

## CHAPTER G DENSITY BONUS PROGRAMS

The WHP, AHP, or the TDR Programs are the required methods for increasing density above the maximum density permitted by a property's FLUA designation within unincorporated PBC, unless a Site Specific FLUA Amendment is adopted pursuant to Art. 2.H, FLU Plan Amendments. **[Ord. 2008-003] [Ord. 2010-005] [Ord. 2019-033]**

### Section 1 Workforce Housing Program (WHP)

#### A. General

##### 1. Purpose and Intent

The WHP 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. The WHP implements Policies 1.1-o and 1.5-g of the Housing Element of the Comprehensive Plan, among others, by establishing an inclusionary WHP to provide Low, Moderate 1, Moderate 2, and Middle-Income housing. The program mandates the provision of workforce housing for all new developments in the Urban/Suburban Tier with a residential component of ten or more dwelling units; encourages the development of additional workforce housing through a density bonus and other incentives; encourages the equitable geographic distribution of workforce housing units; and, ensures a minimum affordability period. The WHP is implemented by the Planning Division of the Planning, Zoning and Building Department, and the Department of Housing and Economic Development (HED). **[Ord. 2019-033] [Ord. 2023-036]**

##### 2. Applicability

###### a. Conflicts

In cases of conflict between this Chapter and other Articles of this Code, the provisions of this Chapter shall apply. In cases of conflict between this Chapter and Conditions of Approval imposed by the Board of County Commissioners, the more restrictive shall apply. **[Ord. 2019-033]**

###### b. Thresholds

The WHP shall apply to all new developments with a residential component of ten or more dwelling units. **[Ord. 2019-033]**

###### c. Prior Approvals

For existing projects proposing ten or more additional dwelling units, the program shall apply to those units being added. For projects approved under versions of this Section in effect prior to October 26, 2023 and having rental WHP units subject to the requirement for either an annual report or Utility Allowance, or both, the Property Owner may request an amendment to the Master Restrictive Covenant in order to forgo either the annual report or Utility Allowance requirement, or both. **[Ord. 2019-033] [Ord. 2023-036]**

###### d. Location

###### 1) Urban/Suburban Tier

The WHP applies for all new developments with a residential component in the Urban/Suburban Tier, except as follows: **[Ord. 2019-033]**

###### a) URA Priority Redevelopment Areas

The WHP obligation for developments with a UC or UI FLU shall be met through the provision of a minimum of 15 percent of all new units, pursuant to Policy 1.2.2-b of the Future Land Use Element of the Comprehensive Plan. The Limited Incentive Option shall not be available to these developments, nor any incentives offered through the WHP. All other applicable provisions of the WHP shall apply. **[Ord. 2019-033]**

###### b) WCRAO

Developments of ten or more units in the WCRAO shall not be subject to the WHP if Density Bonus Pool Units are used pursuant to Art. 3.B.14.H.1, Density Bonus Pool. **[Ord. 2019-033] [Ord. 2021-006]**

###### 2) Other Tiers

The WHP may be required by the Board of County Commissioners in developments in other tiers through Conditions of Approval. **[Ord. 2019-033]**

###### e. Exemptions

- 1) Developments utilizing the AHP. **[Ord. 2019-033]**
- 2) Congregate Living Facilities (CLFs). **[Ord. 2019-033] [Ord. 2021-022]**

**f. Developments with Both WHP and AHP**

If a development includes both WHP and AHP units or units restricted to occupancy by households with Annual Household Incomes below 60 percent of Median Family Income, the Planning Director or designee shall make a determination as to the applicability of the WHP to the development, considering the affordable housing programmatic requirements of the governmental or other agency providing affordable housing funding. [Ord. 2019-033] [Ord. 2023-036]

**3. Program Standards**

**a. Definitions**

**1) Subject Development**

For the purposes of the WHP, the Subject Development is the boundaries of the overall project generating the WHP obligation, regardless of whether the required WHP units will be provided on that site. [Ord. 2019-033]

**2) Developer**

The developer of the Subject Development. [Ord. 2019-033]

**3) Exchange Builder**

The builder of the Exchange Project. [Ord. 2019-033]

**4) Exchange Project**

The development where the WHP units will be delivered through the Off-Site Construction/Exchange Builder Option. [Ord. 2019-033]

**5) Annual Household Income**

For WHP rental units, documentable gross income before taxes received annually by income earners residing in the WHP tenant's household only. At least one income earner must be employed in Palm Beach County. Annual Household Income is used to determine the income category, and subcategory if applicable. Annual Household Income does not include investment, retirement, or checking/savings account balances, but may include distributions to the WHP tenant from retirement accounts, and periodic determinable allowances such as alimony and child support. Irregular income such as overtime and bonus payments may be considered income at the discretion of the WHP rental unit owner or designee. [Ord. 2023-036]

**6) Maximum WHP Rent**

The maximum price published and updated annually by the Planning Director, or designee, for each income category, and subcategory if applicable, by the number of bedrooms, based on the monthly rent limits published annually for the Florida Housing Finance Corporation Multifamily Rental Programs. [Ord. 2023-036]

**7) WHP Rent**

The amount that is charged to the WHP tenant that includes all Mandatory Fees, and reflects the Utility Allowance if applicable. [Ord. 2023-036]

**8) Mandatory Fees**

Fees required to be paid by all tenants in a rental development that includes WHP rental units. These fees include but are not limited to charges assigned by virtue of ratio utility billing or similar unmetered allocation arrangements. For projects subject to a Utility Allowance pursuant to a Master Restrictive Covenant, Mandatory Fees shall not include charges assigned by virtue of ratio utility billing or similar unmetered allocation arrangements for water, sewer, gas, or electric service provided directly to the unit and not to common areas. [Ord. 2023-036]

**9) Voluntary Fees**

Fees for optional services or features offered to and selected by the WHP tenant, and not mandatory for all units in the development. [Ord. 2023-036]

**10) Utility Allowance**

A monthly rent reduction to help offset WHP tenant-paid costs of water, sewer, gas, and/or electric service provided directly to the unit and not to common areas, that are billed to the WHP tenant by the WHP rental unit owner or designee, the utility, or a third party. If the cost of one or more of these utilities is borne by the WHP rental unit owner and not billed to the WHP tenant by the WHP rental unit owner or designee, the utility, or a third party, the Utility Allowance is applied against such cost and any difference is credited or charged to the WHP tenant. [Ord. 2023-036]

**b. Income Categories**

There are four targeted income categories in the WHP. Income categories are derived from the Median Family Income (MFI), also known as the Area Median Income (AMI), published annually for Palm Beach County by the U.S. Department of Housing and Urban Development, as follows: **[Ord. 2019-033]**

- 1) Low-Income (> 60 to 80 percent MFI); **[Ord. 2019-033]**
- 2) Moderate 1 Income (> 80 to 100 percent of MFI); **[Ord. 2019-033]**
- 3) Moderate 2 Income (> 100 to 120 percent of MFI); and, **[Ord. 2019-033]**
- 4) Middle-Income (> 120 to 140 percent of MFI). **[Ord. 2019-033]**

**c. Pricing**

The Planning Director or designee shall annually set and publish WHP sale prices and rent ranges for all income categories and subcategories. **[Ord. 2019-033] [Ord. 2023-036]**

