

TAB 2

POINT PAPER

DISCUSSION REGARDING ATTAINABLE HOUSING

June 16, 2008

PROBLEM: The housing market has slumped, and there are many homes for sale under the county-wide calculated maximum price for attainable housing (\$201,600). As such, it may be inappropriate for us to require that builders construct and sell homes with deed restrictions that limit the resale of the homes. Homes with such restrictions would almost certainly not sell, while similarly priced homes are available without any limit to the future market price.

BACKGROUND: Last year, the City of Palmetto adopted Ordinance # 06-892 requiring the construction of attainable housing units. This Ordinance also has provisions that restrict the resale price of attainable homes, so as to ensure that the supply wouldn't dwindle as people bought the homes and "flipped" them for a greater-than-normal profit.

The Ordinance allowed for payment in lieu of construction of the homes, so that developers could provide cash into a Housing Trust Fund or other public amenities that further the goals of the ordinance.

The current availability of "attainably priced" housing units would suggest that the City move to a voluntary period for the construction of these homes. Unfortunately, it seems that doing so will cause the City to lose the momentum achieved with the adoption of this Ordinance. When the market changes, we will, again, face a critical shortage of housing.

Staff has contemplated a variety of options:

- Shall we move into the "voluntary period" with regard to attainable housing?
- Do we continue to allow for the utilization of the incentive matrix?
- What should we do about the longevity of the "Certificates of Credit" that developers can earn?

City Commission should provide feedback before Staff's beginning to draft proposed amendments to the Ordinance.

ORDINANCE NO. 06-892

AN ORDINANCE OF THE CITY OF PALMETTO, FLORIDA, ESTABLISHING A MEANS OF INCREASING LOCAL ATTAINABLE HOUSING FOR MEDIAN-INCOME HOUSEHOLDS; PROVIDING FOR FINDINGS OF FACT; PROVIDING FOR DEFINITIONS; PROVIDING FOR A VOLUNTARY PERIOD; PROVIDING FOR REQUIREMENTS; PROVIDING FOR DEVELOPER INCENTIVES; PROVIDING FOR PAYMENTS IN LIEU; PROVIDING FOR EXEMPTIONS, REDUCTIONS, AND WAIVERS; PROVIDING FOR ADMINISTRATION; PROVIDING FOR ENFORCEMENT; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Article VIII, Section 2 of the Florida Constitution provides that municipalities shall have governmental, corporate and proprietary powers to enable municipalities to conduct municipal government, perform municipal functions and render municipal services; and

WHEREAS, pursuant to the referenced provision of the Florida Constitution, the City may exercise any power for municipal purposes except as otherwise provided by law; and

WHEREAS, Chapter 166, Florida Statutes, the "Municipal Home Rule Powers Act," implements the applicable provisions of the Florida Constitution and authorizes municipalities to exercise any power for municipal purposes, except when expressly prohibited by law and to enact ordinances in furtherance thereof; and

WHEREAS, within the above-referenced grant of powers, the City of Palmetto, Florida ("City") has the authority to establish land use and

development regulations for the protection of the public health, safety and welfare; and,

WHEREAS, the City is home to a diverse array of people representing all socio-economic backgrounds and income levels; and

WHEREAS, the City has conducted research and accumulated data pertaining to available housing within the boundaries of the City for residents of various income levels; and

WHEREAS, said research and current data indicates that housing needs for households earning between 80% and 120% of the median income are not being met; and

WHEREAS, said research and data indicates that while approximately 30% of the City's households fall within said income range, approximately 5% of currently available housing stock in the City is affordable to these households; and

WHEREAS, federal and state funds for the construction of housing units do not fully meet the needs of households earning between 80% and 120% of the median income; and

WHEREAS, the City has conducted research and accumulated data pertaining to the type and amount of housing that is desirable and necessary for the City to create a healthy, safe and economically secure environment for its residents now and in the future; and

WHEREAS, the City endeavors to promote a range of housing opportunities for all income levels in such proportion that current and future residents of the City will benefit from the City's growth and development; and

