

THE LIVE LOCAL ACT'S NEW LAND USE TOOL FOR AFFORDABLE HOUSING

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The Live Local Act (the “Act” or “SB 102”) was a 96-page bill that contained a variety of affordable housing policies, from funding and tax incentives to land use and publicly owned land strategies. One of the most discussed aspects of the Act is the land use preemptions for eligible affordable housing developments in commercial, industrial, and mixed-use areas. This new tool has the potential to expedite much-needed affordable rental housing development while accomplishing local planning goals such as redevelopment of underutilized properties, encouraging economically sustainable development through mixed-use and mixed-income, and reducing auto-dependence through transit-oriented development.

This provision of the Act, referred to hereinafter as subsection (7), sunsets in 2033. Local governments and developers only have ten years to utilize this tool unless the Legislature renews it. Let’s break down 1) what affordable housing developments are eligible; 2) what eligible developments are entitled to; 3) other planning criteria in subsection (7); and 4) local policy considerations and what local governments can do now.

WHAT AFFORDABLE HOUSING DEVELOPMENTS ARE ELIGIBLE FOR SB 102 LAND USE APPROVAL?

Only multifamily and mixed-use rental residential developments are eligible for the favorable land use standards in subsection (7) – single-family and homeownership developments are not eligible for SB 102 land use approval. To be eligible, developments must:

1. Be in an area zoned for commercial, industrial, or mixed-use;
2. Devote at least 40% of its residential units as affordable housing to households earning at or below 120% of the Area Median Income (the 40% rule); and
3. If the development is a mixed-use residential project, set at least 65 percent of the total square footage for residential purposes.

WHAT DEVELOPMENT STANDARDS ARE ELIGIBLE DEVELOPMENTS ENTITLED TO?

In exchange for a substantial percentage of affordable units, eligible developments are entitled to favorable development standards regarding use, density, height, and in certain circumstances, administrative approval, even if those standards exceed what may be allowed on a property based on a jurisdiction's current regulations.

There is also language requiring local governments to consider reducing parking requirements for eligible developments. Subsection (7)(a) states that a local government cannot require a “zoning or land use change, special exemption, conditional use approval, variance, or comprehensive plan amendment for the building height, zoning, and densities” offered through the Live Local land use preemption.

1. Use: eligible developments are entitled to their proposed multifamily or mixed-use residential use in commercial, industrial, and mixed-use districts regardless of if the property's current zoning regulations allow for residential uses. For example, consider a proposed project in a jurisdiction's general commercial district where the regulations do not allow for residential uses. If the proposal satisfies the 40% rule and residential square footage requirements in subsection (7), it would have the right to its proposed residential use in a zoning district that would not otherwise allow for residential uses¹.
2. Density: in addition to the use, subsection (7) entitles eligible developments to the “highest allowed density on any land [in the jurisdiction] where residential development is allowed.” At the time of this writing, the text of subsection (7) does not specify whether “highest allowed density” refers to by-right densities or whether it includes bonus densities (another common tool used to encourage affordable housing development). Further, the text does not expressly eliminate the application of “intensity” regulations such as Floor Area Ratio (FAR) maximums. Local government and developer attorneys will need to interpret these nuances for themselves in the spirit of facilitating affordable housing development. To illustrate how this provision could work, suppose the highest density allowance anywhere in a jurisdiction is 30 units/acre. In this case, an

1. Note that at subsection (7)(f), there is language that limits the use of the tool for multifamily-only rental developments in commercial and industrial districts for certain local governments. Cities, for example, that have less than 20 percent of their total land area zoned for commercial and industrial uses can only use subsection (7) for mixed-use developments in commercial and industrial zones. Consult your planning department to analyze whether subsection (7)(f) applies to your jurisdiction.

