential" developments "in any area zoned for commercial, industrial, or mixed-use."[17]

This requirement is an example of a one-size-fits-all approach that does not match every local government's land development regulations. The Community Planning Act explicitly does not require a local government to use zoning[18] and not all Florida local governments

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[14] *Id*. at § 420.0004(12).

[15] *Id*. at §§ 125.01055(8); 166.04151(8).

[16] Cicely Hodges, *Lingering Concerns with the Live Local Act*, FLA. POLICY INST. (Mar. 20, 2023), https://www.floridapolicy.org/posts/lingering-concerns-with-live-local-act; Cicely Hodges, *What Housing-Related Bills Did Florida Lawmakers Pass in 2024*, FLA. POLICY INST. (Mar. 19, 2024), https://www.floridapolicy.org/posts/legislative-roundup-housing-related-bills-passed-in-2024.

[17] Fla. Stat. §§ 125.01055(7)(a); 166.04151(7)(a).

[18] *Id*. at § 163.3202(3).

have adopted zoning.[19] Further, the Community Planning Act does not define the terms commercial, industrial, or mixed-use and local governments may use these terms in their zoning laws differently.

Because the act's land use standard requires a tailored approach specific to each local government's land use regulations, the Office of the Attorney General of Florida has promulgated an informal opinion[20] regarding the exemption.

> [T]he phrase "area zoned for commercial, industrial, or mixed use" refers only to land located in districts having those specific zoning classifications, rather than encompassing land in any zoning district where some commercial, industrial, or mixed use land uses may be permitted … . This interpretation is consistent with judicial recognition that a description of the use a parcel is "zoned for" is synonymous with the area's "zoning classification."[21]

In a later informal opinion, the Attorney General added further clarification for determining whether a classification qualifies as a "mixed-use" zoning classification under the Live Local Act:

> [W]hile the particular name given by a municipality or [c]ounty to a zoning classification is potentially helpful for determining whether a classification is a "mixed use" zoning classification, it is just one of several aspects worthy of consideration … . A court reviewing the applicability of the Act would likely look beyond a title of a zoning classification and focus on whether the particular classification is similar to what has been historically and is normally understood to be a mixed use zoning classification specific to the area at issue.[22]

Informal Attorney General opinions function as sources of persuasive authority[23] which Florida courts have previously relied upon to support past rulings.[24]

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[19] W. THOMAS HAWKINS, LAND USE LAW IN FLORIDA 81 (2021).

[20] The Attorney General's Office issues both formal and informal opinions. "Generally, [informal] opinions address questions of more limited application" than those of formal opinions. *Requesting an Attorney General Opinion*, OFFICE OF THE ATT'Y GEN., STATE OF FLA., https://www.myfloridalegal.com/attorney-general-opinions/frequently-asked-questions-about-attorney-general-opinions (last visited Oct. 20, 2024)

[21] Op. Att'y Gen. Fla. (July 20, 2023) (informal opinion).

[22] Op. Att'y Gen. Fla. (July 12, 2024) (informal opinion).

[23] *Requesting an Attorney General Opinion*, *supra* note 32.

[24] *See, e.g.*, *Chiles v. Phelps*, 714 So. 2d 453, 458 (Fla. 1998) (incorporating Attorney General analyses from formal and informal opinions into the court's reasoning); *Demings v. Orange Cnty. Citizens Review Bd.*, 15 So. 3d 604, 609 (Fla. 5th DCA 2009) (citing an informal Attorney General opinion to support the court's holding).

Density

The act requires a local government to allow "density up to the highest density allowed anywhere in the jurisdiction."[25] This highest density does not include density the local government allows by any bonus, variance, other special exception, or the Live Local Act itself.[26]

Intensity

The act requires a local government to allow intensity "up to 150% of the highest floor area ratio allowed anywhere in the jurisdiction."[27] The highest floor area ratio does not include intensity the local government allows by any bonus, variance, other special exception, or the Live Local Act itself.[28]

Height

The act requires a local government to allow "height up to the highest currently allowed height for a building located in the jurisdiction that is either within one mile of the proposed development or is three stories tall."[29] The tallest height does not include height the local government allows by any bonus, variance, other special exception, or the Live Local Act itself.[30]

In addition, the act allows a local government to use a second alternate height standard for a proposed development which is "adjacent to, on two or more sides, a parcel zoned for single-family residential use which is within a single-family residential development with at least 25 contiguous single-family homes."[31] In that case, the local government may restrict height to the greatest of 1.5 times the height of the tallest building on any adjacent property; the highest currently allowed under local regulation; or to three stories tall.[32]

Parking

The act requires a local government to "consider" reducing parking requirements when an accessible transit stop is located within one-quarter mile of the proposed development.[33] A local government "must reduce parking requirements by at least 20 percent" when the

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[25] Fla. Stat. §§ 125.01055(7)(b); 166.04151(7)(b).

[26] *Id*.