WHEREAS, in order to better meet housing demands and keep pace with projected growth, the City seeks to achieve approximately 15% of the City's stock of homes affordable to households earning between 80% and 120% of the median income ("Attainable Housing Units"); and

WHEREAS, to achieve this result, it is necessary to mitigate the negative impacts of market-rate housing on the supply and cost of housing stock within the City; and

WHEREAS, prolific development of market-rate housing reduces the supply of developable sites that would otherwise be appropriate for Attainable Housing Units; and

WHEREAS, it is necessary, reasonable and in the public's best interest to require that developers of new market-rate housing bear some responsibility for the negative impacts of such development; and

WHEREAS, the City Commission has determined that a mix of regulatory requirements and developer incentives is an equitable and efficient method of increasing the supply of Attainable Housing Units within the City; and

WHEREAS, the City Commission finds that allowing cash payments and equivalent donations in lieu of providing required Attainable Housing Units is a reasonable alternative to the provision of such housing; and

WHEREAS, said payments and donations will be used to subsidize and facilitate achievement of the optimal number of Attainable Housing Units within the City limits; and

WHEREAS, the City's calculation of the payment in lieu amount takes into account the City's costs associated with purchasing real property, constructing Attainable Housing Units and required improvements, and administering the Attainable Housing Units program; and

WHEREAS, development of market-rate housing encourages new residents to move to the City, but a significant portion of the public and private sector employees needed to meet the needs of these new residents do not earn incomes that would enable them to purchase market-rate housing; and

WHEREAS, the City Commission has determined that the requirements of this ordinance do not impose inequitable or disproportionate burdens upon landowners, developers or builders; and

WHEREAS, the City Commission finds that all requirements imposed by this ordinance are related to the need for Attainable Housing Units and that the means set forth herein specifically and reasonably address that need; and

WHEREAS, the City Commission has determined that the exemptions, reductions, and waivers set forth within this ordinance implement such intent; and

WHEREAS, the City Commission has considered draft ordinances pertaining to attainable housing at numerous public workshop meetings; and

WHEREAS, the City Commission held properly noticed public hearings on July 24, 2006;

WHEREAS, the City Commission has taken into consideration the recommendations of City staff and information provided at the public hearings; and

WHEREAS, the City Commission has determined that adoption of this ordinance is in the best interest of the public health, safety, and welfare.

NOW THEREFORE, be it ordained by the City of Palmetto, Florida, in session duly assembled that:

Section 1. Findings of Fact. The above "whereas" clauses are hereby adopted as findings of fact and incorporated herein.

Section 2. New Language. Chapter 17, Article III of the City of Palmetto Code of Ordinances is hereby amended by adding Division 1, Sections 17-47 through 17-97, which sections shall read in their entirety as follows:

Division 1. Attainable Housing

Sec. 17 - 47. Policy and Intent.

(a) *Attainable Housing Problem.* The City faces a serious housing problem that threatens its economic security. Lack of attainable housing has a direct impact upon the health, safety, and welfare of City residents. The City will not be able to maintain a healthy environment without additional housing affordable to households earning between 80% and 120% of the median income. By adoption of this ordinance, the City intends the following:

- (1) To encourage development and availability of housing units within the City that are soundly constructed, aesthetically pleasing, and affordable to a broad range of households with varying income levels;
- (2) To promote the City's goal of achieving a specific number of housing units within the City that are affordable to households earning between 80% and 120% of the median income;
- (3) To achieve a balanced housing market that provides adequate housing for public and private sector employees that will be needed to meet service demand resulting from the development of market-rate housing within the City;
- (4) To expand the array of housing opportunities within the City such that employees may live in the region where they work, thereby reducing, among other things, traffic, related air quality impacts, and demands placed on the City's infrastructure.

(b) *Compliance and presumption of public benefit.* Consistent with the City's intent and policy behind enacting this ordinance, the City hereby determines that those who construct Attainable Housing Units pursuant to this ordinance shall be afforded a presumption that their efforts to construct such housing and the benefits they may receive pursuant to this ordinance are in the best interests of the health, safety, and welfare of the City. The City further declares that it shall fully

cooperate with those who construct Attainable Housing Units pursuant to this ordinance to provide to such developers as many incentives and benefits as possible. Any benefits and incentives denied to developers who construct Attainable Housing Units pursuant to this ordinance shall be accompanied by findings of fact which clearly support the denial.