WHERE TO FIND THESE PROVISIONS IN THE LAW

Although the language for cities and counties is almost identical, Section 3 of the Act applies to counties, whereas Section 5 applies to municipalities. These sections create two new subsections of Florida law for counties and municipalities, respectively – s. 125.01055(7) and s. 166.04151(7). Affordable housing professionals may recognize these sections of Florida law as they are titled “Affordable housing” and contain the state’s inclusionary zoning law, the state’s authorization for linkage fees, and the House Bill 1339 land use tool. This article refers to this new land use tool in the Live Local Act as “subsection (7)” and “SB 102” interchangeably.

Subsection (7) was enacted in the Live Local Act to facilitate affordable housing development on parcels zoned for commercial, industrial, or mixed-uses. Eligible developments can use this new subsection to receive certain state-mandated use, density, height, and administrative approval standards, even if those development standards conflict with the local jurisdiction’s regulations.

- eligible project is entitled to build up to 30 units/acre. SB 102 does not allow developments to exceed this maximum density – it simply allows an eligible development to build up to the highest density allowed in the jurisdiction.
3. Height: along with use and maximum density, subsection (7) entitles eligible development to the “highest currently allowed height for a commercial or residential development located in its jurisdiction within 1 mile of the proposed development or 3 stories, whichever is higher.” This means that if within 1 mile of a proposed development, the highest currently allowed height for a commercial or residential structure is 10 stories, an eligible development would be allowed to build up to 10 stories. Though this provides great flexibility, the realities of costs associated with taller residential structures and other regulations will likely have a limiting effect on the heights of proposals.
 4. Administrative Approval: aside from use, density, and height, if a proposed development meets subsection (7)’s eligibility requirements, “satisfies the [jurisdiction’s] land development regulations for multifamily developments in areas zoned for such use and is otherwise consistent with the comprehensive plan” it must be approved administratively. This provision expedites an eligible proposal’s construction by alleviating the requirement for a public hearing. At the time of this writing, it is unclear which multifamily regulations to use for proposed developments under SB 102, especially if a jurisdiction has multiple multifamily zoning districts. Here again, in the spirit of facilitating affordable housing development, this will require local government and development attorneys to negotiate on which development standards to use for a project to receive administrative approval.

5. Reduced parking: subsection (7)(e) requires local governments to “**consider** reducing parking requirements for a proposed development” that utilizes the SB 102 land use preemption “if the development is located within one-half mile of a major transit stop, as defined in the [city or county’s] land development code, and the major transit stop is accessible from the development.” Note that this language does not require reduced parking near transit stops – it only requires local government to consider reducing parking. We encourage local governments to take this consideration seriously and reduce parking requirements where feasible to increase the viability of SB 102 projects. Also note that a “major transit stop” is defined by the city or county itself.

WHAT LIMITATIONS OR OTHER PLANNING CRITERIA SHOULD BE CONSIDERED?

While the Act prescribes certain standards regarding use, density, height, and administrative approval for affordable housing in commercial, industrial, and mixed-use areas, the Act is clear that all other “state and local laws and regulations” that govern development still apply. That means regulations regarding setbacks, parking, open space, environmental considerations, and other provisions that shape what can be built on a parcel may still apply to eligible developments.

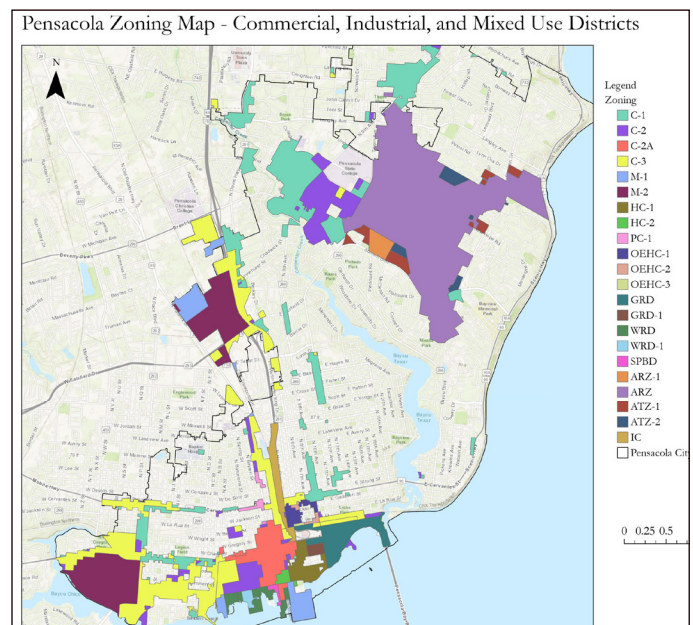
Such regulations may indirectly lower the density and height allowed under the Live Local Act. We strongly encourage local governments to facilitate the use of the tool in good faith to build more affordable homes rather than stifle its potential impact.

