

9J-2.048 Adequate Housing Uniform Standard Rule.

(1) Purpose. This rule establishes how the Department will evaluate adequate housing issues in the review of applications for binding letters, local government development orders, and DRI applications for development approval (ADA).

(a) The Legislature established Chapter 380, Florida Statutes, to facilitate orderly and well-planned development and protect the health, welfare and quality of life of the residents of this state, by authorizing the state land planning agency to establish land management policies to guide local decisions relating to growth and development. Sections 186.002, 186.007, 186.009, and 187.101, Florida Statutes, establish the State Comprehensive Plan as the long-range, state land development policy guide to be considered in the DRI review process in order to ensure orderly growth in Florida, pursuant to subsections 380.06(3), (4), (12), (13), (14), (15), (25), and 380.065(3), Florida Statutes.

(b) Consistent with the land management policies delineated in the State Comprehensive Plan, it is the intent of the Department to set forth in this rule specific adequate housing DRI review guideline standards and criteria.

(c) The statutory authority to promulgate and establish this rule is derived from subsections 380.032(2) and 380.06(23), Florida Statutes.

(2) Definitions. As used in this rule:

(a) "Adequate Housing" means housing that is available for occupancy and that is not substandard.

(b) "Adequate Housing Demand" means the projected number of adequate housing units necessary to accommodate the development's very low, low, and moderate income employee households.

(c) "Adequate Housing Need" means the projected number of adequate housing units necessary to accommodate the development's very low, low and moderate income households which will not be provided in a timely manner on the development site, or which will be unavailable within a reasonably accessible distance of the development site.

(d) "Adequate Housing Supply" means the existing number of adequate housing units affordable to the development's very low, low, and moderate income employee households that are currently available for occupancy, not substandard and which are reasonably accessible to the development site.

(e) "Affordable housing" means a situation where monthly rents or monthly mortgage payments for housing, including taxes, insurance and utilities, do not exceed 30 percent of the gross annual income of the development's very low, low, and moderate income employee households.

(f) "Applicable Local Plan" or "Local Government Comprehensive Plan" means a plan or element or portion thereof prepared, adopted, or amended pursuant to Part II of Chapter 163, Florida Statutes, as amended.

(g) "Applicable Regional Plan" means the Regional Planning Council's adopted Strategic Regional Policy Plan pursuant to Section 186.508, Florida Statutes.

(h) "Applicable State Plan" means the State Comprehensive Plan.

(i) "Available for occupancy housing" means housing that is either for sale or for rent on an annual basis, includes a kitchen and bathroom within the unit, and that can accommodate and be affordable to the people seeking to inhabit it.

(j) "Department" means the Florida Department of Community Affairs.

(k) "Direct Mass Transit" means mass transit affording the development's employees the ability to travel directly from the project site to a regularly scheduled stop located within one-quarter mile of their housing.

(l) "Florida Statistical Abstract" means the publication by that title which is prepared by the Bureau of Economic and Business Research, College of Business Administration, University of Florida, and which is published by University Press of Florida, Gainesville, Florida.

(m) "Low Income Household" means one or more persons, related or unrelated, residing together whose combined annual adjusted gross income is greater than 50 percent but does not exceed 80 percent of the median annual adjusted gross household income, as reported by the U.S. Department of Housing and Urban Development (HUD) for the metropolitan statistical area (MSA) or county within which they reside, whichever is greater.

(n) "Mass Transit" means daily operating, fixed route and fixed schedule passenger services provided by public, private, or non-profit entities such as the following surface transit modes: computer rail, rail rapid transit, light rail transit, automated guideway transit, express bus, and local bus.

(o) "Moderate Income Household" means one or more persons, related or unrelated, residing together whose combined annual adjusted gross household income is greater than 80 percent but does not exceed 120 percent of the median annual adjusted household gross income, as reported by the U.S. Department of Housing and Urban Development (HUD) for the metropolitan

statistical area (MAS) or county within which they reside, whichever is greater.

(p) "Owner Occupied Affordable Housing" means for-sale housing for which the total monthly mortgage payments for the unit, including principal, interest, utilities, taxes and insurance, do not exceed 30 percent of the gross monthly income for the development's very low, low, or moderate income households.

(q) "Project phase" means a discrete, five year or lesser construction timeframe of development, including local government issuance of certificates of occupancy for that construction or its functional occupancy.

(r) "Reasonably Accessible" means a commute time from the principal access point of the place of employment in the development to the location of adequate housing by private or public conveyance of twenty minutes (during peak hour) or a commute distance of ten miles, whichever is less. In areas having an established Metropolitan Planning Organization, this distance and time determination is established from use of appropriate traffic analysis zones.

