

CHAPTER G DENSITY BONUS PROGRAMS

The WHP, AHP or the TDR Program are the required methods for increasing density above the maximum density permitted by a property's FLUA designation within unincorporated PBC, unless an applicant can both justify and demonstrate a need for a Site Specific FLUA Amendment and demonstrate that the current FLUA designation is inappropriate, as outlined in [Art. 2.H, FLU Plan Amendments](#). [Ord. 2008-003] [Ord. 2010-005]

Section 1 Workforce Housing Program (WHP)

A. Purpose and Intent

The WHP implements HE Policies 1.1-o and 1.5-g of the Plan, among others, by establishing an Inclusionary WHP. The program mandates or encourages the development and equitable geographic distribution of workforce housing units for low, moderate 1 and Moderate 2, and middle-income households, ensures a minimum affordability period, and provides for a density bonus and other incentives. The program is intended to increase the supply of housing opportunities for persons employed in PBC in jobs that residents rely upon to make the community viable. [Ord. 2006-055]

B. Applicability

In cases of conflict between this Chapter and other Articles of this Code, the provisions of this Chapter shall apply. The WHP shall apply to all new developments with a residential component of 10 or more dwelling units. For existing projects proposing 10 or more dwelling units, the program shall apply to those units being added. Requirements and limitations are further defined in Table 5.G.1.B, Workforce Housing Program. [Ord. 2006-055] [Ord. 2010-005]

Table 5.G.1.B - Workforce Housing Program

Applicability		
Location:	Threshold	Required > or = to 10 residential dwelling units
	Tier or Overlay	U/S
	FLU (1)	LR-1, LR-2, LR-3, MR-5, HR-8, HR-12, HR-18, UC and UI
Density Bonus Incentive		
LR-1 thru LR-3		up to 30%
MR-5 thru HR-18 (2)		up to 100% (Pre-App required for > 30%)
UC or UI		N/A
Required % of WHP Units (3)		
Standard Density		5%
Maximum Density		16%
WHP Density Bonus		34%
UC or UI		15%
Required WHP Ranges (4)(6)		
Low (60-80%)		25%
Moderate 1 (> 80-100%)		25%
Moderate 2 (> 100-120%)		25%
Middle (> 120 or ≤ 140%)		25%
Provision of Units		
Option 1	Construct units off site. (Art. 5.G.1.G.1)	
Option 2	Purchase existing market rate units and deed to the County or sell to eligible households and deed restrict. (Art. 5.G.1.G.2)	
Option 3	Donate build-able land acceptable to the County in an amount = or > than the buyout cost. (Art. 5.G.1.G.3)	
Option 4	In-lieu Payment. (Art. 5.G.1.G.4)	
[Ord. 2006-055] [Ord. 2007-013] [Ord. 2010-005] [Ord. 2010-022]		
Notes:		
1.	Shall also apply to mixed use projects with applicable underlying FLU designations for Commercial and Industrial Mixed Use Development. [Ord. 2006-055]	
2.	A density bonus of > 30% shall be permitted subject to meeting the additional standards of Art. 5.G.1.H , Additional Requirements for > 30% Density Bonus. [Ord. 2006-055]	
3.	Percentages shall be rounded up to the nearest whole number. [Ord. 2006-055]	
4.	Based on County Median Income. Where assigning units to a category, priority may be given to middle income first, proceeding downward to low income (i.e. where 3 units are required, the first shall be middle [> 120 or ≤ 140%]; the 2 nd Moderate 2 [> 100-120%]; and, the 3 rd Moderate 1 [> 80-100%]). This does not prohibit allowing higher numbers of lower income units. [Ord. 2006-055] [Ord. 2007-013] [Ord. 2010-005]	
5.	All units not located on site shall comply with requirements of onsite units. [Ord. 2006-055] [Ord. 2010-005]	
6.	UC or UI applications: Consideration may be given to additional affordable housing household incomes in developments requesting all or a portion of the 15% unit requirement within their proposal be based on the programmatic requirements imposed by a governmental agency providing affordable housing funding or by an entity with programmatic requirements (e.g., Habitat for	

1. Exemptions

- a. Projects utilizing the AHP shall not be subject to the requirements of the WHP. [Ord. 2010-005]
- b. All congregate living facilities (CLFs); and, nursing or convalescent facilities. [Ord. 2006-055]

2. Limitations

WHP units shall not be subject to restrictions beyond income qualifications. [Ord. 2010-005]

