



Staff Report

File #: LN-465

PLANNING AND ZONING BOARD

Meeting Date: JUNE 28, 2023

AFFORDABLE HOUSING RELATED POLICY AND CODE AMENDMENTS

Request:	Proposed Policy and Text Amendments
P&Z#	N/A
Owner:	N/A
Project Location:	N/A
Folio Number:	N/A
Land Use Designation:	N/A
Zoning District:	N/A
Commission District:	N/A
Agent:	N/A
Project Planner:	Jean Dolan (954-786-4045 / jean.dolan@copbfl.com)

Background and 2023 Calculation:

In September of 2013, the City Commission directed the City Manager to have staff hire a consultant to develop a standard in lieu of fee methodology for affordable housing buyouts. This was accomplished and the resulting fee of \$2,333 was developed based on a “gap analysis” which looks at the difference between what families making 60% of median income can afford and the average market price per unit based on a 3-year average. At that time, the total “gap” was \$15,556 per affordable unit (which when multiplied by 15% equates to the \$2,333 fee for every unit versus \$15,556 for just the 15% affordable units). This in lieu fee was then adopted in Chapter 154 via Ordinance 2014-19.

The same methodology has been applied to the average market price presented in the 2021 Lambert Affordable Housing Study which included a market analysis from the first quarter of 2021. The re-evaluation of the in lieu fee using 2022 median income, 2021 median sales price and current interest rates results in an in lieu fee of \$27,708 per unit (total gap between “affordable” and median sales price is \$184,720).

Though median income increased 46% between 2013 and 2022, the median price of for-sale housing increased 84% and interest rates increased 44% in the same period. The increased percentage of the affordable monthly payment that must be used for taxes and insurance has also increased significantly further reducing the amount of an affordable mortgage. The resulting gap between affordability and the housing market, therefore, increased over 10 fold.

Areas That Could Buyout:

The map of our ½ mile buffer areas where we require mixed income housing (no more than 50% deed restricted affordable) is attached. With the exception of the Downtown Pompano Transit Oriented Corridor

(DPTOC) and the East Transit Oriented Corridor (ETOC), within these circles, the buyout is not applied because no affordable housing is required. This removes a large percentage of the City from ever having to consider paying a buyout fee.

Within the two transit oriented corridors, every project is required to provide some affordable housing and could still consider buying out. To date, the average project size in the Downtown and ETOC is 167 units. The buyout for this average size project would be \$4.6+ million based on the \$27,708 per unit buyout. It is unlikely any developer could afford to buyout at this amount. If the Applicant was committed to buying out but needed a lower in lieu of fee, they could use County Policy 2.16.4 for their mixed use project in either of the TOCs and then buyout of the affordable for \$10,000 per unit (established by the County in Policy 2.16.4). The City would receive half of this buyout amount and the County would receive the other half (167 units X 10,000 = \$1.67 million).

Excluding the TOCs, Citi Center residential and the LIVE! project residential, all of which have 15% affordable requirements through their individual land use plan amendments, only those projects that:

- (1) request 50 or fewer flex or redevelopment units; and
- (2) are located outside the ½ mile buffer areas; and
- (3) are not eligible for or not required to use County Policies 2.16.3 or 2.16.4;

will be subject to affordable housing requirements that can be bought out. This greatly reduces the number of projects that will have the option to buyout using the City's buyout fee.

Expected Outcome and Trade-Off:

The outcome of raising the buyout fee to \$27,708 per unit may eliminate all revenue into the Affordable Housing Trust Fund from this revenue source. Our mixed income housing regulations have already limited the revenue potential from the in lieu of fee source because we require the use of policy 2.16.3 as a condition of receiving flex units whenever a project is eligible. For example, the two market rate projects that required flex units that would have bought out their affordable requirement if we did not require the use of Policy 2.16.3 (Gateway and 2050 MLK) would have paid a total of \$907,537 into the Affordable Housing Trust Fund at the current in lieu fee of \$2,333 per unit. Because of our required use of Policy 2.16.3, however, we will have 57 moderate income housing units built instead of the single-family homes that OHUI would have built if those funds were deposited into the Affordable Housing Trust Fund.