- 1) WHP for-sale units shall target the Low, Moderate 1, and Moderate 2 categories. The sale prices shall be derived as follows: Median Family Income for Palm Beach County (West Palm Beach/Boca Raton Metropolitan Statistical Area) published annually by the U.S. Department of Housing and Urban Development, multiplied by three, and adjusted to the midpoint of each of the income categories: Low (70 percent), Moderate 1 (90 percent), and Moderate 2 (110 percent). **[Ord. 2019-033]**
- 2) WHP rental units shall target all four WHP income categories, unless otherwise specified by the project's development approval. Rent ranges shall be published annually by the Planning Director or designee, based on the Florida Housing Finance Corporation Multifamily Rental Programs Rent Limits by number of bedrooms. **[Ord. 2019-033] [Ord. 2023-036]**
- 3) For the purposes of annual price updates, the WHP prices initially established for the for-sale unit's income category at the time of approval of the Subject Development shall be the sales floor throughout the affordability period. No WHP for-sale unit is required to be sold at a price below the sales floor, though a seller may opt to do so. The WHP rent range initially established for the rental unit's income category at the time of approval of the Subject Development shall be the rental floor throughout the affordability period. No WHP rental unit is required to be rented below the rental floor, though a rental unit owner may opt to do so. **[Ord. 2019-033] [Ord. 2023-036]**

**d. Assignment of the Required WHP Units**

WHP required units are intended to be distributed equally among all required income categories pursuant to Art. 5.G.1.B, Program Options or Conditions of Approval. When assigning units to income categories, units shall be assigned first to the highest income category, proceeding downward to low income. This does not prohibit a Developer or rental unit owner from providing higher numbers of lower-income units. **[Ord. 2019-033] [Ord. 2023-036]**

**e. Calculations**

Calculations shall be performed using two decimal places, and standard rounding applied for density and WHP density bonus calculations; standard rounding is applied at the end for the WHP obligation calculation. **[Ord. 2019-033] [Ord. 2023-036]**

**f. Unencumbered Units**

WHP units shall not be subject to restrictions beyond WHP income qualifications. Units used to meet a WHP obligation shall not be income restricted as a result of funding or other requirements of any other program, unless: **[Ord. 2019-033] [Ord. 2023-036]**

- 1) The workforce housing units result from the Off-Site Construction/Exchange Builder Option of the Workforce Housing Program, and the Board of County Commissioners approves the income restriction to be applied due to another program; or **[Ord. 2023-036]**
- 2) The restrictions result from funding sources used to provide purchase assistance to qualified buyers of a for-sale workforce housing unit with terms that are consistent with or equal to County terms. **[Ord. 2023-036]**

**g. Affordability Periods**

**1) For-Sale Units**

All WHP for-sale units shall be income restricted for a period of 15 years (recurring), from the date of sale. 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. 2019-033] [Ord. 2023-036]**

**2) Rental Units**

All WHP rental units shall be income restricted for a period of 30 years (non-recurring), from the date of occupancy of the first WHP unit. **[Ord. 2019-033]**

**h. Design Standards**

**1) Compatible Design and Unit Features for All WHP Units**

- a) The exteriors of WHP units shall be designed compatible with market rate units in the development. **[Ord. 2019-033] [Ord. 2023-036]**
- b) One of more of the following shall be provided: **[Ord. 2019-033]**
  - (1) a representative WHP model at the WHP site; **[Ord. 2019-033]**
  - (2) a representative WHP model at a different location in Palm Beach County; or, **[Ord. 2019-033]**
  - (3) a market rate model with information delineating the differences between the market rate model and the WHP units. **[Ord. 2019-033]**

**2) Requirements for WHP For-Sale Units**

- a) At minimum, all WHP for-sale units shall include a refrigerator, range, built-in microwave, dishwasher, washer, and dryer. **[Ord. 2019-033] [Ord. 2023-036]**
- b) All WHP for-sale units shall have a minimum of two bedrooms, and 25 percent of the WHP for-sale units shall have a minimum of three bedrooms. All WHP for-sale units shall have a minimum bedroom size of 100 square feet. **[Ord. 2019-033] [Ord. 2023-036]**

**3) Requirements for WHP Rental Units**

No minimum number or size of bedrooms applies to WHP rental units. **[Ord. 2019-033] [Ord. 2023-036]**

**B. Program Options**

The WHP offers the choice of either a “limited” or a “full” program option, which determines the amount of required workforce housing and the availability of other incentives. These options are not available to Subject Developments that are subject to FLUA amendment Conditions of Approval establishing a specific percentage of required workforce housing. **[Ord. 2019-033] [Ord. 2023-036]**

**1. Limited Incentive Option**

**a. Intent**

The Limited Incentive Option minimizes the WHP obligation, and allows only a limited density bonus as an incentive. **[Ord. 2019-033]**

**b. Incentives Available**

The only incentive available through the Limited Incentive Option shall be a density bonus; the density bonus shall not exceed 50 percent of the permitted density. **[Ord. 2019-033]**

**c. Amount of WHP Required**

The required percentage of WHP units shall be two and one-half percent of standard density; eight percent of maximum density; and, 17 percent of any WHP density bonus. The WHP obligation may be further modified by the disposition option selected, per Art. 5.G.1.C.4, Methods Available. The number of WHP units required shall be identified by the Planning Director or designee in a WHP Letter of Determination. **[Ord. 2019-033]**

**d. Pricing of Workforce Housing Units**

50 percent of the required WHP units shall be provided in the Low-Income category and 50 percent of the required WHP units shall be provided in the Moderate 1 Income category. **[Ord. 2019-033]**

**e. WHP Letter of Determination for Limited Incentive Developments**

Developments opting for the Limited Incentive Option are eligible for a maximum density bonus of 50 percent of the permitted density. No additional incentives are available for the developments using the Limited Incentive Option. For the purposes of this Subsection, permitted density shall be the number of units allowed by the standard and maximum density pursuant to the Comprehensive 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. **[Ord. 2019-033]**

Upon request, the Planning Director or designee shall provide a WHP Determination Letter identifying the density bonus requested, and the total number of WHP units required. This WHP Determination Letter is to be submitted by the Developer with the Zoning or Building Permit application. **[Ord. 2019-033]**

## 2. Full Incentive Option

### a. Intent

The Full Incentive Option offers several incentives, including a density bonus, and requires an increased amount of workforce housing. [Ord. 2019-033]

### b. Incentives Available

A development selecting the Full Incentive Option shall have available all applicable WHP incentives provided in this Section below, including a density bonus of up to 100 percent of the permitted density, pursuant to the Density Bonus process in Art. 5.G.1.B.2.e, Density Bonus Determination for Full Incentive Developments. [Ord. 2019-033]

### c. Amount of WHP Required

For WHP for-sale units, the required percentage of WHP units shall be four and three-eighths percent of standard density; 14 percent of maximum density; and, 29.75 percent of any WHP density bonus used. For WHP rental units or in-lieu fee purposes, the required percentage of WHP units shall be five percent of standard density; 16 percent of maximum density; and, 34 percent of any WHP density bonus used. The WHP obligation may be further modified by the disposition option selected, per Art. 5.G.1.C.4, Methods Available. The number of WHP units required shall be identified by the Planning Director or designee in a WHP Letter of Determination, pursuant to the Density Bonus process in Art. 5.G.1.B.2.e, Density Bonus Determination for Full Incentive Developments below. [Ord. 2019-033]

### d. Pricing of Workforce Housing Units

Units shall be priced in all applicable income categories, pursuant to Art. 5.G.1.A.3.c, Pricing. [Ord. 2019-033]

### e. Density Bonus Determination for Full Incentive Developments

Developments opting for the Full Incentive Option are eligible for a density bonus of up to 100 percent of permitted density. For the purposes of this Subsection, permitted density shall be the number of units allowed by the standard and maximum density pursuant to the Comprehensive 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. [Ord. 2019-033]

