



Inclusionary Housing & The Live Local Act

**Presentation for Coalition of City Neighborhood Associations of Sarasota
April 1, 2023**

About the Florida Housing Coalition

- Statewide nonprofit organization that is primarily a training and technical assistance provider to local governments and nonprofits on all things affordable housing
- Our work covers:
 - Compliance with local, state, and federal affordable housing programs
 - Affordable housing program design
 - Capacity building for nonprofit housing providers
 - Land use planning for affordable housing
 - Research & data gathering

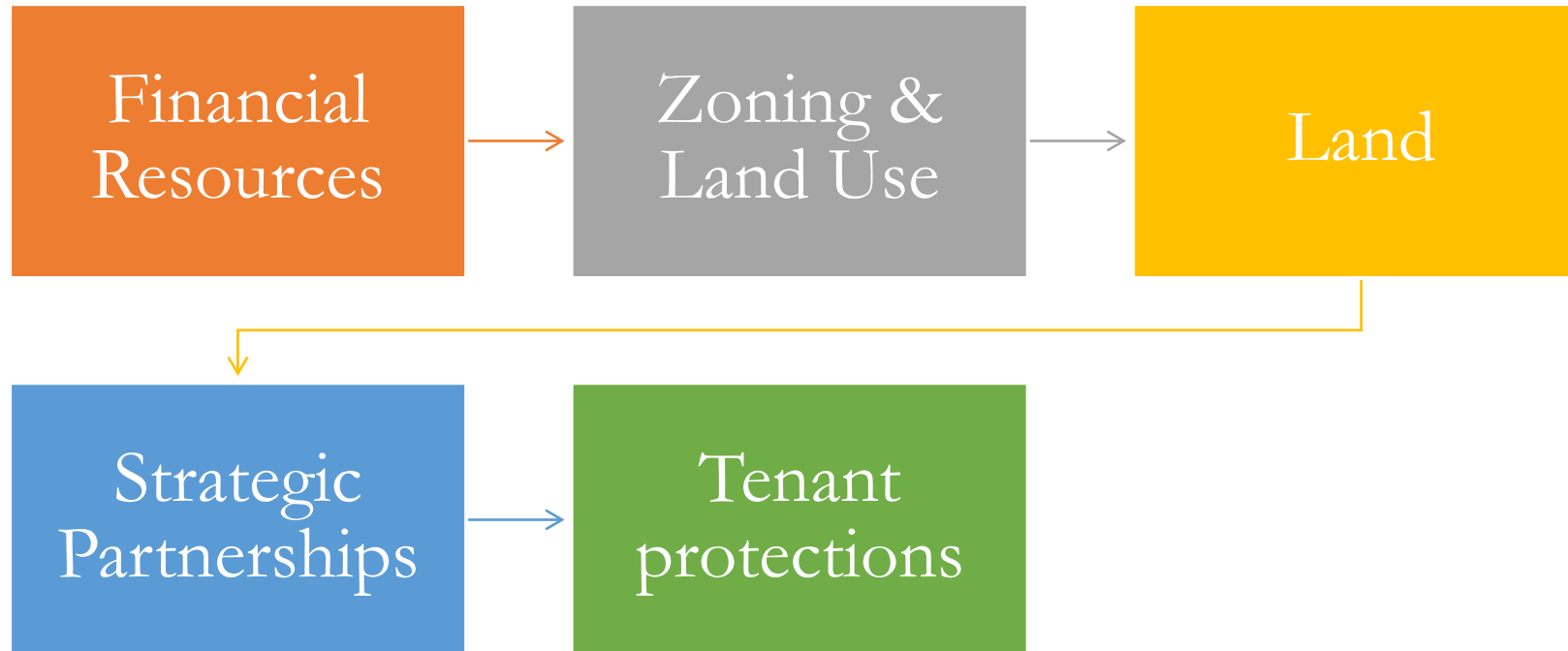


Topics covered

- What is inclusionary zoning?
- Mandatory v. voluntary inclusionary zoning
- Steps to adopt IZ
- Overview of the Live Local Act



Local government role in affordable housing



What is Inclusionary Zoning?

