DEVELOPMENT, CODE COMPLIANCE, AND REDEVELOPMENT COMMITTEE

Friday, October 4, 2024
10:00 a.m. – 2:00 p.m. ET

Meeting Room: Florida Ballroom 5-7
Hilton Orlando
6001 Destination Parkway
Orlando, FL 32819

FLC Staff Contact: David Cruz

FLC
FLORIDA LEAGUE OF CITIES

Agenda

Development, Code Compliance, and Redevelopment Legislative Policy Committee
Friday, October 4, 2024, from 10:00 a.m. to 2:00 p.m.
Hilton Orlando – Meeting Room: Florida Ballroom 5-7
6001 Destination Parkway, Orlando, Florida

AGENDA

I. Introduction and Opening Remarks..**Chair Dorothea Taylor Bogert**
Mayor, City of Auburndale

II. FLC Policy Committee Process for 2024-2025 .... **David Cruz, FLC Staff**

III. Potential 2025 Priority and Policy Issues

a. Affordable Housing Update .... **David Cruz, FLC Staff**
   i. Live Local Act
   ii. National Housing Trends

b. Vacation Rentals Update... **David Cruz, FLC Staff**

c. Impact Fees Update
   i. Impact Fee Increases……………………………..………**David Cruz, FLC Staff**
   ii. Eligible Uses of Impact Fee Revenue..................**Commissioner Joseph McMullen**
   Town of Oakland

d. HB 1621(2024) Unlawful Demolition of Historical Structures .....**Mayor Nancy Sikes-Kline**
David Birchim, City Manager
City of St. Augustine

e. Farmworker Housing ....**Commissioner Hugo Vargas**
City of La Belle

IV. Other Business .... **David Cruz, FLC Staff**

V. Additional Information... **David Cruz, FLC Staff**

a. Key Legislative Dates
b. Key Contacts – Click HERE to sign-up
c. 2024 Legislative Session Final Report

VI. Closing Remarks...**Chair Dorothea Taylor Bogert**
Mayor, City of Auburndale

VII. Adjournment

Breakfast and Lunch provided by the Florida League of Cities

WiFi is Available
Network: FLCPC1024
Access Code: FLCPC1024

Committee Roster

2024-2025 Legislative Policy Committee

Development, Code Compliance and Redevelopment

Staffed by: David Cruz, Legislative Counsel

Chair:

The Honorable Dorothea Taylor Bogert
Mayor, City of Auburndale

Vice Chair:

The Honorable Morris West
Vice Mayor, City of Haines City

Members:

The Honorable Antonio Arserio
Commissioner, City of Margate

Lana Beck
Communications and Govt Relations Administrator, City of Pinellas Park

The Honorable Ray Beliveau
Councilman, City of Seminole

The Honorable Liston Bochette III
Councilmember, City of Fort Myers

The Honorable Samson Borgelin
Mayor, City of North Lauderdale

Michael Bornstein
Village Manager, Village of Palm Springs

Jeff Burton
Executive Director, CRA/Economic Development, City of Bradenton

Patrick Callahan
Community Development Director, City of Satellite Beach

The Honorable Traci Callari
Commissioner, City of Hollywood

Leondrae D. Camel
City Manager, City of South Bay

The Honorable Jolien Caraballo
Vice Mayor, City of Port St. Lucie

The Honorable Theresa Carli Pontieri
Council Member, City of Palm Coast

The Honorable Joy Carter
Commissioner, City of Coral Springs

The Honorable Melissa Castro
Commissioner, City of Coral Gables

Pamela Cichon
City Attorney, City of Temple Terrace

The Honorable Jeremy Clark
Vice Mayor, City of Davenport

The Honorable Gary Coffin
Commissioner, Town of Longboat Key

Nick Colonna
Community Development Administrator, City of Pinellas Park

The Honorable Bradley T. Dantzler
Commissioner, City of Winter Haven

The Honorable Dennis Dawson
Councilmember, City of Mount Dora

The Honorable Jack Dearmin
Commissioner, City of Lake Alfred

The Honorable Alison Dennington
Mayor, Town of Melbourne Beach

The Honorable Susy Díaz
Council Member, City of Greenacres

The Honorable Ed E. Dodd
Mayor, City of Sebastian

The Honorable Debbie Dolbow
Councilwoman, City of Edgewater

Pamela Durrance
City Manager, City of Bowling Green

Krista Ellingson
Code Compliance Manager, City of Satellite Beach

The Honorable Alex Fernandez
Commissioner, City of Miami Beach

The Honorable Josh Fuller
Mayor, Town of Bay Harbor Islands

The Honorable Marge Herzog
Vice Mayor, Town of Loxahatchee Groves

Jay Hubsch
Community Development Director, Village of Tequesta

The Honorable Linda Hudson
Mayor, City of Fort Pierce

The Honorable Terry Hutchison
Vice Mayor, City of Naples

Heather Ireland
Director, Planning and Development, City of Jacksonville Beach

The Honorable Dan Janson
Councilman, City of Jacksonville Beach

The Honorable Michael Jarman
Vice Mayor, City of Panama City Beach

The Honorable Rahman K. Johnson, Ph.D
Councilmember, City of Jacksonville

The Honorable Debra Jones
Councilmember, City of Williston

The Honorable N'Kosi Jones
Mayor, City of Bowling Green

The Honorable Barbara King
Commissioner, City of South Bay

The Honorable Greg Langowski
Vice Mayor, City of Westlake

The Honorable William "B.J." Laurie
Commissioner, City of Crescent City

Kelly Layman
Legislative & External Relations, Town of Jupiter Island

Max Lohman
City Attorney, City of Palm Beach Gardens

The Honorable Karen Lythgoe
Mayor, Town of Lantana

The Honorable Kelli Marks
Council Member, City of Orange City

The Honorable Michael McComas
Councilman, City of Everglades City

The Honorable Debbie McDowell
Commissioner, City of North Port

The Honorable Matthew McMillan
Mayor, City of Longwood

The Honorable Joseph McMullen
Commissioner, Town of Oakland

The Honorable Everett McPherson
Commissioner, City of Pahokee

The Honorable Michael Miller
Vice Mayor, City of Sanibel

The Honorable Janice D. Mortimer
Commissioner, City of Starke

The Honorable Fran Nachlas
Council Member, City of Boca Raton

The Honorable Karen M. Ostrand
Mayor, Town of Ocean Breeze

The Honorable John Penny
Vice Mayor, City of Holly Hill

The Honorable Karen Rafferty
Vice Mayor, City of Belleair Bluffs

The Honorable Chelsea Reed
Mayor, City of Palm Beach Gardens

The Honorable Paula Reed
Commissioner, City of Daytona Beach

The Honorable Thomas Reid
Commissioner, City of South Pasadena

The Honorable Betty Resch
Mayor, City of Lake Worth Beach

The Honorable Cora Perry Roberson
Council Member, Town of Lake Hamilton

The Honorable Marie Rosner
Commissioner, Town of Jupiter Inlet Colony

The Honorable Dylan Rumrell
Mayor, City of St. Augustine Beach

The Honorable Daniel Saracki
Mayor, City of Oldsmar

The Honorable William Schaetzle
Councilman, City of Niceville

Brian Sherman
City Attorney, Goren, Cherof, Doody, & Ezrol

Shari Simmans
Economic Development, Communications, Govt Affairs Director, City of DeBary

The Honorable Jordan Smith
Commissioner, City of Lake Mary

The Honorable Bill Steinke
Councilmember, City of Cape Coral

The Honorable Sarah Stoeckel
Councilmember, City of Titusville

The Honorable Larisa Svechin
Mayor, City of Sunny Isles Beach

The Honorable Christa Tanner
Vice Mayor, City of Brooksville

The Honorable Judith Thomas
Commissioner, Town of Lake Park

The Honorable Debbie Trice
Commissioner, City of Sarasota

The Honorable Hugo Vargas
Clerk-Commissioner, City of LaBelle

Steven Weathers
Director, Economic Development, City of Fort Myers

The Honorable Jiana Williams
Mayor, Town of Micanopy

The Honorable Evelyn Wilson
Mayor, City of Groveland

The Honorable Janet Wilson
Vice Mayor, City of Indian Rocks Beach

The Honorable Normita Woodard
Mayor Pro-Tem, City of Dade City

Latricia Wright
City Clerk, City of Williston

FLC Policy Committee Process for 2024-2025

2024-2025 FLC LEGISLATIVE POLICY PROCESS

The Florida League of Cities' (FLC's) Charter and Bylaws specify that the League shall engage only on legislation that pertains directly to "municipal affairs." "Municipal affairs" refers to issues that directly pertain to the governmental, corporate and proprietary powers to conduct municipal government, perform municipal functions, render municipal services, and raise and expend revenues. Protecting Florida's cities from egregious, far-reaching attacks on Home Rule powers will always be the top priority.

Each year, municipal officials from across the state volunteer to serve on the League's legislative policy committees. Appointments are a one-year commitment and involve developing the League's Legislative Platform. The Legislative Platform addresses priority issues of statewide interest that are most likely to affect daily municipal governance and local decision-making during the upcoming legislative session.

Policy committee members also help League staff understand the real-world implications of proposed legislation, and they are asked to serve as advocates throughout the year. To get a broad spectrum of ideas and to better understand the impact of League policy proposals on rural, suburban and urban cities of all sizes, it is ideal that each of Florida's cities be represented on one or more of the legislative policy committees.

There are currently five standing legislative policy committees:

DEVELOPMENT, CODE COMPLIANCE, AND REDEVELOPMENT COMMITTEE: This committee addresses development, redevelopment, housing, community planning, zoning, eminent domain, property rights, short-term rentals, code enforcement, building and fire code, building permitting, and concurrency management.

FINANCE AND TAXATION COMMITTEE: This committee addresses general finance and tax issues, fees, assessments, infrastructure funding, local option revenues, pension issues, revenue sharing, franchise fees, Communications Services Tax (CST), and ad valorem.

INTERGOVERNMENTAL RELATIONS, MOBILITY, AND EMERGENCY MANAGEMENT COMMITTEE: This committee addresses transportation, municipal roads, traffic safety, municipal airports, drones, vertiports, ports, telecommunications, broadband, use of public rights-of-way, parking, signage, emergency management, homelessness, charter counties, annexation, ethics for public officers and employees, elections, special districts, and general preemptions.

MUNICIPAL OPERATIONS COMMITTEE: This committee addresses government operations, municipal service delivery, cybersecurity, technology, public safety, public meetings, public records, public property use and management, procurement, personnel, insurance, collective bargaining, workers' compensation, liability, and sovereign immunity.

UTILITIES, NATURAL RESOURCES, AND PUBLIC WORKS COMMITTEE: This committee addresses coastal management, environmental permitting, hazardous and toxic wastes, recycling, solid waste collection and disposal, stormwater, wastewater treatment and reuse, water management, water quality and quantity, resiliency, brownfields, and municipal utilities.

Due to Sunshine Law issues, only one elected official per city can be represented on a legislative policy committee, but a city could have an elected and a non-elected city official on each of the five policy committees. Appointments are made by the League president based upon a city official's support and advocacy of the Legislative Platform and participation at meetings, Legislative Action Days and other legislative-related activities.

The Florida Legislature convenes the 2025 Legislative Session on March 4. The League's legislative policy committee meetings commence in October 2024 and meet three times. No new issues will be considered by a legislative policy committee after the second committee meeting. At the last meeting, each of the five policy committees adopts ONE legislative priority. In addition, a legislative policy committee may, but is not required to, recommend ONE policy position related to other relevant issues. The policy position must satisfy the same criteria for legislative priorities. Priority and policy position statements are capped at 75 words. Recommended legislative priorities and policy positions will be considered by the Legislative Committee. If favorably considered by the Legislative Committee, they will be considered by the general membership. If adopted by the general membership, the policy priorities and policy positions may be published as the League's Legislative Platform and communicated to legislators and others, as appropriate.

The Legislative Committee is composed of:

- Each legislative policy committee chair and the chairs of the other standing committees
- The president of each local and regional league
- The presidents of several other municipal associations
- Chairs of the municipal trust boards
- Several at-large members appointed by the League president.

2024 Legislative Policy Committee Meeting Dates

- October 4, 2024, 10:00 a.m. to 2:00 p.m. at the Hilton Orlando, 6001 Destination Parkway, Orlando, FL 32819.
- November 8, 2024, 10:00 a.m. to 2:00 p.m. at the Hilton Orlando, 6001 Destination Parkway, Orlando, FL 32819.
- December 5, 2024, during the FLC Legislative Conference at the Hilton Orlando, 6001 Destination Parkway, Orlando, FL 32819.

If you are interested in serving or learning more, please contact Mary Edenfield at 850.701.3624 or *medenfield@flcities.com*.

What is an FLC legislative policy committee?

- Policy committees help set the Legislative Platform for the Florida League of Cities (FLC) and Florida's municipalities in advance of the next legislative session.
- The five policy committees include the Development, Code Compliance, and Redevelopment Committee; Finance and Taxation Committee; Intergovernmental Relations, Mobility, and Emergency Management Committee; Municipal Operations Committee; and Utilities, Natural Resources, and Public Works Committee.
- Committees are made up of municipal officials from across the state.

Have there been any changes to the legislative policy committees this year?

- Yes! The League shifted some issues among committees to better match each committee's scope. Also, the names of four committees were changed to better represent their focus.
- Before signing up for a committee, carefully review each of the committee descriptions found in the *2024-2025 FLC Legislative Policy Committee Process* document.

When and how do I sign up for a policy committee?

- Sign-up opens in June each year.
- To sign up, contact Mary Edenfield at *medenfield@flcities.com* for the sign-up link or go to *flcities.com*.
- The FLC President makes the committee appointments, and appointments are announced in August after the FLC Annual Conference.

Can I serve on more than one policy committee?

- No. All committees meet simultaneously.

When are the meetings, and is there a virtual option?

- Committee meetings take place in person in Orlando in October, November, and December during the FLC Legislative Conference.
- There is no virtual meeting option; meetings are in person.

How do I submit a policy issue for a committee to consider?

- If you want a committee to consider an issue as a League priority, contact the committee staff person before the October or November policy committee meeting.
    - **David Cruz**, FLC Legislative Counsel, staffs the Development, Code Compliance, and Redevelopment Committee.
    - **Charles Chapman**, Legislative Consultant, staffs the Finance and Taxation Committee.
    - **Jeff Branch**, FLC Senior Legislative Advocate, staffs the Intergovernmental Relations, Mobility, and Emergency Management Committee.
    - **Sam Wagoner**, FLC Legislative Advocate, staffs the Municipal Operations Committee.
    - **Rebecca O'Hara**, FLC Deputy General Counsel, staffs the Utilities, Natural Resources, and Public Works Committee.
- No new issues can be presented after the November meeting.

What can I expect at each meeting?

- First meeting in October: Discussions begin regarding potential priorities and policy positions.
- Second meeting in November: Discussions continue, and the committee may narrow down the list of considerations.
- Final meeting in December: The committee votes on one priority and one optional policy position, finalizing the text for the priority/policy position statements.

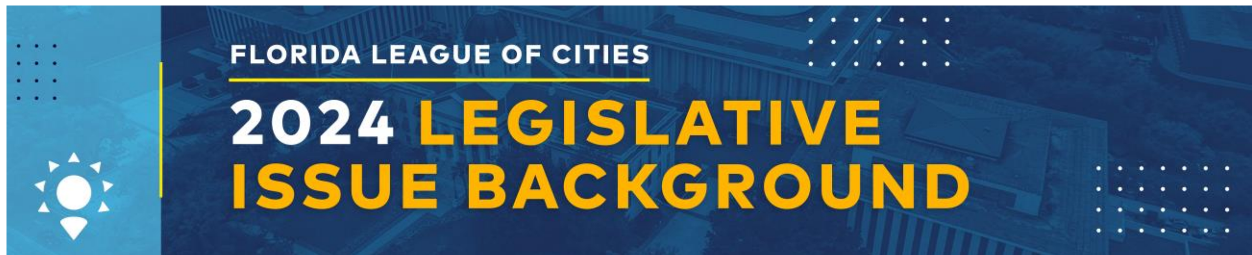
When will I get the meeting agenda?

- Meeting packets containing the agenda and related materials will be emailed to committee members one week before the meeting.
- You should bring a printed copy or your device to the meeting.
- Meeting packets are also available on *flcities.com* under the Advocacy tab.

Does FLC cover any meeting expenses?

- The League provides breakfast and lunch on the meeting date.

Affordable Housing



Affordable Housing Update

Affordable housing remains a pressing issue in Florida, with cities facing increasing demand for housing alongside rising land and construction costs. This challenge is worsened by rapid population growth, putting significant strain on both the housing market and local infrastructure. In many areas of the State low- to moderate-income households struggle to find affordable, quality housing, placing the burden on city governments to address these needs. State legislators are likely to introduce additional affordable housing measures in the 2025 Legislative Session.

Recent Legislation: The Florida Live Local Act

In response to the growing crisis, the Florida Legislature passed the Live Local Act in 2023, aiming to tackle affordable housing through incentives and policy reforms. The law promotes affordable housing development by offering tax credits, expediting project approvals, and requiring local governments to approve certain high-density developments in areas zoned for commercial, industrial, or mixed-use purposes. It also limits the ability of local governments to impose development restrictions on projects that include affordable rental housing. This has sparked concerns from cities over balancing growth with infrastructure capacity and the compatibility of these developments in certain areas.

In 2024, the legislature revisited the Live Local Act, passing **CS/CS/SB 328**. This bill further refines land use regulations attempting to clarify density, floor area ratios, and height entitlements for qualifying projects, while reducing parking requirements for projects near transit hubs.

These legislative changes offer both opportunities and challenges for cities, which must balance growth, community concerns, and infrastructure limitations.