(s) "Regional Planning Council" means a governmental body created pursuant to Chapter 186, Florida Statutes.

(t) "Rental Affordable Housing" means rental housing for which monthly rents, including utilities, do not exceed 30 percent of the gross monthly income for very low, low, or moderate income households.

(u) "Stage" means one in a series of approximately equal increments in the development of a proposed development upon which are placed quantified limits for construction that are calculated to ensure that adequate housing affected by the proposed development will not be overburdened by development demands. As used in this rule, a stage is to be a subset of a particular project phase of development planned for a project by a developer. A state of development includes both a specific type and amount of development and the associated approved buildout timeframe for that development.

(v) "Student" means any person not living with that person's parent or guardian who is eligible to be claimed by that person's parent or guardian as a dependent under the federal Income Tax Code and who is enrolled on at least a half-time basis in a secondary school, vocational-technical center, community college, college, or university.

(w) "Substandard housing" means any housing unit lacking complete plumbing or sanitary facilities for the exclusive use of the occupants; or any housing unit which has been found by an appropriate local authority to have one or more violations of an applicable housing code that poses a material threat to the health or safety of the occupant; or any housing unit that has been declared unfit for human habitation; or any housing unit that has been found to be substandard in the most recent housing conditions survey conducted by the local government, done in conjunction with the local comprehensive plan or otherwise, provided that there is no evidence that this dwelling has since been rehabilitated.

(x) "Very Low Income Household" means one or more persons, related or unrelated, residing together, not including students, whose combined annual adjusted gross income does not exceed 50 percent of the median annual adjusted gross household income, as reported by the U.S. Department of Housing and Urban Development (HUD) for the metropolitan statistical area (MSA) or county within which they reside, whichever is greater.

(3) Application.

(a) This rule shall be used by the Department to review adequate housing issues in binding letters and applications for development approval (ADA), effective the date of this rule. Any development that meets or exceeds the significant impact thresholds identified in this rule shall be determined by the Department to have a significant impact on the ability of people to find adequate housing reasonably accessible to their places of employment. This rule shall not apply to any application submitted to the Department prior to the effective date of this rule, where such an application has continued to remain pending and active, consistent with paragraphs 380.06(4)(d) or (10)(b), Florida Statutes.

(b) This rule shall be used by the Department to review adequate housing issues in local government development orders. This rule shall not apply to any development order rendered to the Department after the effective date of this rule that approves, with or without conditions, an application that was submitted prior to the effective date of the rule and has continued to remain pending and active until the development order's approval.

(c) A development order shall be determined by the Department to make adequate provision for the adequate housing issues addressed by this rule, and shall not be appealed by the Department on the basis of inadequate mitigation of adequate housing impacts, if it contains the applicable mitigation standards and criteria set forth in this rule or if it is reviewed and provides applicable mitigation consistent with the East Central Florida Housing Methodology, developed April, 1996 and revised June, 1999. If a development order does not contain the applicable mitigation standards and criteria set forth in this rule, the Department shall have discretion to appeal the development order, pursuant to the provisions of Section 380.07, Florida Statutes. However, nothing in this rule shall require the Department to undertake an appeal of the development order simply because it fails to comply with the

provisions of this rule. A development order failing to comply with the provisions of this rule will be addressed on a case-by-case basis by the Department as to whether it otherwise complies with the intent and purposes of Chapter 380, Florida Statutes. The Department will take into consideration the balancing of this rule's provisions with the protection of property rights, the encouragement of economic development, the promotion of other state planning goals by the development, the utilization of alternative, innovative solutions in the development order to provide equal or better protection than the rule, and the degree of harm created by non-compliance with this rule's mitigation criteria and standards.

(d) This rule shall not limit the ability of the Department to make a determination of significant impact or appeal a development order on the basis of inadequate, inappropriate, or inaccurate adequate housing impact analyses carried out by the applicant or his agents, where the findings of such analyses are instrumental to forming the basis of information necessary to evaluate compliance with the application of this rule's criteria and standards. However, if agreement was reached at the DRI preapplication conference regarding adequate housing impact analyses assumptions and methodologies to be used in an ADA, then reviewing agencies may not subsequently object to these assumptions and methodologies, consistent with the provisions of paragraph 9J-2.021(1)(h), Florida Administrative Code.

(4) Determination of Adequate Housing Demand. Adequate housing demand is the number of housing units needed to accommodate the development's projected very low, low, and moderate income employee households.