- Two types: 1) mandatory IZ; and 2) voluntary IZ
- Mandatory inclusionary zoning is a land use mechanism that requires a market-rate developer to provide a set number or percentage of affordable units within a market-rate development
- Voluntary inclusionary zoning encourages the private sector to provide affordable housing in exchange for favorable development rights (incentives)
- Both can be for homeownership and rental
- **No one-size-fits-all approach** – setting IZ policies depends on the local land use system, housing needs, and development trends



Mandatory IZ

- Ex) developments of 20 or more units must have at least 10% of its units be affordable to households making up to 120% AMI
- Mandatory IZ is not a silver bullet – it is only one tool to address the housing crisis
- In Palm Beach County – more than **2,500 IZ units produced** through their mandatory IZ program
- Mandatory IZ must be designed carefully enough to not become exclusionary zoning – prevent forum shopping & limiting housing supply
- Mandatory IZ works best in hot markets & places with restrictive zoning codes
- **Incentives are everything.**



Two main goals of a mandatory IZ program

An ideal mandatory IZ program can **BOTH**:



Produce deed-
restricted affordable
homes

Address exclusionary
zoning policies that
limit overall housing
supply

Common characteristics of mandatory IZ

- **Threshold number of market rate units or application** that activates the IZ requirement w/a corresponding percentage of affordable units required
- Requirement that affordable units are **comparable in quality and aesthetics** to market rate units
- **Benefits or incentives** to assist the private sector in providing the affordable units
- Provision for **payment in-lieu** where nature of development makes it practically infeasible to include affordable units
- Housing trust fund as **the depository for the payments in-lieu**
- **Term of affordability**
- Policies for **administration** of the program and opportunity for appeal



House Bill 7103 (2019)

- Amended Florida’s inclusionary zoning laws – found at ss. 125.01055 (counties) and 166.04151 (municipalities)
- For mandatory inclusionary zoning, local governments must now “provide incentives to fully offset all costs to the developer of its affordable housing contribution”
- Ex) if there is a 100-unit market-rate development and 10 of the units are required to be affordable, local government must provide incentives to “fully offset all costs” associated with the 10 affordable units



How to “fully offset all costs” to comply with state law

- This does not mean local governments have to pay developers in cash
- Density bonuses & rezonings from low intensity uses may be more than enough to fully offset all costs
- If density bonuses are not enough, can also provide:
 - Fee waivers
 - Infrastructure contributions
 - Expedited permitting
 - Reduction of any regulatory cost
 - Other incentives
- May need calculation by local government staff – each incentive will have its own value



Keys to IZ state law compliance

1. Provide as many opportunities as possible for the developer and local government staff to settle on IZ requirements and incentives.
2. Over-incentivize developers – make the IZ ordinance a win-win for developers and to increase the supply of housing overall.
3. Staff capacity & flexibility is key
4. Show your work – calculate IZ requirements and offsetting incentives.



Florida mandatory IZ examples

- Palm Beach County
 - Range affordability requirements (2-34%) depending on incentives chosen by the developer
 - Applies to new construction of 10 or more units
 - In-lieu of fee ranging from \$75,000-\$120,000 per required affordable unit
- City of Tallahassee/Leon County
 - Currently drafting a joint IZ ordinance that applies to all developments of 20 units or more within Urban Service Area
- Town of Jupiter
 - 6% of dwelling units in a residential development of 10 units or more must be workforce housing units
 - A developer who proposes any increase in density is required to develop 12% of units as affordable
 - Density bonuses offered



Voluntary IZ – types of incentives

1) Regulatory

- Density bonuses
- Housing type flexibility
- Lot design reform
- Transfer of development rights

2) Financial

- Fee & tax exemptions
- Fee & tax rebates
- Development subsidy
- Infrastructure contributions

Basis for an incentive program

- Regulatory incentives work best where there are restrictive zoning codes – **find your leverage.**
- Restrictive zoning policies to look at as the “carrot” for an incentive program:
 - Maximum densities & intensities
 - Housing type
 - Minimum lot sizes
 - Setback requirements
 - Parking requirements
 - Fees & development review processes
- All land development regulations that 1) cost \$\$\$ to a developer; or 2) limit the amount of allowable homes that can be built can be leveraged incentives to build affordable housing.