#### 1) Full Incentive Developments Requesting a WHP Density Bonus up to and including 50 Percent

For Full Incentive Developments requesting a WHP density bonus of up to and including 50 percent, upon request the Planning Director or designee shall provide a WHP Determination Letter identifying the density bonus requested, and the total number of WHP units required. This WHP Determination Letter is to be submitted by the Developer with the Zoning or Building Permit application. [Ord. 2019-033]

#### 2) Full Incentive Developments Requesting a WHP Density Bonus Greater Than 50 Percent

For developments requesting a WHP density bonus of greater than 50 percent, the Planning Director or designee shall review the request pursuant to the following process: [Ord. 2019-033]

##### a) Density Bonus Pre-Application Appointment

Requests received for density bonuses greater than 50 percent shall be scheduled for the next available Pre-Application Appointment, which shall be conducted regularly by the Planning Division, according to a schedule published by the PZB Department. Pre-Application Appointments shall include other appropriate County Departments and Agencies, as determined by the PZB Department. The Developer shall be required to participate in the Pre-Application Appointment for the proposed development, to discuss the proposed development and unit types, characteristics of the site and surrounding area, and other relevant factors. [Ord. 2019-033]

##### b) Factors for Consideration

Staff shall consider the following factors in developing a maximum density and density bonus recommendation. [Ord. 2019-033]

(1) The extent of which the proposed WHP units further County objectives: [Ord. 2019-033]

(a) The intent to provide the workforce housing units on site; [Ord. 2019-033]

(b) The intent to provide Single Family and for-sale workforce housing units; [Ord. 2019-033]

(c) The proximity of the location where the WHP units are to be provided to employment centers; [Ord. 2019-033]

- (d) The concentration of households with incomes in the WHP income categories, in the location where the WHP units are to be provided. **[Ord. 2019-033]**
  - (2) The potential impact of the proposed density bonus: **[Ord. 2019-033]**
    - (a) The total number of units proposed, including any Transfer of Development Rights; and **[Ord. 2019-033]**
    - (b) The compatibility with the character of the adjacent and surrounding area in the location of the Subject Development. **[Ord. 2019-033]**
- c) **Density Bonus Recommendation**

Within ten days following the Pre-Application Appointment, the Planning Director or designee shall provide a written WHP Letter of Determination identifying the recommended maximum density bonus and the total number of WHP units required, subject to further limitations due to property development regulations and other factors in the development review process. The Planning Director or designee shall provide the WHP Letter of Determination to the Developer, DRO, ZC, or BCC, whichever is appropriate and may include recommended Conditions of Approval for the resulting Development Order. **[Ord. 2019-033]**
- f. **Incentives Available under Full Incentive Option**
  - 1) **Traffic Performance Standards Mitigation**
    - a) **WHP Special Methodologies**

TPS mitigation shall be permitted for developments where the required WHP units are being provided in accordance with Policy 1.2-d(4) of the Transportation Element of the Comprehensive Plan. **[Ord. 2019-033]**
    - 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. 2019-033]**
  - 2) **Expedited Review**

The following expedited review processes may apply to a development where the required WHP units are being provided: **[Ord. 2019-033]**

    - 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. 2019-033]**
    - 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. 2019-033]**
      - (2) If a subdivision plat is required, permits will be concurrently reviewed, but only issued at recording of the plat. **[Ord. 2019-033]**
      - (3) Pursuant to Art. 3.E.1.H.1, Standards, Building Permits may be issued for Sales Offices, Sales Models, gatehouses, entry features, and utilities prior to the recording of the Final Plat. **[Ord. 2019-033]**
  - 3) **Flexibility in Property Development Regulations**
    - 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 development, and shall not be granted on a lot-by-lot basis. **[Ord. 2019-033]**
    - b) **Applicability**

Full Incentive Option developments providing all the required WHP units on site may utilize the flexibility in property development regulations listed herein. This flexibility shall be granted for all units of the same unit type as the WHP units, in all pods where WHP units are being provided. **[Ord. 2019-033]**

**c) Justification Report**

Use of these provisions 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. 2019-033]**

- (1) The regulations that are proposed to be modified. **[Ord. 2019-033]**
- (2) The amounts and specifics of the requested deviation(s). **[Ord. 2019-033]**
- (3) The areas within the development that the deviation(s) will be applied to. **[Ord. 2019-033]**
- (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. 2019-033]**

**d) Site Plan Approval**

Any deviations sought pursuant to this Subsection shall be reflected on Site Plans submitted for DRO approval. **[Ord. 2019-033]**

**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. 2019-033]**

**f) Option 1 – RT District**

The zoning for parcels electing to use this option must be in compliance with Art. 3.A.3, Zoning District Consistency with the Future Land Use Atlas (FLUA). **[Ord. 2019-033]**

**(1) RT PDR Deviations**

Deviations from the minimum PDRs for the RT district with an LR-2 or LR-3 FLU designation may be in accordance with Table 5.G.1.B, RT Deviations for WHP, only for those developments 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. 2019-033]**

**Table 5.G.1.B – 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 sq. ft.	85'	35%	100'	ND	ND
RT	TDR, WHP	LR-3	9,000 sq. ft.	65'	40%	80'	1st floor – 10'	1st floor – 15'

**[Ord. 2006-055] [Ord. 2019-033]**

**Key:**

**ND** No deviation.

**g) Option 2 – TND Regulations**

Developments 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. 2019-033]**

- (1) U/S Tier only; **[Ord. 2019-033]**
- (2) Development does not qualify to be a TND or use Option 1 or 3; and, **[Ord. 2019-033]**
- (3) If the development has an LR-1, LR-2, LR-3, or MR-5 FLU designation, the development shall meet all requirements for and be approved as a PDD. **[Ord. 2019-033]**

**h) Option 3 – Flexible Regulations**

Developments with MR-5, HR-8, HR-12, or 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. 2019-033]**

- (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. 2019-033]**

(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 PDRs: building coverage; and front and side street setbacks. [Ord. 2019-033]

(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. 2019-033]

**i) Option 4 – PDD Open Space Reduction**

Developments 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 development incorporates common usable open space areas as defined in Art. 1.H.2.O.13, Open Space, Usable for WHP. [Ord. 2019-033]

**j) Option 5 – Internal Incompatibility Buffers**

Required Incompatibility Buffers between SFD and MF units within a development shall not be required. [Ord. 2019-033]

**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 development: [Ord. 2019-033]

(1) In the case of a civic site cash out, the deletion of the Civic Pod and increase in Residential Pod area; or [Ord. 2019-033]

(2) The relocation of residential units to a Civic Pod, or the relocation of residential units where the Civic Pod is deleted. [Ord. 2019-033]

**3. Approval Process**

Subject Developments requesting density bonuses greater than 50 percent are subject to a Class A Conditional Use approval; approval processes for developments with density bonuses up to and including 50 percent are determined by the applicable thresholds in Art. 3, Overlays and Zoning Districts and Art. 4, Use Regulations of the Code. [Ord. 2019-033]

**C. Disposition of WHP Obligation**

**1. Declaration of Method to Meet WHP Obligation**

The Developer is required to declare the selected method to meet the WHP requirement prior to certification for public hearing for approval of the proposed Subject Development, or at DRO if the Subject Development is not subject to public hearing. The declared method shall be included as a Condition of Approval. [Ord. 2019-033]