(a) NUMBER OF EMPLOYEES. The number of employees to be generated by each project phase or stage of the development under consideration shall be based upon either:

1. The actual number of full-time equivalent, permanent employment opportunities to be provided by the development by salary income range, if known; or

2. An appropriate estimate of full-time equivalent, permanent employees by salary income range generated by the proposed DRI from an existing, comparable development; or

3. An estimate derived by applying standard planning ratios of employee per amount of development by salary income range agreed upon at the pre-application conference, pursuant to paragraph 9J-2.021(1)(h), Florida Administrative Code.

(b) DISTRIBUTION OF EMPLOYEES BY INCOME. The distribution of employees by salary income range for each project phase or stage of the development shall be based upon either:

1. The actual salary income range distribution of full-time equivalent, permanent employees by annual income for the development, if known; or

2. An appropriate estimate derived from the actual distribution, in equivalent dollars, from an existing, similar development; or

3. An estimate derived by applying average Standard Industrial Classification (SIC) wages reported by the Florida Department of Labor and Employment Security for the projected employment types to occur at the development, as agreed upon at the pre-application conference, pursuant to paragraph 9J-2.021(1)(h), Florida Administrative Code.

(c) NUMBER OF EMPLOYEE HOUSEHOLDS AND ADEQUATE HOUSING DEMAND.

1. The number of employee households within each salary income range for each project phase or stage of the development that will have an adequate housing demand shall be determined by multiplying the number of employees in a salary income range from (b) above by a fraction, the numerator being the number of Households in the county, and the denominator being the amount of Employment in the county, from the most recent year in Tables 2.05 and 6.10, respectively, of the current Florida Statistical Abstract.

2. The applicant shall have the option to demonstrate that an alternative method is appropriate, when this alternative is agreed upon at the pre-application conference, pursuant to paragraph 9J-2.021(1)(h), Florida Administrative Code.

(5) Determination of Adequate Housing Supply. Adequate housing supply is the existing number of adequate housing units affordable to each salary income range within the development's very low, low, and moderate income employee households that are currently available for occupancy, not substandard and which are reasonably accessible to the development site.

(a) The adequate housing supply that is reasonably accessible to each salary income range within the development's very low, low, and moderate income employee households shall be determined for each project phase or stage of development from either:

1. A survey of existing rental complexes for rental affordable housing and of local real estate listings for owner occupied affordable housing; or

2. An estimated survey derived from published sources of information that provide current estimates of available rental affordable housing and owner occupied affordable housing units by price range, as agreed upon at the pre-application conference, pursuant to paragraph 9J-2.021(1)(h), Florida Administrative Code. When specifically agreed upon, such an estimate of adequate

housing supply may be derived from appropriate use of an updated housing inventory from the data base for very low, low and moderate income housing developments maintained by the Florida Housing Finance Agency as described in its market studies conducted pursuant to Section 420.507, Florida Statutes.

(b) An adequate housing supply survey shall include:

1. The name and address of each rental complex, housing subdivision, or census tract in which the available housing unit(s) is located; and
2. The number of units currently available for occupancy by cost and the number of bedrooms for each complex; and
3. A map showing the locations of the adequate housing supply units and the reasonably accessible contour in relation to the development site.

(c) An adequate housing supply survey shall not include:

1. Substandard housing units; or
2. Housing units available only on a seasonal basis; or
3. Hotel or motel units; or
4. Housing units which are proposed for construction, but for which building permits have not been issued; or
5. Housing units which have been previously included in an adequate housing supply survey of another proximate DRI approved during the preceding 5 years and which occur within the reasonably accessible contour for this development; or
6. One-room efficiency housing units which comprise more than 25 percent of the adequate housing supply or which exceed the percentage of single-person households for the county in which the development is located, whichever is less; or
7. Single bedroom housing units which comprise more than 50 percent of the adequate housing supply or which exceed the percentage of two and three-person households for the county in which the development is located, whichever is less; or
8. Vacant adequate housing dwelling units that are needed to maintain a vacancy rate of five percent.

(6) Determination of Adequate Housing Need. Adequate housing need is the projected number of adequate housing units necessary to accommodate each salary income range category within the development's very low, low, and moderate income employee households for each project phase or stage of development, and which are projected either not to be able to be provided in a timely manner on the development site or which will be unavailable within a reasonably accessible distance of the development site. The adequate housing need for a project is equal to the difference of the adequate housing demand minus the demand which can be met by the adequate housing supply in each salary income range category, plus any existing very low, low and moderate housing to be displaced by the development.

