Regulatory & Land Use
Planning Issues Affecting
Affordable Housing

Part I: House Bill 1339
Implementation







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Webinar Logistics

- All participants are on mute
- Please type in your questions and comments into the question box on the side panel
- We will not identify who has asked a question
- Webinar is recorded
- PPT is provided as a handout
- For follow-up information or problems downloading handouts, please contact glazer@flhousing.org



Agenda

- I. Background on House Bill 1339
- II. Land Use Flexibility for Affordable Housing
- III. Linkage Fees
- IV. Accessory Dwelling Units
- V. Affordable Housing Advisory Committees (AHACs)





I. House Bill 1339 (2020)

House Bill 1339 (2020)

- Omnibus housing bill of the 2020 Florida Legislative Session
- Covered a variety of topics affecting affordable housing including:
 - Linkage Fees
 - Accessory Dwelling Units (ADUs)
 - The State Housing Initiative Partnership (SHIP) program
 - Affordable Housing Advisory Committees (AHACs)
 - Approval of affordable housing developments on land zoned residential, commercial, or industrial
 - Mobile homes/Manufactured Housing





II. Land Use Flexibility for Affordable Housing

Land Use Flexibility for Affordable Housing

House Bill 1339 created Fla. Stat. § 125.01055(6) (for counties) and 166.04151(6) (for municipalities):

"Notwithstanding any other law or local ordinance or regulation to the contrary, the governing body of a [city or county] may approve the development of housing that is affordable, as defined in s. 420.0004, on any parcel zoned for residential, commercial, or industrial use."



Before we get into the weeds...

- This is still a relatively new statutory provision
- Given the state's affordable housing shortage, it is an opportune time for local governments to use this land use flexibility to innovate their affordable housing policies
- Success breeds success!
- Important to share best practices so this provision is more widely utilized in Florida
- "HB 1339" in this training is used as shorthand for this particular statutory provision, not the entirety of the bill



What does this new statutory provision mean?

- It is essentially permission for a local government to override their own comprehensive plan and/or zoning code to approve an affordable housing development
- If utilized, affordable housing developers would not need a comprehensive plan amendment or re-zoning on a parcel where the local land use laws currently do not permit the proposed housing
- Ex) An affordable housing developer could be permitted to build a multifamily project in a commercial land use designation without needing a zoning change
- This language can act as a "super-waiver" of land development regulations for affordable housing developments

"Super-waiver" of Land Development Regulations?

- "Notwithstanding any other law or local ordinance or regulation to the contrary, the governing body of a [city or county] may approve the development of housing that is affordable, as defined in s. 420.0004, on any parcel zoned for residential, commercial, or industrial use."
- Pursuant to this language, local government has the authority to waive relevant comprehensive plan and local government regulations to permit an affordable housing development in the three zones (residential, commercial, or industrial)
- The scope of this language will be determined by each local government

How far should we go?

- A broad reading of the new statutory provision ("notwithstanding any other law or local ordinance or regulation to the contrary) could potentially allow a waiver of <u>all</u> relevant local land use laws for an affordable housing development
- Yet, there will surely be development standards the local government will still need to regulate:
 - Density
 - Parking
 - Setbacks
 - Compatibility with surrounding structures
 - Environmental considerations



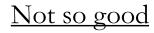
Benefits & Burdens



Good



- Could reduce costly land use barriers for affordable housing development
- Expands government owned-lands that can be used for housing
- Expedite affordable development
- Can be helpful for missing middle housing & adaptive reuse
- Helpful in combating NIMBY





- Would be harmful if misused to permit affordable housing where people should not live e.g. near toxic uses, in food deserts, areas without adequate transit or infrastructure
- If used in commercial and industrial areas, may reduce available land for new employment/job growth



Considerations for implementing the land use flexibility in HB 1339

- 1. Provide clear standards for when an affordable housing development can be approved.
- 2. Consider different development standards based on the existing zoning.
- 3. Do not approve projects on parcels that are not appropriate for affordable housing.
- 4. Ensure development meets the public purpose intent of the law.
- 5. Delegate authority to approve affordable developments to staff officials.