**2. Change of Declared Method**

A change to the selected method cannot be requested after Building Permits have been issued for more than 25 percent of the units in the Subject Development. A change to the declared method shall be subject to the same approval process through which the Subject Development received approval. For developments subject to public hearing, approval of a change in declared method shall be at the discretion of the Board of County Commissioners. The Developer may request Expedited Application Consideration for a Development Order Amendment pursuant to Art. 2, Application Processes and Procedures. Any necessary amendments to the recorded Master Restrictive Covenant for the Subject Development as a result of the change of declared method shall be recorded by the Developer no later than 60 days following the approval of the change. [Ord. 2019-033] [Ord. 2023-036]

**3. Recalculation**

A change to a Subject Development's unit total, unit type, unit tenure, or declared method or WHP unit location shall require a recalculation of the workforce housing obligation, and shall include reassessment of the density bonus pursuant to the process outlined in Art. 5.G.1.B.2.e, Density Bonus Determination for Full Incentive Developments. Any recalculation that reduces the number of units approved on the Subject Development's Final Site Plan may require that the Final Site Plan be amended to reflect the reduced unit count, or the purchase of Transfer of Development Rights in the amount of the reduction. [Ord. 2019-033] [Ord. 2023-036]

**4. Methods Available**

Several alternative methods are available for the disposition of a Subject Development's WHP obligation: [Ord. 2019-033]

**a. WHP On-Site Construction Option**

WHP units may be located on site. For Single Family or Townhouse for-sale developments using the Full Incentive Option, the number of required WHP units may be reduced by 20 percent if all

required WHP units are to be provided as on-site, for-sale, Single Family units, or reduced by ten percent if provided as on-site, for-sale, Townhouse units. Prior to Final DRO approval, the Developer shall identify on the plan the total number of WHP units proposed for the Subject Development within each pod or phase, as applicable. 50 percent of WHP units must receive Certificates of Occupancy prior to the issuance of 50 percent of market rate unit Building Permits in the Subject Development. All WHP units must receive Certificates of Occupancy prior to issuance of no more than 85 percent of the residential Building Permits in the Subject Development. **[Ord. 2019-033]**

**b. WHP Off-Site Options**

WHP units may be located off site using the options listed below. For-sale Subject Developments that opt to provide the required WHP units as off-site rental units through off-site construction, through the Purchase of Market Rate Units, or through an Exchange Builder, shall have a WHP obligation one and one-half times the number of WHP units required if developed on site not including the on-site reduction. Off-site options may be accommodated in municipalities located within Palm Beach County. When the obligation is to be met in a municipality, the Developer shall provide written confirmation to the Planning Director or designee that the administrator or manager of the municipality has been notified that the WHP unit obligation is to be met in the municipality, prior to the issuance of the first WHP Building Permit; or prior to the recordation of a deed restriction or deed transfer to the County for a market rate unit pursuant to Art. 5.G.1.C.4.b.3), Off-Site Option 3 – Purchase of Market Rate Units. The enforcement of any requirements of this Section for units provided in municipalities shall be the responsibility of Palm Beach County. For Subject Developments outside the Westgate Community Redevelopment Area Overlay that opt to locate WHP units in the WCRAO, no more than ten percent of the development's WHP units to be located in the WCRAO shall be in the Low-Income category. The Developer shall provide written confirmation to the Planning Director or designee that the WCRA has been notified that WHP units will be provided in the WCRAO. **[Ord. 2019-033]**

**1) Off-Site Option 1 – Off-Site Construction/Same Developer**

Prior to issuance of the first residential Building Permit or Final DRO approval for the Subject Development, whichever comes first, 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. Certificates of Occupancy shall be issued for a minimum of 50 percent of the required WHP units to be constructed off-site prior to the issuance of no more than 50 percent of the Building Permits in the Subject Development. All off-site WHP units must receive Certificates of Occupancy prior to issuance of no more than 85 percent of the Building Permits in the Subject Development. The Site Plan, the Master Restrictive Covenant, or other appropriate document shall be amended to reflect the number of WHP units, including the number in each applicable WHP income category, to be located on the receiving site(s). The Planning Director or designee shall determine the appropriate document and the timeframe for the modification, which shall be no later than the 85 percent threshold identified in this paragraph. **[Ord. 2019-033] [Ord. 2023-036]**

**2) Off-Site Option 2 – Off-Site Construction/Exchange Builder**

Provision of required WHP units may be arranged by the Developer of the Subject Development through an Exchange Builder who will provide them off site, subject to the following: **[Ord. 2019-033] [Ord. 2023-036]**

- a) The exchange price shall be set by the County at 80 percent of the in-lieu fee associated with the Subject Development. **[Ord. 2019-033] [Ord. 2023-036]**
- b) All Exchange Projects that propose to utilize other programs in addition to WHP exchange payments that will result in income restrictions on WHP units will require the approval of the Board of County Commissioners. This approval is required prior to the earlier of Final DRO or first Building Permit. **[Ord. 2019-033] [Ord. 2023-036]**
- c) Prior to issuance of the first residential Building Permit for the Subject Development, the Developer of the Subject Development shall record a Notice of Disposition for the Subject Development indicating that the Exchange Builder Option has been selected to meet some or all of the WHP obligation, and shall select one of the following two options: **[Ord. 2019-033] [Ord. 2023-036]**

(1) Demonstrate engagement of an Exchange Builder, who shall provide: **[Ord. 2019-033]**

- (a) Evidence of receipt of payment of the required exchange price; **[Ord. 2019-033]**
- (b) A detailed description of the proposed Exchange Project, including site location; the site's land use designation, zoning, and density bonus determination if

applicable; the total number of proposed units by type, size, and income category; proposed Exchange Project layout including the number and type of buildings; proposed Exchange Project schedule; status of any development approvals; *pro forma* financial statements demonstrating the Exchange Project's financial viability; and, documentation evidencing availability of all sources of funding required for the Exchange Project development budget, including documentation from the financing source(s) providing a firm or a conditional commitment to financing and identifying all financing terms and conditions. **[Ord. 2019-033]**

