



FACILITATING MISSING-MIDDLE DEVELOPMENT WITH HOUSE BILL 1339 (2020)

*A SUPPLIMENT TO A COMPREHSNIVE GUIDE
TO SMALL SCALE DEVELOPMENT*



PREPARED BY THE
FLORIDA HOUSING
COALITION

TABLE OF CONTENTS

Facilitating Missing-Middle Development With House Bill 1339 (2020)	3
Acknowledgments	3
Introduction	4
History Of The House Bill 1339 Land Use Tool	4
Statutory Interpretation	5
Benefits Of The Tool	6
Expedites Affordable Housing Development	
Addresses Exclusionary Zoning Practices	
Opens More Land For Affordable Housing Development	
Can Create Mixed-Use, Walkable, And Quality Communities	
Challenges	7
The Breadth Of The Tool Can Be Intimidating	
If Not Designed Carefully, Could Add Another Layer Of Government Regulation	
Preserving The Right Amount Of Commercial And Industrial Land For Job Growth	
Consistency In Application	
Environmental Justice Concerns	
How House Bill 1339 Is Impacted By The Live Local Act (2023)	9
The Live Local Act's Land Use Preemption	
Comparing Hb 1339 And The Live Local Act's Land Use Preemption	
Local Policy Considerations For Leveraging The Hb 1339 Land Use Tool In Light Of Live Local	
Considerations For Implementation	12
With Local Motivation, The Possibilities Are Great	12
By-Right Allowances V. House Bill 1339 Approval	12
Implementing Ordinance V. Case-By-Case Decision-Making	12
Long-Term Affordability	13
House Bill 1339 As The Basis For Any Incentive Zoning Program	13
Elements For A Model Hb 1339 Implementing Policy Or Ordinance	14
Applicability	14
Zone Districts Or Other Identifiable Areas	
Size Or Type Of Development	
Mixed-Use Allowances	
Proximity Scoring	
Terms Of Assistance + Income Levels Served	14
Percentage Of Affordability	
Income Levels Served	
Development Standards	15
Density And Height	
Lot Design Regulations	
Process	15
Application Requirements	
Standards For Review	
Rehearing And Appeals	
Public Notice	
Enforcement Of Long-Term Affordability	16

FACILITATING MISSING-MIDDLE DEVELOPMENT WITH HOUSE BILL 1339 (2020)

In 2020, the Florida Legislature passed House Bill 1339, which among other housing policies, created sections 125.01055(6) and 166.04151(6) of the Florida Statutes. These two subsections of Florida law provide counties and cities the flexibility to approve affordable housing developments on any parcel zoned for commercial or industrial uses without needing a comprehensive plan amendment or zoning change. These provisions have the potential to open more land for affordable housing development and drastically expedite the approval time of said development. This flexibility, colloquially referred to as the “House Bill 1339” land use tool for affordable housing, has already been amended twice at the time of this writing, and still holds tremendous potential for facilitating affordable housing construction, particularly the construction of missing middle housing types.

This guide explores various considerations for how local governments can facilitate the development of affordable missing middle housing with the House Bill 1339 land use tool and also by allowing more missing middle types generally by right. This document will provide a history of the tool with a discussion on its benefits, opportunities and challenges, discuss interaction with the new land use tool adopted in the 2023 Legislative Session’s “Live Local Act”, and provide guidance on how to devise land use policies that encourages the development of both deed-restricted and market-rate missing middle housing types.

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INTRODUCTION

HISTORY OF THE HOUSE BILL 1339 LAND USE TOOL

The 2020 Florida Legislature passed House Bill 1339 which was signed into law by Governor Ron DeSantis. This bill was the 2020 Legislative Session's omnibus housing bill and contained a variety of policies addressing affordable housing in Florida. One of those policies, contained in Sections 1 and 6 for counties and municipalities respectively, was a new land use planning tool to expedite the zoning process for affordable housing developments. This new tool, colloquially referred to as the "House Bill 1339" or "HB 1339" land use tool, is found at s. 125.01055(6) and s. 166.04151(6) of the Florida Statutes for counties and cities, respectively.