[27] *Id*. at §§ 125.01055(7)(c); 166.04151(7)(c).

[28] *Id*.

[29] *Id*. at §§ 125.01055(7)(d)1.; 166.04151(7)(d)1.

[30] *Id*.

[31] Fla. Stat. §§ 125.01055(7)(d)2.; 166.04151(7)(d)2.

[32] *Id*.

[33] *Id*. at §§ 125.01055(7)(f)1.; 166.04151(7)(f)1.

proposed development is within one-half mile and accessible "by safe, pedestrian-friendly means" from a "major transportation hub" and when the proposed development "[h]as available parking within 600 feet … ."[34] And, a local government must not require parking when a proposed mixed-use residential development is within a transit-oriented development or area.[35]

The act gives examples to explain the terms "safe, pedestrian-friendly means" and "available parking" but does not define those phrases.

Rest of comprehensive plan and land development regulations apply

The Live Local Act explicitly requires a proposed development to "comply with all applicable state and local laws and regulations" other than those land use, density, intensity, height, and parking standards from which the act provides a specific exemption.[36] In addition, a proposed development that meets the affordability standard must still "satisf[y] the [local government's] land development regulations for multifamily developments in areas zoned for such use and [be] otherwise consistent with the comprehensive plan … ."[37]

Administrative review

The Live Local Act requires a local government to decide whether to permit a proposed development that may meet the affordability standard through an administrative review process.[38]

Generally, a local government decides whether to permit a proposed development through either a quasi-judicial or an administrative review process. Which review process a local government uses affects the due process rights of the people the decision impacts and whether people generally may observe the review process.

Quasi-judicial review occurs in a public hearing[39] and "results in the application of a general rule of policy"[40] to a set of facts considered in that hearing. Any person may attend a public meeting in Florida.[41] And, when a quasi-judicial decision uniquely impacts a person, the person has procedural due process rights.

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[34] *Id*. at §§ 125.01055(7)(f)2.; 166.04151(7)(f)2.

[35] *Id*. at §§ 125.01055(7)(f)(3); 166.04151(7)(f)(3).

[36] *Id*. at §§ 125.01055(7)(i); 166.04151(7)(i).

[37] Fla. Stat. §§ 125.01055(7)(e); 166.04151(7)(e).

[38] *Id*. at §§ 125.01055(7)(e); 166.04151(7)(e).

[39] *De Groot v. Sheffield*, 95 So. 2d 912 (Fla. 1957).

[40] *Bd. of Cnty. Comm'rs v. Snyder*, 627 So. 2d 469, 474 (Fla. 1993).

[41] Fla. Stat. § 286.011.

> A quasi-judicial hearing generally meets basic due process requirements if the parties are provided notice of the hearing and an opportunity to be heard. … [T]he parties must be able to present evidence, cross-examine witnesses, and be informed of all the facts upon which the commission acts.[42]

In contrast, when a local government makes a decision through an administrative review process, the local government does not hold a hearing.[43] Instead, an administrative staff person decides whether the local government will permit proposed development and no person necessarily has rights to observe or participate in the review process.

The model administrative review policy requirement

The Live Local Act requires every Florida city and county to maintain on its website a policy containing the local government's procedures and expectations for administrative review of a development proposal that might be eligible for the act's exemptions.[44] The second part of this document is a model administrative policy a local government may adapt when authoring its own administrative review policy.

Adopt administrative review policy by ordinance

The act does not provide any standards for how a local government must adopt its administrative review policy. The Community Planning Act, however, requires a local government to adopt land development regulations[45] and requires that all land development "regulations shall be combined and compiled into a single land development code for the jurisdiction."[46]

The model administrative review policy includes substantive information regarding Live Local Act exemptions and this information should be a part of a local governments land development regulations. To make its administrative review policy available in the expected location, a local government's governing body should adopt the administrative review policy by ordinance and should codify the policy within the local government's land development regulations.

Land use restriction agreement

The model administrative review policy proposes a local government require a landowner to grant a restrictive covenant to the local government to facilitate the local government's long-term evaluation of whether a development that meets the act's standards at the time of

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[42] *Jennings v. Dade Cnty.*, 589 So. 2d 1337, 1340 (Fla. 3d DCA 1991).

[43] *See City of St. Pete Beach v. Sowa*, 4 So. 3d 1245, 1247 (Fla. 2d DCA 2009).

[44] Fla. Stat. §§ 125.01055(7)(e); 166.04151(7)(e).

[45] *Id*. at § 163.3202(1).

[46] *Id*. at § 163.3202(3).

permitting continues to meet the affordability standard for 30 years. The third part of this document is an example land use restriction agreement.

Treatment as nonconforming use

The model administrative review policy proposes how a local government may treat a development that is a nonconforming use—meaning the development does not meet the affordability standard for 30 years. The model administrative review policy proposes the local government enforce the affordability standard using all available tools and specifically references the Local Government Code Enforcement Boards Act.