Sec. 17 - 48. Definitions.

The following terms shall have the following meanings within this ordinance, except where context would otherwise require:

- (a) *"Affordable Housing Unit"* or *"Affordable Unit"* means a residential unit that must be affordable for purchase by Eligible Households earning less than 80% of the Median Household Income. Sales prices for Affordable Housing Units may be determined by the County Department and shall be approved by the City Commission.
- (b) *"Attainable Housing Unit"* or *"Workforce Unit"* means a residential unit within the City that an Eligible Household may purchase as their homestead at or below the Maximum Attainable Housing Unit Sales Price, but above the maximum sales price for an Affordable Housing Unit.
- (c) *"Maximum Attainable Housing Unit Sales Price"* means the maximum sales price for a home that an Eligible Household can afford. The Maximum Attainable Housing Unit Sales Price may be determined by the County Department and shall be approved by the City Commission. The price shall include the total cost of the purchase of the home and shall include any additional amenities that may be offered by the seller, such as parking spaces and community facility usage, with the purchase of the home.
- (d) *"Baseline"* means the number of Attainable Housing Units a developer is required to construct pursuant to Section 17-51. During a "Voluntary Period," as defined in Section 17-49, the Baseline

means the number of Attainable Housing Units a developer *would be* required to construct pursuant to Section 17-51, were that provision in effect and applicable at that time.

- (e) "*Certificate of Credit*" is a certificate issued by the Office of the City Planner. Such Certificate indicates that a developer has constructed Attainable Housing Unit(s) during a "Voluntary Period", as defined in Section 17-49, or has constructed Attainable Housing Unit(s) above the Baseline during a "Mandatory Period", as defined therein.
- (f) "*City Planner*" means the City Planner for the City of Palmetto and shall include his or her designee.
- (g) "*Construct*" or "*Construction*", as it pertains to the building of Attainable Housing Units, means to build an Attainable Housing Unit and be issued a Certificate of Occupancy for that Unit, or in instances where the developer may make a "payment in lieu" pursuant to Section 17-54 for an Attainable Housing Unit, means to remit all funds or make all donations to the City in accordance with such section. "Construct" or "Construction" shall only apply to new Attainable Housing Units built after the effective date of this ordinance and to the renovation of Units built before the effective date of this ordinance, where such renovation increases the market value of the Unit by 51% or more.
- (h) "*County Department*" means the Manatee County Housing Authority, so long as its responsible for administering the workforce housing program provisions of Manatee County's Land Development Code, Chapter 13.
- (i) "Credit" means the measurement by which individual Attainable Housing Units are represented in a Certificate of Credit. A Certificate of Credit may represent one (1) Credit, a part of a Credit, or several Credits.

- (j) “*Developer*” means any person, business, or other legal entity that seeks approval from the City to construct residential Units.
- (k) “*Eligible Household*” means a household determined by the County Department to earn not less than 80% nor more than 120% of the Median Household Income, and not exceed a corresponding maximum asset level.
- (l) “*Housing Trust Fund*” means a trust fund maintained by the City Commission to hold any payments made by developers as provided for in this ordinance. The funds shall be used only to subsidize the purchase of a home by an Eligible Household or to facilitate the development of additional Attainable Housing Units.
- (m) “*Median Household Income*” means the median income of a household within the Manatee County Metropolitan Area. The Median Household Income may be determined by the County Department and shall be approved by the City Commission.
- (n) “*Unit*” means a room or group of rooms forming a single independent habitable area used for, or intended to be used for living, sleeping, sanitation, cooking, and eating purposes by one (1) family only; and made available to such family for purchase. Unless the context requires otherwise, a “Unit” does not include Attainable Housing Units, Affordable Units, nursing homes, assisted care living facilities, retirement homes, school dormitories, mobile homes, and apartments.

Section 17 - 49. Applicability of Mandatory Provisions.