As of this writing in 2023, the HB 1339 land use tool authorizes local governments to allow the development of affordable housing on commercial and industrial parcels even when the zoning and land use regulations for that parcel may not currently allow said use. This tool gives local governments the discretion to approve developments that set aside at least 10% of their units as affordable housing on an eligible parcel without needing a rezoning or comprehensive plan amendment – a process that could take months and sometimes, years.

As of the 2023 Legislative Session, the HB 1339 tool has already been amended twice. Originally, the tool applied to all parcels zoned for residential, commercial, or industrial use. However, as a result of Senate Bill 102 (2023) the tool currently only applies to parcels zoned for commercial or industrial use. Here is a brief summary of the tool's history:

- 2020: Originally enacted in House Bill 1339
 - Gave local governments the discretionary approval to approve affordable housing developments on any parcel zoned for residential, commercial, or industrial use without needing a comprehensive plan amendment or rezoning
- 2022: Amended by Senate Bill 962
 - Provided that local governments can only use this discretionary approval if at least 10 percent of a development's units are affordable
 - Prohibited developments that apply or receive SAIL funding from utilizing the tool
 - Clarifies that the tool is self-executing and does not require the city or county commission to adopt an ordinance or regulation before using the tool
- 2023: Amended by Senate Bill 102
 - Remove ability to use this tool on residential parcels
 - Removed prohibition on using the tool for SAIL-funded projects

This is the language as of 2023 for counties (the policy is identical for cities):

125.01055(6) – "Notwithstanding any other law or local ordinance or regulation to the contrary, the board of county commissioners may approve the development of housing that is affordable, as defined in s. 420.0004, including, but not limited to, a mixed-use residential development, on any parcel zoned for commercial or industrial use so long as at least 10 percent of the units included in the project are for housing that is affordable.

The provisions of this subsection are self-executing and do not require the board of county commissioners to adopt an ordinance or a regulation before using the approval process in this subsection.

The next section will break down this provision in Florida law.

STATUTORY INTERPRETATION

1. **“Notwithstanding any other law or local ordinance or regulation to the contrary. . .”**

This clause operates as a “super-waiver” of sorts to local land use or other regulations and gives local governments discretion to apply flexible development standards to approve an eligible development proposal. For example, a local government could use this provision at its own discretion to override its own zoning code and comprehensive plan provisions governing use, density, height, setbacks, parking, and other lot design requirements to facilitate an affordable housing development. If the zoning regulations for an eligible parcel has parking, density, or other standards that limit the potential of a desired proposal, a local government could use this tool to shape the applicable development standards on a case-by-case basis. It is important to note that this language is not a preemption – it is a statutory authorization providing local governments complete discretion in the spirit of allowing more affordable housing development on commercial and industrial parcels.

2. **“. . . the board of county commissioners may approve . . .”**

This language states that the board of the city or county commission has the authority to use the tool to approve an affordable housing development. The Coalition interprets this provision to mean that a city or county can set its own process for approving developments with the HB 1339 tool. A city or county can decide to have each HB 1339 proposal go before the commission for final approval or it can delegate authority to staff with clear criteria for administration.

3. **“. . . the development of housing that is affordable, as defined in s. 420.0004, including but not limited to, a mixed-use residential development . . .”**

Section 420.0004(3) of the Florida Statutes contains a definition of “affordable” for various affordable housing policies and programs. While this definition does not de-facto govern all affordable housing policies in the state, it does apply to policies and programs that cite to it like the HB 1339 tool does. This is the definition of “affordable” at s. 420.0004(3):

“(3) “Affordable” means that monthly rents or monthly mortgage payments including taxes, insurance, and utilities do not exceed 30 percent of that amount which represents the percentage of the median adjusted gross annual income for the households as indicated in subsection (9), subsection (11), subsection (12), or subsection (17).”

Subsections (9), (11), (12), and (17) refer to the definitions of extremely-low, very-low, low- and moderate-income households. With this definition, a local government can use the HB 1339 land use tool to approve a development that serves households up to 120% of the Area Median Income (AMI). Since this is a discretionary tool, a local government can decide to utilize the tool to serve lower-income levels if it chooses. For example, a city or county can enact a local policy stating it will

only use HB 1339 approval for developments that serve households at or below 80% AMI.