The Local Government Code Enforcement Boards Act provides a framework for a local government to appoint a code enforcement board or a special magistrate to enforce local ordinances.[47] A local government may also appoint a code enforcement board or a special magistrate and enforce local ordinances by other means.[48] A local government's enforcement powers through the Local Government Code Enforcement Boards Act include imposing a fine on a violator, attaching a lien to a violator's real property, and foreclosing on a code enforcement lien.[49]

[47] *Id*. at §§ 162.02; 162.03.

[48] *Id*. at § 163.03.

[49] *Id*. at § 163.09(3).

MODEL ADMINISTRATIVE REVIEW POLICY

Background

This model administrative review policy is an educational document. A local government should consult with its attorney when the local government authors its administrative review policy.

This model administrative review policy uses brackets to indicate where a local government should insert language specific to local needs. Within those brackets, instructions are in italics and optional language is within quotation marks. For example: [*insert language specific to local needs such as* "option 1" *or* "option 2"].

Policy

I. Short title. [*Identify the administrative review policy by its codified location within the land development regulations*] is the "live local administrative review policy."

II. Purpose and intent. Florida Statutes sections [*select one:* "125.01055(7)–(8)" *for a county or* "166.04151(7)–(8)" *for a city*] provide standards for land use, density, intensity, height, and parking for certain development proposals and require a local government to decide whether to permit these development proposals through an administrative review process. Florida Statutes sections [*select one:* "125.01055(7)–(8)" *for a county or* "166.04151(7)–(8)" *for a city*] also require a local government to have a policy containing procedures and expectations for administrative review of these development proposals. This live local administrative review policy is the administrative review policy Florida Statutes sections [*select one:* "125.01055(7)–(8)" *for a county or* "166.04151(7)–(8)" *for a city*] require [*name of local government*] to have.

III. Rule. A development proposal must meet all standards in this live local administrative review policy, all applicable standards in the comprehensive plan, and all applicable land development regulations for [*name of local government*] to approve the development proposal pursuant to this policy.

[*Name of local government*] approval pursuant to this live local administrative review policy is not final permission to construct a development proposal. Instead, approval pursuant to this policy is the equivalent of [*insert the name of the planning-level review the local government gives to multifamily residential or to mixed-use residential projects such as "development plan" or "conceptual plan" review*] approval.

The land development regulations require other permits and meeting the standards of this live local administrative review policy does not exempt a development proposal from any other applicable review process. However, [*name of local government*] does not require a zoning or land use change, special exception, conditional use approval, variance, or

comprehensive plan amendment to allow the land use, density, intensity, height or parking standards within this policy.

IV. Standards. A development proposal must meet these standards in addition to all applicable standards in the comprehensive plan and land development regulations.

A. Affordability.

1. At least 40 percent of the residential units in the development must be rental units that, throughout the entire affordability period, have a monthly cost (including rent, utilities, and all other mandatory charges) that does not exceed 30 percent of the adjusted gross annual income of a household earning 120 percent of the median annual adjusted gross income in Florida or within [*insert* "the metropolitan statistical area" *or, if not within a metropolitan statistical area, insert name of county*].

2. The affordable units must be comparable to all other units in quality, in features, in size, in number of bedrooms, and in access to common amenities.

3. Eligible households renting and actually occupying the affordable units must not have an annual adjusted gross income that exceeds the greater of (1) 120 percent of the median annual adjusted gross income for households within the state, or (2) 120 percent of the median annual adjusted gross income for households within [*insert* "the metropolitan statistical area" *or, if not within a metropolitan statistical area, insert name of county*].

4. The owner of the land proposed for development must enter into a land use restriction agreement requiring the use of the land and all real property on the land to meet this affordability standard throughout the affordability period. The land use restriction agreement must—

a. constitute a deed restriction that is recorded in the official records of [*name of county*] County that grants [*name of local government*] rights of enforcement, and that is binding on the owner or owners of the land and any real property on the land and on their successors and assigns;

b. require the owner or owners of the real property to continuously provide to [*name of local government*] all records necessary to demonstrate ongoing compliance with the affordability standard throughout the affordability period; and

c. require the owner or owners of the real property to pay any fee [*name of local government*] may charge to evaluate and enforce compliance with the affordability standard.

B. Land use.

1. The development must be multifamily residential or mixed-use residential. If the development is mixed-use residential, at least 65 percent of the total square footage must be used for residential purposes. If the land proposed for development is within a transit-oriented development or area, the development must be mixed-use residential.

2. The land proposed for development must have one of these zoning classifications: [*Name the commercial, industrial, and mixed-use zoning classifications in the jurisdiction. Consistent with the Office of the Attorney General of Florida informal opinions, do not list all zoning designations that may allow some commercial, industrial, or mixed-use development. Instead, identify those districts the local government would specifically classify as commercial, industrial, or mixed-use based on how the terms commercial, industrial, or mixed-use have historically been and normally are understood. For example, the local government may exclude zoning classifications that allow a range of land uses when a development proposal meets exceptional standards such as a planned development zoning classification.*]

C. Density. Density must be equal to or less than [*insert the highest density the land development regulations allow in the jurisdiction excluding density the land development regulations allow by any bonus, variance, other special exception, or this live local administrative policy*].