Example: Density bonuses for affordable housing

- Increasing in popularity throughout the state
- Most programs do not attract private sector involvement
- Work best in areas with high market demand, limited land availability, and restrictive zoning codes
- Affordable housing incentive programs are most effective when local government has not already given too much away to the private sector
- No one-size-fits all solution: a functioning density bonus program requires local study



Study first, policy design second

1. Know your maximum densities.

- What densities does the current land development code/comprehensive plan allow?

2. Study your development patterns.

- Are developers building up to maximum by-right densities?
- Are there certain places in the local government where developers are pushing up against max densities?

3. Identify your restrictive zoning policies.

- If developers aren't building to maximum densities, why not?
- What other standards in the land use code prevent maximum densities from being **unlocked**?

4. Engage the private sector.

- What does the private sector want that they don't already have?
- What other incentives does the private sector want?



Types of Density Bonus Policies

- Flexible, case-by-case negotiation
 - Staff works with applicant to negotiate favorable development rights in exchange for affordable housing
- Rigid, but predictable
 - Language contained in the Code that allows density bonus by-right if a developer provides x% of affordable housing
- Points-based system or one of several options (avoid)
 - Affordable housing is a type of public good that can give a developer “points” to seek a density bonus



Steps to adopt IZ

1. Conduct a feasibility study to determine where IZ policies may be most effective
2. Decide whether to pursue mandatory IZ, voluntary IZ, or both
3. Design a draft policy
4. Gain community input & buy-in (amend as necessary)
5. Implement the ordinance
6. Quality check annually



Things to consider for an IZ policy

- **Coverage.** Which areas will the IZ requirement cover? Whole city? High growth areas where density bonuses may be most effective?
- **Unit threshold.** What will be the unit threshold for mandatory IZ?
- **Incentives.** What incentives can be offered?
- **Risk management.** How can we make the legal staff comfortable with the City's cost offset calculation?
- **Local development patterns.** What do local development patterns show in terms of incentive opportunities?
- **Stakeholder engagement.** Who are key stakeholders to interview to find out what which incentives will be most enticing?



Things to consider for an IZ policy

- **Term of affordability.** How long will the units be affordable?
- **Compliance monitoring.** Who will monitor and ensure long-term affordability? Best to have local government staff monitor to remove burden from private sector.
- **Penalties.** What will the penalties be for non-compliance?
- **Reporting.** What will the annual reporting process look like?
- **Staff capacity.** Which staff will be dedicated to the program's success?





“Live Local Act”

Senate Bill 102
(Calatayud – Miami-Dade)

House Bill 627
(Busatta Cabrera – Miami-Dade)

Addresses a variety of housing issues including funding, tax incentives, and substantial amendments to the state’s housing strategy.

3/8/23: Passed Senate unanimously

3/23/23: Passed House 103-6



Live Local – array of affordable housing policies

- **Funding.** Record **\$811 million** for affordable housing programs.
- **Tax incentives.** Three new property tax incentives and a sales tax exemption for specified affordable housing developments.
- **Land use tools.** Facilitating affordable housing in commercial, industrial, and mixed-use areas & more.
- **Publicly-owned land.** Encouraging local governments to adopt best practices.
- **State housing strategy.** State guidance on affordable housing policy.
- **Technical assistance.**



Funding in the Live Local Act

- Proposes a **record \$811 million** for affordable housing programs (including up to \$100 million in a new tax credit program)

Program	SB 102/HB 627	FY 22-23	FY 21-22
SHIP	\$252m	\$209.475m	\$146.7m
SAIL	\$259m*	\$53.25m	\$62.5m
Hurricane Housing Recovery		\$150m	
Hometown Hero Program	\$100m (from GR)	\$100m (from SHTF)	
Inflation Response Program	\$100m**		
Live Local Tax Donation Program	(up to \$100m***)		
Total funding****	\$811,000,000	\$512,725,000	\$209,200,000

*Discussed on subsequent slides

** If not used by 12/1/23, goes to SAIL

***For SAIL – dependent on contributions to the program

****This does not include member projects or homelessness grant programs.



SHIP Estimates for FY 23-24 based on the Live Local Act

Jurisdiction	Proposed FY 23-24	FY 22-23	FY 21-22
Sarasota County	\$4,535,048	\$3,706,445	\$2,527,252
City of Sarasota	\$647,272	\$531,430	\$382,653
Total County	\$5,182,320	\$4,237,875	\$2,909,905



Sadowski fully funded & more!