Note that this definition of “affordable” does not refer to an individual tenant’s income when calculating what is affordable. Instead, this definition looks at rent limitations for income categories as a whole.

Additionally, the clause “including, but not limited to, a mixed-use residential development” allows local governments the discretion to use the tool to approve multifamily-only developments, mixed-use developments, or both. A city or county could decide to only use this tool for affordable housing developments that also include a commercial, retail, or other component that creates a mixed-use development.

Also note that there is no limitation on whether this tool can only be used for ownership or rental housing nor is there a unit minimum. For example, a local government has discretion to use the HB 1339 land use approval only for affordable rental housing developments that are at least 50 units (or other unit threshold set by the local government). Similarly, a city or county could use the tool to approve a multifamily affordable condominium for ownership housing.

4. “. . . on any parcel zoned for commercial and industrial use.”

A local government can only use this tool for parcels zoned for commercial and industrial use. Cities and counties have discretion to define the zone districts or parts of their jurisdiction that they want to utilize HB 1339 approval. In other words, if a city or county utilized this tool, it would not have to apply it equally to all commercial and industrially-zoned parcels since this is a discretionary tool to begin with.

5. “. . . so long as at least 10 percent of the units included in the project are for housing that is affordable.”

Note that this is a floor not a ceiling. Local governments have the discretion to require developments that are approved using HB 1339 to contain a higher percentage of affordable units. For example, a city or county could enact a local policy stating it will only use the HB 1339 tool for developments that set aside at least 30 percent of its units as affordable housing.

6. “The provisions of this subsection are self-executing and do not require the board of county commissioners to adopt an ordinance or a regulation before using the approval process in this subsection.”

This sentence, which is identical for counties and cities, makes it clear that a local government does not need to first adopt an “HB 1339 ordinance” or a similar regulation before using the tool to approve an affordable housing development. While a local government may wish to pass a HB 1339 ordinance with clear criteria on how it will use the tool, this language allows cities and counties to approve affordable housing developments on a case-by-case basis.

BENEFITS OF THE TOOL

The HB 1339 tool has the potential to develop and redevelop nascent, vacant, or underutilized commercial and industrial parcels into affordable housing, both as multifamily and mixed-use

developments. This section will briefly touch on some of the key benefits of this land use tool.

Expedites affordable housing development

If an affordable housing developer owned a site that was zoned for commercial use only and wanted to develop on that site, generally speaking, they would likely need to apply for and receive a comprehensive plan amendment and a rezoning to allow for housing to be built – a process that can take months and sometimes, years. With the HB 1339 tool, an affordable housing developer can receive land use approval for their project without needing to go through the time-intensive land use amendment process. Since the tool is “self-executing” and does not require a city or county commission to first adopt an ordinance or regulation, HB 1339 can greatly expedite the approval of affordable housing developments in commercial and industrial areas.

Addresses exclusionary zoning practices

As discussed above, the clause “Notwithstanding any other law or local ordinance or regulation to the contrary” can act as a “super-waiver” of all local land use regulations for an affordable housing development. For example, if a locality’s parking, setbacks, open space, or other lot design regulations inhibit the full potential of a site, a local government can use that first clause to reform exclusionary lot design regulations on a site-by-site basis to ensure that as many affordable units are built as possible. Additionally, as discussed below, by opening up more commercial and industrial land to the potential of multifamily or mixed-use residential development, Euclidian zoning barriers to housing development can be addressed.

Opens more land for affordable housing development

By allowing this tool to apply to all sites zoned for commercial or industrial uses, more land in a jurisdiction has the potential to be developed or redeveloped into affordable housing. If a jurisdiction demonstrates an intent to use the tool, the universe of possible sites for an affordable housing development can increase dramatically. Affordable housing developers will have more potential sites to explore if they know the land use approval process can be expedited for affordable development.

Can create mixed-use, walkable, and quality communities

Approving housing development near core job centers, major transportation corridors, and other community amenities is a key component to creating quality communities. Communities are often zoned to strictly separate residential from commercial uses in the name of “incompatibility.” HB 1339 has the potential to approve multifamily and mixed-use affordable housing on commercial and industrial sites near where people work and play – potentially lowering transportation costs and increasing walkability among a community.