The trade-off, therefore, of requiring the use of the County's mixed income policies while also raising the affordable housing in lieu fee is we will get more affordable, moderate income units built but it is unlikely any of them will be single-family homes built with the help of the City's Affordable Housing Trust Fund.

Recommendations

To mitigate the impact of raising the in lieu fee, the following approach is recommended:

- (1) Expand the current flex policy to require the use of 2.16.3 and 2.16.4 to include the Downtown and ETOC - this has two benefits, it reduces the expectation of a buyout and increases the number of affordable units built while also reducing the number of units taken from the limited basket of rights related to these two transit oriented districts.

(2) Adopt the County's in lieu fee (per Policy 2.16.4) of \$10,000 per unit escalated 3% annually on January 1st of each year - this approach has several benefits, it provides a lower in lieu fee than that based on the "gap" methodology; it mirrors the County's approach and thus is defensible on multiple levels; and it is automatically increased annually without staff intervention or City Commission action.

(3) Apply the updated in lieu fee to projects approved after September 30, 2023. This makes the rule "prospective" which is legally "safer" than making it retroactive to include already approved projects. This also provides a phasing out of the revenue stream to the AHTF from this source. This vests projects such as KOI and WH Pompano which are partially built and have already paid the \$2,333 in lieu fee for a majority of their total units. It also vests project such as: LIVE!, Hillsboro Shores, Hidden Harbor, and Falcone (Wabash). A total of 1,356 units plus the up to 4,000 units that could be built at LIVE! will remain eligible for the in lieu fee in place when their development orders were issued.

The proposed policy and code amendments to implement these recommendations are attached.

Recommended Motion

The Planning and Zoning Board recommends approval of the amendment to Chapter 154 to increase the affordable housing in lieu fee to \$10,000 escalated 3% annually on January 1st of each year for projects eligible to buyout of affordable housing requirements and to adopt a policy and associated code changes to require the use of the County mixed income housing density bonus policies 2.16.3 and 2.16.4 in the ETOC and DPTOC.

Payment-in-Lieu Calculations:**Pompano Beach, FL****Income Target**

MFI (Median Family Income)	120%
Max Income	\$98,520
mid Range/Target income (60% MFI)	\$49,260

Affordable Price

Affordable monthly payment (30%)	\$1,232
Affordable principal and interest (50% of pmt)	\$616
HOA, prop taxes, insurance (50% of pmt)	\$616
Mortgage Interest rate	6.50%
Max mortgage	\$97,418
Max Affordable Price (5% down)	\$102,546