3. Income Ranges

There are four targeted income range categories in the WHP pursuant to [Table 5.G.1.B, Workforce Housing Program](#). Applicants shall not be required to provide units in a category when the category price is greater than the median sales price for the County. These units would be eligible for the In-Lieu payment pursuant to [Art. 5.G.1.G.4, Option 4 – In Lieu Payment](#), or distributed equally among the remaining targeted income ranges. [Ord. 2010-005]

4. When WHP and AHP Units are Proposed

The Planning Director shall make a determination as to which program shall be followed when projects include units targeting both income groups. [Ord. 2010-005]

C. Development Options

1. No Incentives

A proposal requesting no additional WHP density bonus; TDR units; WHP - TPS special methodology mitigation; WHP expedited review; WHP site plan regulation options; or any additional WHP incentive shall comply with the following: [Ord. 2010-005]

- a. All dwelling units proposed shall be required to target households with incomes from 60 percent to 140 percent of AMI. [Ord. 2010-005]
- b. To be eligible no more than 90 percent of the total project units can be built within any one of the four targeted income categories; all other units must be built in any one, or any combination thereof, of the remaining three income categories. [Ord. 2010-005]
- c. All for sale units which includes attached and detached housing types shall be required to be income restricted for a period of 7 years (non-recurring) [Ord. 2010-005]
- d. All units within a rental development utilizing this development option will be required to be income restricted for a period of 30 years (non-recurring). [Ord. 2010-005]
- e. Projects developed under this option shall not be permitted to utilize the payment in lieu of construction provisions as outlined in Art. 5.G.1.B.3, Income Ranges or [Art. 5.G.1.I.5, Release of Obligation to Construct WHP For Sale Units](#). [Ord. 2010-005]

2. Limited Incentive

An applicant may receive no more than 50 percent of the potential density bonus as provided in this Chapter. [Ord. 2011-001]

- a. The required percentage of WHP units will also be limited to: 2.5 percent of Standard Density; 8 percent of PUD Density and 17 percent of the WHP density bonus. [Ord. 2010-005]
- b. 50% of the required WHP units shall be set aside for low income households (households that earn between 60 percent and 80 percent of the County's median income) and 50 percent of the required WHP units shall be set aside for moderate 1 income households (households that earn between 80 percent and 100 percent of the County's median income). [Ord. 2010-005]
- c. The WHP - TPS special methodology mitigation, the WHP expedited review, the WHP site plan regulation options and any additional WHP incentives will be available if requested. [Ord. 2010-005]
- d. All for sale units shall be income restricted for a period of 15 years (recurring). Each WHP unit shall be sold, resold, or rented only to Low or Moderate 1 income qualified households and the WHP restrictions remain in effect for 15 years from the date each unit is first purchased or rented. In the event a unit is resold before the 15 year period concludes, a new 15 year period shall take effect on the date of resale. [Ord. 2010-005]
- e. All units within a rental development utilizing this development option will be required to be income restricted for a period of 30 years (non-recurring). [Ord. 2010-005]

3. Full Incentive

A proposal requesting consideration for all available WHP incentives, as indicated in the following [Table 5.G.1.B, Workforce Housing Program](#), and following text. [Ord. 2010-005]

D. Design Requirements

1. Design

WHP units shall be designed to be compatible with the overall project, as follows: [Ord. 2006-055]

- a. All WHP units shall be constructed on site, unless approved otherwise in accordance with [Art. 5.G.1.G, WHP Off Site Options](#); **[Ord. 2006-055]** **[Ord. 2010-055]**
- b. All affordable units shall be designed to a compatible exterior standard as other units within the development or pod/phase and shall be comparable with the surrounding land uses; and **[Ord. 2006-055]** **[Ord. 2010-005]**
- c. Required WHP units may be clustered or dispersed throughout the project. **[Ord. 2006-055]**

E. WHP Incentives

All projects with 10 or more residential units shall be eligible for WHP Incentives. **[Ord. 2006-055]**

1. Density Bonus

Table 5.G.1.B, Workforce Housing Program, delineates the ranges of density bonus allowed for the WHP. For the purposes of this Section, permitted density shall be the number of units allowed by the standard density allowed by the Plan; or, the maximum density allowed by the Plan, where developed as a PDD, TDD or other density provision of the Plan. TDR units or any other density bonus shall not be included as part of the permitted density for purposes of calculating the WHP density bonus. To ensure compliance with the compatibility requirement of HE Objective 1.5 of the Plan, projects requesting a density bonus greater than 30 percent shall be subject to the requirements of Table 5.G.1.E, Review Process, and [Art. 5.G.1.H, Additional Requirements for > 30% Density Bonus](#). **[Ord. 2006-055]**