CHALLENGES

Applying the HB 1339 tool to approve multifamily and mixed-use affordable housing development is not without its challenges. Local governments will need to consider potential legal challenges that could arise if the tool is not applied consistently, policy implications for using commercial and industrial land for multifamily housing, and other potential issues.

The breadth of the tool can be intimidating

What makes the tool so exciting is also what can make it most intimidating from a local policymaking perspective – the tool is extremely broad. The “Notwithstanding any other law or local ordinance

or regulation to the contrary” language can be read to allow local governments to waive or amend all local regulations pertaining to the development of land. But how far will a jurisdiction want to go? While this language can technically allow an affordable housing developer unlimited density, what limitations will a local government settle on? What parking, setbacks, and other lot design standards will ultimately be decided?

For housing advocates or developers who wish to advocate for the use of the HB 1339 tool, it may be best to be prepared with limitations on certain land development regulations to encourage local adoption. If an advocate starts the discussion by encouraging the tool to be used to allow unlimited density or no required parking, for example, that could invite NIMBY opposition and ultimately derail a jurisdiction’s willingness to use the tool. Be prepared to compromise.

If not designed carefully, could add another layer of government regulation

One of the goals of the HB 1339 tool is to allow affordable housing developers to avoid or alter certain local land development regulations that could stymie affordable housing development. The main way the tool accomplishes this is by allowing a city or county to approve an affordable housing development notwithstanding any comprehensive plan, land development code, or other local regulation that could limit the development. If a local government’s policies to implement HB 1339 are too proscriptive and arguably recreate similar layers of government regulation, the goal of the tool could be thwarted. Local policies should be crafted to encourage the use of the tool by expediting approvals wherever possible.

Preserving the right amount of commercial and industrial land for job growth

The HB 1339 tool allows local governments the discretion to approve affordable housing developments on parcels zoned for commercial or industrial use. Jurisdictions that have a limited supply of land zoned for commercial or industrial uses may be reluctant to use the tool in order to preserve said land for local jobs and business purposes. For jurisdictions that have these concerns, advocates could target certain areas that are most ideal for the tool and even recommend that the tool only be used for mixed-use affordable developments that contain a set percentage of commercial or industrial activity.

Consistency in application

A jurisdiction that uses the HB 1339 tool to approve new housing development will need to think through issues that could arise from an inconsistent application – especially if a jurisdiction uses the tool on a case-by-case basis. If applied on a case-by-case basis without clear and predictable standards, the jurisdiction may need to provide clear findings for why a particular proposal is approved or denied. Legal challenges could arise claiming that the tool is used in an arbitrary manner if the jurisdiction is not careful or does not provide clear standards for how it will apply the tool.

Environmental justice concerns

Not every commercial and industrial parcel is suitable for affordable housing development; there are places where housing should not be built. HB 1339 should not be used to approve homes near toxic or abandoned industrial sites, areas where existing or planned infrastructure cannot support safe and sanitary housing, or other locations not suitable for living. Local governments should have clear criteria to avoid using the tool in areas known to be unsafe, lacking in necessary infrastructure, or otherwise not appropriate for housing where mitigation cannot address site concerns for safe and sanitary housing.

HOW HOUSE BILL 1339 IS IMPACTED BY THE LIVE LOCAL ACT (2023)

Senate Bill 102 from the 2023 Legislative Session, commonly known as the “Live Local Act”, was a nearly 100-page bill that tackled a number of affordable housing policies. The Act contained various funding provisions, publicly owned land guidance, property tax incentives, sales tax refunds, and most relevant to this Guide, a new land use preemption for affordable housing development. This land use preemption, codified at s. 125.01055(7) and s. 166.04151(7) for counties and cities, respectively, can conflict with the HB 1339 land use tool in various ways. This section will briefly explore how HB 1339 and the Live Local Act’s land use preemption work in tandem.

The Live Local Act’s land use preemption

The Live Local Act, signed into law in 2023, enacted a new land use preemption for eligible affordable developments in commercial, industrial, and mixed-use zones. This new preemption tool has similar goals to the HB 1339 provision as it is intended to expedite affordable rental housing 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. Eligible developments are entitled to favorable use, density, height, and administrative approval standards by-right. This is different from HB 1339 which grants local governments the discretion to provide favorable land use approvals to affordable developments in commercial and industrial districts.