Additional amendments to the Live Local Act are likely during the 2025 session. Likely areas of focus include:

- Application of the Act to Planned Unit Developments (PUDs)
- Penalties for local governments that fail to comply with the Act
- Restrictions on the use of moratoriums by local governments to halt projects
- Clarifications on what qualifies as mixed-use zoning

National Trends in Affordable Housing Legislation

Nationally, there is a trend toward zoning reform aimed at increasing housing density and affordability. For example, in 2020, Minneapolis became the first major U.S. city to eliminate single-family zoning. This change allows for more diverse housing types—such as duplexes and triplexes—in areas previously restricted to single-family homes, thereby increasing housing supply. Cities like Portland, Oregon, and states like California have implemented similar reforms to reduce barriers to higher-density development.

These national trends could preview future legislative proposals in Florida, underscoring the ongoing tension between state-level initiatives and local control, a key issue for Florida cities navigating affordable housing challenges.

Live Local 2.0 Bill Summary (2024 Session)

CS/CS/SB 328 (Calatayud) modifies requirements established in the "Live Local Act" (LLA), enacted in 2023 and codified as 2023-17, Laws of Florida. The bill amends sections 125.01055 and 166.04151, F.S., relating to municipal and county land use approval of qualifying LLA projects. In addition, the bill revises section 196.1978(3), F.S., relating to the "Multifamily Middle Market" ad valorem tax exemption, and allocates $100 million in funds to the Florida Housing Finance Corporation for the "Hometown Hero Program," which provides downpayment assistance to first-time homebuyers meeting certain income thresholds.

Land Use Changes to Height & Density Entitlements for Qualifying Projects

The bill clarifies that a multifamily and mixed-use residential project may qualify as a LLA project if at least 40 percent of the residential units in a proposed multifamily development are rental units and clarifies the proposed density of a LLA project must be compared to the highest *currently* allowed density within the municipality or county's land development regulations, as applicable. It further clarifies that the term "highest currently allowed density" does not include the density of any building that was approved as either a LLA project or the density of any building that received any bonus, variance, or other special exception for density as an incentive for development. The bill provides that a county or municipality may not restrict the floor area ratio (or floor lot ratio) of a proposed LLA project below 150 percent of the highest currently allowed floor area ratio under the respective county or municipality's land development regulations, and clarifies that "highest currently allowed floor area ratio" does not include the floor area ratio of any previously approved LLA project or floor area ratio received as a result of any bonus, variance, or other special exception as an incentive for development. With respect to allowable height of a LLA project, the bill clarifies that the term "highest currently allowed height" does not include the height of any building previously approved as a LLA project or the height of any building that received any bonus, variance, or other special exception for height provided as an incentive for development. The bill authorizes a county or municipality to restrict the height of a proposed LLA project to 150 percent of the tallest building on any property adjacent to the proposed LLA project, the highest currently allowed height for the property provided in the municipality or county's land development regulations, or three stories, whichever is higher, if the proposed LLA project is adjacent to, on two or more sides, a parcel zoned for single-family residential use that is a single-family residential development with at least 25 contiguous single family homes. The term "adjacent to" means those properties sharing more than one point of a property line but does not include properties separated by a public road.

Land Use Changes: Miscellaneous

The bill requires counties and municipalities to place on their websites a policy containing procedures for administrative approval of LLA projects and specifies that LLA projects proposed within one-quarter mile of a military installation identified in s. 163.3175(2) may not be administratively approved. The bill specifies that proposed developments within an airport-impacted area as provided in section 333.03, F.S., do not qualify for LLA project approval processes. The bill specifies that LLA projects must be treated as a conforming use even after expiration of the law's effective period and the project's required affordability period and provides an opportunity for a development to cure any violation of the affordability period associated with the project. Finally, the bill allows LLA project applicants who applied to a local government prior to the bill's effective date a choice to proceed under the land use provisions of the Act as they existed at the time of submittal of the application or to submit a revised application to account for changes to the Act made by the bill.

Land Use Approval: Parking Requirements

The bill addresses parking requirements for proposed LLA projects. First, it specifies that a county or municipality must consider reducing parking requirements for such projects located within one-quarter mile (reduced from one-half) of a transit stop ("transit stop" may be defined in the county or municipality's land development regulations). Second, it requires a county or municipality to reduce parking requirements by at least 20 percent for a proposed LLA project if the development is located within one-half mile of a major transportation hub that is accessible from the proposed development by pedestrians and has available parking within 600 feet of the proposed project that is available for use by residents of the proposed development. The county or municipality may not require that the available parking compensate for the reduction in parking requirements. A "major transportation hub" means any bus, rail, or light rail transit station. Third, a county or municipality must eliminate parking requirements for a proposed mixed-use residential LLA project within an area recognized by the county or municipality as a transit-oriented development or area.

Property Tax Exemptions

SB 328 revises the "Multifamily Middle Market" property tax exemption set forth in section 196.1978(3) by clarifying the exemption only applies to the affordable units within an eligible development and allowing LLA projects in the Florida Keys to allocate fewer affordable units to qualify for the exemption. It also clarifies that units used as a transient public lodging establishment are not eligible for the exemption. The bill makes similar clarifying changes to the local option property tax exemption for qualifying projects set forth in section 196.1979. In addition, the bill specifies how property appraisers are to determine the value of an affordable unit that is eligible for either exemption and authorizes property appraisers to request additional information that may be necessary to determine eligibility. The changes made to sections 196.1978 and 196.1979 are remedial and apply retroactively to January 1, 2024.

Effective date: Upon becoming law.
Approved by Governor: Ch. 2024-188, Laws of Florida.

MEMORANDUM

To: Kraig Conn, General Counsel
Florida League of Cities

From: Susan L. Trevarthen

Date: June 26, 2023

RE: The League's Guide to Section 5 of the 2023 Live Local Act for Florida Municipalities

Effective July 1, 2023, the Live Local Act ("Act") allocates significant funding and incentives to affordable housing, which is something that the Florida League of Cities ("the League") strongly supports. However, Section 5 of the Act revises Section 166.04151, Florida Statutes, to create a new subsection (7) precluding local governments' ability to apply their use, height, and density restrictions and hearing processes to qualifying developments with affordable housing units.[1]

As always, the League stands against preemption of home rule. Several amendments were made to this bill in the legislative process, to refine and narrow the scope of these preemptions, but ultimately they were adopted.

Importantly, Section 5 of the Act does **not** preempt other applicable local laws and regulations. So, even if a project is entitled to excess height or density, or proposes residential use allowed in an area that would not otherwise allow residential use, the project must still comply with all of the other applicable land development regulations. Examples include landscaping, floodplain, parking, impervious surface, and design regulations. In addition, the project must otherwise be consistent with the comprehensive plan, with the exception of provisions establishing allowable densities, height, and land use.

Questions have been directed to the League regarding how to apply the Section 5 preemptions to various specific applications. As always, the League counsels its members to consult their municipal attorneys for definitive guidance on the law tied to the specific facts and circumstances of their charters, comprehensive plans, and codes of ordinances. Some communities may choose to enact code changes to specify how these preemptions will be handled; others may issue administrative guidance documents or interpretations. The key thing is to develop a strategy, and apply it consistently to those who may seek to take advantage of the Act's preemptions in a municipality.

This guide will address the most common inquiries as they are likely to affect typical municipalities. It cannot provide a definitive interpretation of how the Act may apply to specific fact patterns arising in one of the hundreds of Florida municipalities and their diverse and unique regulations, but it provides a starting point for the analysis. The guide may be supplemented, as additional inquiries are received and implementation experience with the Act progresses.

TIMING ISSUES

[1] It also modifies the terms of a preexisting option for municipalities to incentivize affordable housing in Section 163.04151(6), F.S.

Q: When does the Act become effective?

A: July 1, 2023. Section 5 of the Act expires October 1, 2033.

Q: If an application for a qualifying development was received before July 1 but it will not be approved until after July 1, is the application eligible to use the preemptions in Section 5 of the Act?

A: While the Act does not address this issue, general background principles of Florida vested rights law provide that the law that is applicable to any development application is the law in place at the time of the approval. Projects are not entitled to follow the law as it exists at the time of application; if the law changes before approval, they must meet the new standards of the law. Following this logic, one might conclude that a project under review as of July 1, 2023 must be allowed to take advantage of the Act.

Q: Does a municipality have to allow projects the benefit of the Act if it has a moratorium that was in place before July 1, 2023?

A: Not necessarily. The Act specifically addresses what rules apply to the approval of a development application. It does not contemplate deviation from other applicable laws. Moratoria may be based on the lack of sewer or water capacity or other problems that require a pause in all development approvals for planning purposes. Once the moratorium is over, the Act will apply. Some moratoria are drafted in a more targeted way so that only certain kinds of development are paused; the municipal attorney should evaluate the particular moratorium to determine whether it will apply to qualifying developments.

QUALIFYING DEVELOPMENTS

Q: What kind of development projects can take advantage of the preemptions in Section 5 of the Act?

A: A multifamily or mixed use residential development containing at least 40% affordable housing units. For purposes of this guide, we will refer to such developments as “qualifying developments.”

Q: What is “affordable” for purposes of a development qualifying for these preemptions?

A: Affordable housing units that target households making up to 120% of the area median income. The cost (including utilities) for such a unit cannot exceed 30% of the tenant’s income, and will vary based on household size. The commitment to affordability has to last for at least 30 years.

Q: Who assures that these affordability requirements remain in place for the required period of time?

A: The Act is silent on this issue, but the municipality should include a mechanism for reporting and monitoring within its approval documents, to assure that this requirement is satisfied. A qualifying development under the Act will be allowed to build to a higher density or height than would otherwise be allowed under local laws, and will be able to develop residential use in zoning districts that do not otherwise allow such use. It will likely be difficult to convert a qualifying development to a conforming development in the event that it fails to continue to qualify under the Act. It would thus be wise for the applicant and the municipality to take all steps necessary to make sure that the development continues to qualify for the Section 5 preemptions throughout its life.

Q: What is a “mixed use development” that may qualify for the Section 5 preemptions?

A: A development with at least 65% of the total square footage devoted to residential purposes. No maximum amount of residential is listed in the Act, but there clearly needs to be some nonresidential use for the project to fairly be described as mixed use and qualify for the preemptions.

Q: Do special rules apply if the qualifying development is transit-oriented?

A: Qualifying developments that are located within a half-mile of a major transit stop must be considered for parking reductions if the major transit stop is accessible from the proposed development. "Major transit stop" is as defined in the municipality's land development code.

USE PREEMPTION

Q: What is the impact of allowing qualifying developments in commercial, industrial, and mixed use zoning districts?

A: The Act preempts municipal use regulation by allowing affordable residential units to be located in zoning districts where they would otherwise be prohibited. It is important to note that development within residential districts is unaffected by the Act.

Q: What are "commercial" and "industrial" zoning districts?

A: These terms are not defined in the Act, but have a commonly understood meaning that can be the starting point for determining how the Act applies in your community. You should start with an examination of your comprehensive plan and zoning code, and follow whatever definitions they include, along with any statements of purpose or intent as to the various types of zoning districts.

Commercial zoning districts typically allow various forms of retail and business uses: uses that involve the sale and purchase of goods and services.

Industrial zoning districts typically allow various forms of light or heavy manufacturing, warehousing, and assembly uses.

Q: Are temporary uses relevant to determining these categories?

A: No, temporary uses such as construction staging or special events should not be considered as part of this analysis.

Q: If the qualifying development seeks to locate in a zoning district that has no regulations for residential development, how does the municipality review the project's compliance for matters other than height, density, and use?

A: The Act requires the municipality to apply its regulations for multifamily development from the zoning district(s) where it is allowed to the qualifying development. Municipalities will need to determine how to apply this provision if they have multiple multifamily districts.

Q: In the process of determining what regulations apply to the qualifying development, if it is possible that more than one development standard may apply, must the municipality apply the most liberal standard?

A: No. The Act specifically preempts and guarantees these projects greater rights as to height, density and use. It does not preempt, and specifically requires qualifying developments to follow, other applicable laws. Outside of the specific preemptions of Section 5, the municipality should interpret and apply its code as it normally would, using accepted standards of interpretation and professional judgment and applying its interpretations even-handedly to similarly situated applicants.

Q: How does Section 5 of the Act affect a municipality that has adopted form-based districts rather than use-based zoning?

A: To the extent that a municipality's form-based districts are purely form-based and do not incorporate elements of use regulation, all districts would allow all uses. So residential use would be allowed in all

Q: Does Section 5 of the Act apply to "mixed use" zoning districts that allow residential uses?

Under a plain reading of the text of this section of the Act, the answer might be no. Section 5 revises subsections (6) and (7) of Section 166.0451 to expand affordable housing by providing an option (subsection (6)) or a mandate (subsection (7)) for multifamily residential or mixed use residential development to be able to locate in zoning districts that do not already allow such uses.

Subsection (6) of Section 166.04151 already provided an option for local governments to incentivize projects with at least 10% affordable housing units in commercial and industrial – and residential - zoning districts. The Act removes the reference to residential zoning districts, so that this optional incentive only applies to commercial and industrial zoning districts going forward.

Similarly, the new subsection 166.04151(7) seeks to incentivize both multifamily use and "mixed use residential" uses that meet the more detailed requirements of subsection (7) for affordability. The "mixed use residential" uses must have at least 65% of their total square footage devoted to residential purposes. The zoning districts in which the preemptions of subsection (7) apply are "commercial, industrial, or mixed use."

When Section 5 of the Act refers to the type of development or use that can utilize its mandates and incentives, it consistently refers to "mixed use residential". When Section 5 of the Act refers to the zoning districts within which such development can seek to locate, it only refers to "mixed use." Thus, a plain reading of the Act is that it incentivizes qualifying "mixed use residential" developments to locate within "mixed use" zoning districts that do not allow residential uses. The distinction in terminology makes sense given the evident purpose of Section 5 of the Act: to promote affordable housing development by allowing it to be located in areas in which it would not otherwise be allowed.

Q: Can the statute be interpreted to allow qualifying developments to be able to locate in mixed use zoning districts that allow residential uses?

A: If a court were to conclude that the use of the term "mixed use" without definition is somehow ambiguous, then other canons of statutory construction would come into play. It is possible that an interpretation that failed to apply Section 5's preemptions to mixed use residential zoning districts could undermine the legislative intent. For example, if all of a municipality's commercial zoning districts allow residential use and the municipality has little industrially zoned land, a failure to allow the Section 5 preemptions to apply in those commercial districts might defeat the purpose of the statutory scheme to expand opportunities for affordable housing. Interpretations that defeat the statutory purpose are generally disfavored.

A challenge with reading the Act differently – to allow its preemptions to be applied to development in mixed use zoning districts allowing residential uses – is that the Act directs municipalities to apply the development standards from its multifamily residential zoning districts to the review and approval of a qualifying development seeking to take advantage of the benefits of Section 5 in other districts. This provision is necessary and makes sense for zoning districts such as commercial, industrial or mixed use that do not already allow for residential uses; by definition, they will not have appropriate regulatory standards for residential development.

In contrast, mixed use zoning districts that allow residential uses already have regulatory standards for such uses. Displacing standards which are calibrated to the specific needs of mixed use residential development with standards for a straight multi-family residential development could lead to absurd results under a particular municipal code. For example, a mixed use zoning district that allows residential uses will specify the amount, location, and character of the various uses. It will recognize the different peak use times of residential and nonresidential uses in the parking standards and in the design of the traffic flow of the development. Also, the kinds of setbacks and buffers that are typical of a straight residential development may be inconsistent with the design needs of a mixed use development, particularly if it is vertically mixed. Interpretations that lead to absurd results are also generally disfavored.

The hundreds of municipalities in Florida have a wide range of different types of mixed use zoning regulations, and it is not possible to generalize as to all of the implications in this guide. In short, if a municipality has already provided appropriate standards for residential uses as a component of a mixed use zoning district where a qualifying development is proposed, the municipal attorney should evaluate whether applying the standards from the multifamily zoning district would lead to absurd results. And if the proposed interpretation of Section 5 of the Act results in no project being able to apply it in a given municipality, the municipal attorney should evaluate whether the interpretation defeats the statutory scheme. If so, in either case, the municipal attorney might consider whether a different interpretation is appropriate.

HEIGHT AND DENSITY PREEMPTIONS

Q: How are density regulations preempted by Section 5 of the Act?

A: A municipality must approve a qualifying development with a density equal to the highest residential density allowed within any of the municipality's residential zoning districts, located anywhere in its jurisdiction. Thus, identifying the density standard to apply to the qualifying development simply requires reading the municipal zoning code and determining the maximum density. There is no minimum density requirement in the Act.

Q: How are height regulations preempted by Section 5 of the Act?

A: As with density, the height preemption comparison is drawn from inside the municipality's jurisdiction, but only nearby properties are considered. A municipality may be required to allow a qualifying development to have greater height if any commercial or residential development located within a mile is allowed to be taller than development on the site of the proposed qualifying development.

There are other differences from the density preemption. First, the application of the height preemption requires an examination not just of the zoning code but also of the zoning map, to determine what zoning districts are mapped within a mile of the qualifying development and within the municipal jurisdiction. Second, the Act guarantees a minimum of three stories in height to qualifying developments, regardless of whether three stories are allowed on properties located within a mile of the site of the qualifying development.

Q: What does it mean for density or height to be "allowed"?

A: That height or density that is allowed by the currently applicable zoning codes and comprehensive plans in your community.

It does not include height or density that was never actually approved by the municipality. Illegal structures, subdivisions, or conversions may not be used to establish the permitted height or density.

It also does not include legal nonconforming height or density. So if a development was allowed and approved when built, but the regulations have changed such that it could not be built again with the same height or density, it cannot be used as the comparator to establish height or density for the qualifying development.

Developments that were approved pursuant to a height or density variance are also not proper comparators for establishing the height and density preemptions for qualifying developments. By definition, those heights and densities were not "allowed", and were only available pursuant to a site-specific determination that no alternative was available for the property.

Q: How do height or density bonuses affect this analysis?

A: Bonus density or height is not allowed as of right in the zoning district. It may only be earned through satisfaction of the criteria for the bonus program. Therefore, bonus density or height should not be considered part of the "allowed" height or density for purposes of the preemptions in Section 5 of the Act.