Table 5.G.1.E - Review Process

Density Bonus	DRO Approval	Class A Conditional Use
Standard District > 30% - 50%	X	
Standard District > 50% - 100%		X
PDD or TDD > 30% - 100%		X
[Ord. 2006-055] [Ord. 2017-007]		

2. Traffic Performance Standards Mitigation

a. WHP Special Methodologies

TPS mitigation shall be permitted for WHP projects in accordance with County Comprehensive Plan Transportation Element Policy 1.2-d (4). **[Ord. 2006-055]** **[Ord. 2011-016]**

b. WHP Traffic Concurrency Hall Pass

TPS mitigation shall also include the option of applying for a WHP Traffic Concurrency Hall Pass separate from a development order application. The WHP Traffic Concurrency Hall Pass serves as a provisional traffic concurrency approval for a period of not more than 90 days, during which it must be merged into an application submitted for a Concurrency Reservation approval. The WHP Traffic Concurrency Hall Pass is described further in [Art. 2.F, Concurrency \(Adequate Public Facility Standards\)](#). **[Ord. 2006-055]**

3. Expedited Review

The following expedited review processes may apply to a proposed WHP development: **[Ord. 2006-055]**

a. Design Review

Review of multifamily or townhouse structures by the Building Division and Fire Rescue shall be allowed concurrent with final DRO review, prior to permit application. **[Ord. 2006-055]**

b. Platting

- 1) If only a boundary plat is required for an existing single lot, building permits may be issued after submittal of the final plat for recordation. **[Ord. 2006-055]**
- 2) If a subdivision plat is required, permits will be concurrently reviewed, but only issued at recording of the plat. **[Ord. 2006-055]**
- 3) Pursuant to [Art. 3.E.1.G.1.a, Permits](#), Building permits may be issued for sales offices, sales models, gate houses, entry features, and utilities may be issued prior to the recording of a final plat. **[Ord. 2006-055]**

4. Density Bonus Development Options

a. Purpose and Intent

To provide flexibility from property development and other related regulations in order to provide greater opportunity for cost effective development of WHP units. These provisions are not intended to supersede deviations that are normally addressed through the variance process. These options shall only be granted at the time of approval for the entire project, and shall not be granted on a lot-by-lot basis. **[Ord. 2006-055]**

b. Applicability

Projects with ten or more units that utilize a density bonus incentive and are subject to the requirements of the WHP may utilize the Development Options listed herein. **[Ord. 2006-055]**

c. Justification Report

Use of Density Bonus Development Options shall not be granted by right, and shall require submittal of a justification report that demonstrates that deviations are the minimum needed to allow for the use of density bonus incentives. The report shall include the following: **[Ord. 2006-055]**

- 1) The regulations that are proposed to be modified. **[Ord. 2006-055]**
- 2) The amounts and specifics of the requested deviation(s). **[Ord. 2006-055]**
- 3) The areas within the development that the deviation(s) will be applied to. **[Ord. 2006-055]**
- 4) Graphic representations such as, but not limited to, site plans, elevations, perspectives, and typical examples, showing how the deviations will meet the intent of the district and WHP with emphasis on open space, privacy, maintenance, and public health, safety and welfare. **[Ord. 2006-055]**

d. Site Plan Approval

All projects requesting Density Bonus Development Options, shall submit an application and site plan to the DRO for certification where applicable, and for final site plan approval for all others. The site plan shall indicate in the tabular data all Development Options requested and where feasible, a regulating plan shall be included to provide typical examples. Approval shall be granted only for the minimum deviations needed to allow for the use of density bonus incentives and where the requirements of all applicable reviewing agencies have been met. **[Ord. 2006-055]**

e. Drainage

Any reduction in lot size or open space area, or increase in building coverage shall be subject to approval of a drainage study demonstrating that reduced pervious surface area will not create adverse drainage issues. **[Ord. 2006-055]**

f. Option 1 - RT District

The zoning for parcels electing to use this option must be in compliance with [Table 3.A.3.B](#), Future Land Use (FLU) Designation and Corresponding Standard Zoning Districts. **[Ord. 2008-037]**

1) RT PDR Deviations

Deviations from the minimum PDRs for the RT district with a LR-2 or LR-3 FLU designation may be in accordance with [Table 5.G.1.E](#), RT Deviations for WHP, only for those projects that exceed the standard density in the footnote in FLUE Table 2.2.1-g.1, Residential Future Land Use Designation Maximum Density, and utilize a minimum density bonus of 20 percent. **[Ord. 2006-055] [Ord. 2019-**