1. Provide clear standards for when an affordable housing development can be approved.

- A sufficient level of predictability for project approval should be a main priority
- A case-by-case conditional approach may be time-intensive, arbitrary, infeasible to manage, and curb potential benefits
- There will not be a one-size-fits-all approach for statewide implementation of this new provision it will require looking at the existing LDRs and community plans, land development patterns, and need some level of community input



2. Consider different development standards based on the existing zoning.

- Policies allowing affordable housing on parcels currently zoned for one of the three uses could differ based on the existing use
- For example, using HB 1339 to allow high-density affordable apartments in a low-density single-family district may not be desirable
- It may be more desirable to use HB 1339 to facilitate missing middle housing (duplex, triplex, townhome) in lower-density zones
- A parcel currently zoned for higher-density residential, commercial, or industrial will likely be able to better support higher-density development

Sample Zoning Matrix

- Local governments can create a zoning matrix that establishes predictable development standards based on the existing zoning category.
- Idea. Create three special zoning categories and codify those three districts as R-AH1, R-AH2, R-AH3.
- These special zoning categories would generally allow for higher density, more lot and housing type flexibility, and other benefits to produce more units than the existing zoning.



Sample Zoning Matrix

Special Zoning Category	Housing Types	Description
R-AH1	 Single-family attached/detached Missing middle housing types (Duplex, triplex, townhomes) 	 Can be used in existing low- density residential districts to allow for slightly higher density and greater flexibility in housing type
R-AH2	 R-AH1 housing types plus low- rise apartments and other moderate-density units 	• Can be used in existing medium- density districts of all three zones (residential, commercial, industrial) to produce a variety of affordable housing types
R-AH3	 R-AH1 and R-AH2 housing types plus high-rise and other high-density units 	 Can be used in existing high- density districts of all three zones



Sample Zoning Matrix

• Once you have established the special zoning categories, define where those zoning categories can be used.

Existing Zoning	Special Affordable Housing Zoning Category
Low-Density Residential	R-AH1
Medium-Density Residential	R-AH2
High-Density Residential	R-AH3
Low-Intensity Commercial	R-AH2
High-Intensity Commercial	R-AH3
Low-Intensity Industrial	R-AH2
High-Intensity Industrial	R-AH3



How would this work (simplified)?

- 1. Local government, through the LDR adoption process, establishes predictable standards (zoning matrix) for when and where House Bill 1339 can be used
- 2. Developer wants to build 50 affordable units on a parcel zoned for low-intensity commercial uses (as defined by the local government)
- 3. Developer looks at the zoning matrix and sees that in a low-intensity commercial district, they can use the zoning standards established for R-AH2
- 4. Developer provides a site plan/required project specifications to meet the requirements for R-AH2
- 5. Local government staff reviews and approves the project



Case-by-Case use of House Bill 1339?

- Local government can still use House Bill 1339 on a case-by-case basis even if it does not set up predetermined standards for approval
- Case-by-case approach could work for local governments with smaller staff, already flexible zoning codes, less demand for use
- Way to secure negotiated zoning standards for affordable housing
- If case-by-case approach, secure City or County Commission approval at a public hearing



3. Do not approve projects on parcels that are not appropriate for affordable housing.

- As part of the clear development standards established in Step 2, define how to assess whether a parcel or area is appropriate for HB 1339's land use flexibility
- Without proper safeguards, HB 1339 could raise issues of racial & environmental justice
- Avoid approving homes near toxic or abandoned industrial sites, areas where existing/planned infrastructure cannot support safe and sanitary housing, or other locations not suitable for living



Ideas for how to determine whether a parcel or area is appropriate for affordable housing

- Require an environmental assessment for proposed developments in industrial zones
- Assess proximity to grocery stores, employment, public transit, and other opportunity indicators
- Consider not implementing HB 1339 in areas known to be unsafe or otherwise lacking necessary infrastructure
- If it is appropriate for market-rate housing, it is appropriate for affordable housing



4. Ensure development meets the public purpose intent of the law.

- "Notwithstanding any other law or local ordinance or regulation to the contrary, the governing body of a [city or county] may approve the development of housing that is affordable, as defined in s. 420.0004, on any parcel zoned for residential, commercial, or industrial use."
- S. 420.0004: "affordable" means that monthly rents or mortgage payments do not exceed 30 percent of an eligible household's gross income by income category
 - •Extremely low-income: 0-30% AMI
 - •Very-low-income: 30.01-50% AMI
 - •Low-income: 50.01%-80%
 - •Moderate-income: 80.01-120% AMI