Alternatively, if a municipality wishes to allow consideration of bonus height or density, then a qualifying development that seeks to use that bonus height or density should be required to satisfy all of the requirements of the bonus program. Otherwise, the qualifying development may only seek to use the height or density allowed by right in those zoning districts.

Q: Must a qualifying development always be able to construct the full density or height allowed by these preemptions?

A: No. The Act is clear that other laws continue to apply, and may work to limit the development potential of a particular parcel. For example, environmental regulations, setbacks, buffer requirements, lot coverage requirements, minimum unit sizes, parking and other development standards may all prevent a particular property from achieving the theoretical maximum amount of development. In addition, the development must otherwise be consistent with the comprehensive plan, with the exception of provisions establishing allowable densities, height, and land use.

APPROVAL PROCESSES

Q: How are approval and hearing processes preempted by Section 5 of the Act?

A: If a qualifying development seeks to locate within a commercial, industrial, or mixed use zoning district, the municipality may not require rezonings, land use changes, special exception or conditional use approvals, variances, or comprehensive plan amendments in order to obtain the height, density, and use preemptions.

Q: So what process applies to these projects?

A: Municipalities must administratively approve a qualifying development without holding hearings before the governing body or other board, if it otherwise complies with all other regulations.

If the qualifying development requires a variance, special, exception, or other type of approval, unrelated to use, height, or density, those separate processes are not preempted and must be followed.

Q: What does it mean to "administratively approve" a project?

A: The project will still need to undergo the typical application processes in a municipality. It will need to submit an application with an application fee, and supporting plans and information demonstrating that it satisfies all applicable laws. For municipalities that do not already have processes for administratively approving certain kinds of development that can be adapted to this purpose, it may be beneficial to create one.

The municipal staff will still need to assess the application's compliance with those laws before any development orders or permits can be approved. That may involve review by a staff Development Review Committee or individual review by each affected department, depending on how each municipality structures its process. It may also involve review from other agencies, such as the county or a water management district. The public may provide input into such processes by submission of written comments.

Some municipalities already have administrative hearing processes where a department head, municipal manager or hearing officer individually reviews and decides whether to approve a project. Those processes may or may not provide a mechanism for the public to be present or to be heard by that decision maker.

districts, and there are no “industrial, commercial, or mixed use” zoning districts within which to apply the Section 5 preemptions.

However, most form-based codes are hybrid, and retain certain use-based regulations and districts. A careful analysis of each particular code may be necessary to determine how the Act applies to development in a given municipality with a form-based code.

Q: Must a municipality always allow a pure residential project in commercial and industrial districts?

A: No. If a municipality[2] designates less than 20% of its land area as commercial or industrial, then a multifamily project seeking to use the Act must be mixed-use residential, with at least 65% residential square footage. Another difference with these municipalities is that the project can only locate in a commercial or industrial zoning district.

The Act does not specify how the 20% threshold is measured, so a reasonable methodology should be developed by the municipality.

Q: Are there any areas in which a development project cannot take advantage of the Act?

A: Yes. Property defined as recreational and commercial working waterfronts in section 342.201(2)(b), F.S., located in any area zoned industrial.

MIXED USE ZONING DISTRICTS AND SECTION 5 OF THE ACT

Q: What are “mixed use” zoning districts?

A: The term is not defined in Section 5, and was not used in Section 166.04151 before the Act. “Mixed use” zoning districts, at the most basic level in zoning regulation, are districts that allow more than one type of land use. For example, a district that allows both a clothing store and a gift shop would not traditionally be seen as a mixed use district. Both of these uses are within the same type of land use: they are commercial uses traditionally found within commercial districts.

Similarly, accessory uses are allowed in all districts, and do not render the district “mixed-use.” Examples of accessory uses include parking, storage, solar panels, home occupations, a lobby store in a hotel, or a caretaker’s cottage on a large industrial site.

In contrast, districts that allows both non-residential and residential uses, or districts that allow combinations of different types of non-residential uses, are generally considered to be mixed use districts.

Another distinction between different kinds of mixed use districts is whether they allow the mixing of uses in the same building, such as a building with retail uses on the first floor and residential units above (vertically mixed uses) or they only allow the mixing of uses in a parcel side-by-side, such as a residential community with an outparcel of commercial use (horizontally mixed uses). The standards for these two kinds of development are quite different. For example, there may be a landscaping buffer or setback required between the residential and nonresidential uses in a horizontally mixed use development. It would be absurd to discuss a landscaping buffer or setback between uses when the uses are in the same building. The Act is silent on the distinction between vertical and horizontal mixed uses.

Q: What kind of “mixed use” zoning districts are affected by Section 5 of the Act?

In the absence of any definition, zoning districts that provide for a range of different types of uses.

[2] This same rule applies to a multicounty independent special district that meets certain requirements and has less than 20% of its land designated for commercial or industrial use.

Q: Are there specific provisions that should be considered for inclusion in a development order approving a qualifying development?

A: As noted above, a unique aspect of development under Section 5 of the Act is that it only qualifies for the preemptions if it maintains its affordability for 30 years. It is therefore advisable to include mechanisms in the development order for monitoring and continuing to assure that these requirements are met, such as requiring that a covenant be recorded for the benefit of the approving municipality, with rights of enforcement.

Also, because the qualifying development is only eligible for approval pursuant to the Live Local Act, the municipality might want to include findings in the development order as to how the application satisfies the statutory criteria. The development order could also specifically find that the project is not otherwise “allowed” under the municipality’s code and plan.

Q: Does the Act require municipalities to waive height restrictions around an airport?

A: Likely not. FAA approval is still necessary for the height of development in flight paths, and other height and density limits related to runway crash zones around civilian or military runways are usually a product of state or federal law that would not be preempted by the Act. As always, examine the specifics of your regulations with your municipal attorney to determine what the right strategy is.

POLICY IMPACT OF SECTION 5 OF THE ACT

Q: Some municipalities have too much residential development and not enough commercial/industrial development to maintain a sound fiscal basis. Is there anything municipalities can do to keep this new law from further exacerbating this problem?

A: As noted above, if a municipality designates less than 20% of its land area as commercial or industrial, then only mixed-use residential projects with at least 65% residential square footage can seek to take advantage of the Act. The remainder of Section 5 of the Act will apply.

One option to consider is amending the Code to change the existing zoning districts or create new zoning districts that are more attractive for multifamily projects to locate as of right in appropriate locations and to include nonresidential uses. That evaluation should also include consideration of whether zoning map amendments are necessary so that these districts are applied to locations that are appropriate for mixed use residential development. A municipality might even consider allowing an applicant to seek administrative approval of the application of an overlay or floating zone with appropriate standards to commercial, industrial and mixed use zoned properties.

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July 12, 2024

The Honorable Vicki L. Lopez
House of Representatives, District 113
2100 Coral Way, Ste. 702
Miami, FL 33145

Dear Representative Lopez:

As a legislator interested in section 166.04151, Florida Statutes (the "Live Local Act," or "Act"), you seek clarification regarding the phrase "area zoned for commercial, industrial, or mixed use" contained in subsection (7) of that statute. Your question arises in light of an earlier opinion of this office, Informal Opinion to Eve Boutsis, dated July 20, 2023. There, we stated: "Given the Staff Analysis, judicial interpretations, and examples from other statutes, we conclude that the Legislature, in amending section 166.04151, specified zoning classifications of commercial, industrial, or mixed use districts." You indicate that some jurisdictions are utilizing that informal opinion to attempt to limit the applicability of the Act. Initially, I note that any opinion issued by the Office of Attorney General is confined to the specific facts and circumstances presented and not meant to be utilized by any party in any other factual or legal context. Informal opinions are given in matters of limited application either because the specific, particularized facts presented in the request will not likely occur elsewhere or the law itself applies to only a few individual entities or persons. In addition, all Attorney General opinions are persuasive and do not decide or declare definitively any parties' rights.

You seek clarification of what, as relevant to the Act, constitutes a mixed use zoning district. In particular, you request a determination of whether the Orlando "MXD-2 Mixed Residential-Office District" zoning category, as set forth in the Orlando Zoning Code, chapter 58 of the Code of Ordinances of the City of Orlando, constitutes a "mixed use" zoning classification under section 166.04151(7). You opine that "[a] jurisdiction cannot be allowed to create mixed-use zoning districts which are specified as such in legislative intent, uses permitted, and even the title of the district itself, yet define the district as something other than what it clearly is to avoid the application of the Act."

Responding to a specific inquiry concerning a discrete provision of any local code or ordinance is generally not a matter squarely within the purview of the Attorney General's role in providing opinions.[1] Your question, however, is appropriate for our office's review to the extent that you seek clarity on discerning the meaning of specific phrases in section 166.04151(7)(a). As such, we consider your inquiry to consist of the following:

> In using the phrase "area zoned for . . . mixed use" in section 166.04151(7)(a), has the Legislature dictated either the characteristics to be attributed to, or the nomenclature to be used in designating, mixed use zoning districts subject to the Act? How might a person determine whether an area maintains a zoning classification of mixed use?

In sum:

Unless and until legislatively or judicially determined otherwise, it is my opinion that while the particular name given by a municipality or County to a zoning classification is potentially helpful for determining whether a classification is a "mixed use" zoning classification, it is just one of several aspects worthy of consideration in determining whether a classification is a "mixed use" under the Act. A court reviewing the applicability of the Act would likely look beyond a title of a zoning classification and focus on whether the particular classification is similar to what has been historically and is normally understood to be a mixed use zoning classification specific to the area at issue.

Background

Your question arises from a prior informal opinion, in which we concluded that in section 166.04151(7)(a), the phrase "area zoned for . . . mixed use" referred only to land located in zoning districts having a mixed use classification, rather than encompassing land in any zoning district in which various land uses might occur. In that opinion, the City of Dania Beach asked whether section 166.04151(7) applied to zoning classifications that were commercial, industrial, or mixed use or to land located in any zoning district where some commercial, industrial, or mixed use land uses might be permitted. We concluded that section 166.04151(7) applied to commercial, industrial, or mixed use zoning classifications because the Legislature used the words "zoned for," which multiple Florida courts have interpreted to mean a zoning classification.

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[1] *See generally* § 16.01(3), Fla. Stat. (2023) (providing, in pertinent part, that the Attorney General "may, upon the written requisition of a member of the Legislature . . . give an official opinion and legal advice in writing on any question of law relating to the official duties of the requesting officer."); *see also* Requesting an Attorney General Opinion, https://www.myfloridalegal.com/attorney-general-opinions/frequently-asked-questions-about-attorney-general-opinions (last visited July 11, 2024) (reflecting that requests arising from uncertainty regarding the correct interpretation of local law "will usually be referred to the attorney for the local government in question").

Analysis

The prior opinion concluded that the Legislature's use of the phrase "zoned for" means section 166.04151(7) applies to areas classified as industrial, commercial, or mixed use. That conclusion is supported by Florida law and nothing contained in your letter leads us to a different conclusion. Florida courts have determined that a description of the use a parcel is "zoned for" is helpful to consider when determining the area's "zoning classification."[2] In other statutes in which the Legislature specified permitted uses within specified areas, it did not utilize "zoned for," but included other language.[3] Likewise, our view of the limitation created by use of "zoned for" was buttressed by Staff Analysis commenting on an earlier version of the bill (dated February 24, 2023), where staff observed:

> With regards to local governments, the bill:
>
> • Preempts local governments' requirements regarding zoning, density, and height to allow for streamlined development of affordable housing in commercial and mixed-use zoned areas under certain circumstances. Developments that meet the requirements may not require a zoning change or comprehensive plan amendment.[4]

The Staff Analysis supports this conclusion that "mixed use" characterization in the phrase "zoned for commercial, industrial, or mixed use" in section 166.04151(7)(a) describes a zoning classification, rather than a permitted use. In short, judicial review of the phrase, prior legislative use of it, and Staff Analysis including it, all support our conclusion regarding the reach of section 166.04151(7) to areas that maintain the zoning classification of commercial, industrial, or mixed use. We have no reason to reach a different opinion on that issue.

That leads us to next your question as we have reinterpreted it, which is how a person might discern whether an area exists in a "mixed use" zoning classification and whether section 166.04151(7) applies to a circumstance in which a local government titles or re-titles a zoning classification in an attempt to evade applicability of the Live Local Act. The Legislature, in the Live Local Act, did not indicate what it meant by its use of "mixed use" in its listing of zoning classifications in section 166.04151(7)(a). We note that there "is no universally accepted definition of mixed-use

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[2] *See, e.g.*, *Lee Cnty. v. Sunbelt Equities, II, Ltd. P'ship*, 619 So. 2d 996, 998, 1002 (Fla. 2d DCA 1993) (stating, when property owner sought to prompt re-zoning to enable construction of a commercial or office development in an area zoned for agricultural use, that review of the County's comprehensive plan was worthwhile in determining whether the suggested use of land in the pertinent category was inconsistent with the plan).

[3] *See* § 163.3205(3), Fla. Stat. (2023) ("A solar facility shall be a permitted use in all agricultural land use categories . . . and all agricultural zoning districts within an unincorporated area . . . ."); § 163.3208(4), Fla. Stat. (2023) ("New and existing electric substations shall be a permitted use in all land use categories . . . within a utility's service territory except those designated as preservation, conservation, or historic preservation on the future land use map or duly adopted ordinance.").

[4] Florida Staff Analysis, S.B. 102 at 2, 26 (February 24, 2023).

development. The definition differs depending on how land-use categories are defined, how a functional measurement of land use mix is selected, and the scale of geographic analysis . . . ."[5]

Although the exact parameters of defining what constitutes a mixed use zoning classification in every possible circumstance is beyond the scope of this opinion, the context and objective of the Live Local Act indicate that mixed use refers to a zoning classification that allows for either commercial or industrial development alongside residential development. In both sections 125.01055(7)(a) (as applicable to counties) and 166.04151(7)(a) (as applicable to municipalities), the Legislature utilized "zoned for ... mixed use" near "mixed-use residential" when discussing authorization of certain developments within an area that maintains a commercial, industrial, or mixed use zoning classification. In various other contexts, the Legislature has defined mixed use as a development concept that allows industrial or commercial development adjacent to or alongside residential development.[6]

In practice, a person might discern whether an area exists in a "mixed use" zoning classification by considering the title and described locations of an area, as depicted in a local government's plans. In particular, provisions in comprehensive plans and in local government land development and use regulations would be relevant in determining whether specific areas are in districts that are classified as mixed use. If a municipality or county attempts to evade applicability of the Live Local Act by titling or styling a zoning category such that it does not contain one of the labels, "commercial, industrial, or mixed use," such an effort would likely be readily apparent and rendered disingenuous upon review of prior zoning classification schemes and the content of the particular zoning classification and by comparing the new zoning scheme to historical land development and use regulations, provisions in comprehensive plans, or other applicable sources that apply to land development in the area at issue.

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[5] Daniel R. Mandelker, Zoning for Mixed-Use Development, 46 No. 9 Zoning and Planning Law Reports NL 1 (October 2023).

[6] *See* § 163.2517(3), Fla. Stat. (2023) (directing local governments seeking to designate an area as an urban infill or redevelopment area to prepare a plan that considers, among other aspects, "mixed-use planning to promote multifunctional redevelopment to improve both the residential and commercial quality of life in the area"); § 163.3162(4), Fla. Stat. (2023) (stating that a potential amendment to a local government comprehensive plan is "presumed not to be urban sprawl . . . if it includes land uses and intensities of use that are consistent with the uses and intensities of use of the industrial, commercial, or residential areas that surround the parcel" and stating, in part, that each application for a plan amendment under the subsection must "appropriate new urbanism concepts such as clustering, mixed-use development, the creation of rural village and city centers, and the transfer of development rights in order to discourage urban sprawl while protecting landowner rights"); § 163.3246(2)(e)10., Fla. Stat. (2023) (discussing local planning certification that required "[e]ncourag[ing] clustered, mixed-use development that incorporates greenspace and residential development within walking distance of commercial development"); § 190.003(7), Fla. Stat. (2023) (defining "compact, urban, mixed-use district" as "a district located within a municipality and within a community redevelopment area created pursuant to s. 163.356, that consists of a maximum of 75 acres, and has development entitlements of at least 400,000 square feet of retail development and 500 residential units.").

As an illustrative example of how we expect a court would analyze the applicability of the Live Local Act, the zoning classification that you describe in your request, MXD-2 in the City of Orlando, would, in our estimation, likely be found to be an area having a mixed use zoning classification within the meaning of the Live Local Act. The title itself in that instance, "MXD," seems to denote a district that a court could conclude is categorized as mixed use insofar as zoning classification. Putting that aside, a court would also likely review the particular provision of the land development code related to that classification. That specific section, codified at Section 58.260, ("Relationship to Growth Management Plan") states, in part, "[t]he MXD-2 district implements the Residential-High Intensity and Mixed Use Corridor-High Intensity categories of the Future Land Use Map Series." This language or similar language would likely lead a court to conclude that such a zoning classification is a mixed use classification pursuant to how the Act uses that term.[7] Even putting aside that language, a court would also likely observe that a zoning classification allowing the type of development that the MXD-2 classification allows, permitting residential and office space to exist together, is consistent with historical understandings of a mixed use classification. Nothing in this opinion forecloses the City of Orlando from pointing to other land development documents that could be used to support a contrary conclusion. The point of the above illustrative analysis is to demonstrate how we believe a court would likely review an area to determine whether it is an area zoned for mixed use, as described in the Act.

Conclusion

Unless and until legislatively or judicially determined otherwise, it is my opinion that the particular name given by a municipality or County to a zoning classification, while potentially helpful for determining whether an area is in a "mixed use" zoning category, is merely one aspect worthy of consideration. A court reviewing the applicability of the Act would likely look beyond a title and focus on whether the particular classification is similar to what has been historically and is normally understood to be a mixed use zoning classification. Local government land development and use regulations, along with other sources such as provisions in comprehensive plans or reviews of past practices, will be relevant in determining which specific areas are within mixed use zoning district classifications. Disagreements arising in that regard may, as appropriate, be settled by recourse to existing legal remedies available to resolve land use development disputes.