Section 17-51 of this ordinance shall apply only during such times when the number of Attainable Housing Units falls below 15% of the total number of residential units constructed or expected to be constructed within the City after the effective date of this ordinance and by the next Determination Date set forth below in subsection (b) (“Total Residential Units”). This shall be referred to as a “Mandatory Period.” Those times when

the number of Attainable Housing Units meets or exceeds 15% of the Total Residential Units shall be referred to as a "Voluntary Period".

- (a) The City Planner shall initially determine the number of Total Residential Units by utilizing reliable data to estimate the number of residential units expected to be constructed in the City from the effective date of this ordinance to January 1, 2010.
- (b) Beginning on January 1, 2010, and on January 1 every five years thereafter ("Determination Date"), the City Planner shall update the number of Total Residential Units by utilizing reliable data to estimate the number of residential units constructed as of the effective date of this ordinance and expected to be constructed in the City by a date that is five years from the date of the prior determination.
- (c) In determining whether the required percentage of Attainable Housing Units exists, the City Planner may include, in his or her sole discretion and pursuant to an adopted administrative policy, those Attainable Housing Units which have been sufficiently guaranteed, in writing, to be constructed before the next Determination Date set forth in subsections (a) and (b), above. The City Planner shall be authorized, pursuant to an adopted administrative policy, to withhold declaring a Voluntary Period until all or some portion of the Attainable Housing Units that have been sufficiently guaranteed are constructed.

Section 17 - 50. Voluntary Period.

Developers who voluntarily construct Attainable Housing Units during a Voluntary Period shall be eligible for developer incentives as set forth in Section 17-52, provided that the developer constructs a number of Attainable Housing Units equivalent to or above the Baseline, and shall be eligible for developer Certificates of Credit as set forth in Section 17-53.

Sec. 17 - 51. Attainable Housing Unit Requirements (Mandatory Period).

(a) *Applicable developments.* The provisions of this section may apply to developers who intend to and ultimately do construct Attainable Housing Unit(s) and who voluntarily subject themselves to this ordinance by execution of a written agreement with the City, and shall apply to all developers seeking subdivision approval or other approvals requiring site plan review in connection with new construction:

- (1) of ten (10) units or more; or
- (2) of five (5) units or more, but less than ten (10) units, where the total estimated project value is at least \$1,500,000, or eight (8) times the Maximum Attainable Housing Unit Sales Price, whichever is greater; or
- (3) of five (5) units or more, but less than (10) units, where the total project area, excluding designated wetlands and mandatory conservation areas, is ten (10) acres or more.

(b) *Avoidance prohibited.* Developments shall not be segmented or phased in a manner to avoid compliance with these provisions.

(c) *Number of Attainable Housing Units required.* Developers to which this section applies shall provide a minimum of fifteen percent (15%) of the total number of approved units (rounding up where necessary to result in a whole number of units) for the construction of Attainable Housing Units. The minimum number of Attainable Housing Units shall be referred to as the "Baseline".

(d) *Location and quality.* Developers shall provide Attainable Housing Units either on the site of the proposed development or off-site within the City limits. The character and quality of Attainable Housing Units must be consistent with established guidelines kept on file in the Building Department. All guidelines shall further the policy and intent of this ordinance, including, but not limited to, the policy that the location of off-site Attainable Housing Units shall be in areas

which are deemed by the City Commission to be appropriate and beneficial to the public.

(e) *On-site development plans.* Where required Attainable Housing Units will be constructed on-site, developers shall simultaneously submit plans for both the Attainable and Non-Attainable Housing Units to the City Planner.

(f) *Off-site development plans.* Where some or all of the required Attainable Housing Units will be constructed off-site, developers shall not be required to simultaneously submit plans for Attainable Housing Units, but shall not receive a certificate of occupancy for non-Attainable Housing Units until all off-site required Attainable Housing Units have received a certificate of occupancy or until the City Planner has been provided with a sufficient written guarantee, as determined by the City Commission, that the off-site required Attainable Housing Units will be constructed at a location deemed by the City Commission to be appropriate and beneficial to the public within two (2) years of the execution of such guarantee, unless such time limit is modified by approval of the City Commission.