4. Ensure development meets the public purpose intent of the law.

- Affordable developments that are granted HB 1339 zoning flexibility should be affordable <u>long-term or in perpetuity</u>
- Use a Land Use Restriction Agreement (LURA) that defines:
 - •Number or percentage of required affordable units
 - •Income levels served
 - Term of affordability
 - Compliance monitoring
 - •Party responsible for qualifying households (developer or housing staff?)
 - •Enforcement & penalties for noncompliance



5. Delegate authority to approve affordable developments to staff officials.

- "Notwithstanding any other law or local ordinance or regulation to the contrary, the governing body of a [city or county] may approve the development of housing that is affordable, as defined in s. 420.0004, on any parcel zoned for residential, commercial, or industrial use."
- Primary value of this provision is to expedite and ease approval of an affordable housing development where the current land use laws do not allow it.
- If each development must be presented to the "governing body" to be approved, the time savings may not be achieved.

Consider: delegate authority to approve applicable developments from City/County Commission to professional staff.





HB 1339 Draft
Ordinance to
Implement Process
for Applications to
City Council



House Bill 1339 Provision

- Notwithstanding any other law or local ordinance or regulation to the contrary, the governing body of a municipality may approve the development of housing that is affordable, as defined in s. 420.004, on any parcel zoned for residential, commercial or industrial use.
- Purpose of draft ordinance is to create a process for an applicant to apply directly to City Council for consideration of an affordable housing development that would otherwise not be permitted in the zoning district.





Community Discussions

COW – December 10th

HLUT - August 13th and September 10th May 13th

AHAC – July 22, May 17th: Motion to encourage adoption and streamlined process





POTENTIAL CODE MODIFICATIONS

Create a process for applications

- Affordable Housing Site Plan Review
- Add to Housing code (Vs. zoning)
- Project and Site Plan specific
- One public hearing vs. multiple steps
- Public Notice
- Facilitates annual applications for financing





Draft Ordinance

- Minimum locational, density, affordability and property size criteria for eligibility:
 - NT and NS zoning districts
 - Minimum 1 acre in size
 - Minimum of 20 units
 - Maximum rent at 120% of AMI
 - Minimum affordability period of 30 years
 - IT and IS zoning districts
 - Minimum 5 acres in size
 - Minimum of 60 units
 - Shall be located within ½ mile of public or vocational school
 - Shall be located within ¼ mile of PSTA bus line
 - Shall be located within 1 mile of a grocery store
 - Shall be located within 1 mile of the Pinellas Trail or City Park
 - Maximum rent at 120% of AMI
 - Minimum affordability period of 30 years