Sincerely,

Kathryn P. Inman
General Counsel

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[7] Orlando, Fla. Code § 58.260 (2024); *see also* § 163.3177(1), Fla. Stat. (2023) (stating, in subsection (1), that a local government's comprehensive "plan shall establish meaningful and predictable standards for the use and development of land and provide meaningful guidelines for the content of more detailed land development and use regulations" and requiring, in subsection (6)(a)10.b.(IV), that, "[t]he following areas shall … be shown on the future land use map or map series, if applicable … mixed-use categories").

Memorandum

MIAMI-DADE COUNTY

Date: June 26, 2023

To: Development Services, RER

From: Nathan Kogon, AICP Assistant Director

Development Services Division
Department of Regulatory and Economic Resources

Subject: **Implementation and Interpretations of the Live Local Act regarding zoning and land use (SB 102)**

The Florida Legislature recently adopted the Live Local Act, Laws of Florida Ch. 2023-17, which has an effective date of July 1, 2023. The Live Local Act preempts certain County regulations pertaining to the procedures and standards that govern affordable housing developments, to require the County to administratively approve applications for multifamily rental residential developments that meet the statutory qualifications and to prohibit public hearings on such applications. The qualifying multifamily rental developments must: (1) be located on property that is currently zoned for commercial, industrial, or mixed uses; (2) provide a minimum of 40% of its residential units as "affordable" residential units as defined in the Florida Statutes; and (3) if they are mixed-use developments, dedicate a minimum of 65% of the total square footage of the development for residential use. The purpose of this memorandum is to provide a general interpretation and guidance for the implementation of the Live Local Act as it relates to the County's land use and development processes. Because of the breadth of the changes the legislation makes to the County's standard development review processes and standards, this interpretation is subject to change as further analysis and implementation occurs.

Statutory Requirements:

1. **Affordable multifamily and mixed-use residential developments must be approved if they meet certain conditions – "**A County **must** authorize multifamily and mixed-use residential as allowable uses in any area **zoned** for commercial, industrial, or mixed use if at least 40 percent of the residential units in a proposed multifamily **rental** development are, for a period of at least 30 years, affordable as defined in s. 420.0004 [of the Florida Statutes]." Furthermore, "For mixed-use residential projects, at least 65 percent of the total square footage must be used for residential purposes." Section 125.01055(7)(a), Fla. Stat.

Interpretations/comments:

1) *Multifamily Rental Use* - The development, or residential portion of a mixed-use development, must be multifamily in nature, must consist of rental units, and must satisfy the statutory affordability requirements for at least 30 years.
    a. The statutory definition of affordable is different than the County's workforce housing income range.
    b. **Section 33-196.6(10) of the County Code** provides for an income range "**up to 140 percent** of the most recent area median income for the County."
    c. By contrast, **Section 420.0004(3) and (12), Florida Statutes**, limit the qualifying income range to "**<u>less than 120 percent</u>** of the median annual adjusted gross income for households within the state, or 120 percent of the median annual adjusted gross income for households within the metropolitan statistical area (MSA) or, if not within an MSA, within the county in which the person or family resides, whichever is greater."
    d. For single-use developments, **40 percent of the residences must be restricted based on the statutory affordability requirements and must be rentals**.
    e. For mixed-use developments, in addition to the residential component complying with the requirements for single-use residential developments, the **residential component must comprise at least 65 percent of the square footage of the mixed-use development**. **But only 40 percent of those residential units would be required to be restricted** to the statutory affordability requirements.

2) *Monitoring affordable units* - The County will monitor the development's compliance with the statutory affordability requirements by requiring an **<u>Annually Renewable Certificate of Use (C.U.)</u>**. The holder of the C.U. shall be responsible for submitting agreements, covenants, or other evidence from the agency that monitors their rentals to demonstrate continued compliance with the affordability requirement.

3) *Multifamily requirement* – The statute does not apply to single-family homes, duplexes, or townhomes.

4) *Locations of qualifying residential multifamily projects or mixed-use developments* **– Developments that meet the foregoing requirements shall be permitted on properties zoned commercial, industrial, or mixed-use** without requiring a rezoning, special exception, conditional use approval, variance, or CDMP amendment for the uses, densities, or building height authorized by the statute. Qualifying County zoning districts include at least all properties zoned BU, IU, OPD, RU-5, and Urban Center (but not in land use categories that permit only residential uses) and, for the RTZ District,

properties that have obtained a special exception and are not restricted to residential uses.

   a. The statute does not define "mixed-use."
   b. The Agricultural (AU) District is not a "mixed-use" zoning district. AU provides for a range of like and compatible uses, just as other traditional zoning districts do; this is in contrast to urban center and RTZ zoning districts, which explicitly provide for the vertical and horizontal mixing of different uses that would have been divided into separate districts under traditional zoning.

5) *Mixed-Use Districts* - If a mixed-use development in one of the County's mixed-use districts (e.g., RTZ, Urban Center, MCD) does not provide for 65 percent of the development to be residential and for 40 percent of those units to be affordable as defined in the statute, such mixed-use development would not be exempt from any public hearing or other requirements. But a single-use residential development that meets the other statutory criteria and is located in one of those mixed-use districts would be exempt.

6) *Properties in the Rapid Transit Zone (RTZ) District* – Properties that either do not require a public hearing, or have already obtained a special exception and are not otherwise restricted through those approvals to residential uses, are zoned appropriately, likely as mixed use. But if the property has simply been added to the RTZ District by ordinance and has not gone through the public hearing process, the underlying zoning will govern whether it qualifies.

2. **Additional public hearings for qualifying residential developments are prohibited –** "Notwithstanding any other law, local ordinance, or regulation to the contrary, a county may not require a proposed multifamily development to obtain a zoning or land use change, special exception, conditional use approval, variance, or comprehensive plan amendment for the building height, zoning, and densities authorized under this section." Section 125.01055(7)(a), Fla. Stat.

Interpretations/comments:

1) The statute does not supersede covenants that were accepted as part of a quasi-judicial zoning proceeding. If a covenant must be modified or deleted to allow the proposed development, then an application for covenant modification will still be necessary. Covenants need to be reviewed case by case.
2) The statute does not supersede conditions of a previously approved quasi-judicial zoning resolution, such as for a variance. But if a development that meets the

statutory requirements can be built without relying on any such prior zoning approval, then the site may be able to be developed without modifying the resolution.

3) A county is prohibited from requiring a public hearing to obtain the use, height, and density permitted by the statute for qualifying developments on properties that are already zoned commercial, industrial, or mixed-use.
4) Although qualifying developments are not subject to use, density, or height restrictions beyond those provided in the statute, they **are** subject to all other land development regulations, including but not limited to environmental regulations, traffic engineering reviews, and concurrency. Section 125.01055(7)(g), Fla. Stat.

3. **Density at the statutory minimum must be approved -** "A county may not restrict the density of a proposed development authorized under this subsection below the highest allowed density on any unincorporated land in the county where residential development is allowed." Section 125.01055(7)(b), Fla. Stat.

Interpretations/comments:

1) The County is prohibited from restricting density on a qualifying development below what the statute authorizes.
2) The CDMP's highest allowed density on "unincorporated land" is 250 units per acre, which is the maximum for a Metropolitan Urban Center. The CDMP's Regional Urban Center covers only lands that are entirely incorporated and thus does not apply to the statutory density requirement.
3) "Highest allowed density" does not include stacking any bonuses provided under any other county program that allows a development to exceed the maximum CDMP Land Use Plan map density upon compliance with certain conditions.
4) Site-specific density bonuses authorized by the CDMP and the County's Workforce Housing Development Program under chapter 33, article XIIA may be permitted through the ASPR only if the development relies on the underlying density authorized by the CDMP and Zoning Code rather than relying on the density allowed by the Live Local Act.

4. **Building height at the statutory minimum must be approved -** "A county may not restrict the height of a proposed development authorized under this subsection below 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." Section 125.01055(7)(c), Fla. Stat.

Interpretations/comments:

1) In contrast to the density provision, which refers to "any **<u>unincorporated</u>** land," the statutory height requirement refers to "development located **<u>in its jurisdiction</u>**." That means maximum allowed height includes properties within an incorporated area over which the County exercises zoning jurisdiction, such as in the RTZ.
2) The statutory height requirement **<u>does not supersede other massing controls</u>**, such as, but not limited to, floor-area ratio (FAR), open space, lot coverage, setbacks, and landscaping requirements. Section 125.01055(7)(g), Fla. Stat., expressly provides, "Except as otherwise provided in this subsection, a development authorized under this subsection must comply with all applicable state and local laws and regulations."
3) Should the maximum height within a mile of the site be the zoning district on the subject parcel, then that height should prevail.
4) "Highest currently allowed height" does not include stacking any bonuses provided under any other county program that allows a development to exceed the maximum height allowed in a zoning district upon compliance with certain conditions.
5) Site-specific height bonuses authorized by the County's Workforce Housing Development Program under chapter 33, article XIIA, may be permitted through the ASPR only if the development complies with the height requirements provided under the zoning code rather than the height allowances provided by the Live Local Act. Thus, a development can add the workforce housing height bonus to the maximum permitted height for the property under the property's zoning district, but cannot add it to height permitted under SB 102 should that height be greater than the permitted height for that zoning district.

5. **Qualifying developments must be approved administratively –** "A proposed development authorized under this subsection **<u>must be administratively approved</u>** and no further action by the board of county commissioners is required **<u>if the development satisfies the county's land development regulations for multifamily developments</u>** in areas zoned for such use **<u>and is otherwise consistent with the comprehensive plan</u>**, with the exception of provisions establishing allowable densities, height, and land use. Such land development regulations include, but are not limited to, regulations relating to setbacks and parking requirements." Additionally, **"**Except as otherwise provided in this subsection, **a development authorized under this subsection must comply with all applicable state and local laws and regulations**." Section 125.01055(7)(d), Fla. Stat.

Interpretations/comments:

1) The property must be zoned appropriately at the time of the application. Future Land Use Designations on the Comprehensive Development Master Plan (CDMP) Land Use

Plan map are generally not considered. The CDMP does, however, affect the zoning on parcels outside of the Urban Development Boundary, which are generally designated as Agriculture, Open Land, or Environmental Protection.

a. In the urbanized area, the CDMP generally deems pre-existing zoning to be consistent with the property's Future Land Use Designation.
b. But for properties that are CDMP-designated as Agriculture or Open Land, the pre-existing zoning is **not** deemed wholly consistent with the Land Use Plan map designation. Instead, the CDMP provides that, while "all existing lawful uses and zoning are deemed consistent with this Plan" unless a subsequent planning study finds to the contrary,
    i. in the Open Land areas: "[t]his [allowance] does not . . . authorize the expansion of any use inconsistent with the specific provisions for the applicable Open Land subarea. To the contrary, it is the intent of this plan to contain and prevent the expansion of such inconsistent development in Open Land areas"; and
    ii. in the Agriculture areas: "[t]his [allowance] does not . . . authorize the expansion of any use inconsistent with this plan. To the contrary, it is the intent of this Plan to contain and prevent the expansion of inconsistent development in the Agriculture area."
c. For properties that are CDMP-designated as "Environmental Protection," the CDMP does not deem all existing lawful uses and zoning to be consistent with the Future Land Use Designation. Instead, the CDMP provides, "Uses permitted within these areas must be compatible with the area's environment and the objectives of the Comprehensive Everglades Restoration Plan, and shall not adversely affect the long-term viability, form or function of these ecosystems. Residential development in this area shall be limited to a maximum density of one unit per five acres, and in some parts of this area lower densities are required to protect the fresh water supply and the integrity of the ecosystems."
d. Section 125.01055(7)(d), Fla. Stat. requires that a proposed development be "otherwise consistent with the comprehensive plan," **and section 125.01055(7)(g) requires that "a development must also comply with local laws and regulations."**
e. Because inconsistent zoning is **not** deemed consistent with the comprehensive plan in these land use designations, multi-family development is not permitted on properties with a Future Land Use Designation of Agriculture, Open Land, or Environmental Protection regardless of whether they have BU or IU zoning (or are zoned GU and trended to one of those districts) and whether they are located inside or outside the UDB.

2) **Applications for approval pursuant to the Act shall be processed though an Administrative Site Plan Review (ASPR).**
3) Other than use, height, and density, the development must meet all other zoning and land development regulations of the zoning category applicable to the underlying property.
4) If the subject property already permits multifamily development, then those standards shall be used, such as the BU zoning district. As discussed below, RMD and MCD standards may also be used in some cases.
5) ASPR decisions can be appealed in accordance with section 33-311(A)(2).
6) In zoning districts that do not permit multifamily development, such as OPD and IU, the zoning standards from the RU-4, High Density Apartment House District, may be used regardless of location. In addition, where a property falls within a CDMP-designated Mixed-Use Corridor or Urban Center, the Residential Modified District (RMD) or Mixed-Use Corridor District (MCD) standards may be used, subject to FAR limitations as set forth in the CDMP and summarized below. Properties zoned BU may also use the following FAR standards but, where BU authorizes residential uses, will be subject to other BU development standards.
    a. Major or Mixed-Use Corridor: For a property that is located in a Major/Mixed-Use Corridor or Rapid Transit Corridor (Smart Corridor), the following table shall be used to determine maximum FAR if the property is being developed with the BU, RMD or MCD zoning regulations.

Mixed-Use Developments Located Within:	Floor Area Ratio Range	Maximum Residential Density (dwelling units)
Major Corridors	from 1.0 to 1.5	36
Mixed-use Corridors identified in an area plan	Up to 2.0	60
Rapid Transit Activity Corridors		
Within one-quarter mile	Up to 2.0	60
Between one-quarter and one-half mile	Up to 1.5	36
Between one-half and one mile (East-West Corridor)	Up to 1.25	18

    b. Within an Urban Center Radius: If a property is located within the radius of a CDMP-designated but unzoned urban center, the following table shall be used to determine maximum FAR if the property is being developed with the BU, RMD or MCD zoning regulations. The RU-4 standards, including FAR, may still be used.

	Average Floor Area Ratios (FAR)	Max. Densities Dwellings per Gross Acre
Regional Activity Centers	greater than 4.0 in the core not less than 2.0 in the edge	500
Metropolitan Urban Centers	greater than 3.0 in the core not less than 0.75 in the edge	250
Community Urban Centers	greater than 1.5 in the core not less than 0.5 in the edge	125

c. Outside of Major/Mixed-Use or Rapid Transit Corridor or Urban Center Radius: If a property is located outside of a CDMP-designated Major/Mixed-Use or Rapid Transit Activity Corridor or Urban Center radius, the following table shall be used to determine maximum FAR if the property is being developed with the RMD zoning regulations. Maximum FAR shall be the maximum permitted for non-residential development. The RU-4 standards, including FAR, may still be used and in excess of these thresholds. Because the RMD and MCD districts rely on the underlying CDMP FAR standards, the below table is the only mechanism to regulate maximum FAR when not located in either a CDMP Mixed-Use Corridor or Urban Center Radius. Properties that are zoned BU shall be subject to the BU zoning standards, including FAR, unless utilizing the MCD standards where permitted in the Rapid Transit Activity Corridor.

Maximum Allowable Non-Residential Development Intensity

Inside the Urban Infill Area UIA	2.0 FAR
Urbanizing Area, UIA to Urban Development Boundary (UDB)	1.25 FAR
Outside UDB	0.5 FAR

6. **Certain properties with industrial zoning are not entitled to develop pursuant to the Live Local Act –** "This subsection does not apply to property defined as recreational and commercial working waterfront in s. 342.201(2)(b) in any area zoned as industrial."
   1) Section 342.201(2)(b), Fla. Stat., provides: *"Recreational and commercial working waterfront" means a parcel or parcels of real property that provide access for water-dependent commercial activities or provide access for the public to the navigable waters of the state. Recreational and commercial working waterfronts require direct access to or a location on, over, or adjacent to a navigable body of water. The term includes water-dependent facilities that are open to the public and offer public access by vessels to the waters of the state or that are support facilities for recreational, commercial, research, or governmental vessels. These facilities include docks, wharfs, lifts, wet and dry marinas, boat ramps, boat hauling and*

repair facilities, commercial fishing facilities, boat construction facilities, and other support structures over the water."

2) Certain industrial-zoned properties along Biscayne Bay and the Miami River may be excluded from development under the Live Local Act.

7. **Properties remain subject to airport zoning regulations, as set forth in article XXXVII of chapter 33 Miami-Dade County Code –** Section 125.01055(7)(d), Fla. Stat. requires that a proposed development be "otherwise consistent with the comprehensive plan," and Section 125.01055(7)(g), Fla. Stat., requires that "a development must also comply with local laws and regulations."

Interpretations/comments:

1) Section 333.03(1)(a), Fla. Stat., requires Miami-Dade County to "adopt, administer, and enforce . . . airport protection zoning regulations for such airport hazard area."
2) Section 333.04(2) further provides, "In the event of conflict between any airport zoning regulations adopted under this chapter and any other regulations applicable to the same area, whether the conflict be with respect to the height of the structures or vegetation, the use of the land, or any other matter…**the more stringent limitation or requirement shall govern and prevail**."
3) The County adopted article XXXVII of chapter 33 pursuant to these statutory requirements.
4) The legislative intent of the County's airport zoning regulations, set forth in section 33-330(A) of the County Code, includes the following findings:
   a. "The capability of an efficient, safe airport system and associated industry and businesses, acting in conjunction with other urban services, including public and private educational facilities, to establish general development trends, is well recognized."
   b. "[H]eight restrictions within identified areas around airports were developed in coordination with the Federal Aviation Administration and the City of Miami. The height restrictions are at the maximums tolerable under the current state of aviation technology."
   c. "This Board acknowledges and adopts as its own those legislative findings in Chapter 333, Florida Statutes, that airport hazards and the incompatible use of land in airport vicinities should be prevented in the interest of the public health, public safety, and general welfare."
   d. "The purpose of these regulations is to provide both airspace protection and land uses compatible with airport operations; to promote the coordinated use of lands and foster an orderly development within the County; to protect the

health, safety and welfare of the County's residents and visitors; to ensure the economic benefits and capacity of the County's system of airports; and to ensure compliance with all federal, state, and local aviation regulations."