D. Intensity. Intensity must be equal to or less than a [*insert the number equal to 1.5 multiplied by the highest floor area ratio the land development regulations allow in the jurisdiction excluding floor area ratio the land development regulations allow by any bonus, variance, other special exception, or this live local administrative policy*] floor area ratio.

E. Height.

[*The local government may adopt one of two height standards. The first option applies a single standard throughout an entire jurisdiction. The second option generally applies a standard throughout an entire jurisdiction but also includes a special rule for development adjacent to land zoned for single-family residential that may allow the local government to impose a shorter maximum height on those developments.*

This is option one, a single standard that applies throughout an entire jurisdiction:

"Height must be equal to or less than the greater of—

1. the highest currently allowed height for a commercial or residential building in the jurisdiction within 1 mile of the development, excluding height the land development regulations allow by any bonus, variance, other special exception, or this live local administrative policy, or

2. 3 stories."

This is option two, a standard that generally applies throughout an entire jurisdiction along with a special rule for development adjacent to land zoned for single-family residential that may allow the local government to impose a shorter maximum height on those developments. The special rule may actually allow a taller building than the general standard and a local government should evaluate hypothetical development scenarios to identify the option that best matches its preferences for height.

"1. For a development that is not adjacent to, on two or more sides, parcels zoned for single-family residential use within a single-family residential development with at least 25 contiguous single-family homes, height must be equal to or less than the greater of—

a. the highest currently allowed height for a commercial or residential building in the jurisdiction within 1 mile of the development, excluding height the land development regulations allow by any bonus, variance, other special exception, or this live local administrative policy, or

b. 3 stories.

2. For a development that is adjacent to, on two or more sides, parcels zoned for single-family residential use within a single-family residential development with at least 25 contiguous single-family homes, height must be equal to or less than the greater of—

a. 1.5 times the height of the tallest building on any property adjacent to the development;

b. the highest currently allowed height for a commercial or residential building in the jurisdiction within 1 mile of the development, excluding height the land development regulations allow by any bonus, variance, other special exception, or this live local administrative policy; or

c. 3 stories."]

F. Parking.

1. This parking standard provides the minimum number of generally available motor vehicle parking spaces a development must include. The land development regulations may include other parking standards a development must meet such as a limit on the maximum number of parking spaces, a requirement for bicycle parking, a requirement for disabled person parking, or standards to accommodate loading and service vehicles.

2. The number of parking spaces must be the number the land development regulations require unless one of these three alternate standards is a smaller number.

a. [*Name of local government*] will consider a number of parking spaces that is smaller than the number the land development regulations require if the land development regulations identify a transit stop within one-quarter mile of the development and the transit stop is accessible from the development.

b. The number of parking spaces must be equal to or greater than 0.8 times the number the land development regulations require if the development—

i. is located within one-half mile of a major transportation hub that is accessible from the development by safe, pedestrian-friendly means such as sidewalks, crosswalks, elevated pedestrian or bike paths, or other multimodal design features; and

ii. is within 600 feet of available parking.

c. The number of parking spaces must be equal to or greater than zero if the development is a mixed-use residential development and the [*name of local government*] recognizes the land proposed for development as a transit-oriented development or area.

G. Regulations for multifamily development in areas zoned for such use. This live local administrative policy does not provide alternate standards for any aspect of development other than land use, density, intensity, height, and parking. A development must meet all other applicable standards in the comprehensive plan and land development regulations including standards for multifamily residential or mixed-use residential development in areas zoned for such use.

[*A local government may cross-reference or restate its standards for multifamily residential and mixed-use residential development in areas zoned for such use here.*

A local government should cross-reference or restate its standards if it has multiple sets of such standards (for example, if the local government allows multifamily residential and mixed-use residential development in more than one zoning classification). In that case, the local government should select one set of applicable standards or should provide a method for determining which of the several standards applies to a given development proposal.

If a local government cross-references or restates its standards here, it should be comprehensive and include all standards that specifically apply to multifamily residential and mixed-use residential development such as dimensional standards (like lot size or setbacks), design standards (like landscaping or architecture), or environmental standards (like open space, impervious surface, or conservation).]