MARKET-AFFORDABILITY GAP**Market Price (2017 sales)**

Market Price per SF	\$238
Avg Unit Size	1,207
Market Price per Unit	\$287,266

Market-Affordability Gap/Fee

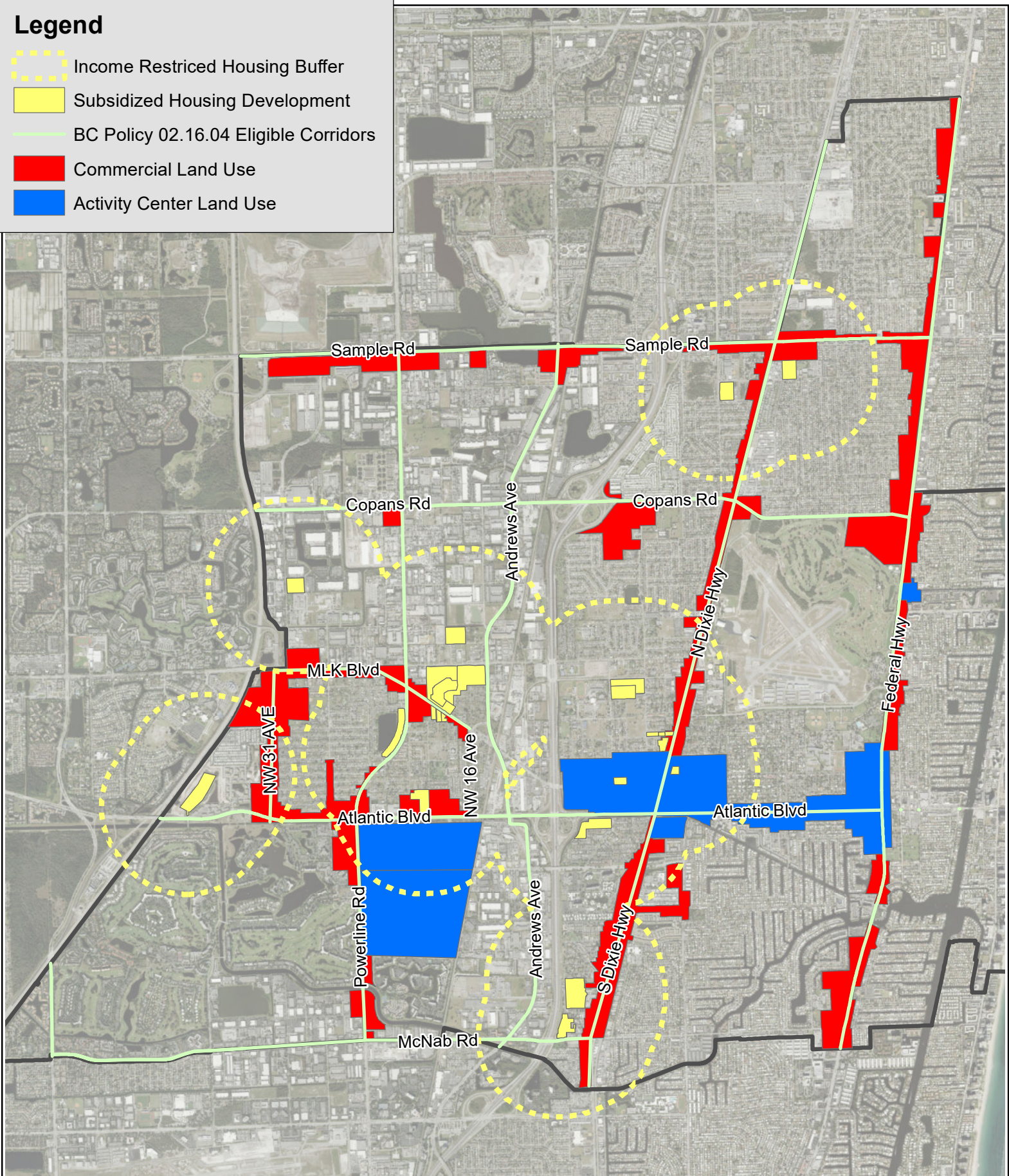
per Unit	\$184,720
per Square Foot per unit	\$153.04
per non-affordable unit (based on 15% inclusionary requirement)	\$27,708
per SF per non-affordable unit (15% inclusionary requirement)	\$22.96

Income Restricted Housing, Land Use, and Corridors Analysis Map

Map Updated: January 05, 2023

Legend

-  Income Restrictd Housing Buffer
-  Subsidized Housing Development
-  BC Policy 02.16.04 Eligible Corridors
-  Commercial Land Use
-  Activity Center Land Use



AFFORDABLE HOUSING CONTRIBUTIONS

§ 154.80 PROVISION OF REQUIRED AFFORDABLE HOUSING.

(A) In lieu of providing affordable housing units on-site or off-site as required by regulations within [Chapter 154 and Chapter 155](#) (Zoning) or pursuant to a land use plan amendment, a property owner may elect to contribute a fee in lieu of to be deposited into the city's Local Affordable Housing Trust Fund. If this in lieu of option is taken for the allocation of flex or redevelopment units approved after September 30, 2023, the in lieu of fee, \$10,000 per unit (except for those units required to be non-income restricted pursuant to § [154.61\(F\)\(3\)\(i\)](#)), will apply to every flex and redevelopment unit allocated to the project that is not classified as affordable in accordance with the definitions in § [154.60](#). All flex units allocated before September 30, 2023 that opt to buyout of any income-restriction applicable at the time of approval will pay \$2,333 for every flex unit allocated.