5) Section 33-333 of the County Code specifies, among other requirements, the land use compatibility regulations and height/airspace regulations that apply to the areas around each airport, as applied within the specific restriction zones identified in article XXXVII around each airport.
   a. As set forth in section 33-333(A), "The land use compatibility regulations contained herein seek to address the impact of aircraft operations on surrounding uses, to safeguard the quality of life in the surrounding communities while increasing the efficiency of airports as economic generators."
   b. Similarly, as set forth in section 33-333(B), "The objective of these height/airspace regulations is to ensure that airspace in Miami-Dade County is safe, navigable, and free of obstructions."
6) In furtherance of these objectives, which are related to, among things, the safety and economic viability of airport operations, the County's airport zoning regulations restrict the development of new residential construction and of the height of structures within the applicable airport restriction zones.
7) The Live Local Act recognizes that developments must continue to comply with these local laws and regulations, which relate to airport operations and safety.

8. **Other tax incentives -** The Statute provides various property tax and building material tax exemptions. Questions on these programs should be directed to the Miami-Dade Property Appraiser's Office, the Miami-Dade County Tax Collector's Office, the Florida Department of Economic Opportunity (DEO), or the Florida Housing Finance Corporation.

OPINION > **COMMENTARY** • Opinion

The Live Local Alliance: Ensuring housing for our workforce | Opinion

Phil Sears/AP

Senate President Kathleen Passidomo, R-Naples, led efforts to pass a bill to address affordable housing.

By **TREY PRICE**

PUBLISHED: August 20, 2024 at 6:10 a.m.

Longtime housing advocates were thrilled to see workforce housing take center stage during the 2023 legislative session in Tallahassee. Senate President Kathleen Passidomo, R-Naples, a real estate attorney and resident of a city facing a longstanding workforce housing shortage, championed the Live Local Act. Early reports indicate that this legislation is making positive strides in addressing housing concerns.

Trey Price served as executive director of the Florida Housing Finance Corporation from 2017-2023. (courtesy, Trey Price)

The new law can establish a framework for collaboration between industry and local and state governments. The goal of the Live Local Act is to create a sustainable environment where housing is not only affordable but also accessible to a broader spectrum of Floridians.

The need for workforce housing has never been more critical. Our nurses, firefighters, police officers, restaurant servers and many others who form the backbone of our communities deserve to live in clean, safe environments they can be proud to call home. The Live Local Act aims to encourage developers to set aside a portion of apartment units specifically for these essential workers. This initiative challenges the status quo, which often leads to "hollow" cities where only the wealthy can afford to live. Current de facto policies, including moratoriums, zoning and land use restrictions, create exclusionary environments, further driving up the cost of housing and rewarding the wealthy.

Florida needs new housing units to compensate for the significant shortage resulting from the financial crisis of the late 2000s. Many small- to medium-sized local homebuilders went out of business, and homebuilding slowed to a trickle even as people continued to flock to Florida. The post-pandemic period has only intensified the demand, leading to a dramatic increase in home prices. The Live Local Act seeks to address this imbalance by incentivizing the development of more housing units, thereby increasing supply and stabilizing prices.

As with any complex legislation, the Live Local Act is not without its challenges. Development interests and local governments have identified technical issues, and the "Not In My Backyard" (NIMBY) attitude has emerged in some areas of the state. Even worse, some bad actors have taken unreasonable stands against the new law, complicating its implementation. If obstruction succeeds, it will fan the flames in favor of harsher policies that will not benefit Floridians.

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On the national level, the idea of establishing a national rent control policy has also emerged. Policies like these discourage investment in new housing developments, leading to a reduction in the overall supply of rental units. When supply is restricted, prices inevitably rise, creating a vicious cycle of scarcity and unaffordability. Moreover, rent control can lead to the deterioration of existing housing stock as landlords may lack the funds to maintain and improve their properties.

There have been reports of some local governments obstructing the Live Local Act and refusing to comply with the law. Some have filed legal challenges or dared developers to do so. While unfortunate, our legal process exists for disputes to be settled in court. However, as a housing advocate and a contributing author to the Live Local Act, I cannot stand idly by and let a small minority of local governments bully providers of workforce housing.

With that in mind, I will be heading a group to advocate on behalf of the Live Local Act and its new permissions. The Live Local Alliance will look for opportunities to build a framework for the homebuilding industry to work with state and local governments to address our housing issues collaboratively, including making necessary technical changes to the legislation.

We must remind people why this new law was enacted and signed by Gov. Ron DeSantis, who deserves credit for pushing workforce housing and down payment assistance programs since his first year in office. And we will give a voice to Floridians who believe that we need to do more to help our workforce live their lives how they choose, without spending hours commuting from other towns just to make a living. Our children's future here in Florida depends on it.

Trey Price served as executive director of the Florida Housing Finance Corporation from 2017-2023. A second generation Floridian, he and his family live in Tallahassee. He can be reached via email at TreyP@Livelocalalliance.org.

- SNPS 2023

Summary

The following model policy authorizes the construction of accessory dwelling units (ADUs) on residential property, outlines the building and land requirements for such dwellings, the permitting processes, and, when applicable, a preemption of local laws prohibiting the construction of such dwellings.

ACCESSORY DWELLING UNITS ACT

Section 1. Purpose and Intent.

(1) To promote economic self-sufficiency and address shortages in housing supply and increasing housing affordability problems, it is the policy of [state] to promote and encourage the creation of accessory dwelling units (ADUs) in order to meet the communities' housing needs and to realize other benefits of ADUs. It is the intent of [state] that homeowners will be authorized to create and maintain ADUs as either personal residences or rental units in areas zoned for residential single-family homes, mixed use, and offices.

Section 2. Definitions.

(1) Accessory dwelling unit. An accessory dwelling unit (ADU) means a residential living unit on the same parcel as a single-family dwelling or other primary use. The ADU provides complete independent living facilities for one or more persons. It may take various forms: a detached unit; a unit that is part of an accessory structure, such as a detached garage; or a unit that is part of an expanded or remodeled primary dwelling.

(2) Junior accessory dwelling unit. A junior accessory dwelling unit (JADU) is a small living unit that does not meet the definition of an ADU because either its cooking or sanitation facilities are shared rather than independent.

Section 3. Eligibility.

(1) An ADU or JADU may be built on any lot zoned to permit residential use.

(2) The use of an ADU and/or JADU unit is a permitted accessory use on any lot where the primary use is residence in a single-family house;

(3) The construction and use of an ADU or JADU shall comply with all applicable health and safety codes.

Section 4. Preemption.

(1) A municipality may not establish any restriction or requirement for the construction or use of an ADU or JADU with respect to:

(a) total lot size;

(b) street frontage; or

(c) connectivity between the ADU/JADU and the primary dwelling;

(2) A municipality may not require that the single-family dwelling or the accessory dwelling unit be occupied by the owner.

(3) A municipality's regulation of architectural elements for ADUs and/or JADUs shall be consistent with the regulation of single-family units, including single-family units located in historic districts.

(4) A municipality may not require the installation of a separate utility meter or utility connection for an ADU or JADU.

(5) A municipality may not restrict the occupancy of an ADU or JADU based on income, family relationship, age, or any other personal characteristic.

(6) A municipality may:

(a) prohibit the installation of a separate utility meter for an ADU and/or JADU;

(b) require the owner of a primary dwelling to abide by local regulations applicable to rentals/landlords for renting an ADU and/or JADU provided that such regulations are consistent with similar regulations for rental property generally;

(c) prohibit the creation of an ADU and/or JADU if the primary dwelling is served by a failing septic tank;

(d) hold a lien against a property that contains an ADU and/or JADU.

Section 5. Design.

(1) Default design standards for ADUs and JADUs are stated in this section. If not addressed in this section, not withstanding any local rules or standards, [municipality] must issue an ADU permit if it is in footprint of existing structure, in an existing structure, or meets 800 sqft. 4′ setback, 16′ tall.

(2) Parking. No additional parking is required for an ADU or JADU.

(3) Accessory suites must meet the following additional requirements:

(a) Size. An accessory suite ADU may be no larger than the footprint of the structure of which it is part.

(b) Nonconformity. An ADU shall not be penalized if there's a zoning nonconformity elsewhere on the lot.

(4) Garden cottages must meet the following additional requirements:

(a) A municipality may not set maximum building heights, minimum setback requirements, minimum lot sizes, maximum lot coverages, or minimum building frontages for accessory dwelling units that are more restrictive than those for the single-family dwelling on the lot. Additionally,

(1) Structure Separation. Detached ADUs must meet the separation requirements for detached dwellings per state building code.

(2) Side and front setbacks. A newly constructed garden cottage must abide by the side and front setbacks that would apply to a new single family detached house, or the actual setbacks of the existing primary dwelling, whichever is less.

(3) Rear setback. A newly constructed garden cottage must be set back at least three feet from the rear lot line.

Section 6. Number.

(1) One ADU or one JADU is permitted per lot.

Section 7. Creation.

(1) An ADU or JADU may be created through new construction, conversion of an existing structure, addition to an existing structure, or conversion of a qualifying existing house to a garden cottage while simultaneously constructing a new primary dwelling on the site.

(2) ADUs and JADUs may be prefabricated or otherwise constructed offsite.

Section 8. Density.

(1) ADUs and JADUs are exempt from the residential density standards and are not considered to increase or exceed the density on a lot.

Section 9. Approval.

(1) A permit application for an ADU and/or JADU that meets the relevant building code and design standards and fire safety codes shall be approved or denied ministerially without discretionary review or a hearing, notwithstanding any local ordinance regulating the issuance of variances or special use permits, within 30 days after receipt of a completed application. Denial of an application shall be accompanied by written findings detailing the reason for denial and any remedy necessary to secure approval. If the local agency has not approved or denied the completed application within 30 days, the application shall be deemed approved. A request by the applicant to adjust the [state's] ADU/JADU standards will be handled through a separate [discretionary] process and is not subject to the 30 day review period.

Section 10. Occupancy and Use.

(1) Occupancy and use standards for an ADU and/or JADU shall be the same as those applicable to a primary dwelling on the same site. [State and Local] Fire and occupancy limits shall apply to the ADU and/or JADU without regard to the number of persons living in other units on the lot.

Section 11. Existing Units.

(1) ADUs and JADUs created prior to (date) may be permitted by registering the unit with the (building official) for inclusion into the [Certificate of Occupancy Program]. Application for registration will follow the same ministerial process as an application to build a new ADU and must contain the name of the owner, the address of the unit, the floor area of the two dwelling units, a plot plan of the property, evidence of the date of establishment of the unit, and a signature of the owner. Existing non-conforming ADUs/JADUs shall be permitted unless there is a written health/safety concern.

(2) A [municipality] may only initiate a code enforcement action on an unpermitted ADU or JADU based on the code governing at the time of construction. If [municipality] initiates a code enforcement it must notify the owner of the process for legalizing the unit and delay the enforcement action to allow the owner to register the unit for inclusion into the [Certificate of Occupancy Program].

Section 12. Historic Designation.

(1) ADUs and JADUs are authorized on properties containing structures subject to historic preservation laws, as long as such units do not affect the facade as visible from the right-of-way.

Section 13. Impact Fees.

(1) ADU and JADUs of less than 750 square feet are exempt from all impact fees. Impact fees applied to larger ADUs and JADUs must be scaled by unit size. ADUs and JADUs of less than 500 feet are exempt from school fees.

(2) No municipality or school district shall set an impact fee or school fee for an ADU or JADU that is larger than the impact fee for a single-family house.

Section 14. Enforcement.

(1) All incorporated cities in [state] must pass an ADU ordinance incorporating the provisions of this law and stating any compliant local requirements, processes or procedures for ADU construction or permitting. These ordinances must be filed with [State housing authority or agency].

(2) No additional state-level commission approval shall be required to implement this law and allow the permitting of ADUs or JADUs.

(3) The [State housing authority or agency] shall refer instances of non-compliance to the Attorney General who is empowered to take action to ensure compliance.

Section 15. Effective Date.

(1) This act is ordered to take immediate effect.

HOUSING AND LAND USE

Unlocking Additional Housing Through Accessory Dwelling Units

GRETCHEN BALDAU, ALAN JERNIGAN / MARCH 11, 2024

Americans across the nation are struggling to find a home. With a housing gap of 2.5 million homes and with housing permits trailing household formation in 73 out of the 100 largest metros in the country, the good news is that states are proposing solutions.

Over 300 housing bills have been introduced across the states. While these contain an array of reforms tackling housing-related issues like minimum lots sizes and parking requirements, a noticeable amount of the bills address accessory dwellings units (ADUs) and removing the barriers to their construction.

"Accessory dwelling unit" is an umbrella term for a type of housing that can take many shapes and forms. On a technical level, an ADU is "a residential living unit on the same parcel as a single-family dwelling or other primary use… that provides complete independent living facilities for one or more persons." Common examples include granny flats, backyard cottages, and above-garage apartments, but altogether, there are over 35 different terms used to describe ADUs.

The variety of names given to ADUs hints at the fact that these units are often used to address a variety of specific housing needs. Some use these units to create a second income stream. Families often use ADUs to provide housing for family members like elderly parents or newly graduated children who need a space that balances proximity with independence—while also being affordable. ADUs, which typically rent for a few hundred dollars less a month than standard housing, can meet that need.

This year, Colorado, Hawaii, Nebraska, New Jersey, and Virginia are just a few of the states considering easing restrictions for ADUs. Nebraska's bill would make constructing ADUs a right on a lot containing a single-family dwelling. Similarly, Colorado's bill allows the construction of ADUs

on lots zoned for single-family homes and preempts local regulations restricting the construction of these dwellings.

In states that have passed reforms to ease ADU permitting, ADU construction has flourished. Washington and Oregon both added a few thousand ADUs to their markets after streamlining relevant regulations in the early 2000s. California is the most notable example: since passing ADU reforms in 2016 and 2019, it has experienced a 15,334% increase in ADUs permitting, resulting in 83,865 additional permitted ADUs. Of the ADUs constructed since 2018, 24% of these qualify as "very low-, low-, or moderate-income units," according to the California Department of Housing and Community Development.

Noting the success of these reforms, ALEC members approved the Accessory Dwelling Units Act last year (One of ALEC's *Essential Policy Solutions for 2024)*. This model policy authorizes the construction of ADUs on residential lots and those zoned for single-family dwellings across a state. Additional sections outline building requirements, permitting processes and deadlines, and relevant regulations that would remain under local control.

As interest and inflation rates remain high, Americans are increasingly at risk of becoming rent burdened or entirely priced out of homes. States might not be able to cut these rates, but they can tackle the rules and regulations that add almost $100,000 to new home prices. ADU reform like ALEC's model Accessory Dwelling Units Act offers states a gentle solution to cut regulations and "promote economic self-sufficiency and address shortages in housing supply and... housing affordability problems."

Published: **March 11, 2024** Issues: **Housing and Land Use**

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Zoning reform made way for an explosion of smaller homes in California. Will it work elsewhere?

Lali Grewal is pictured outside his accessory dwelling unit in the Elysian Valley neighborhood of Los Angeles. ALISHA JUCEVIC FOR THE WASHINGTON POST VIA GETTY IMAGES

By Molly Bolan | JULY 10, 2024

Encouraged by California's success, states across the country are passing laws to allow for more accessory dwelling units to address a shortage of affordable homes. But a slew of factors can keep the housing solution from taking off.

HOUSING INFRASTRUCTURE FINANCE

Whatever name they go by—granny flats, in-law suites, backyard bungalows, casitas—accessory dwelling units in California have exploded over the last several years. The number of these small homes permitted each year increased by more than 15,000% between 2016 and 2022. Last year, 1 in 5 of all new homes in the Golden State were ADUs.

It's a rare success story in the midst of a nationwide affordable housing shortage, and one that other states want to replicate. But it's not as easy as flipping a switch, said Yonah Freemark, research director of Urban Institute's Land Use Lab.

"Saying, 'You can build an ADU,' is not necessarily adequate to actually get ADUs built," he said. "There are a number of different other obstacles standing in the way," including parking and setback minimums that can be nearly impossible to meet when working with limited space.

California's journey began in 2016 when it started enacting a series of laws that limit the restrictions local governments can place on ADUs and streamline permitting processes—–a boon for the ADU industry. The bills effectively created a new market in the state, said Denise Pinkston, founder of Casita Coalition, a nonprofit that advocates for ADU-friendly policies.

Prior to 2016, the ADU industry in California was struggling, said Pinkston. “Factories went bankrupt. … [But today], there are literally dozens of companies in California, more coming through every day, that are building accessory dwelling units in factories and selling enough of them to have a profitable ongoing business.”

With the average ADU valued somewhere between $200,000 and $300,000, the ADU industry is burgeoning while offering a housing solution with relatively little government spending.

“It’s not quite the tech boom,” Pinkston said, “but it's still solid economic growth—and from an unexpected place that solves a lot of social problems.”

Unsurprisingly, other states want in on the action and are considering their own zoning reforms to limit local restrictions on ADUs.

A multibillion dollar Massachusetts bond bill, for example, is making its way through the state legislature and would, among other initiatives, make accessory dwelling units allowable by right across the state. A few weeks ago, the Rhode Island General Assembly approved legislation allowing property owners to build ADUs while stipulating those units cannot be used as short-term vacation rentals. In May, Colorado approved legislation that requires cities with a population of more than 1,000 to allow ADUs on the properties of single-family homes. The list goes on.

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But there are broader barriers that can prevent ADUs from becoming a meaningful housing tool or economic influence. While some states have created grant programs to help homeowners build ADUs, financing is often still a major obstacle, especially for low- and middle-income households without much capital on hand.

“Having an ADU in your backyard can provide you some significant income to help make your house more affordable,” said Freemark of the Urban Institute. “There's a bit of a challenge there because folks who are lower income might actually be able to better afford their home if they have access to an ADU, but at the same time, getting that ADU in the first place might be more difficult for them.”