V. Enforcement.

The owner or owners of real estate that is the subject of a live local administrative review policy approval and their successors, assigns, and agents must ensure the development meets the affordability standard throughout the affordability period and must comply with the applicable land use restriction agreement. If a development does not meet the affordability standard or any term of the applicable land use restriction agreement at any point during the development's affordability period, [*name of local government*] will allow the owner or owners [*insert* "a reasonable time" *or insert a number of days that is a reasonable time to cure a violation of the affordability standard, such as 30 days*] to cure the violation. If the owner or owners do not cure the violation within the time allowed, [*name of local government*] will treat the development as a nonconforming use. Treatment as a nonconforming use may include, but is not limited to—

1. enforcing compliance through any provisions of the land use restriction agreement;

2. enforcing compliance through the Local Government Code Enforcement Boards Act including by imposing fines on the violator, attaching a lien to the violator's real property, and foreclosing on the code enforcement lien; or

3. enforcing compliance through any other state or locally adopted enforcement procedure including a civil action for injunctive relief.

VI. Process and application.

1. To request [*name of local government*] evaluate whether a development proposal meets the standards of this live local administrative review policy, an applicant must—

a. provide public notice of the development meeting the standards of [*reference the provisions within the land development regulations that describe the public notice activities the local government determines are appropriate such as mailed notice, published notice, posted notice, or a public workshop*];

b. submit an application in the form the ["city" *or* "county"] manager prescribes; and

c. pay the fee for review the [*name of the local government's fee schedule*] requires.

2. [*Name of local government*] must not approve a development proposal pursuant to this live local administrative review policy unless the owner of the land proposed for development has entered into a land use restriction agreement that meets the standards of this policy.

VII. Definitions.

"Accessible" in the context of whether a transit stop or a major transportation hub is accessible from development means (1) that a person walking between the transit stop or transportation hub and the development may travel the entire distance on even, paved sidewalks or within marked crosswalks, (2) that the entire route meets applicable standards of the Americans with Disabilities Act, and (3) that the route does not cross any road having a design speed greater than 25 miles per hour or having more than two motor vehicle lanes.

"Affordability period" means the period of time that begins on the day [*name of local government*] issues the first certificate of occupancy for a development and ends 30 years following the day [*name of local government*] issues the last certificate of occupancy for the development.

"Affordable" means that costs (rent, utilities, and all mandatory charges) do not exceed 30 percent of the adjusted gross annual income of a household earning 120 percent of the median annual adjusted gross income in Florida or within [*insert* "the metropolitan statistical area" *or, if not within a metropolitan statistical area, insert name of county*].

"Available" in the context of whether parking is available means an applicant has provided reasonable assurances that residents of a development will have exclusive access to the parking throughout the affordability period without charge or for a charge that the applicant has included in its evaluation of whether the development meets the affordability standard.

"Eligible household" means one or more natural persons, the total annual adjusted gross income of whom does not exceed the greater of (1) 120 percent of the median annual adjusted gross income for households within the state, or (2) 120 percent of the median annual adjusted gross income for households within [*insert* "the metropolitan statistical area" *or, if not within a metropolitan statistical area, insert name of county*], who rent and actually occupy an affordable unit.

"Major transportation hub" means [*list the bus, train, or light rail transit stations in the jurisdiction*].

EXAMPLE LAND USE RESTRICTION AGREEMENT

Background

This example land use restriction agreement is an educational document. A local government should consult with its attorney when the local government drafts or accepts a land use restriction agreement.

This example land use restriction agreement uses brackets to indicate where a local government should insert language specific to local needs. Within those brackets, instructions are in italics and optional language is within quotation marks. For example: [*insert language specific to local needs such as* "option 1" *or* "option 2"].

Agreement

EXAMPLE LAND USE RESTRICTION AGREEMENT

between

[*name of local government*]

and

[*name of real property owner*]

This land use restriction agreement (hereinafter "this Agreement") is made and entered into as of this [*day of month*] day of [*month*], [*year*] (hereinafter "Effective Date") by and between [*name of local government*], a political subdivision of the State of Florida (hereinafter "Local Government"), and [*name of real property owner*], a [*state and corporate form*] for itself and its successors, assigns, and agents (hereinafter "Owner").

Recitals

WHEREAS, Owner is the owner in fee of that certain real property located in [*name of local government*], Florida, as legally described in Exhibit A attached hereto and incorporated herein by reference (hereinafter "the Property"); and

WHEREAS, Local Government has zoned the Property for commercial, industrial, or mixed-use development; and

WHEREAS, pursuant to Florida Statutes sections [*select one:* "125.01055(7)–(8)" *for a county or* "166.04151(7)–(8)" *for a city*] Local Government allows multifamily residential and mixed-use residential developments on land zoned for commercial, industrial, or mixed-use if at least 40 percent of the residential units in the development are, for a period of at least 30 years, affordable as defined in Florida Statutes section 420.0004; and

WHEREAS, Owner seeks to develop a multifamily residential or a mixed-use residential development on the Property; and

WHEREAS, in compliance with Florida Statutes sections [*select one:* "125.01055(7)–(8)" *for a county or* "166.04151(7)–(8)" *for a city*], Owner seeks to restrict at least 40 percent of the total number of residential units to be developed on the Property to be affordable as defined herein; and

WHEREAS, in compliance with Florida Statutes sections [*select one:* "125.01055(7)–(8)" *for a county or* "166.04151(7)–(8)" *for a city*], Owner and Local Government wish to ensure that the restricted units are affordable for a period of not less than 30 years, regardless of any subsequent changes in ownership of the Property.