(B) For projects within an area that is subject to affordable housing requirements established through a Broward County Land Use Plan Amendment process approved after September 30, 2023, the in lieu of fee to be paid to the city shall be \$2,333 \$10,000 per market-rate unit. If affordable units will be provided, they will meet the definition of affordable housing provided in § [154.60](#) and deed restricted to the proposed range of affordability for a ~~45-year~~ 30-year period. All project's subject to affordable housing requirements established through a Broward County Land Use Plan Amendment process approved before September 30, 2023 that opt to buy-out will pay \$2,333 per non-income restricted unit.

(C) Projects granted density bonuses, in association with the Broward County Administrative Policy 2.16.3 and 2.16.4 must comply with the fees and standards of the Broward County policy which include a deed restriction of 30 years.

(D) The city's in-lieu fee associated with flex and redevelopment units and Comprehensive Plan amendments that were subject to county policy 2.16.2, shall be paid to the city at the time of building permit.

(E) The city's \$10,000 in lieu fee per (A, B and D) above shall be reviewed a minimum of once every three years. The fee may be adjusted by the City Commission to reflect updated housing sales costs, development costs, land values, interest rates and other considerations. increased by 3% on every January 1st after adoption.

**East Transit Oriented Corridor (ETOC) and Downtown Pompano Transit Oriented Corridor
(DPTOC) Policy Regarding Use of County Policies 2.16.3 and 2.16.4**

June, 2023

The County adopted, and later modified, two policies, 2.16.3 for multifamily residential projects and 2.16.4 for mixed use projects on major arterial roadways and in Activity Centers. Municipalities can use these policies to generate residential entitlements much in the same way flex/redevelopment units are used except they require a modest percentage of the units to be deed restricted to remain affordable (income restricted) for 30-years.

The City has a limited number of units in the basket of rights for the ETOC and the DPTOC, both of which require 15% of each project to be affordable or the Applicant is required to buy-out of that requirement using the City's in-lieu-fee. When the City requests additional entitlements for either or both of these two districts, it will be beneficial if we can document how the City has implemented the County's mixed income housing policies (2.16.3 and 2.16.4) within these Activity Centers.

To use our the remaining residential development rights in these two districts wisely while ensuring the use of the County's affordable housing policies 2.16.3 and 2.16.4, the City adopts the following policy:

POLICY

Projects requesting 7 units or more in the ETOC and the DPTOC must use policy 2.16.3 or 2.16.4 to generate their requested development rights. The minimum 15% affordable housing based on the associated land use plan requirements will still apply. The requirement to use policies 2.16.3 or 2.16.4 in the ETOC and the DPTOC can be waived at the City Commission's discretion at a duly noticed public hearing. Any project choosing to use policy 2.16.3 will be allocated the affordable units from the basket of rights and the remaining entitlements will be bonus units per the formula in 2.16.3 (however, the 15% affordable minimum will apply to the moderate income unit density bonus formula). Projects using 2.16.4 will have 100% of their units granted through this mixed use policy but the 15% affordable minimum will still apply to the moderate income unit density bonus formula.

Advantages of this policy:

- (1) Increases the number of projects supported by and lengthens the life of the current residential basket of rights in these two districts;
- (2) Increases the supply of both market rate and affordable housing while remaining consistent with the city's mixed-income housing policy designed to deconcentrate poverty;

(3) The use of County policies 2.16.3 and 2.16.4 supports future County land use plan amendments to add additional residential entitlements to accommodate future phases of these two Activity Centers;

(4) The waiver provision gives the City Commission flexibility to use the basket of rights rather than 2.16.3 or 2.16.4 for any project if there are compelling reasons to do so.

POLICY 2.16.3

- (1) Bonus residential density may be allocated to facilitate the development of affordable housing for persons within the following income categories as defined in the Broward County Land Use Plan:

- Moderate-income persons having a total annual anticipated income for the household that does not exceed 120 percent of the median annual income adjusted for family size for households within the county.*

- Low-income persons having a total annual anticipated income for the household that does not exceed 80 percent of the median annual income adjusted for family size for households within the county.*

- Very-Low income persons having a total annual anticipated income for the household that does not exceed 50 percent of the median annual income adjusted for family size for households within the county.*

*While occupying a rental unit, annual anticipated gross income may increase to an amount not to exceed 140 percent of the applicable median income adjusted for family size.