Thanks to state legislation enacting ADU-friendly policies, more attention has been paid to these issues and have led to national solutions.

allows lenders to consider potential income from renting out an ADU as part of a borrower’s total qualifying income. The move is meant to help a broader range of people qualify for a loan backed by FHA and, in turn, increase homeownership.

“Super powerful national-level finance reform can only happen with state-level zoning reform in the ADU space,” Pinkston said.

As more states encourage ADU development, other systems still need to catch up.

In California, there hasn’t been uniform data tracking on sales involving ADUs, Pinkston said, making it hard for property owners to know the value of their units or for assessors to know how much the units should be taxed.

And there are also challenges in getting the public to understand the changing ADU landscape.

"If 75% of the land area of most cities is locked in amber for single-family homes, and we're expecting one city at a time to suddenly change all these other institutional barriers, we're kidding ourselves," Pinkston said. "It's got to be system-scale reform to remove all of the barriers and then to reform other institutions like lending and realty practice."

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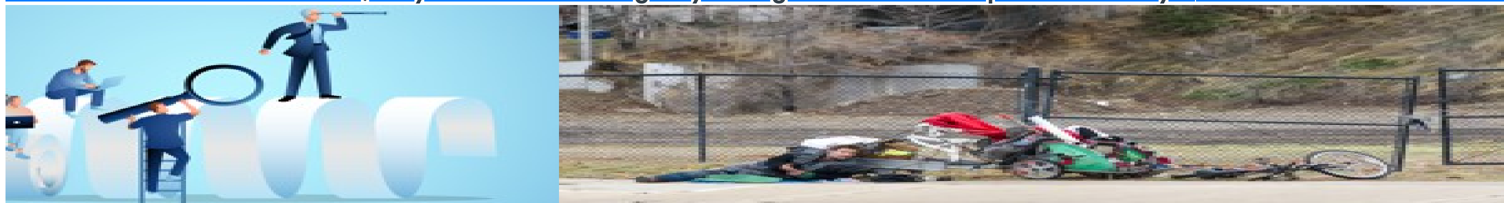

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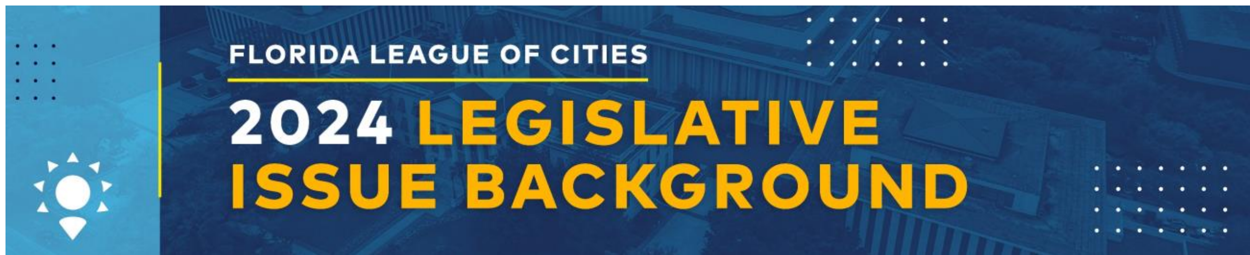


Vacation Rental Background:

Before 2011, Florida cities had broad authority under home rule to regulate vacation rentals. This included control over the duration and frequency of stays, as well as the ability to prohibit vacation rentals in certain areas. In 2011, the Legislature passed HB 883, which preempted local governments from regulating vacation rentals based on their classification, use, or occupancy. This law effectively removed local governments' authority to prohibit or limit the proliferation of vacation rentals. However, a grandfather clause in HB 883 allowed local regulations adopted before June 1, 2011, to remain in effect if they specifically regulated vacation rentals.

HB 883 sparked significant concern among citizens and lawmakers, leading the Legislature to revisit the issue in 2014. During that year's legislative session, SB 356 was passed and signed into law. SB 356 repealed the complete preemption of vacation rentals, allowing local governments to regulate them under certain conditions. However, local governments were still prohibited from banning vacation rentals outright or regulating them based on the frequency or duration of stays. The bill did authorize cities to create local vacation rental registration programs and establish maximum occupancy limits for rentals.

Since 2014, the Florida Legislature has repeatedly attempted to further restrict local control over vacation rentals, with previous bills failing to pass. However, during the 2024 Legislative Session, SB 280 was passed, marking a significant shift in vacation rental regulations.

SB 280 was comprehensive, preempting vacation rental licensing and regulation to the state and establishing guidelines for local registration programs, including conditions for suspending or revoking a vacation rental's registration. The bill also allowed local governments to charge fees for processing individual vacation rental registrations and conducting certain inspections. Additionally, SB 280 transferred the regulation of advertising platforms to the state and granted the Division of Hotels and Restaurants (the Division) enforcement powers over unlicensed advertising activities. The bill further required the Division to establish a statewide system enabling local governments and advertising platforms to verify the licensing and registration status of vacation rentals.

Although SB 280 passed the Legislature, it was vetoed by the Governor. In his veto message, the Governor expressed concerns about fully preempting local regulation of vacation rentals, noting that the vacation rental market is not uniform across Florida. It remains uncertain whether further legislation will be introduced during the 2025 Session to restrict local control of vacation rentals.

VACATION RENTAL DISCUSSION

PRE 2011 LOCAL AUTHORITY:

Prior to 2011, local governments could outright ban short-term renting under their home rule zoning authority.

However, in 2011 the Legislature completely preempted local regulation of the topic.

THE 2014 LEGISLATION:

In the aftermath of the 2011 preemption, many citizens and local governments complained that the complete preemption left local governments with no way to deal with the growing problems associated with vacation rentals.

At the same time, some lawmakers were suggesting that they did not really understand the impact of what they had voted on in 2011.

Thus, in the 2014 legislative session, a bill was introduced to repeal the 2011 law and hand the regulation of vacation renting back to local governments. However, the House version was not so generous and in the final weeks of the session, the Senate, under pressure from the vacation rental industry, revised its version.

In the end, the Legislature adopted SB356 and HB307, which became Chapter Law 2014-71. Chapter Law 2014-71 removed the outright preemption language, and instead provided that local governments could not do three things:

- Adopt outright bans on vacation rentals
- Regulate based on frequency of rentals
- Regulate based on duration of rentals

That 2014 amendment basically gave local governments back the home rule authority they had prior to 2011, *except for the foregoing three prohibitions*.

The House vote then was 90 – 27, and the Senate's vote was 37 – 2. Indeed, many current Senators, including the current Senate President, either co-sponsored the legislation or voted for it while in the House. If this balance between local authority and partial preemption was good public policy in 2014, what has changed?

While complete restoration of home rule authority over vacation rentals would be optimum, that is unlikely to occur. In the absence of such restoration, most local governments take the view that a proper balance was struck back in 2014.

Preemption Litigation Over 2014 Law:

While there may have been some argument after 2014 as to whether local governments did regain home rule authority (save for the three actions called out in the 2014 version of the statute), a 2022 case decided by Florida's courts has confirmed such home rule authority exists.

Specifically, the Town of Redington Shores (similar to many other cities in Florida) has a vacation rental code. Adopted in 2020, that code set up a registration program, requires an annual registration process and fee, establishes a maximum occupancy, and imposes a variety of obligations on vacation rental operators. This code was based on that Town's home rule authority, not a specific statutory grant of statutory power.

In 2021, an operator of vacation rentals sued the Town of Redington Shores. Count I of the suit alleged that the Town's short term rental ordinance was preempted by the statute. The Town defended that so long as the ordinance did not create total bans, nor regulate on frequency or duration, the statute did not preempt the regulatory scheme. See, ***Management Properties, LLC v. Town of Redington Shores*, 29 Fla. L. Weekly Supp. 793b (6th Judicial Circuit, January 28th 2022)**. In analyzing this issue, the court ruled:

> The Parties' competing motions do not draw the court's attention to any Florida appellate court opinion directly addressing the preemptive scope of Florida Statutes § 509.032(7), and it does not appear any exists. However, the Town drew the Court's attention to several circuit court opinions addressing similar vacation rental rules preemption arguments. In *30 Cinnamon Beach Way, LLC v. Flagler County*, case no. 2015-CA-167 (Fla. 7th Judicial Circuit (June 1st 2015), affd., 183 So.3d 373 (Table), 2016 WL 194800 (Fla. 5th DCA 2016), a vacation rental company sought to invalidate a Flagler County ordinance enacting regulations for vacation rental units, alleging they were preempted by Florida Statutes § 509.032(7). While the opinion only dealt with the denial of the plaintiff's emergency motion for preliminary injunction, the circuit court ruled that it could not determine the Flagler ordinance was preempted as it did not prohibit vacation rentals, or regulate the duration or frequency of rentals. The Town also drew the Court's attention to *Florida Gulf Coast Vacation Homes, LLC v. City of Anna Maria*, 2016 WL 7647544, *1 (Fla. 12th Circuit Court, April 11th 2016), wherein the court granted summary judgment to the City in a similar vacation rule rental challenge because the City's occupancy limits did not prohibit vacation rentals, or regulate the frequency or duration of such rentals. At the hearing, the Town also drew the Court's attention to footnote four to the opinion in *Mojito Splash, LLC v. City of Holmes Beach*, 326 So.3d 137, n. 4 (Fla. 2d DCA 2021) [46 Fla. L. Weekly D1725a].
>
> While *Mojito Splash* was a Bert Harris Act case, it related to the adoption by Holmes Beach of vacation rental occupancy rules. The plaintiff had argued in part that the City's rules were preempted by Florida Statutes § 509.032(7). However, the court dismissed this argument in footnote four as follows:
>
>> As part its argument that Ordinance 08-05 lacked "teeth," Mojito suggests that a 2011 amendment to section 509.032(7), Florida Statutes (2018), preempted the City

> from adopting any ordinance regulating vacation rentals. See ch. 2011-119, § 7(b), Laws of Fla. (prohibiting "[a] local law, ordinance, or regulation" from "restrict[ing]," "prohibit[ing]," or "regulat[ing] vacation rentals based solely on their classification, use, or occupancy"). However, Mojito overlooks the language exempting "any local law, ordinance, or regulation adopted before June 1, 2011." *Id.* In any case, the legislature amended section 509.032(7) in 2014 to remove the preemptive language covering occupancy restrictions in vacation rentals. See ch. 2014-71, § (7)(b), Laws of Fla. Thus, the City was not preempted from adopting Ordinances 15-12 and 16-02, as consistent with its 2009 amendment to its Comprehensive Plan. See *City of Miami v. AIRBNB, Inc.*, 260 So. 3d 478, 482 (Fla. 3d DCA 2018) [43 Fla. L. Weekly D2700a] (holding that the City's 2016 re-adoption of the zoning code was not preempted because its substantive content was identical to the provision already in place in 2009, during the period protected by section 509.032(7)(b)'s grandfather clause).

> The foregoing language is best characterized as *dicta*. However, it is at least consistent with the Town's position that § 90-116 is not preempted by the statute. While the Court did carefully consider the Plaintiff's arguments as to why § 90-116 is in fact preempted by Florida Statutes § 509.032(7), the Court agrees with the arguments presented by the Town, and finds that § 90-116 is not preempted by Florida Statutes § 509.032(7), since it does not prohibit vacation rentals, nor regulate the duration or frequency of rentals.

The management company appealed this order to the Second District Court of Appeals. The appeal (and initial suit) raised both preemption and several speech issues. In its order in ***Management Properties, LLC v. Redington Shores*, 352 So.3d 909 (Fla. 2d DCA 2022)** (attached in PDF format), the appeals court ruled as to the lower court's determination of the preemption question:

> We affirm the entry of judgment on the pleadings on Management Properties' preemption claim without further comment.

In light of this outcome, it is clear that under the current statute, local governments have home rule authority to adopt vacation rental regulations so long as they are not complete bans, or regulate frequency or duration of rentals.

<u>2023 LEGISLATION</u>:

In the last legislative session, SB 714 and HB 833 were introduced. These bills expressly allowed local governments to require registration of vacation rentals, and to require a few other minor requirements such as a point of contact.

The sponsors of the Bills suggested that the registration provisions in SB 714 (2023) and HB 833 (2023) had the effect of providing a "tool in the toolbox" for local governments that they did not have.

Those suggestions do not take into account that local governments already possess home rule authority to address vacation rentals, so long as they do not outright ban them, or regulate frequency or duration of renting.

The primary concern with the 2023 legislation is that it would in effect become a ceiling beyond which a local government may not enact or maintain any additional regulations. In short, the courts may find that implied preemption has occurred.

By way of example, local ordinances already in existence allow authorization to operate to be cancelled upon some violation circumstances or because a property has not been made to be compliant with the ADA or fire code. Under the 2023 Bills as written, the only reason a local government could revoke authorization to operate would be if the owner fails to pay $50 and get a certificate. That is unlikely to ever actually happen.

At the very least, if adopted, this legislation will result in rounds of litigation as to how it impacts local regulations regarding vacation rentals which have been adopted since 2014.

The 2023 Bills made it all the way to adoption, and only failed due to a last minute amendment in the House which made the House version even less friendly to local government.

The sponsors have indicated the Bills will be re-introduced again in the 2024 session.

OCCUPANCY LIMITS LANGUAGE:

Finally, in examining the language in the 2023 Bills regarding occupancy limits (language which was added during the committee process), the language provided that the Bills do not prohibit ordinances restriction on "the maximum occupancy for residential properties that are rented *if uniformly applied without regard to whether the residential property is used as a vacation rental*."

This provision, while appearing to provide authority to maintain occupancy limits, would be nearly impossible for cities and counties to implement. The proposed language basically provides that an occupancy limit can only be applied to a vacation rental if that same limit is applied to every other residential property in the jurisdiction.

If a local government attempted to comply with this provision by extending its occupancy limit to all residential properties "that are rented" (but not being used as short term rentals), the owners of those residential properties would likely sue the local government for violation of the federal Fair Housing Act (which places certain restrictions on the imposition of occupancy limits).

And the language could also create legal claims that the local government is violating the Equal Protection Clause (with the argument being that it is not rational to limit occupancy in residential properties only when those properties are rented to long-term tenants, vs. having no such limit on residences which are owner-occupied).

The reality is that the occupancy of short term rentals creates code enforcement, law enforcement, and other impacts which are simply not the same impacts related to people who are actually living long term in a community, but as a renter.

WHAT ABOUT THE NEED TO AMEND AN EXISTING ORDINANCE:

Some communities have pre-2011 ordinances in place, but they are afraid to amend them even a little for fear of losing the grandfathered status.

While there does not appear to be any caselaw or statutory basis for this concern, if the legislative delegation wishes to assist such communities in the 2024 session, a very simple amendment which inserted the following new provision as a new last sentence to sec. 509.032(7) would do so:

> The provisions of subsections (a) and (b) above do not preempt local governments from adopting additional regulations regarding vacation rentals so long as those additional regulations are not inconsistent with this section, or any other provision of law.

CONCLUSION:

The Legislature knows how to fully preempt local governments as to vacation rentals. It did so in 2011. But it restored a good measure of home rule in 2014, and local governments around the state have since used their home rule authority to adopt various vacation rental rules which fit their communities' needs and policy goals.

All those existing ordinances would, if the expected 2024 versions of these bills were to become law, be challenged as non-compliant with the statute. Attorneys for rental owners would argue that the statute would become the only rules a local government could have. In sum, local governments would be again preempted from adopting their own rules on vacation rentals.

RON DESANTIS
GOVERNOR

FILED
2024 JUN 27 PM 6: 30
DEPARTMENT OF STATE
TALLAHASSEE, FL

June 27, 2024

Secretary Cord Byrd
Secretary of State
R.A. Gray Building
500 South Bronough Street
Tallahassee, Florida 32399

Dear Secretary Byrd:

By the authority vested in me as Governor of the State of Florida, under the provisions of Article III, Section 8 of the Constitution of Florida, I do hereby veto and transmit my objection to Committee Substitute for Senate Bill 280 (CS/SB 280), enacted during the 126th Session of the Legislature of Florida during the Regular Session 2024 and entitled:

An act relating to Vacation Rentals

Beyond creating new bureaucratic red tape that locals must comply with, CS/SB 280 prevents local governments from enforcing existing ordinances or passing any new local measure which would exclusively apply to vacation rentals. Under the bill, any such measure must apply to all residential properties. The effect of this provision will prevent virtually all local regulation of vacation rentals even though the vacation rental markets are far from uniform across the various regions of the state.

Going forward, I encourage the Florida Legislature and all key stakeholders to work together, with the understanding that vacation rentals should not be approached as a one-size-fits-all issue.

For these reasons, I withhold my approval of CS/SB 280 and do hereby veto the same.

Sincerely,

Ron DeSantis
Governor

Short-term vacation rental bill sponsor won't pick up the mantle in 2025

Republican Nick DiCeglie sponsored bills for the past 2 years that would have given the state more power to regulate platforms like Airbnb.

Florida lawmakers may once again attempt to pass legislation tightening regulation of short-term vacation rentals next year but, if they do, the Senator who has sponsored those bills during the past two Sessions won't be the one carrying it.

"No," said Pinellas County Republican **Nick DiCeglie** when asked Monday night in St. Petersburg about sponsoring a similar measure next year.

"I did two years in a row. I haven't heard anything. I don't think there's going to be any effort to change anything from a local standpoint, but I don't know. I have no idea. But I will not have my name on it."

DiCeglie resides in Indian Rocks Beach, a small coastal community in Pinellas that has been described as "ground zero" in the battle between vacation rental owners and their residential neighbors who resent such rentals. He sponsored a measure in the House in the 2023 Session that **died on the last day of the Session** when the House refused to pick up last-hour changes made by the Senate.

The measure went further in 2024, successfully getting though both chambers, although its **nine-vote margin of victory** in (60-51) was one of the closest tallies of any bill in the

House during the entire Session. But it was **vetoed** by Gov. **Ron DeSantis** in late June, just days before the legislation would have gone into effect.