(g) *Developer Incentives.* Developers who provide the requisite number of Attainable Housing Units under this section shall be entitled to request incentives pursuant to Section 17-52.

(h) *Waivers and Payments-in-Lieu.* Developers for whom the provisions of this section impose demonstrable burdens, as outlined in section 17-56(b), may apply for waivers and request approval to make payments in lieu of constructing all or some of the Attainable Housing Units required herein, as provided for in section 17-54 of this division.

Sec. 17 - 52. Developer Incentives.

(a) *Request for Incentives required.* At the development approval application stage, a developer who intends to construct Attainable Housing Units and desires to receive incentives pursuant to this ordinance must notify the City Planner on a form provided by the City Planner to be entitled "Request for Incentives". The form shall include:

- (1) a list of incentives potentially available to the developer, including, but not limited to, an increase

in density over what is otherwise permitted in the zoning district in which the development is located, waivers and modifications to setbacks, parking, and amenity requirements, and development fee reductions; and

- (2) a description of any other benefits or incentives the developer seeks which would assist in making the construction of Attainable Housing Units more feasible and economically justifiable for the developer; and
- (3) a narrative describing how the design and orientation of the overall development minimizes any negative impacts of applying the proposed incentives and maintains compatibility with the surrounding land uses. The narrative shall address any matter concerning such impact on the surrounding neighborhood and the City as a whole, including but not limited to the following:
 - a. Does applying the proposed incentives conform in all respects to the current Zoning Code?
 - b. Does applying the proposed incentives conform to the current Comprehensive Plan?
 - c. Does applying the proposed incentives conflict with or place an inordinate burden on existing or planned public infrastructure and services such as the provision of water and sewer services, refuse management, emergency services, and similar necessary services?
 - d. Will applying the proposed incentives adversely affect vehicular or pedestrian traffic patterns or congestion?
 - e. Will the proposed change adversely impact population density or development intensity such that the demand for schools,

recreational areas and facilities, and other public facilities are adversely affected?

- f. Will the proposed change otherwise adversely affect the health, safety, and welfare of the neighborhood or the City as a whole?
- g. Is applying the proposed incentives consistent with the development patterns in the area and appropriate for orderly development of the community?
- h. Will the proposed change adversely impact historic resources?
- i. Will the proposed change have an adverse environmental impact on the vicinity?

(b) *Completeness review by City.* Within ten (10) business days of receipt of the Request for Incentives, the City Planner shall review the request for completeness.

- (1) If all required information is included within the request, the City Planner shall consider the Request for Incentives complete and provide the petitioner with written notification of such.
- (2) If additional information is required, the City Planner shall notify the petitioner in writing, by hand-delivery or by certified mail, return-receipt requested, of any additional information that the City Planner must receive before it can deem the application complete. The Request for Incentives shall be considered withdrawn if all required information is not provided within sixty (60) business days of receipt of notification provided for under this section.
- (3) Nothing herein shall prevent the petitioner from amending the Request for Incentives with supplemental information, or prevent the City Planner from requiring supplemental information, at any time after the request is deemed complete

and while the request is being reviewed; however, whether such additional information will be considered is at the discretion of the City Planner.

(c) *Review by City Planner.* Within forty-five (45) business days of the determination that the Request for Incentives is complete, the City Planner shall review the Request and determine in writing which incentives are recommended to be applied to the development. The City Planner shall provide, where possible, conditional recommendations for incentives not otherwise recommended for approval. City staff shall work with developers to award incentives that make the construction of Attainable Housing Units economically viable. Toward that end, the City Planner shall have the authority to waive administrative requirements promulgated by the Mayor or City departments and imposed on developments by the City, so long as such waiver does not conflict with the City's Comprehensive Plan or Charter, or with preemptive state and federal laws. Any waiver made pursuant to this subsection shall be uniformly applied amongst similarly situated developments, as determined at the sole discretion of the City Planner.

(d) *Agreement required.* All awarded incentives shall be memorialized in an agreement between the City and the developer. Where applicable, the incentives also shall be included in the final development order.