(7) Determination of Significant Impact. A development shall be considered to have a significant impact on the ability of the development's very low, low, and moderate income employee households to find adequate housing reasonably accessible to their place of employment when, for any phase or stage of development, the development's cumulative adequate housing need is projected to exceed 5 percent of the applicable DRI residential threshold for the affected local government, or 50 units, whichever is larger,

(8) Mitigation of Significant Adequate Housing Impacts. A development order shall be determined by the Department to make adequate provision for the adequate housing issues addressed by this rule, and shall not be appealed by the Department on the basis of inadequate mitigation of adequate housing impacts if, at a minimum, it contains as binding conditions the provisions enumerated below:

(a) Mitigation of a development's significant impact on adequate housing through development order mechanisms that ensure the provision of units guaranteed to be affordable initially, in the case of owner-occupied housing, or remain affordable for a minimum period of fifteen years, in the case of rental housing, in one of the following ways:

1. Construction of adequate housing units onsite, or reasonably accessible to the development site, sufficient to equal in number the adequate housing need identified for each salary income range within that stage or phase's very low, low, and moderate income employee households; or
2. Payment to an appropriate affordable housing trust fund of funds dedicated to, and sufficient in amount to result in, the rehabilitation of unoccupied substandard housing or construction of reasonably accessible adequate housing units equal in number to the adequate housing need identified for each salary income range within that stage or phase's very low, low, and moderate income employee households; or
3. Dedicated direct rent or ownership subsidies to the development's very low, low, and moderate income employees sufficient in amount to satisfy the adequate housing need identified for each salary income range within that stage or phase's very low, low,

and moderate income employee households from available, non-affordable, but otherwise adequate housing units reasonably accessible to the development site.

(b) The development order shall ensure that:

1. Prior to the initiation of a project phase or stage of development which will create an adequate housing need, that the adequate housing need mitigation for that project phase or stage of development is ensured of being provided when needed; and

2. The housing mitigation provided is affordable housing that specifically matches the projected adequate housing need to be created by the development.

(c) As an incentive to promote the co-location of adequate housing in close proximity with employment, and in recognition that such co-location also reduces impacts to transportation, air quality, and energy usage, the following credits against the mitigation requirements for the adequate housing need of this section shall be given for the developer provision of adequate housing units based on the distance of these units from the development site and the availability of direct mass transit facilities:

1. Onsite Provision. Each very low, low, or moderate income adequate housing unit provided onsite shall be counted as mitigation for 1.5 units of that stage or phase's applicable very low, low, or moderate income adequate housing need within the same salary income range.

2. Direct Mass Transit Within Reasonably Accessible Area Provision. Each very low, low, or moderate income adequate housing unit provided within a reasonably accessible distance of the development site that is connected to the development site by a daily operating direct mass transit system shall be counted as mitigation for 1.25 units of that stage or phase's applicable very low, low, or moderate income adequate housing need within the same salary income range.

3. Outside of Reasonably Accessible Area Provision.

a. No more than 50 percent of a development's adequate housing need may be cumulatively satisfied by the provision of units outside of the reasonably accessible area under provisions b. and c., below.

b. No Direct Mass Transit Provision. Each very low, low, or moderate income adequate housing unit provided within a zone between a commute time by private or public conveyance of twenty minutes (during peak hour) or a commute distance of ten miles, whichever is less, and a commute time of twenty five minutes (during peak hour) or a commute distance of fifteen miles, whichever is less, shall be counted as mitigation for 0.30 units of that stage or phase's applicable very low, low, or moderate income adequate housing need within the same salary income range.

c. Direct Mass Transit Outside of Reasonably Accessible Area Provision. Each very low, low, or moderate income adequate housing unit provided within a zone between a commute time by private or public conveyance of twenty minutes (during peak hour) or a commute distance of ten miles, whichever is less, and a commute time of twenty five minutes (during peak hour) or a commute distance of fifteen miles, whichever is less, and which is connected to the development site by a daily operating direct mass transit system shall be counted as mitigation for 0.50 units of that stage or phase's applicable very low, low, or moderate income adequate housing need within the same salary income range.

(9) Construction of Rule. This rule shall not be construed to limit the ability of local governments to impose more stringent mitigative measures than those delineated in this rule, where such measures or policies are contained within local land development regulations, or a local government comprehensive plan.

(10) Effect of Areas of Critical State Concern. This rule shall be superseded by more stringent housing requirements for developments in designated Areas of Critical State Concern.

Specific Authority 380.032(2)(a), 380.06(23)(a), (c)1. FS. Law Implemented 380.021, 380.06, 380.065, 380.07 FS. History—New 3-23-94, Amended 2-21-01, 6-1-03.