- (c) Evidence of control of the proposed Exchange Project site, through a recorded deed or title, or an executed purchase agreement or purchase option, approved by the County Attorney for legal sufficiency and by the County Administrator or designee; **[Ord. 2019-033]**
  - (d) A recorded Master Restrictive Covenant, or deed restriction if a Master Restrictive Covenant is not practical, for the Exchange Project site; and, **[Ord. 2019-033]**  
**[Ord. 2023-036]**
  - (e) Guarantee acceptable to Palm Beach County and approved by the County Attorney's Office for an amount equal to 80 percent of the full in-lieu fee. The guarantee shall be for a term not to exceed 39 months, and of a type described in Art. 11.B.2.A.6, Guarantees. **[Ord. 2019-033]**
- (2) Provide guarantee acceptable to Palm Beach County and approved by the County Attorney's Office, for an amount equal to 100 percent of the in-lieu fee. The guarantee shall be for a term not to exceed 39 months, and of a type described in Art. 11.B.2.A.6, Guarantees. Prior to issuance of no more than 25 percent of the Building Permits in the Subject Development, the Developer of the Subject Development shall have the option to replace the guarantee provided at first Building Permit with items meeting the requirements of Art. 5.G.1.C.4.b.2)c)(1) above. If at 25 percent of Building Permits the required information has not been provided or is not approved by the County Administrator or designee, the Developer may pay the full in-lieu fees, and if not Palm Beach County shall file a claim against the guarantee for 100 percent of the in-lieu fees. Prepayment of the in-lieu fee by the Developer shall not be allowed. **[Ord. 2019-033]**
- d) Prior to the end of the 36th month of the guarantee, all WHP units shall be issued COs or a renewed guarantee shall be delivered by the Exchange Builder to Palm Beach County. The terms of the renewed guarantee shall be at the discretion of Palm Beach County, but in no case shall exceed an additional three months beyond the term of the original guarantee. The amount of the renewed guarantee shall be prorated to reflect any WHP units already issued Certificates of Occupancy. The Exchange Builder may request additional time beyond the three-month extension; approval of such a request will be at the discretion of the Board of County Commissioners and will require a renewed guarantee for the extension approved by the Board. If neither the required WHP units nor an acceptable renewed guarantee is delivered, Palm Beach County shall collect the guarantee. **[Ord. 2019-033]**
  - e) The Site Plan, the Master Restrictive Covenant, or other appropriate document shall be amended to reflect the number of WHP units, including the number in each applicable WHP income category, to be located on the Exchange Project(s). The Planning Director or designee shall determine the appropriate document and the timeframe for the modification, which shall be no later than the 85 percent threshold identified in Art. 5.G.1.C.4.b.2)c) above. **[Ord. 2019-033]** **[Ord. 2023-036]**
- 3) Off-Site Option 3 – Purchase of Market Rate Units**
- Purchase of existing market rate units to be deeded to the County, sold to eligible households and deed restricted, or retained by the Developer subject to recordation of a deed restriction that meets the intent of this provision and subject to the conversion factor pursuant to Art. 5.G.1.C.4.b, WHP Off-Site Options if applicable. Prior to issuance of the first residential Building Permit or Final DRO approval for the Subject Development, whichever comes first, 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. 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 50 percent of the residential 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 COs in the Subject Development. The market rate units shall be approved by the Department of Housing and Economic Development, and must meet housing quality standards and criteria established by PBC. The Site Plan, the Master Restrictive Covenant, or other appropriate document shall be amended to reflect the number of WHP units, including the number in each applicable WHP income category, to be located on the receiving site(s). The Planning Director or designee shall determine the appropriate document and the timeframe for the modification, which shall be no later than the 85 percent threshold identified in this paragraph. **[Ord. 2019-033] [Ord. 2023-036]**

**c. Donation of Buildable Land Option**

Donation of developable land acceptable to the County in an amount equal to the buyout costs of the affected units. Donated land must be approved by the Property and Real Estate Management Division prior to submittal of the Subject Development's application in the Zoning process. The donated land must be deeded to the County prior to issuance of 50 percent of the residential Building Permits in the Subject Development. **[Ord. 2019-033] [Ord. 2023-036]**

**d. In-Lieu Fee Option**

- 1) In-lieu fees shall be published by the Palm Beach County Planning, Zoning and Building Department for Single Family units, Townhouse units, and Multifamily units as defined by Art. 4, Use Regulations. The in-lieu fee amounts shall be adjusted annually in accordance with the annual All Items Consumer Price Index for All Urban Consumers (CPI-U) for the U.S. City Average, not seasonally adjusted, as published by the U.S. Bureau of Labor Statistics. **[Ord. 2019-033] [Ord. 2023-036]**
- 2) The in-lieu fees assessed for a Subject Development shall be based on the unit type of the Subject Development. For Subject Developments with a mix of unit types, the in-lieu fees shall be calculated based on the unit type distribution in the Subject Development. **[Ord. 2019-033]**
- 3) Fees shall be paid prior to the issuance of 50 percent of residential unit Building Permits for the Subject Development. Fees shall be made payable to the Palm Beach County Board of County Commissioners and submitted to the Department of Housing and Economic Development. The payment shall be deposited in the WHP Trust Fund maintained by the PBC Department of Housing and Economic Development. **[Ord. 2019-033] [Ord. 2023-036]**

**5. Banking of WHP Units**

A Developer may opt to bank or restrict WHP units for the purpose of applying those units toward the obligation of a future development subject to the WHP. The Developer shall record, in a form provided by the County, a Master Restrictive Covenant or deed restriction for the banked unit site which shall include the applicable restriction for WHP for-sale or WHP rental units, pursuant to Art. 5.G.1.D, Delivery of WHP Units below. The affordability period for the banked units shall begin upon the effective date established by the Master Restrictive Covenant or deed restriction recorded for the banked unit site. The Developer may claim a banked unit for a future Subject Development through the Master Restrictive Covenant or deed restriction for the Subject Development, provided that the income category of the banked units is consistent with or lower than the income category of the WHP units required for the Subject Development. **[Ord. 2023-036]**

**D. Delivery of WHP Units**

Except as noted, the following Section applies to Subject Developments that opt to dispose of the WHP obligation through the following methods: On-Site Construction, Off-Site Construction/Same Developer, Off-Site Construction/Exchange Builder, or Purchase of Market Rate Units. Required WHP units may be delivered as for-sale or for-rent units. **[Ord. 2019-033]**

**1. For-Sale Units**

**a. Master Restrictive Covenant**

- 1) Except for Subject Developments using Off-Site Construction/Exchange Builder Option for the Subject Development's entire WHP obligation, prior to first Building Permit on the Subject Development, the Developer of the Subject Development shall record in the Public Records of Palm Beach County a Master Restrictive Covenant binding the entire Subject Development, in a form provided by the County, which identifies the WHP unit requirement for the Subject Development and addresses the requirements of this Subsection. Subject Developments that use the Exchange Builder Option to meet some or all of the WHP obligation may record a Notice of Disposition instead of a Master Restrictive Covenant for that portion of the obligation met through the Exchange Builder Option. **[Ord. 2019-033] [Ord. 2023-036]**
- 2) The Master Restrictive Covenant shall include but not be limited to restrictions requiring: that all identified WHP units shall be sold or resold only to a purchaser certified by the Department of Housing and Economic Development, at or below the price established annually by Palm

Beach County for the income category of the WHP for-sale unit, subject to the affordability requirements and provisions of this Article; that the County shall have the exclusive option to purchase WHP units that are unsold at day 150 of the required marketing period; that rental of units is permitted only under specific circumstances, for limited periods of time, and with prior approval by the Director of the Department of Housing and Economic Development; that these restrictions remain in effect for 15 years recurring from the date of sale 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; and, that the 15-year period shall be extended by the amount of time a Code Enforcement magistrate or a judge finds the Developer or unit owner out of compliance with the WHP. The Master Restrictive Covenant shall further provide monitoring and compliance requirements including but not limited to those set forth below to ensure compliance with the WHP, and provide that every deed for sale of a WHP housing unit shall include: a statement that the units are subject to covenants, conditions, and restrictions including the Master Restrictive Covenant; the date and the Book and Page of the Official Record of recordation of the Master Restrictive Covenant; and, the income category associated with the unit. **[Ord. 2019-033] [Ord. 2023-036]**