(e) *Review by City Commission.* Notwithstanding anything herein to the contrary, the City Commission shall hold a properly noticed public hearing regarding all requests to apply developer incentives. Proper notification shall be consistent with the requirements of the City Zoning Code pertaining to variances. Subsequent to the public hearing at which the request for development approval is considered, the City Commission shall make specific findings and determinations as set forth herein. The Commission shall deny application of requested incentives only if it finds that applying the incentives is incompatible with surrounding development and infrastructure, that such application would contravene the intent of this ordinance, or that application of the requested incentives is otherwise detrimental to the public health, safety, and welfare. The Commission shall have the authority to approve an application of such incentives with conditions, or

approve an application of such incentives that is less than that requested by the applicant.

(f) *Incentives for on-site construction.* It is the intent of this ordinance to promote mixed developments of both Attainable and non-Attainable Housing Units. Accordingly, the City Commission shall have the authority to award additional incentives where Attainable Housing Units will be constructed on-site.

(g) *Time limit.* All incentives, benefits, and credits awarded pursuant to this section 17-52 and section 17-53 must be applied to a development within three (3) years of construction of the Attainable Housing Units that gave rise to the request for such incentives and benefits and to the issuance of such credits. A developer may receive an extension on such time limit for a maximum of two (2) years, provided that the City Commission finds that an extension is necessary and consistent with the intent and purposes of this ordinance, and provided that the City Commission authorizes such requested extension or an extension of less time than requested.

Sec. 17 - 53. Certificates of Credit.

(a) *Receiving.* Developers who construct Attainable Housing Units above the Baseline during a Mandatory Period shall receive a Certificate of Credit representing the number of Attainable Housing Units constructed above the Baseline. Developers who voluntarily construct Attainable Housing Units during a Voluntary Period shall receive a Certificate of Credit representing the number of all Attainable Housing Units constructed. The City Planner shall issue these Certificates to the developer upon the completion of construction and issuance of a certificate of occupancy for these Attainable Housing Units. Such Certificate must contain: (1) a unique reference number, (2) the name(s) of the developer(s), (3) the name of the subject development, (4) information concerning what the Certificate represents, (5) the number of Credits, (6) whether the Certificate was granted for the construction of Attainable Housing Units during a Mandatory or Voluntary Period, (7) the number of years for which the Certificate is valid, and (8) instructions on how to validly transfer the Certificate. As it pertains to determining the number of Attainable Housing Units constructed and the number of Credits to be issued under this

subsection, the City Planner shall not take into account redeemed Certificates of Credit.

(b) *Redeeming.* The holder of a Certificate of Credit may present such Certificate to the City Planner during the development approval application stage with a request to redeem the Certificate. The holder of the Certificate may request to redeem the Certificate for the total number stated thereon or a number less than the total number stated thereon. A redeemed Certificate is equivalent to the developer having constructed an Attainable Housing Unit or Units within the development for which the developer has applied for approval. The redeemed Certificate shall decrease the total number of Attainable Housing Units the developer must construct in order to reach the Baseline and receive the incentives set forth in this ordinance, by one (1) for each one (1) credit the developer redeems from his Certificate. If the holder of a Certificate does not redeem the total number of Attainable Housing Units represented by a Certificate, the remainder of such number, not then redeemed, shall be issued by new Certificate to the holder of the original Certificate; provided, however, that all credits still must be redeemed by the expiration date provided on the original Certificate.

(c) *Transferring.* The holder of a Certificate of Credit may transfer the Certificate, provided that the holder surrenders it, properly endorsed, to the City Planner. The City Planner shall then issue a new Certificate to the party to whom the holder of the Certificate instructs the same to be transferred, and the City Planner shall record such transfer on the records of the City. If the holder of a Certificate does not transfer the total number of Attainable Housing Units represented by a Certificate, the remainder of such number, not then transferred, shall be issued by new Certificate to the transferor.

