

## **Model Starter Homes Act**

A bill to be entitled

An act relating to lot size and dwelling flexibilities with respect to local governments; creating [FILL IN]; establishing guidelines for the implementation of minimum lot size, lot split flexibility, and dwelling flexibility requirements by local governments; providing definitions; providing exceptions; providing a short title; providing an effective date.

Be It Enacted by the Legislature of the State of [FILL IN]:

Section 1. This act may be cited as the “Starter Homes Act.”<sup>1</sup>

Section 2. Section [FILL IN] Statutes, is created to read:

163.3254 Lot size and dwelling flexibilities; local governments.

(1) The Legislature finds that the median price of homes in this state has increased steadily over the last decade, rising at a greater rate of increase than the median income in the state. The Legislature finds that the cost of home ownership or renting often exceeds an amount that is attainable for residents of the state. [FILL IN STATE CONSTITUTIONAL PROVISION WHEN APPROPRIATE, SEE APPENDIX FOR LANGUAGE] The Legislature finds that any regulation, ordinance, resolution, rule, development order, or other policy requires a relationship to public safety, health, or reasonable enjoyments and expectations of property. The Legislature finds that there is currently a housing shortage that constitutes a threat to the health, safety, and welfare of the residents of the state, and that this shortage is caused to a significant extent by burdensome land development regulations and zoning regulations enacted by local governments that do not have a relationship to public safety, health, or reasonable enjoyments and expectations of property. The Legislature finds that these burdensome land development regulations and zoning regulations enacted by local governments lack flexibility due in part to large minimum lot size requirements, which inhibit the construction of starter homes on small residential lots. The Legislature also finds that these burdensome land development regulations and zoning regulations enacted by local governments lack flexibility due in part to restrictions on the types of single-family dwellings allowed on residential lots, including the prohibition of duplexes, triplexes, quadplexes, and accessory dwelling units (ADUs). The Legislature finds that increasing the supply of housing will help address the housing shortage and make homeownership and renting more attainable for residents of the state. Therefore, the Legislature finds that the flexibilities of decreasing minimum lot sizes, and allowing more types of single-family dwellings on residential lots, serve important public purposes by enabling starter homes on small residential lots and allowing more single-family

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<sup>1</sup> Thanks to the Florida Student Policy Forum for its major contribution to this model act.

dwellings on residential lots, which will increase the supply of housing and make home ownership and renting more attainable for residents of the state.

(2) For the purpose of this section, the term:

- a. "Local government" means a county, municipality, or any other governmental entity with authority over land development and zoning regulations.
- b. "Population" of a county shall be equivalent to the highest value among the following three population estimates for that county: the most recent 1-year American Community Survey, the most recent 5-year American Community Survey, and the most recent decennial United States Census.
- c. "Single-family dwelling" means a single-family detached (SFD) home, single-family attached (SFA) home, duplex, triplex, quadplex, townhome, townhouse, row house, or accessory dwelling unit (ADU), together with the curtilage thereof.
- d. "Residential lot" refers to any lot that is zoned for residential use, or any lot on which, whether in part or in whole, single-family dwellings are an existing or lawful use.
- e. "Parent parcel" means the original parcel from which subsequent lots are created.
- f. "Relationship to public safety, health, or reasonable enjoyments and expectations of property" means that a regulation, ordinance, resolution, rule, development order, or other policy has a real and substantial connection to protecting public safety, health, or reasonable enjoyments and expectations of property, such as requiring the structural integrity of structures, safe plumbing, safe electricity, and preventing nuisances.
- g. "Prohibited from requiring" means prohibited from adopting, promoting, enforcing, or otherwise applying any regulation, ordinance, resolution, rule, development order, government action, or other policy that mandates, compels, or otherwise requires compliance with the specified conditions.
- h. "Lot split" means the division of one parent parcel into no more than four lots, parcels, tracts, tiers, blocks, sites, units, or any other division of land.
- i. "Subdivision" means the division of land into five or more lots, parcels, tracts, tiers, blocks, sites, units, or any other division of land; and includes establishment of new streets and alleys, additions, and resubdivisions; and, when appropriate to the context, relates to the process of subdividing or to the lands or area subdivided.
- j. "Development" means the carrying out of any building activity or the making of any material change in the use or appearance of any structure or land.
- k. "Public transportation stop" means a stop or station for any commuter rail service, intercity rail transportation system, fixed-guideway transportation system, or public transit service on a fixed route with service headways of thirty minutes or less at peak periods, except for airport people movers.