NOW, THEREFORE, in consideration of the mutual covenants and undertakings set forth herein, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, Local Government and Owner do hereby contract and agree as follows:

Article 1. Recitals

The recitals set forth above are true and correct and incorporated into this Agreement by reference.

Article 2. Definitions

Unless otherwise expressly provided herein or unless the context clearly requires otherwise, the following terms have the respective meanings set forth below.

"Adjusted gross income" means all wages, assets, regular cash or noncash contributions or gifts from persons outside the eligible household, and such other resources and benefits as may be determined to be income by the United States Department of Housing and Urban Development, adjusted for family size, less deductions allowable under section 62 of the Internal Revenue Code.

"Affordability period" means the period of time that begins on the day [*name of local government*] issues the first certificate of occupancy for Project and ends 30 years following the day [*name of local government*] issues the last certificate of occupancy for Project.

"Affordable" means that costs (including rent, utilities, and all mandatory charges) do not exceed 30 percent of the adjusted gross annual income of a household earning 120 percent of the median annual adjusted gross income in Florida or within [*insert* "the metropolitan statistical area" *or, if not within a metropolitan statistical area, insert name of county*].

"Affordable unit" or "affordable units" means the dwelling units for which cost is affordable to an eligible household. The affordable units do not need to be the same dwelling units throughout the affordability period. Instead, which dwelling units are affordable units may change over time.

"Dwelling units" means the residential rental units within the Project, including the affordable units.

"Eligible household" means one or more natural persons, the total annual adjusted gross income of whom does not exceed the greater of (1) 120 percent of the median annual adjusted gross income for households within the state, or (2) 120 percent of the median annual adjusted gross income for households within [*insert* "the metropolitan statistical area" *or, if not within a metropolitan statistical area, insert name of county*], who rent and actually occupy an affordable unit.

"Project" means the multifamily residential or mixed-use residential development on the Property.

Article 3. Use and occupancy of the Property

Section 3.1. Owner responsible for compliance with these restrictions. Owner must ensure use of the Property complies with the use and occupancy restrictions in this article throughout the affordability period. These restrictions are covenants that run with the land throughout the affordability period and are binding on Owner.

Section 3.2. Use requirement. Owner must develop and maintain Project as a multifamily residential or a mixed-use residential rental housing development. If the Project is a mixed-use residential development, at least 65 percent of the total square footage of the development must be used for residential purposes. Owner must rent at least 40 percent of the dwelling units to eligible households at a cost that is affordable.

Section 3.3. Minimum number of affordable units. Local Government approves [*insert the number of dwelling units Local Government approves in Project*] dwelling units. Throughout the affordability period, the number of affordable units must equal at least the lesser of (1) [*the number of dwelling units Local Government approves in Project times 0.4 and rounded up to the nearest whole number*] or (2), if Owner has not constructed the total number of dwelling units Local Government approves, the actual number of dwelling units existing.

Section 3.4. Certificates of occupancy. Owner will not apply for, and Local Government will not approve, a certificate of occupancy for a dwelling unit if Project does not include the number of affordable units Section 3.3 requires.

Section 3.5. Owner responsible for income verification. For each affordable unit, the Owner is responsible for determining and verifying the adjusted gross income of prospective tenants to ensure tenants renting and actually occupying an affordable unit constitute an eligible household.

Section 3.6. Affordable rents. The cost of an affordable unit must be affordable to an eligible household.

Section 3.7. Affordable units must be comparable to other dwelling units. The Owner must intermix affordable units with, and not segregate affordable units from, the other dwelling units in Project. Throughout the affordability period the affordable units must be

comparable to other dwelling units in quality, in features, in size, in number of bedrooms, and in access to common amenities.

Section 3.8. No conflict of interest. Neither Owner nor a person related to or affiliated with Owner may occupy an affordable unit.

Section 3.9. No subleasing. Owner must ensure no person renting an affordable unit sublets the affordable unit or assigns the rental agreement for the affordable unit.

Article 4. Compliance monitoring

Section 4.1. Required recordkeeping. Owner must maintain complete and accurate income records pertaining to each eligible household occupying an affordable unit. Owner must update these records annually and must maintain these records throughout the affordability period. At a minimum, Owner must maintain the following records:

a. each eligible household's complete application for tenancy and related information including the name, proof of identity, employment, income, and asset information of each member of the eligible household;

b.a copy of the lease agreement showing the term of tenancy, showing the cost, and identifying each tenant residing in the affordable unit;

c. documents verifying that the tenants of each affordable unit constitute an eligible household;

d. documents verifying that the cost of each affordable unit is affordable to the eligible household renting and actually occupying the affordable unit; and

f. descriptive information about each dwelling unit including which dwelling units are affordable units, floorpans showing the number of bedrooms within and the size of each dwelling unit, the estimated cost of utilities for each dwelling unit, and what amenities Owner provides to the tenants occupying each dwelling unit.