Table 5.G.1.E – RT Deviations for WHP

Zoning District	Applicability	FLU	Lot Dimensions				Setbacks	
			Size	Width and Frontage	Building Coverage	Depth	Side	Rear
RT	TDR, WHP	LR-2	12,000 sf	85'	35%	100'	ND	ND
RT	TDR, WHP	LR-3	9,000 sf	65'	40%	80'	1st Floor – 10'	1st floor – 15'
[Ord. 2006-055]								
Notes:								
ND	No deviation.							

g. Option 2 - TND Regulations

Projects eligible for this option shall be permitted to utilize the PDRs of [Table 3.F.3.D](#), TND Residential Lot Size and Setback Regulations, subject to meeting the requirements of [Art. 3.F.3.D.5, Residential Uses](#) and the following limitations: **[Ord. 2006-055]**

- 1) U/S Tier Only; **[Ord. 2006-055]**
- 2) Project does not qualify to be a TND or use Option 1 or 3; **[Ord. 2006-055]**
- 3) If the subject site has a LR-1, LR-2, LR-3 or MR-5 FLU designation, the project shall meet all requirements for and be approved as a PDD; **[Ord. 2006-055]**

h. Option 3 - Flexible Regulations

Projects with MR-5, HR-8, HR-12, HR-18 FLU designations, or if approved as a PDD or TDD, may deviate from the residential requirements of [Table 3.D.1.A, Property Development Regulations](#), or [Table 3.D.2.B, ZLL Property Development Regulations](#), as follows: **[Ord. 2006-055]**

- 1) SFD units may be permitted up to a maximum ten percent deviation for the following PDRs: lot size; width and frontage; building coverage; and, side, and rear setbacks. **[Ord. 2006-055]**
 - 2) SFD units limited to one floor with no loft or other similar feature, may be permitted up to a maximum 20 percent deviation for the following PDR's: building coverage; and front and side street setbacks. **[Ord. 2006-055]**
 - 3) ZLL lots may be permitted up to a maximum lot width reduction of five feet, and ten percent deviation from the minimum lot size, building coverage, and front setback for units with front loading garages. **[Ord. 2006-055]**
- i. **Option 4 - PDD Open Space Reduction**
Projects which elect to utilize a density bonus of not less than 15 percent, may reduce the 40 percent open space requirement of [Table 3.E.2.C, PUD Land Use Mix](#), to not less than 30 percent open space, provided the project incorporates common usable open space areas as defined in Art. 1.1.2.U.18, Usable Open Space for WHP. **[Ord. 2006-055]**
 - j. **Option 5 – Internal Incompatibility Buffers**
Required incompatibility buffers between SFD and MF units within a WHP development shall not be required. **[Ord. 2006-055]**
 - k. **Option 6 – Relocation of Units to Civic Tracts**
Residential units may be permitted in a civic pod subject to PREM approval. This may include collocating residential units with civic uses. The DRO shall have the following authority where PREM approval is obtained after BCC approval of the overall project: **[Ord. 2006-055]**
 - 1) In the case of a civic site cash out, the deletion of the civic pod and increase in residential pod area; or, **[Ord. 2006-055]** **[Ord. 2010-005]**
 - 2) The relocation of residential units to a civic pod, or the relocation of residential units where the civic pod is deleted. **[Ord. 2006-055]**
- F. WHP On-site Construction**
WHP units may be located on-site in accordance with the provisions of [Art. 5.G.1.C, Workforce Development Alternatives](#); however, under no circumstances shall any site be permitted to develop at a density greater than that permitted by the Plan. Prior to final DRO approval, the applicant shall identify on the plan the total number of WHP units proposed for development within each pod or phase, as applicable. The plan shall also indicate the number of units in each applicable WHP income category. All of the WHP units shall not be constructed in the last phase of a multi-phased development except for a Development Order Amendment to a Development Order approved prior to WHP requirements. **[Ord. 2010-005]** **[Ord. 2012-003]**
- G. WHP Off-site Options**
WHP units may be located off-site using the options listed below and in accordance with the provisions of [Table 5.G.1.B, Workforce Housing Program](#); however, under no circumstances shall any site be permitted to develop at a density greater than that permitted by the Plan. Prior to issuance of a building permit, or final DRO approval if applicable, all contracts or related agreements for any off-site option evidencing site control and necessary approvals shall be approved by the County Administrator, or designee. Prior to final DRO approval, the applicant shall identify the total number of WHP units proposed for development off-site including the number in each applicable WHP income category. Off-site options may be accommodated in municipalities located within Palm Beach County. **[Ord. 2006-055]** **[Ord. 2010-005]**
1. **Option 1 – Off-site Construction**
Building permits shall be issued for a minimum of 25-percent of the required WHP units to be constructed off-site prior to the issuance of no more than 25-percent of the building permits in the subject development. All off-site WHP units must receive CO prior to issuance of no more than 85-percent of the CO's in the subject development. **[Ord. 2006-0455]** **[Ord. 2010-005]**
 - a. **WCRAO** – Off-site construction of the required WHP units within the low income range shall be limited to ten percent. **[Ord. 2008-037]**
 2. **Option 2 – Purchase Market Rate Units**
Purchase of an equivalent number of existing market rate units to be deeded to the County or sold to eligible households and deed restricted. The developer may retain the title to off site units subject to recordation of a deed restriction that meets the intent of this provision. A minimum of 50-percent of the units must be purchased and deeded to the County or deed restricted prior to the issuance of no more than 25-percent of the building permits in the subject development. All market rate units shall be purchased and deeded to the County or deed restricted prior to issuance of no more than 85-percent of the CO's in the subject development. **[Ord. 2006-055]** **[Ord. 2010-005]**
 3. **Option 3 – Donate Buildable Land**