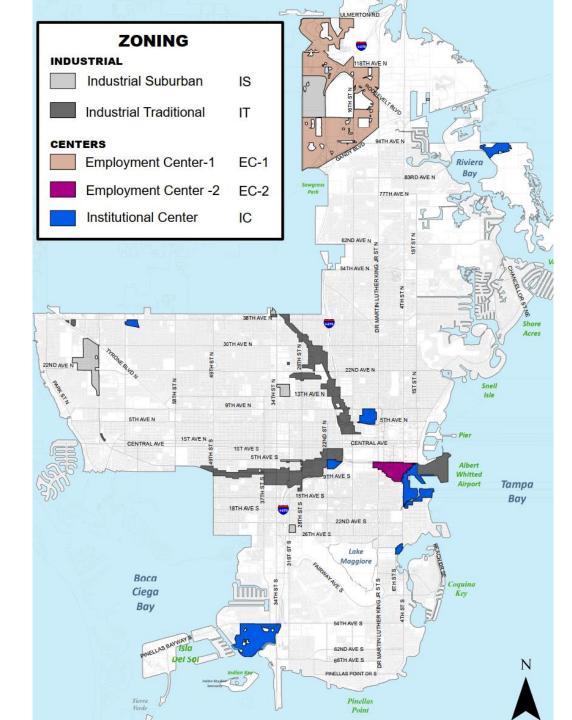




Industrial considerations

Loss of employment generating land





IT and IS zoning districts

Minimum 5 acres in size

Minimum of 60 units

Located within ½ mile of public or vocational school

Located within 1/4 mile of PSTA bus line

Located within 1 mile of a grocery store

Located within 1 mile of the Pinellas Trail or City Park

MAP#	ZONING	ACRES	LAND USE	
3	IS	13.88	Light Manufacture	
4	IT	6.57	Professional Bldg	
5	IS	5.15	Light Manufacture	
6	IS	10.62	Warehouse Stor/Dist	
7	IT	6.50	Light Manufacture	
8	IT	14.51	Light Manufacture	
9	IT	5.02	Mineral Processing	
10	IT	6.92	Lumber Yards	
11	IT	5.06	Light Manufacture	
12	IS	23.34	Vacant Industrial	
13	IS	21.15	Light Manufacture	
14	IS	5.36	Light Manufacture	
15	IS	5.78	Heavy Manufacture	

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ZONING	ACRES	Vacant	HB1339	% Vacant	% HB1339
IS	198.36	44.32	85.27	22.34%	42.99%
IT	586.13	47.97	44.57	8.18%	7.60%
Totals	784.50	92.29	129.84	11.76%	16.55%

Total 129.84

Draft Ordinance Continued

- Application requirements (very similar to site plan review process):
 - Tenant Notice
 - Procedures
 - If the property location is within an industrial zoning district, an environmental report and analysis of surrounding industrial activities.
 - If the redevelopment will displace an existing business or businesses, a plan for relocation of the business or businesses and/or re-employment of existing employees
 - Standard for review
 - Fees no application fee





Draft Ordinance

- Standards for review:
 - Ingress and egress
 - Environmental report of subject property and analysis of surrounding uses for industrial zoning
 - Off –street parking
 - Traffic impact report
 - Drainage
 - Signs
 - Orientation, height and location of buildings in relation to character of the neighborhood
 - Compatibility of the use
 - Substantial detrimental effects





Draft Ordinance Continued

- Standards for review:
 - Sufficiency of setbacks, screens and buffers
 - Land area is sufficient
 - Landscaping and preservation of natural features
 - Sensitivity to historic and archaeological resources
 - Unit type including AMI % of units and rental or ownership
 - If subject property is zoned industrial:
 - One or more of the following characteristics exist over an extended period of time; 1) vacant or underutilized land; 2) vacant or underutilized buildings; 3) poor quality job creation in terms of pay, employee density and spin-off or multiplier effects; 4) chronic competitive disadvantage in terms of location, transportation infrastructure/accessibility and other market considerations
 - Conversion to residential use will not cause negative impacts on surrounding industrial operations
 - Location and surrounding land uses will not cause any adverse impacts to the health of future residents



Chapter 16 and Comprehensive Plan

- LDR text amendment referencing this process and State statute
 - DRC and City Council
- Comprehensive plan amendment referencing this process and State Statute
 - CPPC and City Council





Next Steps

- City Council Feedback
- Public Input
 - CONA
 - Public
 - Chamber of Commerce
 - Affordable Housing Advisory Committee (AHAC)
- Additional Committee Meeting or City Council depending on public input
- July/August adoption





Questions & Comments







III. Linkage Fees

Linkage Fee

- A linkage fee is a local government tool to raise revenue for affordable housing programs
- Typically charged on new office, commercial, or industrial development
- "Links" the new development with the workforce housing needs generated by the new development
- Florida examples: Winter Haven, Coconut Creek, Jupiter
- St. Peterburg and Broward County have completed nexus studies



HB 1339 Codified Linkage Fees in Statute

F.S. 125.01055 (counties) & F.S. 166.04151(municipalities):

- (3) An affordable housing linkage fee ordinance may require the payment of a flat or percentage-based fee, whether calculated on the basis of the number of approved dwelling units, the amount of approved square footage, or otherwise.
- (4) In exchange for a developer fulfilling the requirements of subsection (2) or, for a residential or mixed-use residential development, the requirements of subsection (3), a [city or county] must provide incentives to fully offset all costs to the developer of its affordable housing contribution or linkage fee.

Note: Local government does **NOT** need to fully offset all costs for a linkage fee on commercial, office, industrial, or other non-residential uses.