- SB 102/HB 627 **fully funds** the Sadowski Trust Fund programs.
- **AND**
 - Provides an extra \$150 million/year for 10 years for the SAIL program
 - Up to \$100 million/year for SAIL through the new Live Local Tax Donation Program
 - Up to \$100 million not used on inflation response program for FY 23/24 for SAIL
- This does not include the value of the new local property tax incentives for certain affordable housing developments.



How the extra \$150 million/year for 10 years for SAIL will be spent

At least
70% for:

Rehab/new construction

Addressing urban infill

Provide for mixed-use housing

Provide housing near military installations

Max of
30% for
projects
that:

Use or lease public lands

Address needs of adults aging out of foster care

Meet needs of elderly persons

Provide housing in areas of rural opportunity

Notes:

- FHFC will have the discretion to issue RFAs for this \$150m
- Local governments, developers, & advocates should follow the FHFC RFA process and start planning for local projects to support



New local option property tax incentive

- The Live Local Act authorizes local governments to provide property tax exemptions for specified affordable housing developments.
- Tax exemptions only apply to the affordable units.
- **Eligible developments:**
 - Contain at least 50 or more units
 - At least 20% of the units affordable to households at or below 60% AMI
- Property tax exemptions allowed are based on % of affordability
 - <100% of the units are affordable = up to 75% property tax exemption:
 - 100% of the units are affordable = up to 100% property tax exemption
- Exemption authorized by City or County expires “before the fourth January 1 after adoption”; can be renewed after expiration



New automatic property tax exemptions

1. Land owned entirely by a nonprofit and is leased for a period of 99-years for providing affordable housing to up to moderate-income households
2. Multifamily developments of more than 70 affordable units for households up to moderate-income.
 - Units that serve households 80-120% AMI = automatic 75% property tax exemption
 - Units that serve households <80% AMI = automatic 100% property tax exemption



Using publicly-owned land for affordable housing

- **F.S. 125.379/166.0451** – Florida’s surplus land laws
 - Requires every city and county to identify publicly-owned lands that are “appropriate for use as affordable housing”
- SB 102/HB 627 amends these statutes to:
 - Newly apply to all dependent special districts, including CRAs
 - Require local government to post their affordable housing inventory list online
 - Encourage local governments to adopt best practices including:
 - Establishing eligibility criteria for the receipt or purchase of surplus land by developers;
 - Making the process for requesting surplus land publicly available; and
 - Ensuring long-term affordability through ground leases by retaining the right of first refusal to purchase property



Preemptions in the Live Local Act

1. Rent control prohibited.
2. Land use standards for the **use**, **density**, and **height** of certain affordable housing developments in commercial, industrial, and mixed zones.



Land use standards – Affordable housing in commercial, industrial, or mixed-use zones

A local government cannot regulate the **use, density, or height** of an affordable housing development if a proposed **rental** project is:

- Multifamily or mixed-use residential in any area zoned for **commercial or mixed use**;
- At least **40% of units are affordable** for households up to **120% AMI** for at least **30 years**
- If mixed-use, **at least 65% is residential**

Local government cannot require a development authorized under this preemption to obtain a zoning/land use change, special exception, conditional use approval, variance, or comp plan amendment for **use, density, or height**.



Land use standards – Affordable housing in commercial, industrial, or mixed-use zones

Affordable housing developments allowed under this preemption are entitled to:

Use

- Allowed to build multifamily rental or mixed-use in commercial zones without a zoning or land development change

Density

- Highest density allowed on any land in the City or County where residential development is allowed

Height

- Highest currently allowed height for a commercial or residential development within 1 mile of the proposed development or 3 stories, whichever is higher



Land use standards – Affordable housing in commercial, industrial, or mixed-use zones