Donation of developable land acceptable to the County in an amount equal to the buyout costs of the affected units. Donated land must be deeded to the County prior to issuance of the first building permit in the subject development. **[Ord. 2006-055]**

4. Option 4 – In-lieu Payment (Prior to Issuance of First Residential Unit Building Permit)

The in-lieu payment for all WHP units shall be \$81,500 per for sale unit and \$50,000 per rental unit. The payment shall be deposited in the WHP Trust Fund maintained by the PBC Department of HCD at the time of issuance of the first residential unit building permit for the subject development. **[Ord. 2006-055] [Ord. 2010-005]**

H. Additional Requirements for >30% Density Bonus

Projects requesting a density bonus greater than 30 percent shall comply with the following: **[Ord. 2006-055]**

1. Sector Analysis

WHP projects, including relocated WHP units, shall be equitably distributed so that there is no undue concentration of very-low and low income households. [Table 5.G.1.H, WHP Density Bonus Guide](#) indicates the maximum density bonus permitted and the concentration of very-low and low income housing within a sector will be one factor taken into consideration when determining the maximum density bonus permitted. Other factors to be considered include: the location of the proposed development and its relationship to the study area; the housing type(s) proposed; if the development site is located within 1/4 mile radius of a public park (neighborhood or regional park, not a golf course); civic uses (schools/libraries); a mass transit facility/route; child care facilities; medical facilities; a super market; a community commercial facility; employment opportunities; and within 1/2 mile radius of social services; a regional commercial facility; an industrial facility; additional civic uses and employment opportunities. Prior to submittal of a WHP pre-application, the applicant shall meet with the Planning Director or designee to establish the sector within which the distribution analysis shall be conducted. The boundaries of the sector shall be approved by the Planning Director or designee. The maximum density bonus permitted or a bonus in excess of the maximum shall be recommended by the Planning Director or designee. **[Ord. 2010-005]**

Table 5.G.1.H - WHP Density Bonus Guide

% of Very Low & Low Income Households in Sector	> 50%	40-50%	20-40%	0-20%
Maximum Density Bonus (1)	up to 40%	up to 60%	up to 80%	up to 100%
[Ord. 2009-01] [Ord. 2010-005]				
Notes:				
1. The Planning Director may recommend a density bonus in excess of the Maximum Density Bonus where the project serves to mitigate existing very low and low income concentrations by including a mix of higher income market rate units or Medium 1, Medium 2 and Middle Income WHP units. [Ord. 2006-055]				

a. The sector shall be proportional to the size and character of the proposed development. At a minimum, the sector shall consist of one or more neighborhoods that include features such as schools, shopping areas, an integrated network of residential and collector streets bounded by arterial roads, civic uses, localized shopping, and employment opportunities. For data and analysis purposes, the sector shall be adjusted to accommodate census tracts or census block groups but shall not extend beyond important physical boundaries that may include a major arterial roadway or a wildlife refuge. **[Ord. 2006-055]**

b. Household income characteristics for the sector shall be derived from the most current available census data. The income level of a “family of four” shall be used for the determination of households within the low, moderate and middle income household categories. The analysis of housing and demographic data within the sector shall be in a manner and form approved by the Planning Director. **[Ord. 2006-055]**