Why a Linkage Fee May be Good for your Community

- Flexible revenue source
- Completely directed by local ordinance
- Can fill gaps not covered by other traditional sources
- For hotels, big box stores, large scale retailers employers that pay below a living wage



Considerations for Implementing a Linkage Fee Ordinance

- Development factors
 - Current zoning and future land use
 - Available land
 - Current and future growth trends
- Nexus study
 - Establish connection
 - Determine maximum fee amount based on use
 - Determine if maximum fee will be collected
- Program administration
 - When fee is collected and by whom
 - Alternatives to paying the fee





IV. Accessory Dwelling Units

Accessory Dwelling Units

- ADUs, also known as granny-flats, mother-in-law suites, and garage apartments, can increase the supply of affordable housing.
- Increasing in popularity in Florida Florida has the 2nd highest number of ADUs in the nation.
- Local government can encourage ADU development through zoning reforms, financial incentives, and homeowner education.





Fla. Stat. 163.31771 - Florida's ADU Statute

- Earlier versions of HB 1339 required local governments to allow ADUs in all single-family districts.
- The final version of HB 1339 slightly amended the ADU statute which created different interpretations of the statute's breadth.
- Differing opinions of whether 163.31771(4) requires local governments to collect an affidavit from the homeowner attesting that the ADU will be rented at an affordable rate to income-eligible households.
- Local governments are still encouraged to permit ADUs in all single-family districts & remove zoning barriers to legalize their use.



ADUs for Affordable Housing?

- ADUs are commonly considered a smart growth tool for affordable rental housing.
- However, unless the local government requires affordability, not *every* ADU will be used as long-term affordable housing.
- As with any other housing type, ADUs are subject to the market and can be intended for different uses (long-term rental, family & friends, elderly care, short-term rental).
- Local governments can require affordability through financial incentives.
 - **163.31771(4):** local government tool to require affordability and prevent ADUs from being used as vacation rentals



V. Affordable Housing Advisory Committees (AHACs)

Affordable Housing Advisory Committees (AHAC)

- Required for every SHIP jurisdiction that receives above \$350,000 in a given year
- 8-11 members representing all aspects of the housing industry
- Each AHAC produces an **annual** report which includes recommendations on implementing a variety of affordable housing incentives
- Can engage in other affordable housing activities under City/County direction





HB 1339 Changes to the AHAC – Elected Officials & Annual Reporting

- HB 1339 newly requires a local elected official to be a member of each AHAC
- Requires the elected official on each AHAC to attend biannual, regional workshops on affordable housing best practices administered by the Florida Housing Coalition
- This change has already produced better participation on the AHAC, increased elected official involvement, and improved the legitimacy of the AHAC when implementing local affordable housing policies
- HB 1339 also changed the AHAC statute to require an AHAC report annually instead of every three years
- Land Use Workshop #2 on June 10 will cover best practices for the AHAC









Register Here or at https://register.gotowebinar.com/register/41594939301500686

Regulatory & Land Use Issues Affecting Affordable Housing Workshop #2 When: Thursday, June 10 @ 2pm-3:30pm

Topics Covered:

- Role of local government in making housing affordable
- Impacts of zoning/land use on housing affordability
- How to encourage & require affordable housing development
- Involving the Affordable Housing Advisory Committee (AHAC)

Guest speakers from the local government and nonprofit housing sectors.

FLORIDA HOUSING COALITION PUBLICATIONS

Access these valuable resources and more under the Publications tab at Flhousing.org

Housing News Network Journal
Florida Home Matters Report
Accessory Dwelling Unit (ADU) Guidebook
Adaptive Reuse of Vacant Rentals

Affordable Housing Resource Guide

Affordable Housing Incentive Strategies

CLT (Community Land Trust) Primer

CLT Homebuyer Education – Teacher's Guide

CLT Homebuyer Education – Buyer's Guide

Community Allies Guide to Opportunity Zones

Community-Based Planning Guide

Creating a Local Housing Disaster Recovery

Creating Inclusive Communities in Florida

Credit Underwriting Guide for Multi-Family Affordable Housing in Florida

Developing & Operating Small Scale Rental Properties

Disaster Management Guide for Housing

Landlord Collaboration Guidebook

PSH Property Management Guidebook

Residential Rehabilitation Guide

SHIP Administrators Guidebook

Surplus Lands Guidebook

Supporting Households Moving Out of Homelessness

Using SHIP For Rental Housing















































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