To be eligible for the Live Local Act’s land use preemption (hereinafter referred to as “the land use preemption”, “LLA”, or similar terms), a development must meet certain statutory requirements. Only multifamily and mixed-use rental residential developments are eligible for the favorable land use standards – single family and homeownership developments are not eligible for LLA land use approval. To be eligible, a development 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.

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. Here is a brief summary of the entitlements an eligible affordable development receives via the Live Local Act’s land use preemption:

USE	DENSITY	HEIGHT
Allowed to build multifamily rental or mixed-use residential in commercial, industrial, or mixed-use zones without a zoning or land use change	Highest density allowed on any land in the city or country where residential development is allowed	Highest currently allowed height for a commercial or residential development within one mile of the proposed development or three stories, whichever is higher.

Comparing HB 1339 and the Live Local Act's land use preemption

There is ample crossover between the HB 1339 land use tool and the Live Local Act's land use preemption. It is important to be able to identify which types of projects trigger which land use provisions in Florida law. For example, while both tools apply to commercial zone districts, a project needs to be at least 40% affordable to trigger the Live Local preemption but only 10% to receive discretionary approval authority by the local government. While the Live Local land use preemption only applies to multifamily or mixed-use rental housing, the HB 1339 tool can apply to single family and multifamily rental or ownership housing. The similarities and subtle differences between the two tools can be used to shape local policy decisions about how to maximize their potential to facilitate more affordable housing development.

	HB 1339 Tool (s. 125.01055(6)/s. 166.04151(6))	Live Local Land Use Preemption (s. 125.01055(7)/s. 166.04151(7))
Local discretion?	Yes	Not for use, density, height, and certain admin approval standards
Eligible zones	Commercial, industrial	Commercial, industrial, or mixed-use
Types of development	Affordable residential or mixed-use residential project	Multifamily rental or mixed-use residential
Affordability requirement	At least 10% of the units must be affordable (up to 120% with local discretion on level and length of affordability)	At least 40% of the units must be affordable for at least 30 years (up to 120% AMI with no discretion on level of affordability)
Local authority	Discretion to regulate in any manner	Preempted on certain standards regarding use, density, height, admin approval. All other state and local laws apply

Local policy considerations for leveraging the HB 1339 land use tool in light of Live Local

As mapped out briefly above, the two tools have an interesting relationship to one another. The differences between the provisions can be used by local policymakers to guide growth to targeted areas and seek developments that serve lower incomes. Local governments can be creative in using the HB 1339 as leverage to seek broader affordable housing policy goals.

- Serving lower incomes. A developer can rent out 40% of a development's units as affordable housing to households all at 120% of the Area Median Income and be eligible for the LLA land use preemption. Local governments can use the HB 1339 tool as leverage to approve affordable units for lower income levels in exchange for a lower percentage of affordable units overall. For example, take a developer that proposes an affordable housing development on a commercially zoned parcel (which can trigger both tools). A local government can use the HB 1339 tool as leverage to seek affordable units for 80% AMI households in exchange for the local government requiring only 20% of the units to be affordable (since the HB 1339 tool only requires 10% of the development to be affordable). Similarly, a local government can seek affordable units for households at 60% AMI in exchange for only required 10% of the units to be affordable by using HB 1339.
- Encouraging development to targeted areas. Regarding the Live Local land use preemption, a local government may want to reserve certain commercial and industrial parcels for non-residential uses. If this is the case, a local government can attempt to guide growth to targeted commercial and industrial areas where it is amenable to mixed-use or multifamily affordable rental housing by using HB 1339 as an incentive. A local government can select targeted commercial and industrial areas and offer a lower percentage of required affordable units as an incentive to build away from the commercial and industrial parcels it wishes to preserve for non-residential uses.
- Approving affordable condos and affordable single-family housing. The Live Local land use preemption only applies to multifamily and mixed-use rental housing. It does not apply to single-family or ownership housing of any kind. A local government can use HB 1339 to approve affordable multifamily ownership housing (i.e. condos or townhomes) or affordable single-family housing.
- Avoiding the 20% Rule to approve multifamily-only development. There is an exception in the Live Local Act's land use preemption where a city that has less than 20 percent of its land zoned for commercial or industrial uses can only approve mixed-use developments with the tool; a developer in a city that has less than 20 percent zoned in this fashion cannot use the preemption to receive approval for a multifamily-only development. The HB 1339 tool does not have the same limitation. Cities where this 20% Rule applies can use HB 1339 to approve a multifamily-only residential development.