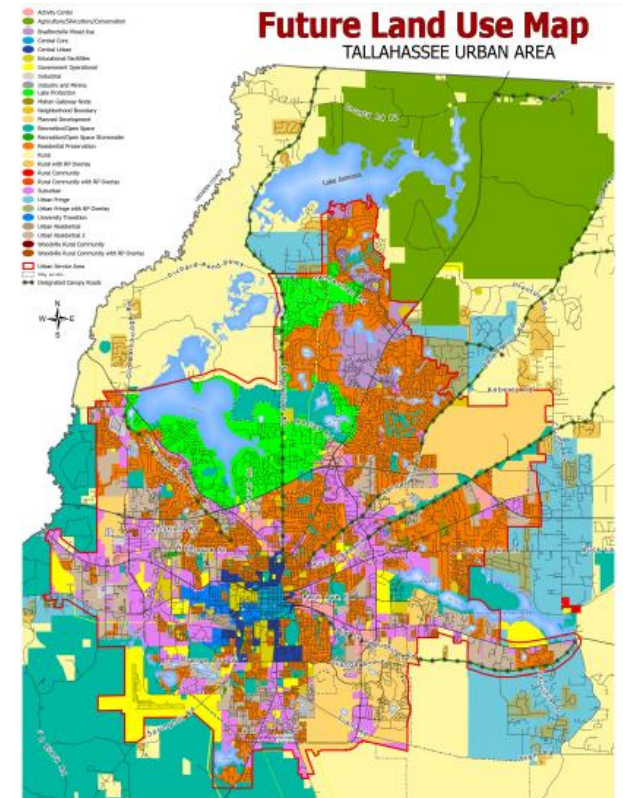
Additional provisions:

- All other state and local laws apply.
 - Ex) setbacks, parking, concurrency, max lot coverage, environmental all still apply – all of which can indirectly limit density and height
- If a proposed project satisfies the existing LDRs and comprehensive plan, project must be administratively approved
- LGs must consider reducing parking requirements if project within one-half mile of a major transit stop
- If project located in a certain city or county that has less than 20 percent of total land use designated for commercial or industrial use, only **mixed-use residential** is allowed with this tool



What should local governments do now re: the land use standards for AH?

- Start studying your City or County's commercially zoned sites that could utilize this new statutory tool
- Examine your:
 - Future land use maps and zoning codes
 - Height and density regulations
 - Other zoning barriers (setbacks, parking, max lot coverage, etc.) that might limit the use of this tool
- Ask:
 - How much land is eligible for this state preemption?
 - What types of projects can be expected on eligible parcels?
 - How can the City/County facilitate affordable housing on eligible parcels?



“HB 1339” (2020) land use tool amended

F.S. 125.01055(6)/166.04151(6): currently allows local government to approve affordable housing developments on any parcel zoned for a **residential**, **commercial**, or **industrial** use without needing a rezoning or comprehensive plan amendment.

What SB 102/HB 627 does:

- Strikes out “residential”
- Removes the prohibition on SAIL funded projects



Encouraging local governments to adopt best practices

- **Section 26** of the bill has several provisions encouraging local governments to adopt best practices on their own – these provisions may form the basis of preemptions in future Legislative sessions. These provisions include:
 - “Local government shall provide incentives to encourage the private sector to be the primary delivery vehicle for the development of affordable housing.” (lines 1927-1929)
 - “Local governments should consider and implement innovative solutions . . . Innovative solutions include: (lines 1937-1957)
 - “Utilizing publicly held land to develop affordable housing . . .”
 - “Community-led planning that focuses on urban infill, flexible zoning, redevelopment of commercial property into mixed-use property . . .”
 - “Project features that maximize efficiency in land and resource use, such as high density, high rise, and mixed use.”
 - “Modern housing concepts such as manufactured homes, tiny homes, 3D-printed homes, and accessory dwelling units.”

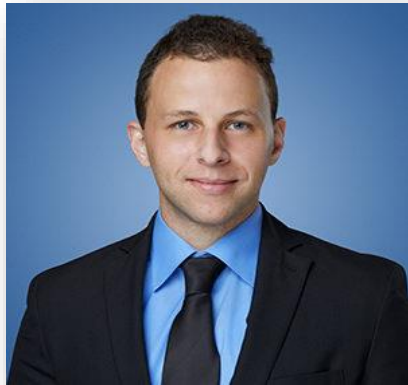


Other policies in SB 102/HB 627 affecting local government

- Amends HB 1339 (2020) land use tool to remove a local government's ability to approve affordable housing on *residential* parcels by bypassing state and local laws that may otherwise preclude such development.
- Requires local governments to post expediting permitting procedures online
- Precludes state funding for housing to local governments whose comprehensive plans have been found not in compliance with Chapter 163



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