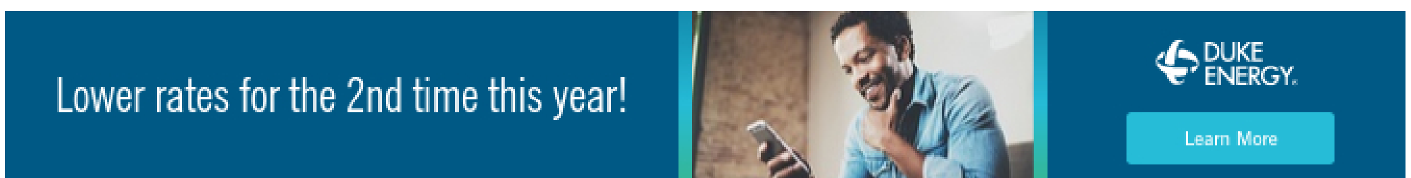
In his **veto message**, the Governor noted objections raised by the many critics of the bill, saying that it would have created "new bureaucratic red tape" preventing local governments from enforcing existing ordinances or passing any new ones exclusively applying to vacation rentals.

DiCeglie said he has no idea whether any other legislator would try to carry the bill next Session. Similar proposals have been introduced virtually every year for a decade, yet the Legislature has failed to act since 2014, when it voted to allow local governments to regulate matters like noise, parking, and trash, but prevented them from prohibiting or regulating the duration or frequency of short-term rentals.

He said certain provisions in this year's bill garnered buy-in from most of the engaged parties, including "data transparency" provisions such as requiring that platforms like Airbnb and Vrbo submit quarterly reports to the state identifying all units listed on their sites, as well as their vacation rental license numbers and locations.

The Department of Business and Professional Regulation would have created and maintained a vacation rental database for all those businesses across the state.

'Good, sound policy'



"I think that was all good, sound policy," DiCeglie said. "The minute we started getting into the local stuff, that's when things got a little hairy."

DiCeglie noted that in Indian Rocks Beach, the City Commission last month **voted down** a compromise that short-term rental operators and city staff negotiated to settle a lawsuit filed by seven vacation rental owners after the city passed an ordinance in 2023.

"It's going to be interesting to see how that plays out," he said. "What are the courts going to ultimately decide? Did they go too far? Was it a balance? Who knows?"

'Out of step'

Kelly Cisarik, a resident of Indian Rocks Beach who has been critical of the state preemption of local governments regulation of short-term vacation rentals, said DiCeglie was "out of step with the majority of his constituents" regarding his 2023 and 2024 bills.

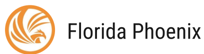
"Voters living in residentially zoned areas want local control of Short Term Vacation Rentals businesses," she said in an email. "Tallahassee can't help us with problems at 2 AM."

In his veto message of SB 280, DeSantis wrote, "Under this bill, any such measure would apply to all residential properties. The effect of this provision will prevent virtually all local regulation of vacation rentals even though the vacation rental markets are far from uniform across all the various regions of the state."

"When Gov. DeSantis vetoed SB 280, he acknowledged that local governments should be able to continue to regulate Vacation Rental businesses," Cisarik wrote. "That veto should have sent a clear message to any potential bill sponsor in 2025, and that message is: One size does not fit all."

—

Mitch Perry reporting. **Florida Phoenix** is part of States Newsroom, a nonprofit news network supported by grants and a coalition of donors as a 501c(3) public charity. Florida Phoenix maintains editorial independence. Contact Editor **Diane Rado** for questions: **info@floridaphoenix.com**. Follow Florida Phoenix on **Facebook** and **Twitter**.



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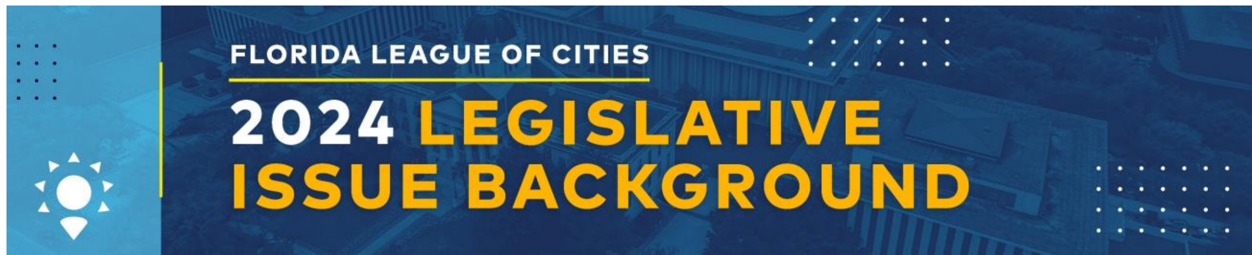

Impact Fees Summary

Impact fees are charges imposed by local governments on new development projects to help fund the cost of infrastructure and services, such as roads, schools, and parks, that support the growing population. In Florida, these fees are governed by both state law and local ordinances, with a primary goal of ensuring that new developments pay for the additional public services they necessitate without overburdening existing residents.

Florida Impact Fee Act (Section 163.31801, F.S.) outlines the requirements for imposing and administering impact fees. It requires that impact fees be:

- Based on a reasonable connection between the need for additional capital facilities and the new development.
- Appropriately allocated so that new developments are paying their fair share.
- Supported by data that demonstrates the need and amount of the fee.

Use of Impact Fees:

- Collected fees must be used for capital facilities that benefit the new development. They cannot be used for operational expenses or general government functions unrelated to the development.

In 2021, the Florida legislature passed legislation limiting impact fee increases by local governments. This legislation was largely in reaction to cities that had not increased impact fees in over a decade requiring large increases to in their fees to reflect actual costs.

HB 337 (2021) significantly curbed the ability of local governments to raise impact fees. Local governments are limited to raising impact fees by no more than:

- 50% of the existing rate over a four-year period.
- 25% in a two-year period.

Increases beyond these thresholds must be supported by **"extraordinary circumstances"** and require at least two-thirds approval from the local governing body. HB 337 (2021), did not provide a detailed definition of what constitutes "extraordinary circumstances" for purposes of increasing impact fees beyond the prescribed limits.

Fee increases must be phased in over time. An increase of up to 25% can be implemented in one year, while a 50% increase must be phased in over four years.

Developments that had already received their building permits before the fee increase cannot be retroactively charged higher fees.

Proponents of these legislative changes claim these changes were enacted to promote predictability and fairness in development costs, providing certainty to developers and businesses while ensuring that new developments still contribute to necessary infrastructure improvements. However, local governments argue that the caps may limit their ability to fully recover the costs associated with growth, leading to potential funding shortfalls for critical public services.

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: CS/CS/CS/HB 337 Impact Fees
SPONSOR(S): State Affairs Committee; Ways & Means Committee; Local Administration & Veterans Affairs Subcommittee; DiCeglie and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/CS/SB 750

FINAL HOUSE FLOOR ACTION: 94 **Y's** 23 **N's** **GOVERNOR'S ACTION:** Approved

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SUMMARY ANALYSIS

CS/CS/CS/HB 337 passed the House on April 21, 2021, and subsequently passed the Senate on April 26, 2021.

Impact fees are imposed by counties, municipalities, and some special districts to fund local infrastructure needed to expand local services to meet the demands of population growth caused by development. An impact fee enacted by a county or municipal ordinance or special district resolution must meet certain minimum statutory criteria. The calculation of the amount due must have a rational nexus both to the need for additional capital facilities and to the expenditures of funds collected and the benefits accruing to the new development construction. Impact fees may not be collected before issuing a building permit for the subject property.

The bill defines the terms "infrastructure" and "public facilities" and clarifies existing statutory text. In addition to local governments, the bill requires special districts to credit against the collection of impact fees any contribution related to public facilities towards impacts on the same type of public facilities for which the contribution was made. All credits against impact fee collections must be made regardless of any provision in local government or special district charter, comprehensive plan policy, ordinance, resolution, or development order or permit. In addition, the bill provides that the assignability and transferability of impact fees apply to all impact fee credits regardless of whether the credit was established before or after the effective date of the bill.

The bill provides that if a local government, school district, or special district impact fee increases not more than 25 percent above the current rate, the increase must be implemented in two equal annual increments. If a fee is increased between 25 and 50 percent above the current rate, the phase in is four equal installments. No impact fee increase may exceed 50 percent and an impact fee may not be increased more than once every four years. The bill provides an exception to these requirements if a local government, school district, or special district establishes the need for the increased impact fee pursuant to the rational nexus test, uses a study showing the extraordinary circumstances requiring the additional increase that was completed within 12 months before the increase, holds at least two publicly-noticed workshops, and adopts the increase by at least a two-thirds vote. Additionally, an impact fee may not be increased retroactively for a previous or current fiscal or calendar year. The impact fee increase limitations operate retroactively to January 1, 2021.

The bill revises a current affidavit requirement by requiring a local government, school district, or special district to submit with its annual financial report or its financial audit report an affidavit signed by its chief financial officer attesting, to the best of his or her knowledge, that all impact fees were collected and expended in compliance with the statute, the reporting entity complied with the spending period provision in the local ordinance or resolution, and that the funds were expended only for the uses allowed under the statute.

The Revenue Estimating Conference, on March 12, 2021, determined the bill would have a negative indeterminate impact on local government revenues. The bill does not have an impact on state government revenues.

The bill was approved by the Governor on June 4, 2021, ch. 2021- 63, L.O.F., and became effective on that date.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Present Situation

Impact Fees

Impact fees are imposed by local governments[1] to fund infrastructure needed to expand local services to meet the demands of population growth caused by new growth.[2] Impact fees must meet the following minimum criteria when adopted:

- The fee must be calculated using the most recent and localized data.[3]
- The local government adopting the impact fee must account for and report impact fee collections and expenditures. If the fee is imposed for a specific infrastructure need, the local government must account for those revenues and expenditures in a separate accounting fund.[4]
- Charges imposed for the collection of impact fees must be limited to the actual costs.[5]
- All local governments must give notice of a new or increased impact fee at least 90 days before the new or increased fee takes effect, but need not wait 90 days before decreasing, suspending, or eliminating an impact fee. Unless the result reduces total mitigation costs or impact fees on an applicant, new or increased impact fees may not apply to current or pending applications submitted before the effective date of an ordinance or resolution imposing a new or increased impact fee.[6]
- A local government may not require payment of the impact fee before the date of issuing a building permit for the property that is subject to the fee.[7]
- The impact fee must be reasonably connected to, or have a rational nexus with, the need for additional capital facilities and the increased impact generated by the new residential or commercial construction.[8]
- The impact fee must be reasonably connected to, or have a rational nexus with, the expenditures of the revenues generated and the benefits accruing to the new residential or commercial construction.[9]
- The local government must specifically earmark revenues generated by the impact fee to acquire, construct, or improve capital facilities to benefit new users.[10]
- The local government may not use revenues generated by the impact fee to pay existing debt or for previously approved projects unless the expenditure is reasonably connected to, or has a rational nexus with, the increased impact generated by the new residential or commercial construction.[11]

The types of impact fees charged and the timing of their collection after issuing a building permit are within the discretion of the local government or special district authorities choosing to impose the fees.[12]

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[1] S. 163.31801, F.S., uses "local government" inclusively to refer to counties, municipalities, and special districts. The statute distinguishes school districts from other local governments. *See* s. 163.31801(4), F.S.
[2] S. 163.31801(2), F.S.
[3] S. 163.31801(3)(a), F.S.
[4] S. 163.31801(3)(b), F.S.
[5] S. 163.31801(3)(c), F.S.
[6] S. 163.31801(3)(d), F.S.
[7] S. 163.31801(3)(e), F.S.
[8] S. 163.31801(3)(f), F.S.
[9] S. 163.31801(3)(g), F.S.
[10] S. 163.31801(3)(h), F.S.
[11] S. 163.31801(3)(i), F.S.
[12] *See* s. 163.31801(2), F.S.

The amount of the impact fee must have a rational nexus both to the need for additional capital facilities and to the expenditures of funds collected and the benefits accruing to the new construction.[13] Meeting this criterion requires the local government ordinance or resolution imposing the impact fee to earmark the funds collected for acquiring the new capital facilities necessary to benefit the new residents.

Some local governments impose impact fees specifically for local school facilities.[14] School districts have authority to impose ad valorem taxes within the district for school purposes[15] but are not general purpose governments with home rule power[16] and are not expressly authorized to impose impact fees.[17] Local governments imposing specific impact fees for education capital improvements typically collect the fees for deposit directly into a segregated account for those improvements.[18] Ordinances creating such an impact fee must require the funds be used only for education capital improvement projects.[19] The credit for impact fees imposed for public educational facilities must be based on the total impact fee assessed and not limited to the impact fee imposed for a particular type of school.[20]

Credits for impact fees may be assigned or transferred at any time once established, from one development or parcel to another within the same impact fee zone or district or within an adjoining impact fee zone or district within the same local government jurisdiction.[21] A local government that increases an impact fee must still provide the holder of any impact fee credit the full benefit of the density and intensity prepaid by the credit balance.[22]

Local governments may not require payment of impact fees prior to issuing a development or building permit.[23] In general, a building permit must be obtained before the construction, erection, modification, repair, or demolition of any building.[24] A development permit pertains to any building permit, zoning permit, subdivision approval, rezoning, certification, special exception, variance, or any other official action of local government having the effect of permitting the development of land.[25]

<u>Local Government Financial Reporting</u>

Counties, district school boards, municipalities with revenues or total expenditures and expenses exceeding $250,000, and special districts with revenues or total expenditures and expenses exceeding $100,000 must have an annual financial audit prepared either by the Auditor General or an

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[13] *See* s. 163.31801(3)(f)-(i), F.S. (Under long-standing court decisions, impact fees must have a reasonable connection, or nexus, between the need for additional capital facilities and the population growth generated by the project, and expenditures of the funds collected from the impact fees and the benefits accruing to the subdivision or project. This is known as the dual rational nexus test. *See St. Johns County v. Northeast Florida Builders Association, Inc.*, 583 So. 2d 635, 637 (Fla. 1991) (citing *Hollywood, Inc. v. Broward County*, 431 So. 2d 606, 611-612 (Fla. 4th DCA (1983), *rev. den.* 440 So. 2d 352 (Fla. 1983)).
[14] *See, e.g.*, Miami-Dade County Code of Ordinances ch. 33k, "Educational Facilities Impact Fee Ordinance," Orange County Code of Ordinances ch. 23, art. V, "School Impact Fees."
[15] Art. VII, s. 9(a), art. IX, s. 4(b), Fla. Const.; s. 1011.71, F.S. *See also St. Johns County*, *supra* at 583 So. 2d 642.
[16] *See* art. VIII, ss. 1(f)-(g) and (2), Fla. Const.
[17] S. 163.31801(2), F.S.
[18] In Miami-Dade County, the education facility impact fee is paid to the County Planning & Zoning Director, who must then deposit that amount into a specific trust fund maintained by the county. Miami-Dade County Code of Ordinances, ss. 33K-7(a), 33K-10(1). In Orange County, the school impact fee is paid to the county or municipality (if the land being developed is within a municipality), which then transfers the funds collected at least quarterly to the Orange County School District. The District is responsible for maintaining the trust into which the impact fee revenues are deposited. Orange County Code of Ordinances, ss. 23-142.
[19] *See* Miami-Dade County Code of Ordinances, s. 33K-11(a); Orange County Code of Ordinances, s. 23-143(b).
[20] S. 163.3180(6)(h)2.b., F.S.
[21] S. 163.31801(8), F.S.
[22] S. 163.31801(5), F.S. This subsection expressly operates prospectively.
[23] S. 163.31801(3)(e), F.S.
[24] S. 553.79, F.S.
[25] S. 163.3164(16), F.S.

independent certified public accountant.[26] The financial audit must be performed according to specific statutory criteria and the rules of the Auditor General.[27] Municipalities with revenues or total expenditures and expenses between $100,000 and $250,000, and special districts with revenues or total expenditures and expenses between $50,000 and $100,000, must have a financial audit prepared every three years.[28] All local government financial audits must be filed with the Auditor General no later than nine months from the end of the audited entity's fiscal year.[29] Municipalities with revenues or total expenditures and expenses less than $100,000 and special districts with revenues or total expenditures and expenses of less than $50,000 are not required to have their financial statements audited.[30] All local governmental entities are required to file an annual financial report with the Department of Financial Services no later than nine months after the end of the entity's fiscal year.[31]

The financial audit report of a county, municipality, special district, or district school board filed with the Auditor General must include an affidavit signed by the chief financial officer (CFO)[32] of the reporting entity that the local governmental entity or district school board has complied with the requirements of the impact fee statute.[33]

Effect of the Bill

Definitions

The bill defines "infrastructure" as a fixed capital expenditure or fixed capital outlay, excluding the cost of repairs or maintenance, associated with the construction, reconstruction, or improvement of public facilities that have a life expectancy of at least five years; related land acquisition, land improvement, design, engineering, and permitting costs; and other related construction costs required to bring the public facility into service. The term also includes a fire department vehicle, an emergency medical service vehicle, a sheriff's office vehicle, a police department vehicle, a school bus,[34] and the equipment necessary to outfit the vehicle for its official use. For independent special fire control districts, the term includes "new facilities" as stated in the independent special fire control district statute.[35] The bill also defines "public facilities" as major capital improvements, including transportation, sanitary sewer, solid waste, drainage, potable water, educational, parks, and recreational facilities,[36] and expressly includes emergency medical, fire, and law enforcement facilities.