(d) *Voluntary Period.* Certificates of Credit received for the construction of Attainable Housing Units during a Voluntary Period must be redeemed within ten (10) years from the date of issue and are not subject to time limitations otherwise imposed on Certificates of Credit granted for the construction of Attainable Housing Units during a Mandatory Period. A developer who applies for incentives based on the redemption of a Certificate of Credit, received during a Voluntary Period, but who is not granted the incentives applied

for, may withdraw the use of the Certificate. In such circumstances, the City Planner shall return the Certificate to the developer and no longer consider the Certificate redeemed.

Sec. 17 - 54. Payment in Lieu.

A developer may make a payment into the Housing Trust Fund in lieu of constructing a required Attainable Housing Unit provided that the City Commission finds that a waiver of the requirements of this ordinance to build the Attainable Housing Unit is appropriate in accordance with section 17-56(b) herein. These payments shall be by cash or by equivalently valued contributions, as determined solely by the City Commission. A payment shall be made for every required Attainable Housing Unit not provided by the developer. For each unit required, the amount of the payment shall be 20% of the then-current Maximum Attainable Housing Unit Sales Price. The amount paid to the Trust Fund shall be used only to subsidize the purchase of a home by an Eligible Household or to facilitate the development of additional Attainable Housing Units.

Sec. 17 - 55. Vested Rights.

(a) *Vested properties.* Those provisions set out in this ordinance requiring of new development the provision of Attainable Housing Units or in-lieu-of payments shall not apply to the development of any property authorized by and consistent with any of the following development orders approved of prior to the effective date of this ordinance or in application prior to the effective date of the ordinance and subsequently approved without major modification during the application period: preliminary plat approval; site plan approval; conceptual plan approval; general development plan approval; development agreement, approved pursuant to Florida Statutes; or, DRI development order approval.

(b) *Effect of major modification.* In those instances where the property owner of a vested property applies for a new development order, that if approved, would constitute a major modification of the previous development order, that property may lose its vested status as it relates to the provisions of this ordinance. Any modification to a previously approved development order resulting in the addition of ten (10) or more dwelling units than previously allowed in the development order

approved prior to July 31, 2006, that were not previously mitigated, shall be subject to the provisions of this ordinance for the increased number of Units.

(c) *Review of modification.* Determination as to whether a change to a development order would constitute a major modification shall be made by the City Planner, based upon applicable criteria in this code and state law. Any property owner may appeal the City Planner's determination to the City Commission.

(d) *Review considerations.* In rendering its determination as to vested rights status, the City Commission shall consider staff's recommendation and whether the affected property already complies with this ordinance; has reached its residential development capacity; or, substantially complies with this ordinance. If the City Commission determines that the property substantially complies with this ordinance, it shall also specify those Attainable Housing Unit requirements that thereafter apply to its further development, if any.

(e) *Attainable Housing Units.* Developments to which this ordinance does not apply, because the properties therein are vested as provided for herein, but in which Attainable Housing Units nevertheless are constructed, shall receive the same benefits for the construction of Attainable Housing Units as other developments would receive if those developments were constructed during a Voluntary Period. For any development to receive such benefits, the developer must construct the number of Attainable Housing Units as required to request incentives in Section 17-50. This subsection shall only apply to the portion of a development that is not otherwise affected by a major modification pursuant to this section.

Sec. 17 - 56. Exemptions, Reductions, and Waivers.

(a) *Exemptions.* The following developments shall be exempt from the requirements of this ordinance:

- (1) Residential developments of Affordable Units provided as part of a federal, state, local, or non-profit Affordable Housing and/or community development program;

- (2) Nursing homes, assisted care living facilities, and retirement homes;
- (3) School dormitories;
- (4) Mobile homes and manufactured homes; and
- (5) New developments of exclusively Affordable and/or Attainable Housing Units.

(b) *Modification and waiver.* The City Commission shall have the authority to modify or waive the requirements of this ordinance upon providing public notice consistent with Section 17-52(e) herein, holding a public hearing, and making all of the following specific findings of fact:

- (1) Special circumstances, unique to a particular development, justify the grant of the modification or waiver; and
- (2) The development would not be practicable (i.e., economically feasible) without the modification or waiver; and
- (3) A specific and substantial financial hardship would occur if the modification or waiver were not granted; and
- (4) No alternative means of compliance are available which would be more effective in attaining the purpose of this ordinance than the relief requested.