(3) For residential lots that are connected to a public water system and a public sewer system, counties with a population of [FILL IN POPULATION THRESHOLD] or greater, and all municipalities within such counties, are prohibited from requiring:

- a) Any regulation, ordinance, resolution, rule, development order, government action, or other policy that does not have a relationship to public safety, health, or reasonable enjoyments and expectations of property.
- b) A minimum lot size of greater than 1,200 square feet for existing lots and lots created by a lot split or subdivision.
- c) Fewer than one single-family dwelling per lot, exclusive of any ADUs.
- d) Fewer than one ADU per lot.
- e) A definition of single-family dwelling that does not include SFD homes, SFA homes, duplexes, triplexes, quadplexes, townhomes, townhouses, and ADUs.
- f) Setbacks more than 20 feet from the front and rear lot lines.
- g) Minimum side setbacks.
- h) More than 30 percent of lot area be reserved for open space or permeable surface.
- i) A maximum building height of less than three stories or thirty-five feet above the FEMA base flood elevation.
- j) A maximum floor area ratio (FAR) of less than 3.
- k) Any individual dimension of a lot, including its width, to exceed 20 feet, provided that the lot meets the relevant minimum lot size requirement.
- l) The property owner to occupy the property.
- m) A minimum single-family dwelling size that is greater than what is required by [INSERT BUILDING CODE PROVISION] and [INSERT RESIDENTIAL CODE PROVISION].
- n) A minimum number of parking spaces greater than one for lots that are 3,500 square feet or less. Local governments are prohibited from requiring any minimum number of parking spaces for lots that are within one half (½) mile of a public transportation stop.
- o) Lots created by a lot split or a subdivision to front or abut a public right of way. Local governments shall allow lots and dwellings to front a shared driveway, alley, or common open space such as courtyards and pocket parks. Local governments are prohibited from requiring a front setback for lots and dwellings that front a shared driveway, alley, or common open space such as courtyards and pocket parks.
- p) A maximum residential density, usually measured in single-family dwellings per acre, that is more restrictive than the components of this subsection (3).
- q) Rental price controls or occupancy restrictions.

(4) For residential lots that are connected to a public water system and a public sewer system, local governments are prohibited from requiring any criteria to be approved for a lot split or to apply for a lot split, except the following criteria that local governments may require:

- a. Compliance with the local government's land development regulations and zoning regulations. On the parent parcel of a lot split, or on any lot created by a lot split, local

governments are prohibited from requiring land development or zoning regulations that differ from the land development or zoning regulations that would be required if the lot were not the parent parcel of a lot split, or if the lot had not been created by a lot split, respectively.

- b. Provision of relevant documentation and a fee no greater than required to cover the cost for the local government to review this documentation. No other fee shall be required to apply for a lot split or be approved for a lot split.
- c. The parent parcel was not created by a lot split or subdivision during the prior two years, or during a shorter period of time that the local government determines, such as one year.

(5) Proposed lot splits, subdivisions, and the development of dwellings that meet the requirements established by a local government's land development regulations shall be approved administratively by the local government, and the local government is prohibited from requiring any further action by the governing body of the local government or by any quasi-judicial or administrative board or reviewing body.

(6) Proposed developments that satisfy the conditions to receive a bonus for height, density, or floor area ratio, pursuant to a regulation or ordinance of a local government, shall be approved administratively for the bonus by the local government, and the local government is prohibited from requiring any further action by the governing body of the local government or by any quasi-judicial or administrative board or reviewing body.

(7) For residential lots in historic districts, and residential lots that occupy or are occupied by historic properties, such as those addressed by [INSERT CODE PROVISION], local governments shall not prohibit a lot split, subdivision, or the development of single-family dwellings, unless the lot split, subdivision, or development of a single-family dwelling would require the demolition or alteration of a protected historic structure that is individually listed in the National Register of Historic Places as defined in [INSERT CODE PROVISION], or is a contributing resource to a National Register-listed district.

(8) This section shall not be construed to prohibit the enforcement of:

- a. Home Owner Association (HOA) rules established prior to [FILL IN], such as those addressed by [INSERT CODE PROVISION].
- b. Deed restrictions established prior to [FILL IN], such as those addressed by [INSERT CODE PROVISION].

(9) ACTION. (a) A person adversely affected or aggrieved by a municipality's violation of this subchapter or a housing organization may bring an action against the municipality or an officer or employee of the municipality in the officer's or employee's official capacity for relief described by Subsection (e).