Section 4.2. Annual reporting. Throughout the affordability period, Owner must provide Local Government an annual report to the ["county" *or* "city"] manager by [*date parties select*] of each year. The annual report must provide the following information regarding each affordable unit—

a. the unit address;

b. the number of people residing in the affordable unit;

c. the adjusted gross income of the people residing in the affordable unit;

d. the monthly cost of the affordable unit; and

e. any other information the Local Government timely requests that Local Government reasonably requires to ensure Owner is complying with this Agreement.

Section 4.3. Records inspection. Owner must permit Local Government to inspect all records this Agreement requires Owner to maintain including, but not limited to, financial statements and rental records pertaining to affordable units. Local Government may inspect records in person or virtually. Local Government will provide reasonable notice of its intent to inspect records. Owner may limit inspection to normal working hours. Owner must submit to Local Government copies of records Local Government requests and reasonably requires to ensure Owner is complying with this Agreement.

Section 4.4. Housing quality standards inspection. Local Government may, from time to time, make or cause to be made a housing quality standards inspection of the Property to determine whether Owner is complying with this Agreement. Local Government will provide reasonable notice to Owner of its intent to inspect the Property. Owner must make any and all necessary arrangements to facilitate Local Government's inspection.

Section 4.5. Monitoring fee. The Local Government will annually provide Owner a written fee statement showing Local Government's actual cost to monitor whether Owner is complying with this Agreement. Owner must pay the the Local Government the amount the fee statement shows within 30 days of receiving the fee statement. Owner failing to timely pay the amount the fee statement shows violates this Agreement.

Article 5. Enforcement and remedies

Section 5.1. Local Government entitled to remedies. If Owner violates any of the terms and conditions of this Agreement or breaches a restriction, warranty, covenant, obligation or duty set forth herein, and if such violation or breach remains uncured for a period of 30 days after written notice thereof, Local Government may, in its sole discretion, to any or all of the remedies in this article.

Section 5.2. Local Government may allow additional time to cure breach. If Local Government determines that Owner has taken and diligently continues corrective action and that Owner cannot correct the breach within a 30-day period, Local Government may, in its sole discretion, allow Owner up to 6 months after first notice to cure the breach.

Section 5.3. Local Government may pursue judicial remedy. Local Government may institute and prosecute any proceeding at law or in equity to abate, prevent, or enjoin any such violation or attempted violation and to compel specific performance. Local Government will be entitled to recover its costs and expenses and reasonable attorneys' fees in any such judicial proceeding where the Local Government prevails.

Section 5.4. Local Government may require quarterly reporting. The Local Government may require the Owner to provide the Local Government with a quarterly report meeting the standards of the annual report this Agreement requires for so long as the Local Government deems reasonable and necessary.

Section 5.5. Supplemental monitoring fee. In the event that the violation or breach requires Local Government to conduct supplemental monitoring of whether Owner is complying

with this Agreement, Local Government may, in its sole discretion, require Owner to pay to Local Government a supplemental monitoring fee equal to the Local Government's actual cost to conduct supplemental monitoring. This supplemental monitoring fee will be in addition to, and distinct from, any reimbursement of costs and legal fees to which Local Government may be entitled as a result of judicial enforcement action and any fines payable to Local Government and Owner must pay the supplemental monitoring fee without regard to whether Local Government undertakes or succeeds in judicial enforcement or code enforcement activities. Local Government's rights to conduct and to receive compensation for supplemental monitoring will extend for two years following the most Owner breach of this Agreement. If Local Government requires Owner to pay a supplemental monitoring fee, Local Government will submit written fee statements to Owner on a quarterly basis which Owner must pay within 30 days of receipt.

Section 5.6. Owner must reimburse eligible households for overcharges. In the event that Owner charges rent to an eligible household that exceeds the amount that is affordable, Owner must reimburse the eligible household for the amount overcharged either in a lump sum, or by discounting the rent on the affordable unit over the remainder of the lease term. In the event that Owner cannot reimburse the eligible household, Owner may pay the amount overcharged to Local Government.

Section 5.7. Owner must increase the number of affordable units if it fails to provide the number this Agreement requires. In the event that Owner fails to provide at least the number of affordable units this Agreement requires, Owner must increase the number of affordable units Owner provides in the Project by the number of affordable units the Owner failed to provide. Owner must provide the additional affordable units for the longer of (1) the amount of time Owner failed to provide the required number of affordable units or (2) one year.