Sec. 17 - 57. Restrictions and Administration.

(a) *Restrictions on homeowners.* All Attainable Housing Units shall remain as such for thirty (30) years through the use of a restrictive covenant that shall be recorded in the public records of Manatee County, Florida, and by other lawful mechanisms deemed acceptable by the City Commission. The City Commission shall approve such additional mechanisms by resolution. The 30-year period shall begin anew for each new owner of the Attainable Housing Unit, provided that no owner owns the Attainable Housing Unit for the full 30 years, and provided that before the end of the active 30-year period, no

more than ninety (90) years would pass from the original sale by the developer of the Attainable Housing Unit to the original purchaser. The developer, or other seller of an Attainable Housing Unit, shall be responsible for ensuring that all covenants and related documents are properly executed and recorded no more than thirty (30) days after the sale of the Attainable Housing Unit, and that a copy of the recorded documents is provided to the City Planner.

(b) *Costs of administration.* A portion of the Housing Trust Fund may be used for the necessary costs of administering this ordinance.

(c) *Confirming determination of eligibility.* The City Planner shall be responsible for verifying the eligibility of persons applying to purchase Attainable Housing Units.

(d) *Annual updates.* The City Planner shall annually provide the City Commission with updated estimates for the Median Household Income and Maximum Attainable Housing Unit Sales Price.

(e) *Delegation to County permitted.* Upon approval by the City Commission, the City Planner shall be permitted to delegate its responsibilities under this section to the County Department, to the extent the County Department agrees to assume such responsibilities.

Sec. 17 - 58. Enforcement.

(a) *Non-limiting enforcement mechanisms.* This ordinance may be enforced as provided for by Florida law, including referral or citation to the City's code enforcement board, issuance of a citation as may be provided for by City ordinance, or the filing of an action in a court of competent jurisdiction to obtain civil remedies, including a restraining order, injunction and damages. Any enumeration of enforcement mechanisms set forth herein is supplemental and not exclusive.

(b) *Stop work order.* In the event that a developer has failed to meet the requirements of this ordinance or the conditions of an agreement pertaining to the construction of Attainable Housing Units, the City Building Official is hereby authorized to issue a stop work order on any and all

development activity which has been approved by the City and for which approval was conditioned on the developer's compliance to this ordinance or such agreement. Such approvals of development activity include, but are not limited to, subdivision approvals, site plan review approvals, and plat approvals, and approvals for the issuance of any and all certificates of occupancy. Such stop work order shall remain until the developer comes into compliance with this ordinance and otherwise fulfills the terms of any related Court order.

(c) *Reimbursement of costs and lien.* The City shall be entitled to reimbursement of its costs, including reasonable attorneys' fees, of enforcing the provisions of this ordinance. By submitting an application for a development approval requesting incentives, developers agree to pay such costs and consent to the City's placement of a lien on the subject property in connection with such costs.

Secs. 17-59 – 17-97 Reserved.

Section 3. Repeals and Conflicts. All ordinances and parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 4. Severability. If any section, subsection, paragraph, sentence, clause or phrase of this Ordinance shall be held invalid by a court of competent jurisdiction, then such invalidity shall not affect the remaining portions hereof.

Section 5. Effective Date. This Ordinance shall take effect as provided for by law and by City Charter, Section 14, upon execution by the Mayor or, if disapproval occurs, upon reconsideration by the City Commission and passing of the Ordinance by at least four (4) votes.

FIRST READING	June 19, 2006
PUBLICATION DATE	July 14, 2006
SECOND READING and PUBLIC HEARINGS	July 24, 2006

**PASSED AND DULY ADOPTED, BY THE CITY COMMISSION
OF THE CITY OF PALMETTO, FLORIDA, with a quorum present and
voting, in regular session assembled, this 24th day of July, 2006.**

By: Lawrence E. Bustle, Jr.
Lawrence E. Bustle, Jr., Mayor

ATTEST:

By: James R. Freeman
James R. Freeman, City Clerk