2. Pre-Application

An application for density bonus greater than 30 percent shall require the submittal of a pre-application prior to submittal of a Zoning or Building permit application for purposes of establishing a density bonus determination. **[Ord. 2006-055]**

a. Contents

The pre-application shall be in a form established by the Planning Director, and made available to the public. **[Ord. 2006-055]**

b. Sufficiency Review

The pre-application shall be subject to the provisions of Art. 2.B.2 or Art. 2.C.2, Sufficiency Review. **[Ord. 2006-055]**

c. Compliance

The density bonus shall not be granted until the project is found in compliance with HE 1.5.h. in the Plan. [Ord. 2006-055]

d. Density Determination

The Planning Director shall provide a written density determination letter within ten days of determining the pre-application is sufficient. The determination shall be based on the sector analysis, size, location and development characteristics of the project with consideration given towards affordability, accessibility, proximity to mass transit or employment centers, compatibility, quality of design, pedestrian and vehicular circulation, open space, and resource protection. The Planning Director shall prepare a report for the applicant, DRO, ZC, or BCC, whichever is appropriate, making a determination of compliance with this chapter, consistency with the Plan and recommend approval, approval with conditions, or denial of the request. [Ord. 2006-055]

I. Affordability Requirements

Where applicable, the required percentage, affordability ranges and provision of units, shall be in accordance with [Table 5.G.1.B](#), Workforce Housing Program. [Ord. 2006-055]

1. Sales and Rental Prices of WHP Units

All required WHP units shall be offered for sale or rent at an attainable housing cost for each of the targeted income ranges. The sale and rent prices shall be updated annually by the Planning Director, or designee, with the sale prices based on the Area Median Income (AMI), and the household income limits for PBC (West Palm Beach/Boca Raton metropolitan statistical area) for a family of four, which pricing shall not be adjusted based on the number of occupants, as published annually by HUD (sale price: household income figure multiplied by three and priced at the middle of each of the four WHP income categories), and rental prices based on the annual Florida Housing Finance Corporation Multi-Family Rental Figures as adjusted for number of bedrooms in WHP rental units. The minimum WHP price initially established at the time of approval for each for sale unit within each WHP category range will be the sales floor. This sales floor shall serve as the minimum sales price point required throughout the applicable deed restriction time frame. The minimum WHP price initially established at the time of approval for each rental unit within each WHP income category range will be the rental floor. This rental floor shall serve as the minimum rental price point required throughout the thirty (30) year term of this Covenant. Any utility allowances applied against gross maximum WHP unit rents shall also be adjusted based on a number of bedrooms in WHP rental units. A chart with the sales and rent prices will be maintained and updated annually by the County. [Ord. 2006-055] [Ord. 2010-005] [Ord. 2012-003] [Ord. 2012-027]

a. Utility Allowance

Utilities shall include, but not be limited to, water, sewer, gas and electric. When one or more utility cost(s) are included within the WHP unit rent price, and reasonable, reliable and verifiable documentation is provided that indicates the total utility cost included within the WHP unit rent price meets or exceeds the stated utility allowance cost, then the utility allowance requirement would be waived. If the information provided constitutes an amount less than the prescribed utility allowance, the value may be applied against the utility allowance and the remaining balance shall be credited to the WHP resident's rent cost. [Ord. 2012-003]

2. Master Covenant

Prior to issuance of the first building permit, the applicant shall record in the public records of Palm Beach County a Covenant binding the entire project, in a form provided for by the County, which identifies each required WHP unit. [Ord. 2006-055] [Ord. 2010-005]

a. For Sale Units

The Covenant shall include but not be limited to restrictions requiring: that all identified WHP units shall be sold, resold or rented only to low, moderate 1, moderate 2, or middle-income qualified households at an attainable housing cost for each of the targeted income ranges; that these restrictions remain in effect for 15 years recurring from the date of the certificate of occupancy for each unit; and that in the event a unit is resold before the 15 year period concludes, a new 15 year period shall take effect on the date of resale. The Covenant shall further provide monitoring and compliance requirements including but not limited those set forth below to ensure compliance with the WHP. Every deed for sale of a WHP housing unit shall incorporate by reference the controlling Covenant. [Ord. 2006-055] [Ord. 2010-005]

b. Rental Units

The Covenant shall include but not be limited to restrictions requiring: that all identified WHP units shall be rented only to low, moderate 1, moderate 2, or middle-income qualified households at an attainable housing cost for each of the targeted income ranges; that these restrictions remain in

effect for a period of 30 years (non-recurring) from the date of occupancy of the first WHP unit; and that in the event a rental complex is resold before the 30 year period concludes, the new owner assumes the requirement for the number of remaining years; and the number of years remaining shall be determined by the Planning Director or his designee; and shall take effect on the date of resale. The Covenant shall further provide monitoring and compliance requirements including but not limited to those set forth below to ensure compliance with the WHP. Every deed for a rental development with WHP housing units and every rental agreement for each WHP unit shall incorporate by reference the controlling Covenant. **[Ord. 2010-005]**