**b. Process for Initial Sale of WHP Units**

**1) Pricing/Affordability**

- a) WHP units shall be sold at or below the current designated price for the unit's income category. In the event that an income-certified purchaser seeks to purchase a WHP unit whose price has increased through annual price adjustments pursuant to this Article, the Developer of that WHP unit shall honor the price in effect at the time of the purchaser's income certification, provided that the purchaser enters into a purchase contract within one year of the date of income certification. **[Ord. 2019-033]**
- b) Developers shall not be required to provide units in an income category when the category price is greater than the median sales price for the County. These units are eligible for the In-Lieu payment pursuant to Art. 5.G.1.C.4.d, In-Lieu Fee Option, or can be distributed equally among the remaining income categories. **[Ord. 2019-033]**
- c) The price of a WHP for-sale unit shall not be raised once a unit is under contract to a purchaser. Purchase price of the WHP unit, including all charges imposed by the seller, cannot exceed the maximum WHP price for the income category. Options selected by the purchaser, including but not limited to upgraded finishes or premium lots, shall not be reflected in the sales price of WHP units, but may be paid by the purchaser at the time of contract execution, or included as a line item on the closing/settlement statement. Earnest money deposit required of purchasers shall not exceed two percent of the sales price. **[Ord. 2019-033] [Ord. 2023-036]**
- d) Affordability restrictions remain in effect for 15 years recurring from the date of sale of the unit; 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. 2019-033] [Ord. 2023-036]**
- e) Rental of WHP for-sale units is permitted only under specific circumstances, for limited periods of time, to income-qualified renters, at or below the Maximum WHP Rents established annually by Palm Beach County for the unit's designated income categories, and with prior approval by the Director of the Department of Housing and Economic Development based on criteria established by the Department. **[Ord. 2019-033] [Ord. 2023-036]**

**2) Qualification and Certification for For-Sale Purchasers**

WHP units shall be sold only to a purchaser certified by the Department of Housing and Economic Development. HED shall qualify prospective purchases and issue a certification letter confirming eligibility to purchase the WHP unit. Palm Beach County retains the right to qualify purchasers for units in categories above or below their income category. When available, down payment assistance may be offered for all workforce housing purchasers; Palm Beach County shall not be obligated to provide down payment assistance to any purchaser. The amount of financial assistance, if any, that is available for purchase of the WHP unit shall be identified in the certification letter. The HED certification process shall be implemented according to procedures established and published by the Department. **[Ord. 2019-033] [Ord. 2023-036]**

- 3) **Closing**
  - a) The process and requirements for closing of sales of WHP units shall be as set forth in County procedures. **[Ord. 2019-033]**
  - b) Every warranty deed documenting a sale of a WHP unit shall include a statement that a unit is subject to covenants, conditions, and restrictions including the Master Restrictive Covenant, and shall include the date of recordation of the Master Restrictive Covenant, and the Book and Page of the Official Record. **[Ord. 2019-033] [Ord. 2023-036]**
- 4) **Compliance Reporting during Initial Sales Period**

Beginning with the commencement of sales of WHP units, until such time as all WHP units have been sold, the Developer or Exchange Builder will provide to the County monthly reports detailing the number of WHP and market rate units built, the number under contract, and the number sold. The Developer shall also provide notice to the Planning Director or designee if ownership of the Subject Development, or Exchange Project, has been transferred. **[Ord. 2019-033]**
- 5) **Marketing of WHP For-Sale Units**
  - a) **WHP Units Delivered through the Exchange Builder or Purchase of Market Rate Options**

The marketing of WHP units delivered through an Exchange Builder, and the marketing of Purchase of Market Rate WHP Units which are intended to be sold by the Developer, shall be the responsibility of the Developer or Exchange Builder. If requested, the County may provide, at the County's sole discretion, a list of interested parties, WHP brochures, informational packets, or other information or assistance for the marketing of WHP for-sale units delivered through these options. **[Ord. 2019-033] [Ord. 2023-036]**
  - b) **WHP Units Delivered through the On-Site Construction or Off-Site/Same Developer Options**

The County shall prepare and publish minimum marketing requirements applicable to WHP units provided through the WHP On-Site Construction Option or Off-Site Construction by Same Developer Option. The marketing requirements shall address the following, at minimum: **[Ord. 2019-033]**

    - (1) The intent that the Developer will act in good faith to market and sell the WHP units in the same manner as the market rate units and for the same period of time. **[Ord. 2019-033]**
    - (2) The marketing of WHP units shall commence concurrent with the marketing of market rate units, and shall continue until at least 75 percent of the for-sale market rate units have been issued Certificates of Occupancy, but not less than 180 days. **[Ord. 2019-033]**
    - (3) Prior to commencement of sales, the Developer shall obtain from the Director of HED or designee a list of interested parties, WHP brochures, and informational packets which provide the qualification standards, terms of the Master Restrictive Covenant, where to go to get qualified, and other relevant information regarding the WHP units. **[Ord. 2019-033] [Ord. 2023-036]**
    - (4) The Developer shall provide notice of commencement of sales to the Planning Director or designee, the Director of HED, and the list of interested parties. The notice shall include the address where the WHP units are located, the address of the sales office, the hours of the sales office, the floor plan and construction specifications for the WHP units, and the pricing of the WHP units. The Developer shall provide to the Planning Director or designee proof of notice to the interested parties list, in the form of a copy of the email or letter sent, and a copy of the distribution list. **[Ord. 2019-033] [Ord. 2023-036]**
    - (5) Within ten days of receipt, the County shall provide written acknowledgement of the notice of commencement of sales. **[Ord. 2019-033]**
    - (6) The Developer shall maintain in the sales office and sales office of the Subject Development if the WHP units are located off site, hard physical copies of informational packets obtained from HED, available to any and all potential buyers. The Developer shall also maintain hard physical copies of the County's WHP brochure and prominent displays indicating certain units are available for purchase for qualified households subject to the WHP provisions, and shall identify the location and availability timeframe for WHP units. **[Ord. 2019-033] [Ord. 2023-036]**

- (7) The Developer shall attend all housing workshops, fairs, orientations, and other WHP events requested by HED during the marketing period, and shall present information about the WHP units and purchase options. **[Ord. 2019-033] [Ord. 2023-036]**
- (8) The Developer shall maintain publicly accessible website landing pages for the WHP units that are prominently displayed on the Subject Development's primary webpage, starting at the time of commencement of sales of the market rate units. **[Ord. 2019-033]**
- (9) The Developer shall provide monthly documentation to the Planning Director or designee demonstrating that the required materials are available in the sales office and prominently displayed, that the Developer is participating in County WHP events, that the website for the WHP units is active and easily accessed, and that marketing efforts for the WHP units are consistent with the marketing efforts for the market rate units. Documentation shall include photographs of the required materials and displays demonstrating a prominent location in the sales office, screenshots of webpages, copies of mailers, photos of billboards, proof of television, radio, newspaper, or online advertisements, for both market rate and WHP units, and shall include a log of visitors and callers interested in the WHP units. **[Ord. 2019-033]**
- c) The County may conduct site visits and inspections to verify compliance with the requirements of this Section. **[Ord. 2019-033]**

**6) Release of Obligation**

It is the County's intent that each Subject Development fulfill its obligation pursuant to this Chapter. Release of obligation is available only for Subject Developments delivering WHP required units as for-sale units through the WHP On-Site Construction or the Off-Site Construction by Same Developer disposition options. 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 purchaser has not been executed. In the event WHP units have been marketed according to the requirements of this Article, then the WHP units are eligible to be released from the WHP obligations indicated in the Master Restrictive Covenant pursuant to the process below. **[Ord. 2019-033] [Ord. 2023-036]**

- a) The Developer shall provide a written notice to the Planning Director or designee requesting release of obligation and confirmation of the In-Lieu cash payment amount. The request shall include documentation demonstrating that at least 75 percent of the for-sale market rate units in the Subject Development have received Certificates of Occupancy. **[Ord. 2019-033]**
- b) The County shall provide a written response to the Developer, within ten business days of receipt, indicating the County's agreement/disagreement with request for release of obligation and confirming the amount of the required In-Lieu cash payment. **[Ord. 2019-033]**
- c) Upon payment of the required In-Lieu cash payment, the WHP unit shall thereafter be released from any and all obligations of the WHP requirements of this Code and the County shall provide written confirmation that the unit has been released, inclusive of release from the Master Restrictive Covenant. **[Ord. 2019-033] [Ord. 2023-036]**
- d) Should a Developer wish to appeal the Planning Director's determination that a Subject Development has not met the requirements for a release of obligation; the appeal shall be pursuant to Art. 2.A.14.C.2.d, Interpretations of the ULDC. **[Ord. 2019-033]**