- (2) Bonus Formulas

Moderate-income: Six (6) bonus units per every one (1) “moderate-income” unit (including areas east of the Intracoastal Waterway).

Low-income: Nine (9) bonus units per every one (1) “low-income” unit (including areas east of the Intracoastal Waterway).

Very-Low-income: Nineteen (19) bonus units per every one (1) “very-low-income” unit (including areas east of the Intracoastal Waterway).

- (3) Affordable housing density bonuses are conditioned on the developer or purchaser providing, in a manner acceptable to the affected unit of local government, guarantees, as a minimum, through the use of restrictive covenants, that the affordability of the bonus units for the affordable income groups described above will be maintained for a period of at least thirty (30) years for rental housing and at least thirty (30) years for owner occupied housing.
- (4) The total number of units, including affordable and bonus units, on lands designated as “Residential” may not exceed a maximum of 50 dwelling units per acre on the Broward County Land Use Plan. For parcels designated “Commerce” or similar designation on the local land use plan map, these maximum densities shall not be applicable. If the total density, including the affordable and bonus units, exceeds the density permitted by the existing zoning classification, the governing body of the local government shall make a finding of compatibility with existing and future land uses and its local land development

regulations at a publicly noticed meeting, consistent with its notification requirements; otherwise, the local planning agency of the local government may make the finding of compatibility at a publicly noticed meeting, consistent with the above.

- (5) At the time of allocation of bonus density, the applicable local government must make a finding that adequate public facilities and services are in place or will be in place with completion of project construction, to accommodate all bonus and affordable units.
- (6) Allocations of bonus residential density do not require an amendment to the Broward County Land Use Plan or local land use plan.
- (7) Units of local government may utilize the Bonus Density provisions regardless of whether such provisions are incorporated within their certified local land use elements. This Policy is discretionary upon the local government and does not create any entitlements to the bonus units. Allocation of the bonus units requires authorization of the local government at a publicly noticed meeting, consistent with its notification requirements, of the governing body or, when the total density, including affordable and bonus units, does not exceed the density permitted by the existing zoning classification, by the local planning agency.
- (8) By January 31 of each year, an official of each local government shall transmit to the Planning Council an annual report providing tables reflecting bonus density units allocated.
- (9) “Affordable” unit and bonus unit construction is subject to the following, as enforced by the applicable local government:
 - a. One hundred percent (100%) of “affordable” units must receive certificates of occupancy before the final fifty percent (50%) of bonus units receive their certificate of occupancy; or
 - b. The local government must require that “affordable” units are available before or concurrently with bonus units.
- (10) This Policy is incentive-based and units of local government may be more restrictive and are not required to adopt, utilize or implement the above referenced bonus formulas.

POLICY 2.16.4 Within parcels located west of and including US 1*, and designated “Commerce” on the Broward County Land Use Plan and fronting with direct access to a roadway classified as a State road, County arterial, per the Broward Highway Functional Classification map, or other road or portion thereof, as approved by the Board of County Commissioners, herein after referred to as a “Qualified Road,” or within a parcel designated “Activity Center,” multi-family residential use is permitted in addition to that permitted otherwise in those designations by this Plan, subject to the following:

(1) One or more of the affordable housing categories, as defined by this Plan, must be a component of the residential development based on the following “bonus” units to “affordable” unit formula(s) described below:

(a) Moderate income: six (6) bonus units for every (1) one moderate income unit.

(b) Low income: nine (9) bonus units for every (1) one low income unit.

(c) Very-low income: nineteen (19) bonus units for every (1) one very-low income unit.