3. Monitoring and Compliance

Prior to the sale, resale, or at the time of the rental of any WHP unit established pursuant to this program, the seller of a for-sale unit or the owner of a rental development shall provide the Planning Director, or designee, documentation sufficient to demonstrate compliance with the WHP. Such documentation shall include but not be limited to information regarding the identity and income of all occupants of the WHP unit. The owner of the WHP unit shall submit to the Planning Director, or designee, on a form provided by the County, an annual report containing information and documentation to demonstrate continued compliance with the WHP and a copy of any monitoring information provided to and received from the appropriate funding agency/source. The County may conduct site visits at reasonable times, or perform other independent investigation to verify continued compliance with the WHP. **[Ord. 2006-055] [Ord. 2010-005]**

4. Enforcement

The County may enforce the requirements of the WHP through any cause of action available at law or equity, including but not limited to seeking specific performance, injunctive relief, rescission of any unauthorized sale or lease, reclassification of a lesser unit to another income category, and tolling of the 15-year recurring term of for sale units or the 30 year non-recurring term for rental units of the WHP. **[Ord. 2006-055] [Ord. 2010-005]**

5. Release of Obligation to Construct WHP For-Sale Units

It is not the intent of the WHP provisions to require a developer to commence construction on any WHP for sale unit for which a valid and binding contract for purchase between developer and buyer has not been executed. It is intended that all WHP units will be marketed in the same manner as the market-rate units within a development. In the event a WHP unit eligible for contract: (i) has been available for purchase for a period not less than 180 days and no contract to purchase that unit has been executed during the 180 day period; and, (ii) is located within a development pod/phase in which not less than 80 percent of the for sale market rate units (i.e. non WHP units) have binding purchase contracts; then that specific WHP unit is eligible to be released from the WHP obligations indicated in the Covenant. **[Ord. 2006-055] [Ord. 2010-005] [Ord. 2012-027]**

a. For Sale Units

When a WHP unit is not purchased in accordance with the provisions above, an In-Lieu cash payment shall be permitted as follows: **[Ord. 2010-005]**

Upon payment of the required In-Lieu cash payment, the WHP unit/lot shall thereafter be released from any and all obligations of the WHP requirements of the ULDC and the County shall provide written confirmation that the unit/lot has been released, inclusive of release from the Covenant. The County shall utilize cash payments for the express purpose of providing down payment assistance to eligible households seeking to purchase WHP units. To the greatest extent possible, the down payment assistance provided by the County shall be utilized for the purchase of WHP units from the project from which the cash payment was provided. The payment shall be deposited in a WHP Trust Fund maintained by the PBC Department of HCD, and designated for the above referenced purpose. **[Ord. 2010-005] [Ord. 2012-027]**

- 1) if the price differential between the required WHP unit and the contract price for the market rate unit is less than or equal to \$20,000, then the In-Lieu cash payment shall be \$10,000; **[Ord. 2010-005]**
- 2) if the price differential between the required WHP unit and the contract price for the market rate unit is greater than \$20,000 and less than \$81,250, then the In-Lieu cash payment shall be one half (50 percent) of the difference; and, **[Ord. 2010-005]**
- 3) if the price differential between the required WHP unit and the contract price for the market rate unit is greater than or equal to \$81,250, then the In-Lieu cash payment shall be \$40,750. **[Ord. 2010-005]**

The contract price of any for sale market rate unit shall be the base price of the unit and shall not include any lot premium and/or buyer purchased upgrades that are in addition to the base price of the unit. The Developer shall provide written notice to the Department of Planning, Zoning and Building

requesting confirmation of the In-Lieu cash payment amount, which request shall include: a copy of the executed purchase contract between seller and purchaser denoting the purchase price of the unit, but shall not be required to submit any information relative to any lot premium and upgrades that are in addition to the base price of the unit; the project name, zoning control number, PCN, and address of the lot; and, the calculation as to the amount of the In-Lieu cash payment amount being requested.