CONSIDERATIONS FOR IMPLEMENTATION

This section provides policymakers, affordable housing developers, advocates, and other interested parties some considerations for how to use the House Bill 1339 land use tool to facilitate affordable housing development.

WITH LOCAL MOTIVATION, THE POSSIBILITIES ARE GREAT

The HB 1339 land use tool at s. 125.01055(6) and s. 166.04151(6) for counties and cities, respectively, has tremendous potential to facilitate affordable multifamily and mixed-use development on commercial and industrially zoned parcels near job centers and community amenities. As it is a highly discretionary tool given that it allows local governments to approve affordable developments “notwithstanding any other law or local ordinance or regulation to the contrary”, the tool will only go as far as local motivation takes it. Political will is key to ensuring that cities, counties, developers, community groups, and advocates use HB 1339 creatively to meet local housing needs.

BY-RIGHT ALLOWANCES V. HOUSE BILL 1339 APPROVAL

One of the bigger debates in the affordable housing planning world at the time of this writing is when to allow more market-rate housing of different sizes and types by-right through deregulation and when to condition favorable land use approvals on a property owner providing a set number or percentage of deed-restricted, below-market rate units (i.e. inclusionary housing policies). This debate is centered around the discussion of whether efforts to increase market-rate housing supply through regulatory reform are sufficient or quick enough to meet the needs of all current and future residents of a community.

When discussing HB 1339 implementation, a community can consider whether it is more optimal to use the tool on a case-by-case basis to seek deed-restricted housing in targeted commercial or industrial districts or whether it is better to simply allow multifamily and mixed-use market-rate housing by-right in commercial and industrial districts. Opening up more land in general to housing development (both for market-rate and deed-restricted affordable housing) can increase housing supply overall which can bring down market-rate rents to make a community more affordable.

Similarly, concurrently with discussing HB 1339’s potential to address exclusionary zoning barriers found in density, height, setback, lot size, and other lot design regulations, a jurisdiction can discuss ways to address those barriers by-right outside of the scope of HB 1339. HB 1339 is just one tool within a broader toolkit of housing policies that can encourage and facilitate housing growth.

IMPLEMENTING ORDINANCE V. CASE-BY-CASE DECISION-MAKING

The statutory language for the HB 1339 land use tool makes it clear that a city or county does not need to first adopt an ordinance or regulation before using the tool to approve an affordable housing development. However, a community will need to decide if it is best long-term to adopt an ordinance to provide predictability and clarity to the affordable housing industry on the jurisdiction’s application of the tool. An implementing ordinance can lay out important policy decisions, application criteria, processes, and other key land development standards to facilitate

the use of the tool. A case-by-case decision-making process without an implementing ordinance or regulation can be nimbler but could invite concerns about arbitrary decision-making and discourage developer involvement.

LONG-TERM AFFORDABILITY

The statutory language for the tool is silent as to the length of affordability for developments that receive this favorable land use approval. Affordability terms should be crafted as a balance between the value of incentives provided and the willingness of the private sector to engage in the incentive structure. For example, if a public entity offered a \$1,000 grant and in exchange required an entire development to be deed-restricted and affordable for a 99-year affordability term, that would most likely discourage private sector involvement. For the HB 1339 tool, start with a 30 or 50-year affordability term and seek longer terms of affordability for additional incentives provided.

HOUSE BILL 1339 AS THE BASIS FOR ANY INCENTIVE ZONING PROGRAM

The HB 1339 tool demonstrates one of many ways a local government can reform its land use policies to encourage the development of affordable housing and can serve as the basis for any incentive zoning program. HB 1339 approval can be a part of a larger incentive zoning strategy that conditions favorable land use entitlements in exchange for deed-restricted, affordable housing. For example, even though the tool does not apply to parcels zoned for residential use, a locality could apply similar policies to its residential zone districts and allow for expedited land use approvals for affordable developments in more parts of a jurisdiction.