- (b) Local government and official immunity to suit and from liability is waived to the extent of liability created by this section.
- (c) A claimant must bring an action under this section in a county in which the real property that is the subject of the action is wholly or partly located.
- (d) This action shall utilize the process outlined [INSERT CODE PROVISION], concerning the summary procedure and the advancement of the cause on the calendar.
- (e) In an action brought under this section, a court may: (1) enter a declaratory judgment under [INSERT CODE PROVISION]; (2) issue a writ of mandamus compelling a defendant officer or employee to comply with this subchapter; and (3) issue an injunction preventing the defendant from violating this subchapter.
- (f) A court shall award reasonable attorney's fees and court costs incurred in bringing an action under this section to a prevailing claimant. The claimant may not recover exemplary damages in the action.
- (g) A claimant in an action brought under this section may elect in the claimant's petition to designate the [XX Court of Appeals] as the exclusive intermediate appellate court over an appeal or original proceeding arising from the action.

Section 3. This act shall take effect [FILL IN].

## APPENDIX – Substantive State Constitutional Provisions Relating to Property Rights

Note: This appendix lists only those states that have substantive provisions for property rights, with key phrase(s) highlighted.

**Arkansas** – Article 2, Section 2 (Freedom and Independence): “**All men are created equally free and independent, and have certain inherent and inalienable rights; amongst which are those of enjoying and defending life and liberty; of acquiring, possessing and protecting property, and reputation; and of pursuing their own happiness.** To secure these rights governments are instituted among men, deriving their just powers from the consent of the governed.”

**California** – Article 1, Section 1 (Inalienable Rights): “**All people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy.**”

**Colorado** – Article 2, Section 3 (Inalienable Rights): “**All persons have certain natural, essential and inalienable rights, among which may be reckoned the right of enjoying and defending their lives and liberties; of acquiring, possessing and protecting property; and of seeking and obtaining their safety and happiness.**”

**Florida** – Article 1, Section 2 (Basic Rights): “**All natural persons, female and male alike, are equal before the law and have inalienable rights, among which are the right to enjoy and defend life and liberty, to pursue happiness, to be rewarded for industry, and to acquire, possess and protect property.**”

**Georgia** – Article 1, Section 1, Paragraph 2 (Protection to Person and Property; Equal Protection): “**Protection to person and property is the paramount duty of government and shall be impartial and complete.**”

**Hawaii** – Article 1, Section 2 (Rights of Individuals): “**All persons are free by nature and are equal in their inherent and inalienable rights. Among these rights are the enjoyment of life, liberty and the pursuit of happiness, and the acquiring and possessing of property.** These rights cannot endure unless the people recognize their corresponding obligations and responsibilities.”

**Idaho** – Article 1, Section 1 (Inalienable Rights of Man): “**All men are by nature free and equal, and have certain inalienable rights, among which are enjoying and defending life**

**and liberty; acquiring, possessing and protecting property; pursuing happiness and securing safety."**

**Iowa – Article 1, Section 1 (Rights of Persons): "All men and women are, by nature, free and equal, and have certain inalienable rights - among which are those of enjoying and defending life and liberty, acquiring, possessing and protecting property, and pursuing and obtaining safety and happiness."**

**Kansas – Bill of Rights, Section 17 (Property Rights of Citizens and Aliens): "No distinction shall ever be made between citizens of the state of Kansas and the citizens of other states and territories of the United States in reference to the purchase, enjoyment or descent of property. The rights of aliens in reference to the purchase, enjoyment or descent of property may be regulated by law."**

**Kentucky – Bill of Rights, Section 1 (Rights of Life, Liberty, Worship, Pursuit of Safety and Happiness, Free Speech, Acquiring and Protecting Property, Peaceable Assembly, Redress of Grievances, Bearing Arms): "All men are, by nature, free and equal, and have certain inherent and inalienable rights, among which may be reckoned: First: The right of enjoying and defending their lives and liberties. Second: The right of worshipping Almighty God according to the dictates of their consciences. Third: The right of seeking and pursuing their safety and happiness. Fourth: The right of freely communicating their thoughts and opinions. Fifth: The right of acquiring and protecting property."**

**Maine – Article 1, Section 1 (Natural Rights): "All men are born equally free and independent, and have certain natural, inherent and unalienable Rights, among which are those of enjoying and defending life and liberty, acquiring, possessing and protecting property, and of pursuing and obtaining safety and happiness."**