[Ord. 2010-005]

The County shall provide written confirmation to the Developer, within ten 10 business days of receipt, as to the County's agreement/disagreement with the In-Lieu cash payment amount requested by the Developer. **[Ord. 2010-005]**

Upon payment of the required In-Lieu cash payment, the WHP unit/lot shall thereafter be released from any and all obligations of the WHP requirements of the ULDC and the County shall provide written confirmation that the unit/lot has been released, inclusive of release from the Covenant. Units which are not required to be constructed pursuant to Art. 5.G.1.B.3, Income Ranges are not eligible for this reduced in-lieu payment. These units must provide in-lieu payment consistent with [Art. 5.G.1.G.4, Option 4 – In Lieu Cash Payment](#). The County shall utilize cash payments for the express purpose of providing down payment assistance to eligible households seeking to purchase WHP units. To the greatest extent possible, the down payment assistance provided by the County shall be utilized for the purchase of WHP units from the project from which the cash payment was provided. The payment shall be deposited in a WHP Trust Fund maintained by the PBC Department of HCD, and designated for the above referenced purpose. **[Ord. 2010-005]**

b. “Available for purchase” shall be defined as:

- 1) written notice is provided to the Planning Director and the Department of Housing and Community Development and to a list of interested parties provided to the developer by the County that developer has a project approved which requires the construction of WHP units and the developer is ready to commence sales of the required WHP unit within the development. The written notice shall include the location of the subject property, the location of the sales office, the hours of the sales office, the floor plan and construction specifications for the WHP unit available for contract; and the pricing of the WHP unit available for contract; **[Ord. 2010-005]**
- 2) developer shall include in the sales office displays and WHP unit promotional brochures produced as of and during the entire duration of the effective period as defined in [Art. 5.G.1.I.5 Release of Obligation to Construct WHP For Sale Units](#), (i) and (ii) above, that certain units within the project are subject to the WHP provisions of Palm Beach County and are available for purchase for qualified households; **[Ord. 2010-005]**
- 3) the inclusion of informational packets in the sales center for those interested in purchasing a WHP unit which provides the qualification standards, terms of the Covenant, where to go to get qualified, and other relevant information regarding the WHP units (note this packet to be provided by or approved by Palm Beach County prior to placement on the sales floor); **[Ord. 2010-005]**
- 4) at the time WHP units become available for purchase the developer shall provide to the Palm Beach County Department of Planning, Zoning and Building proof of out-reach to local housing advocacy groups and others on the interested parties list. **[Ord. 2010-005]**
- 5) the developer acts in good faith to market and sell the unit during the effective period as defined in [Art. 5.G.1.I.5 Release of Obligation to Construct WHP For Sale Units](#), above. **[Ord. 2010-005]**

6. Event of Default of for sale WHP unit following execution of binding contract:

In the event of default by the purchaser of a for sale WHP unit after execution of a binding contract and prior to closing, the developer shall be permitted to provide the In-Lieu cash payment (in the amount as determined using for formula outlined in Section 5.G.1.I.6. above) and shall be permitted to be released from the WHP obligations for the defaulted unit, inclusive of the release from the Covenant, upon the later of either of the two events having occurred: **[Ord. 2010-005]**

- a. the first inspection of the WHP unit subject to the default occurred not less than one hundred and eighty (180) days prior to the request to provide the In-Lieu cash payment; or **[Ord. 2010-005]**
- b. the WHP unit subject to the default is located within a development pod/phase in which not less than 80% of the for sale market rate units (i.e. non WHP units) have binding purchase contracts. The Developer shall provide written notice upon the event of default on a required WHP unit to the Palm Beach County Department of Planning, Zoning and Building, the Department of Housing and Community Development and to the list of interested parties indicating that: **[Ord. 2010-005]**
 - 1) a default occurred on a required WHP unit; **[Ord. 2010-005]**

- 2) the specifics of the defaulted lot (WHP income category, location of the project, PCN for the WHP unit, WHP price of the unit, square footage of the unit, and floor plan of the unit); and, **[Ord. 2010-005]**
- 3) that the unit remains available for purchase to an eligible WHP household until such time as an In-Lieu cash payment is made pursuant to the later of the two timing mechanism having been met. **[Ord. 2010-005]**

7. Compatibility

The resulting development shall be compatible with surrounding residential land uses, as described herein. **[Ord. 2005-002]**

J. Annual Report

The Executive Director of PZB shall submit an annual report to the BCC indicating the status of the WHP. **[Ord. 2006-055]**