ELEMENTS FOR A MODEL HB 1339 IMPLEMENTING POLICY OR ORDINANCE

Whether a local jurisdiction decides to pass an ordinance that provides direction on its application of HB 1339 or whether it enacts a local policy governing case-by-case decision-making, this section provides key elements to consider.

APPLICABILITY

Zone districts or other identifiable areas.

The HB 1339 tool is a discretionary provision that can apply to all parcels in a jurisdiction zoned for commercial or industrial use; cities and counties have the discretion to identify which zone districts or which areas of the jurisdiction to apply the tool. A clear HB 1339 policy should specify which commercial or industrially zoned parts of the jurisdiction are eligible for the expedited land use approval process.

For example, a jurisdiction can state that the tool will only be applied in specific defined commercial districts and light industrial while avoiding heavy industrial districts. Similarly, a jurisdiction can apply the tool only to defined redevelopment areas, existing or planned overlay districts, or other place-based policies to guide affordable housing development. Care should be taken to avoid placing housing in areas that are not appropriate for residential uses.

Size or type of development.

HB 1339 gives local governments the discretion to identify which sizes and types of affordable development they will approve in commercial or industrial districts. A local government could state that only proposals with 20 or 50 more dwelling units (or other number established by the locality based on local housing needs) will be considered. Similarly, a local government can define the types of housing that will be allowed with the tool. This is an opportunity for a locality to define whether it will approve multifamily rental, missing middle housing types, and/or single-family homes in certain contexts.

Mixed-use allowances.

A locality could decide to use the tool only for mixed-use affordable developments. If this is the case, the ordinance or policy could proscribe standards for the non-residential component of a mixed-use development.

Proximity scoring.

The local government can proscribe certain proximity scoring criteria to determine whether a site is appropriate for affordable housing development. Such scoring criteria could include distance to community amenities such as parks, grocery stores, major job or transportation corridors, public schools, or other buffers. The criteria could also include distance away from high-risk areas such as Coastal High Hazard Areas, areas at high risk of flooding, and heavy industrial uses, as examples.

TERMS OF ASSISTANCE + INCOME LEVELS SERVED

Percentage of affordability.

The statutory language for the HB 1339 tool only requires that at minimum of 10 percent of a

development be affordable for a local government to use the provision. This 10 percent requirement is only a minimum; a local government has the discretion to require a higher percentage of affordable housing. A local government can choose to apply the tool only to developments that have at least 30 percent of the units set aside as affordable housing, for example.

Additionally, a local government could tier the percentage or number of required affordable units based on the income limits served by the development. For example, a local government could require 30% of a development to be affordable if the affordable units serve up to 120% AMI but only require 20% of a development to be affordable if the affordable units serve up to 80% AMI.

Income levels served.

The statutory language for the tool allows local governments to use it for developments that provide affordable housing to households at or below 120% of Area Median Income. However, local governments have the discretion to use the tool for income levels it identifies. For example, a local government can decide to use the tool only for developments serve households at or below 80% AMI. Such decisions should be based on local housing need, project feasibility, value of incentives provided, and can work in tandem with a percentage of affordable units required within a development.

DEVELOPMENT STANDARDS

Density and height.

A local HB 1339 policy should describe the maximum allowable density and height for an affordable development that uses the land use tool. Local government can dictate these maximums based on the zone district or location within the jurisdiction. For example, a local government can permit a higher density allowance in commercial and industrial areas planned for greater intensity and adjacent to areas planned for greater density/intensity. A city or county could reference maximum allowances from its multifamily residential regulations.

Lot design regulations.

The “notwithstanding” statutory language allows local governments utmost discretion in regulating the form of HB 1339-approved affordable housing developments. Local government can either be prescriptive in the setback, parking, open space, and other lot design regulations, or regulate on a case-by-case basis based on the unique characteristics of individual lots.

PROCESS

Application requirements.