**Massachusetts – Part the First, Article 1: "All men are born free and equal, and have certain natural, essential, and unalienable rights; among which may be reckoned the right of enjoying and defending their lives and liberties; that of acquiring, possessing, and protecting property; in fine, that of seeking and obtaining their safety and happiness."**

**Montana – Article 2, Section 3 (Inalienable Rights): "All persons are born free and have certain inalienable rights. They include the right to a clean and healthful environment and the rights of pursuing life's basic necessities, enjoying and defending their lives and liberties, acquiring, possessing and protecting property, and seeking their safety, health and happiness in all lawful ways. In enjoying these rights, all persons recognize corresponding responsibilities."**

**Nebraska** – Article 1, Section 25 (Rights of Property; No Discrimination; Aliens): "**There shall be no discrimination between citizens of the United States in respect to the acquisition, ownership, possession, enjoyment or descent of property.** The right of aliens in respect to the acquisition, enjoyment and descent of property may be regulated by law."

**Nevada** – Article 1, Section 1 (Inalienable Rights): "**All men are by Nature free and equal and have certain inalienable rights among which are those of enjoying and defending life and liberty; Acquiring, Possessing and Protecting property and pursuing and obtaining safety and happiness.**"

**New Hampshire** – Bill of Rights, Article 2 (Natural Rights): "**All men have certain natural, essential, and inherent rights - among which are, the enjoying and defending life and liberty; acquiring, possessing, and protecting, property; and, in a word, of seeking and obtaining happiness.** Equality of rights under the law shall not be denied or abridged by this state on account of race, creed, color, sex or national origin."

**New Mexico** – Article 2, Section 4 (Inherent Rights): "**All persons are born equally free, and have certain natural, inherent and inalienable rights, among which are the rights of enjoying and defending life and liberty, of acquiring, possessing and protecting property, and of seeking and obtaining safety and happiness.**"

**New Jersey** – Article 1, Section 1: "**All persons are by nature free and independent, and have certain natural and unalienable rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing, and protecting property, and of pursuing and obtaining safety and happiness.**"

**North Dakota** – Article 1, Section 1: "**All individuals are by nature equally free and independent and have certain inalienable rights, among which are those of enjoying and defending life and liberty; acquiring, possessing and protecting property and reputation; pursuing and obtaining safety and happiness; and to keep and bear arms for the defense of their person, family, property, and the state, and for lawful hunting, recreational, and other lawful purposes, which shall not be infringed.**"

**Ohio** – Article 1, Section 1 (Inalienable Rights): "**All men are, by nature, free and independent, and have certain inalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing, and protecting property, and seeking and obtaining happiness and safety.**"

**Pennsylvania** – Article 1, Section 1 (Inherent Rights of Mankind): "**All men are born equally free and independent, and have certain inherent and indefeasible rights, among which are**



**those of enjoying and defending life and liberty, of acquiring, possessing and protecting property and reputation, and of pursuing their own happiness."**

**South Dakota** – Article 6, Section 1 (Inherent Rights): "**All men are born equally free and independent, and have certain inherent rights, among which are those of enjoying and defending life and liberty, of acquiring and protecting property and the pursuit of happiness.** To secure these rights governments are instituted among men, deriving their just powers from the consent of the governed."

**Utah** – Article 1, Section 1 (Inherent and Inalienable Rights): "**All persons have the inherent and inalienable right to enjoy and defend their lives and liberties; to acquire, possess and protect property;** to worship according to the dictates of their consciences; to assemble peaceably, protest against wrongs, and petition for redress of grievances; to communicate freely their thoughts and opinions, being responsible for the abuse of that right."

**Vermont** – Chapter 1, Article 1 (All Persons Born Free; Their Natural Rights; Slavery and Indentured Servitude Prohibited): "**That all persons are born equally free and independent, and have certain natural, inherent, and unalienable rights, amongst which are the enjoying and defending life and liberty, acquiring, possessing and protecting property, and pursuing and obtaining happiness and safety;** therefore slavery and indentured servitude in any form are prohibited."

**Virginia** – Article 1, Section 1 (Equality and Rights of Men): "**That all men are by nature equally free and independent and have certain inherent rights, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity; namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety.**"

**West Virginia** – Article 3, Section 1 (Bill of Rights): "**All men are, by nature, equally free and independent, and have certain inherent rights, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity, namely: The enjoyment of life and liberty, with the means of acquiring and possessing property, and of pursuing and obtaining happiness and safety.**"