HOW THE HOUSING INDUSTRY CAN CAPITALIZE ON SB 102’S LAND USE TOOL

At the time of this writing, actors throughout the housing ecosystem in Florida are navigating what these new land use standards mean for affordable housing development. Here are some ideas for capitalizing on this new land use tool to facilitate walkable, affordable adaptive reuse projects and expedite affordable housing development.

ANALYZE HOW MUCH LAND IS ELIGIBLE FOR THIS NEW TOOL

The SB 102 land use tool only applies to parcels zoned for commercial, industrial, or mixed-use – it does not affect land currently zoned for residential or other uses. The first step the affordable housing ecosystem can take to capitalize on this opportunity is to analyze how much land is eligible for its benefits. By visualizing the amount of local land eligible for the tool, policymakers and the community at large can get an initial understanding of how SB 102 may affect local development patterns. The image below shows a sample of what this local analysis could look like with the eligible parcels colored in.



CONDUCT A SITE-LEVEL ANALYSIS TO DETERMINE WHICH ELIGIBLE PARCELS ARE PRIMED TO CAPITALIZE ON SB 102 APPROVAL

Although SB 102 applies to all commercial, industrial, and mixed-use areas, not every parcel zoned in that manner will seek and receive SB 102 project approval. Certain parcels may be more primed than others to utilize the tool. For example, an owner of a vacant and underutilized retail property centrally located along a major transit corridor may be more likely to apply for SB 102 approval than an owner of vacant industrial-zoned property lacking infrastructure and not close to other amenities. Policymakers, local advocates, and affordable housing developers can add an additional layer to the analysis proffered above and highlight the most prime parcels for SB 102 to visualize potential impacts.

GUIDE AND FACILITATE AFFORDABLE HOUSING DEVELOPMENT WITH SB 102

The Live Local land use tool poses a tremendous opportunity to revisit and reinvigorate local policies to increase the supply of affordable housing, particularly policies aimed at facilitating adaptive reuse, urban infill, and mixed-use developments that promote walkability. This tool can be a catalyst to address regulatory reform for housing at large through topics such as by-right multifamily allowances, amending setback requirements, parking, development fees, minimum lot sizes, development approval times, and other local land use standards that impact affordable housing development.

Local governments can also consider proactively incorporating SB 102 provisions in their local land development regulations to help clarify local implementation. Even more, there are innovative possibilities to utilize 2020's House Bill 1339 land use approval (s. 125.01055(6)/s.166.04151(6) to guide growth towards certain areas more primed for housing development.

WE ARE HERE TO HELP

SB 102 provides an opportunity for communities to meet their affordable housing needs without having to spend the time and resources to rezoning parcels for housing; the SB 102 tool can become integrated into local community planning efforts.

Contact Kody Glazer at glazer@flhousing.org to schedule a time to discuss how the Live Local Act's land use tool can work for you.



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For more information on the Live Local Act, join us for "Live Local: The Planners Perspective" at the 2023 Affordable Housing Conference.

This interactive workshop will focus on the Act's new land use tool for developments that set aside at least 40% of its housing as affordable in commercial, industrial, and mixed-use areas. Attendees will learn about and have the chance to discuss in break-out groups Live Local Act's implications for local land use planning, how communities can make the most of the Act to drive housing production, and what comes next for state and local affordable housing land use policy.