**c. Process for Subsequent Sales**

**1) Pricing/Affordability**

- a) Affordability restrictions remain in effect for 15 years recurring from the date of sale; 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. 2019-033] [Ord. 2023-036]**
- b) An owner intending to sell a WHP unit during the affordability period must notify the Planning Director or designee in writing of the intent to sell, and request a resale price determination. The Planning Director or designee will determine the current maximum resale price based on the income category of the WHP unit and the current sales price for that category. The WHP price initially established for the for-sale unit's income category at the time of approval of the Subject Development shall be the sales floor throughout the affordability period. No WHP unit is required to be sold at a price below the sales floor, though a seller may opt to do so. **[Ord. 2019-033]**

**2) HED Review**

**a) Qualification and Certification of For-Sale Purchasers**

WHP units shall be sold only to a purchaser certified by the Department of Housing and Economic Development. Unit owners shall refer prospective purchasers to HED, who shall qualify prospective purchasers and issue a certification letter confirming eligibility to purchase the WHP unit. Palm Beach County retains the right to qualify purchasers for units above or below their income category. When available, down payment assistance may be offered for all workforce housing buyers; Palm Beach County shall not be obligated to provide down payment assistance to any purchaser. The amount of financial assistance, if any, that is available for purchase of the WHP unit shall be identified in the certification letter. The HED certification process shall be implemented according to procedures established and published by the Department. **[Ord. 2019-033] [Ord. 2023-036]**

**3) Closing**

- a) The process and requirements for closing of sales of WHP units shall be as set forth in County procedures. **[Ord. 2019-033]**
- b) Every warranty deed documenting a sale of a WHP unit shall include a statement that a unit is subject to covenants, conditions, and restrictions including the Master Restrictive Covenant, and shall include the date of recordation of the Master Restrictive Covenant, and the Book and Page of the Official Record. **[Ord. 2019-033] [Ord. 2023-036]**

**d. Annual Compliance Reporting**

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. The County may conduct site visits at reasonable times, or perform other independent investigation to verify continued compliance with the WHP. **[Ord. 2019-033]**

**2. Rental Units**

**a. Master Restrictive Covenant**

- 1) Except for Subject Developments using Off-Site Construction/Exchange Builder Option for the Subject Development's entire WHP obligation, prior to first Building Permit on the Subject Development, the Developer of the Subject Development shall record in the Public Records of Palm Beach County a Master Restrictive Covenant binding the entire project, in a form provided by the County, which identifies the WHP unit requirement for the Subject Development and addresses the requirements of this Subsection. Subject Developments that use the Exchange Builder Option to meet some or all of the WHP obligation may record a Notice of Disposition instead of a Master Restrictive Covenant for that portion of the obligation met through the Exchange Builder Option. **[Ord. 2019-033] [Ord. 2023-036]**
- 2) The Master Restrictive Covenant shall include but not be limited to restrictions requiring: that all required WHP units shall be rented only to an income-qualified household, in an income category corresponding to the WHP obligation of the Subject Development, at or below the Maximum WHP Rents established for the income category annually by Palm Beach County, subject to the affordability requirements and provisions of this Article; that these restrictions remain in effect for a period of 30 years (non-recurring) for each unit, from the date of occupancy of the first WHP unit; that the 30-year period will be extended by the amount of time a Code Enforcement magistrate or judge finds that the Subject Development is out of compliance with the WHP; 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 designee; and shall take effect on the date of resale. The Master Restrictive 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 units and every rental agreement for each WHP unit shall incorporate by reference the Master Restrictive Covenant. **[Ord. 2019-033] [Ord. 2023-036]**

**b. Marketing of WHP Rental Units**

Marketing of WHP rental units is the responsibility of the WHP rental unit owner or designee. Information regarding the WHP, including eligible income ranges and the availability of workforce housing units, shall be posted in the leasing office and website for the rental project, if any. The WHP rental unit owner or designee shall also maintain current the information provided to the County regarding the rental project. **[Ord. 2019-033] [Ord. 2023-036]**

**c. Notifications to Palm Beach County**

The WHP rental unit owner or designee shall notify the Planning Director, or designee, in writing prior to the commencement of leasing, to obtain the current income and rent ranges. The WHP rental unit owner or designee shall provide the Planning Director, or designee, with written notice of the date of occupancy of the first WHP unit no later than five days after occupancy. The WHP rental unit owner or designee shall also provide written notice to the Planning Director or designee of a change in WHP rental unit owner or designee no later than 30-calendar days after the change occurs. **[Ord. 2019-033] [Ord. 2023-036]**

**d. Rents/Affordability**

- 1) All required WHP units shall be rented only in the designated income categories corresponding to the WHP obligation of the Subject Development, at or below the prices established by Palm Beach County. **[Ord. 2019-033] [Ord. 2023-036]**
- 2) Affordability restrictions remain in effect for a period of 30 years (non-recurring) for each rental unit, from the date of occupancy of the first WHP unit; in the event a rental complex is resold before the 30-year period concludes for all units, the new owner assumes the requirement for the remaining number of years; as shall be determined by the Planning Director or designee based on the date of resale. **[Ord. 2019-033]**
- 3) The rent ranges shall be updated annually by the Planning Director, or designee, based on the monthly rent limits published annually for the Florida Housing Finance Corporation Multifamily Rental Programs, by number of bedrooms. The rent ranges shall address the following income subcategories: > 60 to 70 percent; > 70 to 80 percent; > 80 to 90 percent; > 90 to 100 percent; > 100 to 110 percent; > 110 to 120 percent; > 120 to 130 percent; and, > 130 to 140 percent of MFI. The maximum rent established by Palm Beach County for each income category and subcategory, by number of bedrooms, constitutes the Maximum WHP Rent for that category or subcategory. **[Ord. 2019-033] [Ord. 2023-036]**
- 4) WHP Rents for required WHP rental units are set by the rental unit owner or designee, and shall: **[Ord. 2023-036]**
  - a) include any Mandatory Fees required to be paid by all tenants. Mandatory Fees cannot be charged in addition to the Maximum WHP Rent, even if such charges are designated as "Additional Rent" per the lease. **[Ord. 2023-036]**
  - b) reflect the Utility Allowance if applicable. **[Ord. 2023-036]**
  - c) not exceed the Maximum WHP Rent minus any applicable Utility Allowance. **[Ord. 2023-036]**

Voluntary Fees may be charged in addition to the WHP Rent, even if these cause the Maximum WHP Rent to be exceeded. **[Ord. 2023-036]**

**5) Utility Allowance**

A Utility Allowance is required to be applied if the WHP rental units are subject to a Utility Allowance pursuant to the Master Restrictive Covenant governing the WHP rental units. The amount of the Utility Allowance shall be as established by the Master Restrictive Covenant. For the purposes of this provision, utilities are limited to water, sewer, gas, or electric service provided directly to the unit, and not for common areas. Owners of WHP rental units subject to a Utility Allowance must either: **[Ord. 2023-036]**