(2) (a) Each required affordable housing unit must be no smaller than ten percent (10%) less than the average gross floor area of each bonus unit corresponding type (i.e., one-bedroom, two-bedroom, three-bedroom, etc.) in the development project; or

(b) The number of bedrooms/bathrooms provided in the affordable units must be proportional to the number provided in the bonus units type (i.e., one-bedroom, two-bedroom, three-bedroom, etc.).

(3) Single-family dwelling units are not permitted. Residential units shall not be permitted on the ground floor portion of any building that fronts a Qualified Road. As per Policy 2.2.5 of the Broward County Land Use Plan, studio or efficiency housing units, no greater than 500 square feet in size, may be counted by the local government as 0.5 dwelling units for residential density purposes.

(4) These additional permitted residential density provisions are conditioned on the developer or purchaser providing, in a manner acceptable to the affected unit of local government, guarantees, at a minimum through the use of restrictive covenants, that the affordable unit(s) will be maintained as affordable to the applicable designated income group(s) for a minimum period of thirty (30) years.

(5) Within a development containing residential units, the following shall apply:

(a) Office and commercial use may either be vertically or horizontally integrated providing the following:

1. At least fifty percent (50%) of the ground floor of any portion of a building or development, excluding ingress and egress, facing a Qualified Road shall provide office and/or commercial uses;
2. Portions of a development not facing a Qualified Road within an Activity Center is not required, but encouraged, to provide for office and/or commercial uses.

(b) On parcels greater than five (5) acres, a minimum of ten percent (10%) of the gross floor area, excluding parking garages, must be reserved or utilized for office and/or commercial uses not ancillary to the residential units.

(6) “Affordable unit” requirements may be satisfied via an in-lieu payment to the Broward County Affordable Housing Trust Fund** equal to \$10,000 per unit for the total number of units within the development which sum shall increase by 3% annually.

(7) Units of local government may utilize the additional permitted residential density provisions described in this Policy, at their option, regardless of whether such provisions or conflicting provisions are incorporated within their certified local land use plan elements and utilization of these provisions does not require an amendment to the Broward County Land Use Plan map or local land use plan map.

(8) Local government utilization of the additional permitted residential density provisions described in this Policy is subject to the following, as enforced by the applicable local government: (a) One hundred percent (100%) of the “affordable” units shall be available for occupancy before the final twenty-five percent (25%) of bonus units are available for occupancy.

(9) In addition to the provisions of this Policy, parcels designated “Commerce” and meeting the location, frontage, and access requirements of this Policy or within an Activity Center, where the residential development will be located within ¼ mile of a State road, County arterial, or other road or portion thereof, as approved by Board of County Commissioners (“Board”), the Board shall consider the following in the review of funding applications submitted by local governments for future public infrastructure and economic development projects:

(a) Local government adoption of this Policy into the municipal Comprehensive Plan;

(b) Local government adoption of specific regulations, in the municipal zoning and/or land development code, to allow allocation of additional residential density units as a permitted use, by right, within specific zoning district(s);

(c) Local government adoption of specific regulations to implement the provisions and criteria of this Policy, including:

1. Establishment of a minimum net residential density of twenty-five (25) dwelling units per acre;

2. Where a building is located within 100 feet of any parcel which prohibits, through the applicable zoning regulations, residential development of ten (10) dwelling units per gross acre or more, the local government may establish a maximum building height limit of not less than five (5) stories; and

3. The zoning regulations that establish reduced on-site parking to accommodate the mixed uses.

(d) The Urban Planning Division, in consultation with the Office of the County Attorney, must certify that all the foregoing requirements of this Section (9) have been satisfied.

(10) Units of local government may be more restrictive and are not required to adopt, utilize or implement the above referenced Policy.

* includes all parcels that front and have direct access to US 1 and, at the option of the applicable municipality as a permitted or special exception use, on parcels east of US 1 and west of the Intracoastal Waterway, provided the municipality makes a finding that the additional dwelling units

on said parcels will not negatively impact hurricane evacuation clearance times and/or emergency shelter capacities. A local government is not required to apply this Policy to properties east of US 1 in order to be eligible for funding consideration by the Board of County Commissioners pursuant to Section (9) herein.