The local policy or ordinance should lay out the application requirements for applicants who seek HB 1339 land use approval. The process for application could include a pre-application conference to address any concerns or questions before the application is submitted, any additional conferences as needed between staff and the applicant, and a clear description of what needs to be submitted as part of the site plan review process.

St. Petersburg, Florida’s HB 1339 implementation ordinance provides a great model for an application process. Among other items, the ordinance provides that the application must contain a site plan of the subject property that shall include:

- Elevations depicting architectural details and materials for all sides of each structure
- The parking layout and the number of parking spaces being provided
- A landscaping plan
- A financial document depicting the financial sources for the proposed development including information on financial reserves to maintain the dwelling units
- If the property is in an industrial zoning district, an environmental report of the subject property and an analysis of the surrounding industrial uses
- If the redevelopment will displace an existing business or businesses, a plan for relocation of the business and/or re-employment of existing employees
- If the redevelopment will include any non-residential uses, a narrative describing the types of uses proposed and how those uses will support the future residents

Standards for review.

The ordinance or policy should set out the standards the local government will use to review proposals for HB 1339 approval. Such standards can include specific staff or departments responsible for various elements of the application, specific criteria for projects in certain areas that may require mitigation measures, and any policy decisions made by the local government to ensure the development meets reasonable land use planning standards.

Rehearing and appeals.

If an applicant is denied the use of the tool, the policy or ordinance can provide rehearing or appeals criteria for the applicant. The local government can proscribe specific instances where a rehearing or administrative appeals process is allowed.

Public notice.

The ordinance or policy can provide public notice requirements of applications for HB 1339 approval. Such notice could include written notice to property owners within a certain distance from a proposal.

ENFORCEMENT OF LONG-TERM AFFORDABILITY

Developments approved using HB 1339 will need to be monitored to ensure the affordable units are rented or sold at an affordable rate for the affordability term. Enforcement can be done by local government staff or through a partnership with a third-party organization that has experience in income compliance and long-term monitoring. Considerations for ensuring long-term affordability include:

- Who is responsible for certifying income-eligible households? The jurisdiction can determine whether it is local government staff or the property owner that will be responsible for certifying whether a household is income eligible. If the jurisdiction puts that responsibility onto the property owner, the city or county can establish oversight authority to ensure the property owner is complying with the affordability period. The local government could require annual reporting with specific items to include and conduct random spot-checks as necessary to ensure compliance.
- How in depth will the monitoring and oversight be? The jurisdiction can set its monitoring policies to address potential administrative burdens that come with long-term oversight. The city or county could rely on self-certifications of income rather than require standard income verification processes and perform random spot-checks to lessen administrative

burden while also providing enough teeth to ensure property owners comply.

- How often will the responsible party re-certify households? To address any staff capacity concerns regarding compliance monitoring, the jurisdiction can set its own policies as to how often it will audit records. The city or county can re-certify households each year, each time there is a new owner or renter of the assisted unit, or every three years - whichever policy meets the goals of ensuring long-term affordability while also appreciating staff capacity.
- What happens in the event of a resale? Internal policies should address what happens in the event an assisted unit is sold or otherwise newly occupied. For rental, the next steps to follow in the event of a resale will depend on whether an assisted unit is subject to a recorded land use restriction agreement which specifies set-aside affordability requirements for units. In the ownership context, the jurisdiction will need a mechanism to ensure the price-controlled home is sold at an agreed upon affordable price to a subsequent income-eligible household.
- What will the penalties be for noncompliance? The city or county can exercise any available legal recourse to ensure the affordable units remain affordable for the affordability term. Penalties could include restitution damages, specific performance, liquidated damages, or other terms to encourage compliance.

It is important to consult the local government's or developer's legal team to draft an agreement that imposes land use restrictions on the assisted property for the affordability period. Basic elements of a land use restriction agreement include:

- A description of the affordable units with definitions
- Set-aside requirements (unit mix)
- Required length of affordability (affordability period)
- Households served
- Compliance monitoring (who is responsible for income certification, how often are re-certifications done, etc.)
- Notice provisions (in the event of sale, transfer, foreclosure, etc.)
- Right of first refusal
- Ensuring the agreement runs with the land to successive owners
- Defaults, remedies, and penalties for noncompliance (monetary fines, specific performance, probation, etc.)