- a) reduce the rent by the amount of the Utility Allowance, if the cost of all the identified utilities is billed to the WHP tenant by the WHP rental unit owner or designee, the utility, or a third party; or **[Ord. 2023-036]**
- b) apply the Utility Allowance amount against the actual cost of the utilities provided to the unit, if the cost of any of the identified utilities are borne by the WHP unit owner and not billed to the WHP tenant by the WHP rental unit owner or designee, the utility, or a third party. If the utility costs are less than the prescribed Utility Allowance, the difference shall be credited to the WHP resident's rent cost. If the cost of the utilities exceeds the Utility Allowance, the excess cost may be charged to the WHP tenant, even if it exceeds the Maximum WHP Rent for the WHP tenant's income category or subcategory. Reasonable, reliable, and verifiable documentation is required to confirm utility costs. **[Ord. 2023-036]**

**6) Rentals Below Low-Income Category**

The owner of a WHP unit may request approval from the Executive Director of the Planning, Zoning and Building Department, or designee to rent the unit to a household having an income below 60 percent of Area Median Income, at a rent below the minimum rent for the Low-Income category, but not to exceed 33 percent of the WHP tenant's monthly household income. The Executive Director of the Planning, Zoning and Building Department, or designee, in consultation with the Department of Housing and Economic Development, shall consider the income characteristics of the census block(s) or tract(s) where the development is located and any other relevant information in determining whether to grant the request. **[Ord. 2019-033]**  
**[Ord. 2023-036]**

- 7) The rent ranges initially established for the rental unit's income category at the time of approval of the Subject Development shall be the rental floor throughout the affordability period. No WHP unit is required to be rented below the rental floor, though a rental unit owner or designee may opt to do so. **[Ord. 2019-033]** **[Ord. 2023-036]**

**e. Income Qualification of WHP Tenants**

WHP units shall be rented only to an income-qualified household. The verification of prospective WHP tenants as income qualified for the income category or subcategory, pursuant to the requirements of this Article and procedures established by the Department of Planning, Zoning and Building, is the responsibility of the rental unit owner or designee. **[Ord. 2019-033]** **[Ord. 2023-036]**

**1) At Initial Lease Execution**

The household's income eligibility must be verified through completion of the County's WHP lease addendum and WHP Rent calculation worksheet, which are available on the County's website or from the Planning Director or designee. The WHP rental unit owner or designee may request financial documents it deems reasonably necessary to ensure the household is eligible pursuant to the WHP. The WHP lease addendum and WHP Rent calculation worksheet are submitted by the WHP rental unit owner or designee to the Planning Director or designee for compliance review prior to or at the time of lease execution, but no later than the timeframe specified in the Master Restrictive Covenant for submittal of the lease addendum, or no later than ten days after lease execution if no timeframe is specified. **[Ord. 2023-036]**

**2) At Lease Renewal or at Income Reverification**

At renewals of the lease, the WHP rental unit owner or designee may choose to reverify the Annual Household Income and assigned income category, but is not required to do so. If the WHP tenant's income is to be reverified at lease renewal, the WHP rental unit owner shall provide the tenant a minimum of 60 days' notice prior to renewal date of the intent to reverify. If no new income reverification is completed at lease renewal, no new WHP lease addendum is required, but the WHP rental unit owner or designee is required to provide the WHP Rent calculation worksheet within ten days of lease renewal, indicating the WHP Rent amount pursuant to the renewed lease, to the Planning Director or designee for compliance review. **[Ord. 2023-036]**

The WHP rental unit owner or designee may also reverify the income, adjust the income category or subcategory, and adjust the WHP Rent of the WHP rental unit during the course of the lease if requested by the WHP tenant due to changed household circumstances, but is not required to do so. **[Ord. 2023-036]**

In considering any income category reassignment as a result of the income reverification, the required number of WHP rental units in each category shall not be exceeded, except when opting to shift a WHP rental unit to a lesser income category. **[Ord. 2023-036]**

In the event of any reverification of Annual Household Income, a new completed WHP lease addendum and WHP Rent calculation worksheet must be provided to the Planning Director or designee for compliance review prior to or at the time of lease execution, but no later than the timeframe specified in the Master Restrictive Covenant for submittal of the initial WHP lease addendum, or no later than ten days after lease execution if no timeframe is specified in the Master Restrictive Covenant. **[Ord. 2023-036]**

**f. Compliance Review and Compliance Determination**

It is the County's intent that each Subject Development fulfill 100 percent of its workforce housing obligation pursuant to its Development Order and this Chapter. For each WHP rental unit, the Planning Director or designee shall review the WHP lease addendum and/or WHP Rent calculation worksheet documenting the Annual Household Income verified by the WHP rental unit owner or designee, the household's WHP category and subcategory if applicable, and the WHP Rent to be charged. **[Ord. 2023-036]**

A WHP rental unit shall only be considered compliant once an accurate, complete, and fully notarized WHP lease addendum and/or WHP Rent calculation worksheet are provided to the Planning Director or designee, and the Planning Director or designee verifies that the correct income category, income subcategory if applicable, and rent are applied. **[Ord. 2023-036]**

The Planning Director or designee shall notify the WHP rental unit owner or designee of the result of the review of the submitted documents within three business days of receipt. **[Ord. 2023-036]**

If compliance issues are identified, the WHP rental unit owner or designee shall address the issues identified by the Planning Director or designee to the Planning Director or designee's reasonable satisfaction and resubmit the required documentation for review within ten business days of the Planning Director or designee's request. **[Ord. 2023-036]**

A copy of the completed WHP lease addendum and WHP Rent calculation worksheet shall be provided to the WHP tenant by the WHP rental unit owner or designee within three business days of verification of compliance by the County. **[Ord. 2023-036]**

If the documents are deemed compliant, the WHP rental unit shall be considered compliant from the date of the event (lease start, lease renewal, or income reverification), or the date the compliant documents were submitted to the County, whichever is later. **[Ord. 2023-036]**

The Planning Director or designee shall maintain a record of the project's WHP unit compliance using the WHP lease addenda form and WHP Rent calculation worksheets and other documentation provided by the WHP rental unit owner or designee. **[Ord. 2023-036]**

The Planning Director or designee may conduct site visits at reasonable times, request rent rolls, unit ledgers, or other documentation, and/or perform other independent investigation to verify compliance with the WHP. **[Ord. 2019-033] [Ord. 2023-036]**

It is a violation of this Code if the project has failed to maintain a minimum of 90 percent of its WHP unit obligation for more than 60 consecutive days, has failed to make a non-compliant WHP rental unit compliant within ten business days of written notice provided by the Planning Director or designee, or has failed to provide additional compliance documentation requested by the Planning Director or designee within ten business days of the written request provided by the Planning Director. In the event of a violation of this part or any other part of this Section, the 30-year period will be extended by the amount of time a Code Enforcement magistrate or judge finds that the Subject Development was out of compliance. **[Ord. 2023-036]**

**g. Deed Restriction**

The warranty deed documenting a sale of WHP rental units shall include a statement that the units are subject to covenants, conditions, and restrictions including the Master Covenant, and shall include the date of recordation of the Master Covenant, and the Book and Page of the Official Record. **[Ord. 2019-033]**

**E. Enforcement**

The County may enforce the requirements of the WHP through the County's Code Enforcement process or by bringing an action in the 15th Judicial Circuit Court in and for Palm Beach County, Florida by any cause of action available at law or equity, and seek remedies including but not limited to, specific performance, injunctive relief, rescission of any unauthorized sale or lease, reclassification of a market rate unit to a WHP unit, reclassification of the WHP unit income categories to lower categories, and extensions of the 15-year recurring term of for-sale units or the 30-year non-recurring term for rental units. These remedies are not exclusive and may be awarded in combination with each other and in addition to any other remedy available to the County. **[Ord. 2019-033] [Ord. 2023-036]**