** Fifty percent (50%) of in lieu fees may be paid into an Affordable Housing Trust Fund of the applicable municipality, provided the municipality requires said monies to be used for the construction of new affordable units or home repair. All in-lieu payments shall be made at the time of issuance of building permit.

155.3709

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K. Affordable Housing

The ETOC land use plan amendment created 2,399 new residential units and a minimum of 15% of those units (360 units) are required to be affordable or to contribute to the implementation of the city's policies, methods and programs to achieve and/or maintain a sufficient supply of affordable housing in the city. The city has adopted a policy to require the use of the County's mixed income housing density bonus policies 2.16.3 or 2.16.4 for any project in the ETOC with 7 or more units. This requirement can only be waived by the City Commission in a duly noticed public hearing.

The city may apply to new housing projects one or a combination of the following affordable housing strategies, without limitation:

1. Each residential development may be required to set aside a minimum of 15% of their proposed units as affordable housing to provide all or a portion of the required 360 affordable housing units as vertically integrated affordable housing; or

2. If the project is awarded their entitlements from the District's basket of rights, Until such time as all 360 affordable housing units have been provided, each residential development shall contribute in-lieu-of fees per Code of Ordinances, [Chapter 154](#) (Planning). These funds will be used to promote one or more of the following:

- (a) programs that facilitate the purchase or renting of the existing affordable housing stock;

- (b) programs which facilitate the maintenance of the existing supply of affordable housing;

- (c) programs which facilitate the use of existing public lands, or public land-banking, to facilitate an affordable housing supply;

- (d) other programs or initiatives designed and implemented by the city to address specific affordable housing market needs and challenges in the city that may arise, including but not limited to, strategies that reduce the cost of housing production; promote affordable housing development; prevent displacement; prevent homelessness; promote economic development; and promote transit amongst low-income populations.

3. If the project is awarded entitlements through Broward County policies 2.16.3 or 2.16.4, affordable housing will be provided as required by those policies as long as the minimum 15% of the units are affordable per the land use regulations. No buyout is allowed if using County Policy 2.16.3. The buyout if using County Policy 2.16.4 will be per that policy as it may be amended from time-to-time.

155.3708. K. Additional DPOD Standards

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4. Affordable Housing

Until such time as the 15% affordable housing requirements is met based on 15% of the total residential entitlements within the DPOD ~~as approved in Ordinance 2013-14~~ which may be amended from time to time, all new residential development in the DPOD which does not meet the definition of affordable housing per Code of Ordinances Chapter 154 (Planning), shall be required to implement the city's policies, methods and programs to achieve and/or maintain a sufficient supply of affordable housing in the DPOD. The city has adopted a policy to require the use of the County's mixed income housing density bonus policies 2.16.3 or 2.16.4 for any project in the DPOD with 7 or more units. This requirement can be waived by the City Commission in a duly noticed public hearing.

The City may apply to new housing projects one or a combination of the following affordable housing strategies, without limitation:

- a. A specific set-aside of all or a portion of 15% of the proposed units as vertically integrated affordable housing;
- b. If the project is awarded their entitlements from the District's basket of rights, the applicant may ~~contribute~~, through in-lieu-of fees as set forth in the City Code of Ordinances Chapter 154 (Planning):
 - i. to programs that facilitate the purchase or renting of the existing affordable housing stock;
 - ii. to programs which facilitate the maintenance of the existing supply of affordable housing;
 - iii. to programs which facilitate the use of existing public lands, or public land-banking, to facilitate an affordable housing supply;
 - iv. to other programs or initiatives designed and implemented by the city to address specific affordable housing market needs and challenges ~~in the TO-OP~~ that may arise including but not limited to, strategies that reduce the cost of housing production; promote affordable housing development; prevent displacement; prevent homelessness; promote economic development; and promote transit amongst low-income populations.
- c. If the project is awarded entitlements through Broward County policies 2.16.3 or 2.16.4, affordable housing will be provided as required by those policies as long as the minimum 15% of the units are affordable per the land use regulations. No buyout is allowed if using County Policy 2.16.3. The buyout if using County Policy 2.16.4 will be per that policy as it may be amended from time-to-time.