Section 5.8. Local Government may enforce this Agreement using code enforcement process. Local Government approved Project pursuant to Florida Statutes sections [*select one:* "125.01055(7)–(8)" *for a county or* "166.04151(7)–(8)" *for a city*] in reliance upon Owner's promise to comply with this Agreement. A breach of this Agreement violates development standards the state of Florida and Local Government have adopted and the terms of Local Government's development approval for Project. Local Government may, in its sole discretion, enforce Owner compliance with this Agreement through the Local Government Code Enforcement Boards Act or any locally-adopted code enforcement process including by imposing fines on Owner up to the maximum amount allowed by law, attaching a lien to the Owner's real property, and foreclosing on the code enforcement lien. Owner consents to Local Government's authority to enforce the terms of this Agreement though code enforcement processes.

Section 5.9. Local Government may enforce this Agreement against any party with an interest in Project at time of violation. The enforcement provisions within this article apply to the land, run with the land, and are enforceable against Owner and any other person or

entity that has or had an ownership interest in the Property at the time of a violation or attempted violation of this Agreement.

Section 5.10. Failure to enforce not waiver. Any failure by Local Government to enforce this Agreement is not a waiver of Local Government's right to do so thereafter.

Article 6. Covenants run with the land

Section 6.1. Covenants run with the land. All conditions, covenants, and restrictions contained in this Agreement are covenants running with the land, and will, in any event, and without regard to technical classification or designation, legal or otherwise, be, to the fullest extent permitted by law and equity, binding for the benefit and in favor of, and enforceable by Local Government its successors and assigns, against Owner, its successors and assigns, to or of the Property or any portion thereof or any interest therein, and any party in possession or occupancy of said Property or portion thereof. Each and every contract, deed, or other instrument hereafter executed covering or conveying the Property or Project or any portion thereof or interest therein will conclusively be held to have been executed, delivered and accepted subject to such covenants, reservations and restrictions, regardless of whether such covenants, reservations and restrictions are set forth in such contract, deed or other instruments. If a portion or portions of the Property or Project are conveyed, all of such covenants, reservations and restrictions will run to each portion of the Property or Project.

Section 6.2. Notice of intent to sell or otherwise transfer the Property and subsequent transfer. Owner agrees to provide written notice to Local Government upon an intent to sell or otherwise transfer the Property. In the event of a sale or transfer of ownership of the Property, Owner agrees to provide written notice to Local Government with contact information regarding the purchaser. Local Government will coordinate with any successors and assigns to ensure the Owner's use of the Property continues to comply with this Agreement.

Article 7. Recording, effective date, and duration

Section 7.1. Recording. Owner must cause this Agreement to be recorded in the Official Records of [*name of county*], Florida at Owner's sole expense. Owner must provide a certified copy of this Agreement as recorded to Local Government within 10 days of the Effective Date. Local Government must not issue a building permit for the Project before Local Government receives a certified copy of this Agreement as recorded.

Section 7.2. Effective date. This Agreement is effective as of the Effective Date.

Section 7.3. Duration. This Agreement will remain in effect throughout the affordability period.

Article 8. Miscellaneous provisions

Section 8.1. Notice. All notices which Local Government and Owner may give pursuant to this Agreement must be in writing and must be delivered by personal service or by certified mail return receipt requested addressed to the parties at their respective addresses as indicated below or as the Local Government or Owner may state in writing from time to time.

[*Local Government address*]

[*Owner address*]

Section 8.2. Severability. If any provision hereof is found invalid, illegal, or unenforceable, the validity, legality and enforceability of the remaining portions hereof will not in any way be affected or impaired thereby.

Section 8.3. Disclaimer against development agreement. This Agreement is not intended to be, and indeed is not, a "development agreement" within the meaning of Florida Statutes sections 163.3220–163.3242. Municipal annexation or contraction impacting any portion of the Property does not terminate, modify or otherwise affect the rights or obligations of Local Government or of Owner under this Agreement.

Section 8.4. Entire agreement. This Agreement together with exhibits attached hereto embodies the entire agreement and understanding between the parties and no other agreements and/or understandings, oral or written, with respect to the subject matter hereof, exist that are not merged herein and superseded hereby.

Section 8.5 Venue and governing law. Local Government and Owner covenant and agree that any and all legal actions arising out of or connected to this Agreement must be instituted in the Circuit Court of the [*appropriate state circuit court*] in and for [*name of county*], Florida, or in the United States District Court for the [*appropriate federal district*] District of Florida, as the exclusive forums and venues for any such action, subject to any right of either party to removal from state court to federal court, which is hereby reserved, and each party further covenants and agrees that it will not institute any action in any other forum or venue and hereby consents to immediate dismissal or transfer of any such action instituted in any other forum or venue. This Agreement is entered into within, and with reference to the internal laws of, the State of Florida, and will be governed, construed, and applied in accordance with the internal laws (excluding conflicts of law) of the State of Florida.

IN WITNESS HERETO, the parties herein have caused this Agreement to be executed at the place and on the day specified hereinabove.

[*signature block.*]