Impact Fee Credits

In addition to local governments, the bill requires special districts to credit against the collection of impact fees, on a dollar-for-dollar basis at fair market value, any contribution related to the improvement of public facilities or infrastructure towards impacts on the same type of public facilities for which the contribution was made. All credits against impact fee collections must be made regardless of

[26] S. 218.39(1), F.S.
[27] S. 218.39(2)-(7), F.S. *See* ch. 10.550, Local Governmental Entity Audits (9-30-2019), at https://flauditor.gov/pages/pdf_files/10_550.pdf (last visited Jan. 21, 2021).
[28] S. 218.39(1)(g) and (h), F.S.
[29] S. 218.39(7), F.S.
[30] S. 218.39(1), F.S.
[31] S. 218.32(1), F.S. Local governments required to prepare a financial audit must file a copy of the audit report. S. 219.32(1)(d) F.S.
[32] The term "chief financial officer" for a local government is not defined in statute. For counties, the county commission may designate a county budget officer, typically either the county comptroller or the clerk of the circuit court. S. 129.025, F.S. The finances of a municipality are under the authority of the governing body, which may designate a municipal budget officer. S. 166.241, F.S. Special district boards are responsible for district financial management. S. 189.016(3), F.S. District school boards are responsible to manage and oversee district finances. S. 1001.42(12), F.S.
[33] S. 163.31801(6), F.S.
[34] S. 1006.25, F.S.
[35] S. 191.009(4), F.S.
[36] *See* s. 163.3164(39), F.S. The bill expressly cross-references to s. 163.3164, F.S.

any provision in a local government or special district charter, comprehensive plan policy, ordinance, resolution, or development order or permit.

The bill deletes the provision providing that the requirement to provide the holder of impact fee credits full benefit of the intensity and density prepaid by the credit operate prospectively. Additionally, the requirement for full assignability and transferability of impact fee credits is made applicable to all impact fee credits regardless if they were created before or after the effective date of the bill.[37]

Impact Fee Increases

The bill provides limitations on impact fee increases imposed by a local government, school district, or special district. An impact fee may increase only pursuant to a plan for the imposition, collection, and use of the increased impact fees that complies with the provisions in the bill. An impact fee may not be increased retroactively for a previous or current fiscal or calendar year.

Additionally, the bill limits impact fee increases as follows:

- An increase to a current impact fee rate of not more than 25 percent of the current rate must be implemented in two equal annual increments beginning with the date on which the increased fee is adopted.
- If the increased rate is between 25 and 50 percent of the current rate, the increase must be implemented in four equal installments.
- No impact fee increase may exceed 50 percent of the current impact fee rate.
- An impact fee may not be increased more than once every four years.

The bill provides an exception to these four specific requirements if a local government, school district, or special district increases an impact fee rate by first establishing the need for the increase pursuant to the rational nexus test. A local government or special district implementing this exception must use a study expressly demonstrating the extraordinary circumstances requiring the need to exceed the phase-in limitations, which study must be completed no earlier than 12 months before the adoption of the increase. In addition, the jurisdiction must hold at least two publicly noticed workshops on the extraordinary circumstances justifying the increase and must approve the increase by not less than a two-thirds majority vote of the governing body.

These limitations on impact fee increases operate retroactively to January 1, 2021.

Financial Statement Audits

The bill requires a local government, school district, or special district to submit with its annual financial report or its financial audit report an affidavit signed by its CFO attesting, to the best of his or her knowledge, that all impact fees were collected and expended in compliance with the statute, that the reporting entity complied with the spending period provision in the local ordinance or resolution, and that the funds were expended only for the uses allowed under the statute: acquiring, constructing, or improving the specific infrastructure needs.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The Revenue Estimating Conference (REC) estimated that the bill will not impact state government revenues.

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[37] The bill directs the Division of Law Revision to replace the phrase “the effective date of this act” with the actual date the bill goes into effect.

2. Expenditures:

   The bill does not appear to have an impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The REC estimated the bill will have a negative indeterminate impact on local government revenues.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

   None.

D. FISCAL COMMENTS:

   None.

Uses of Impact Fee Revenue

In Florida, impact fee revenue must be used for capital improvements that directly benefit the new development. According to the Florida Impact Fee Act, these funds can typically be allocated for:

1. **Capital Facilities**: Funding for the construction, expansion, or improvement of infrastructure such as:
    - Roads
    - Parks
    - Schools
    - Public safety facilities (e.g., fire stations, police facilities)

2. **Related Infrastructure Needs**: Projects that address the increased demand for services and facilities due to new development.

Restrictions on Use of Funds

Using impact fee revenue for the maintenance of existing infrastructure, such as routine road maintenance, is generally prohibited. The rationale is that impact fees are intended to cover the costs associated with the additional burden that new development places on public infrastructure, not to subsidize ongoing maintenance costs for existing facilities.

Thus, while new roads and expansions directly related to the new development can be funded with impact fees, routine maintenance of existing roads would typically fall outside the permissible uses of these funds. Local governments often need to rely on other funding sources for maintenance and operational costs.

Proposed Legislative Amendment

163.31801 Impact fees; short title; intent; minimum requirements; audits; challenges.—
(1) This section may be cited as the “Florida Impact Fee Act.”
(2) The Legislature finds that impact fees are an important source of revenue for a local government to use in funding the infrastructure necessitated by new growth and to offset the financial burden of accelerated depreciation and early replacement of existing infrastructure caused by new growth. The Legislature further finds that impact fees are an outgrowth of the home rule power of a local government to provide certain services within its jurisdiction. Due to the growth of impact fee collections and local governments’ reliance on impact fees, it is the intent of the Legislature to ensure that, when a county or municipality adopts an impact fee by ordinance or a special district adopts an impact fee by resolution, the governing authority complies with this section.
(3) For purposes of this section, the term:
(a) “Infrastructure” means a fixed capital expenditure or fixed capital outlay, excluding the cost of general repairs or maintenance, associated with the construction,

reconstruction, or improvement of public facilities that have a life expectancy of at least 5 years; related land acquisition, land improvement, design, engineering, ~~and~~ permitting costs and associated grant writing costs; and other related construction costs required to bring the public facility into service. The term also includes a fire department vehicle, an emergency medical service vehicle, a sheriff's office vehicle, a police department vehicle, a school bus as defined in s. **1006.25**, and the equipment necessary to outfit the vehicle or bus for its official use. For independent special fire control districts, the term includes new facilities as defined in s. **191.009**(4).

1000 FRIENDS of FLORIDA

Special Report

Paying for Development in Florida: The Role of Impact Fees

By Samuel P. Braverman

1000 Friends of Florida Intern

January 2022

1000 FRIENDS of FLORIDA

The Role of Impact Fees

Introduction

Population growth stimulated by new development strains existing infrastructure including roads, water and sewer systems, fire and rescue services, as well as schools and libraries. Local governments in Florida have a tool to help offset the costs of such development. Impact fees help to pay for new or expanded infrastructure necessitated by the construction of new residential or commercial development.

In 2021, however, the Florida Legislature passed a bill, later signed by the Governor, that placed limits on the rate and frequency at which local governments could increase impact fees. That action, its results, and the possibility of further impact fee bills passing during the 2022 Florida legislative session are the impetus for this study of those fees in counties throughout Florida.

An Overview of Impact Fees

Impact fees are one-time fees municipal and county governments and some special districts in Florida may charge a developer to cover a portion of the anticipated cost of additional infrastructure and public facilities needed to support a new development. The fees are charged to help pay for the "impact" of new development on roads, parks, schools and other critical infrastructure. The rationale is that new development necessitates new or expanded infrastructure to accommodate new residents. Without the fees, existing residents would in effect subsidize the costs of new development.

Impact fees are considered allowable under the precept of police powers, the ability of local governments to act to preserve the health and safety of their citizens. The Florida Impact Fee Act (*Section 163.31801, F.S.*) notes:

> The Legislature finds that impact fees are an important source of revenue for a local government to use in funding the infrastructure necessitated by new growth. The Legislature further finds that impact fees are an outgrowth of the home rule power of a local government to provide certain services within its jurisdiction.

In order to assess impact fees, a local government must adopt an ordinance that meets a series of requirements identified in the Act. The Act defines infrastructure as "a fixed capital expenditure or fixed capital outlay, excluding the cost of repairs or maintenance, associated with the construction, reconstruction, or improvement of public facilities that have a life expectancy of at least 5 years; related land acquisition, land improvement, design, engineering, and permitting costs; and other related construction costs required to bring the public facility into service."

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An Overview of Impact Fees *continued*

The Act also allows certain vehicles and associated equipment as needed for law enforcement, emergency medical services and schools.

Impact fees must meet the criteria of the dual rational nexus test to be considered legal. This means that impact fees must have a reasonable connection (rational nexus) between:

1. The proposed new development and the need for additional capital facilities; and,
2. The expenditure of funds and the benefits accruing to the proposed new development.

The concept of impact fees evolved nationally over decades. In Florida, local governments began adopting them as early as the 1960s, with the courts substantiating and validating this approach. Florida's 1985 Growth Management Act required local governments to identify sources of funding for capital improvements such as new roads and schools. As existing tax revenue alone was insufficient to cover infrastructure costs, especially those associated with new development, local governments increasingly turned to impact fees. Impact fees are more widely used in low-tax states which do not have sufficient revenue through income tax and other means to pay for growth.

Impact fees are only to be used to fund new infrastructure necessitated by the new development and may not be used for maintenance or repair, making it especially important for local governments to consider the long-term costs they are shouldering when they approve new development and associated infrastructure. Impact fees also cannot be used to pay off debts or fund previously approved projects. If a developer provides land for road right-of-way or other public contributions, then this value is taken off their impact fee assessment in what is known as a proportionate fair share agreement.

As noted, impact fees cover a portion of the cost of growth and in some instances can discourage unsustainable, sprawling development which requires considerable public investment in roads and other infrastructures. While some maintain that impact fees slow or discourage growth, Florida has experienced some of its highest rates of growth after the advent of impact fees.

Developers often indicate that they pass the cost of impact fees on to their customers, making new construction more expensive and less affordable. Alternatively, residents throughout the municipality or county may face increased taxes to subsidize new development or live with increasingly stressed critical infrastructure and services. New development is far less appealing to prospective consumers if they lack good roads, a quality school system, or reliable fire and EMS services, all of which can be supported by impact fees. People are less likely to want to live or do business in an area that lacks well-maintained essential infrastructure and services.

Purpose of Study

As noted, HB 337, passed during the 2021 Florida legislative session, curtails both the frequency and rate with which local governments are permitted to increase impact fees. Its provisions include:

1. An increase to a current impact fee rate of not more than 25 percent of the current rate must be implemented in two equal annual increments beginning with the date on which the increased fee is adopted.
2. An increase to a current impact fee rate which exceeds 25 percent but is not more than 50 percent of the current rate must be implemented in four equal installments beginning with the date the increased fee is adopted.
3. An impact fee increase may not exceed 50 percent of the current impact fee rate.
4. An impact fee may not be increased more than once every 4 years.

Local governments may only exceed these limits if they demonstrate "extraordinary circumstances," hold two public workshops, and approve the increase by at least a two-thirds vote.

New bills introduced in the 2022 legislative session would further erode the power of county and municipal governments to address growth through impact fees. SB 1030 (Taddeo) and HB 681 (Rodriguez) would expand the area where impact fee credits for a development could be transferred from an adjoining impact fee zone to the entire municipality or county.

Put plainly, growth could occur in an area while the increase in the capacity of critical infrastructure and services paid for by impact fees could occur in an entirely different area of the county. 1000 Friends of Florida opposes this bill because such a change would further limit the ability of local governments to manage growth responsibly, leaving taxpayers to foot the bill for growth through increasing taxes or face growing deficiencies in critical infrastructure and services.

This project primarily intends to provide a baseline evaluation of the frequency and the magnitude of impact fee schedules across county governments in Florida that utilize this growth management tool.

The use of impact fees varies across counties. While some counties do not levy any impact fees, those that do implement impact fee schedules do so for varying purposes. Because each county's growth management scheme is as unique as its development characteristics, the magnitude of impact fees varies significantly across counties.

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Purpose of Study *continued*

This paper provides data on each county in Florida, including minimum, maximum, mean, median, and gross values for total impact fee per square foot of development. Further, the data examines the components of each county's impact fee structure by purpose (i.e., transportation, schools, etc.). It does not survey municipal impact fees.

Method

1000 Friends of Florida collected data on the impact fees of each county in Florida by visiting each county's planning or growth management website. The URLs of the websites from which data was collected are listed in the "Source" column of the spreadsheet. Many governments hosted the information in text or in the form of a pdf link on their websites, while other governmental websites linked to Municode websites. The information on impact fees was transcribed to an Excel spreadsheet for analysis.

Key Findings

Given the complexity and variability of the type of structures (addressed below) between counties, the data in Attachment 1- 4 addresses the impact fees collected for the development of a single-family detached residential structure of approximately 2000 - 2500 square feet in area.

The average rate ($) per square foot of residential development is $3.83 / sq. ft. or $9,564.25 per unit (single-family detached, 2500 sq. ft.)

- 24 of Florida's 67 counties do not implement impact fees. Most of these counties, but not all, have experienced negative or relatively little amounts of growth in the last 10 years (as per the 2010 and 2020 Census Reports).
- 43 of Florida's 67 counties do utilize impact fees. The implementation of fees varies significantly by county.
- Counties with relatively larger population growth (2010 – 2020) assess larger fees.
- Typical purposes for which impact fees (for residential development) are collected:
    - Transportation (*37 counties*)
    - Schools (*32 counties*)
    - Parks (*27 counties*)
    - Fire departments (*29 counties*)
    - Public buildings and libraries (*23 counties*)
    - Law enforcement departments (*18 counties*)
    - Water (*3 counties*)

Implications of Legislation

Impact fees are an integral tool for local governments in Florida. Revenues accrued from impact fees must be spent on infrastructure improvements that directly benefit the development that pays the fee. Therefore, impact fees allow local governments to fund specific components of their infrastructure in an intentional fashion. For this reason, impact fees address the needs of a growing community in a more targeted way than a general fund derived from ad valorem taxes. Additionally, the flexibility to adjust impact fee schedules to account for rising construction prices and property values makes impact fees an invaluable tool for counties in Florida.

HB 337 decreases the capability of local governments in Florida to pay for the growth of their communities. It limits the frequency and magnitude with which local governments can increase impact fee amounts and allows freer transferability of impact fee credits. With their approval of HB 337, the Governor and legislative leaders asserted that county and municipal governments have had too much power to change impact fee schedules and to raise money for capital infrastructure projects through impact fees, leading to excessive and unpredictable increases that make housing and other construction less affordable.

But this message warrants an essential question: How should local governments raise money for infrastructure investments? Property tax rates are already severely limited by a state law implemented in 2007 (*Section 200.065, F.S.*), while sales and gas taxes are collected by the state and local governments must be allocated money from these funds. As politically unpopular as having to pay money to the government is, funding is necessary to a local government's ability to provide adequate infrastructure to its communities. The provisions of HB 337 certainly reduce the revenue of county governments in Florida, which may cause governments to trim back on critical infrastructure programs and services. Meanwhile, the Legislature is considering additional measures that could reduce revenue from impact fees.

So, What's the Plan?

How are local governments in Florida supposed to invest in meeting the needs of growing communities if they can't raise or obtain the funds necessary? If not through impact fees or taxes, how can local governments provide their citizens with critical infrastructure and services? The concept behind impact fees is for new development to pay for at least part of the cost of new public infrastructure or improvements needed to support that new development. The increasing restrictions on impact fees place local governments in an increasing financial bind, with local taxpayers left to either cover an increased portion of the direct costs of new development, or accept a declining quality of life with more crowded roads, schools and strains on other public infrastructure.

Florida County Impact Fee Study | January 2022

By Samuel P. Braverman *1000 Friends of Florida Intern*

ATTACHMENT 1

Combined County Impact Fees

Based on the impact fees collected for the development of a single-family detached residential structure of approximately 2500 square feet in area

Measurement - Fee Category	Transportation	Water	Fire	Law	Parks	Schools	Other*	Total / Sq. Ft	Total / Unit	Population Growth
Average	$4,039.89	$3,449.88	$340.69	$ 513.46	$ 1,227.52	$5,118.90	$660.80	**$3.83**	**$9,578.00**	**62,283**
Median	$2,764.50	$3,551.75	$335.00	$ 411.63	$ 859.83	$5,430.60	$573.00	**$3.71**	**$9,264.26**	**36,628**
Maximum	$ 11,235.00	$6,696.00	$821.00	$ 1,495.74	$ 4,154.34	$ 11,823.00	$2,295.00	$ 11.79	$29,482.65	283,952
Minimum	0	0	$0.08	0	$0.10	0	$ 0.05	$0.04	$625	-251

** Public buildings, such as libraries and other administrative offices, as well as miscellaneous administrative fees*

Florida County Impact Fee Study | January 2022

By Samuel P. Braverman *1000 Friends of Florida Intern*

ATTACHMENT 2

Florida County Residential Impact Fees by Fee Rate

Based on the impact fees collected for the development of a single-family detached residential structure of approximately 2500 square feet in area

County	Fee Y/N	Per Sq. Ft.	Per Unit	Transport.	Water	Fire	Law	Parks	Schools	Other*	Total / Sq. Ft	Total / Unit	Pop. Growth 2010-20
Collier	Y		x	$7,870.36	$6,696.00	$142.07	$1,086.14	$3,628.15	$8,789.54	$1,270.39	$11.79	$29,482.65	54,232
Pasco	Y		x	$11,235.00	$4,291.00	$248.45		$891.82	$8,328.00	$385.36	$10.15	$25,379.63	97,194
Osceola	Y		x	$9,999.00		$391.00		$2,304.72	$11,823.00		$9.81	$24,517.72	119,971
Miami-Dade**	Y	x	x	$10,093.68		$447.01	$593.31	$4,154.34	$612.00	$2,295.00	$7.28	$18,195.34	205,332
Hillsborough	Y		x	$7,346.00		$335.00		$1,815.00	$8,227.00		$7.09	$17,723.00	230,536
Lee	Y		x	$9,996.00		$821.00		$884.00	$5,484.00		$6.87	$17,185.00	142,068
St. Johns	Y		x	$8,927.00		$618.00	$331.00	$1,429.00	$5,016.00	$710.00	$6.81	$17,031.00	54,558
Orange	Y		x	$3,898.00		$339.00	$502.00	$1,721.00	$9,148.00		$6.24	$15,608.00	283,952
Manatee	Y		x	$6,891.00			$825.00	$1,298.00	$6,127.00	$421.00	$6.22	$15,562.00	76,877
St. Lucie	Y		x	$5,130.00		$667.00	$246.00	$1,707.00	$6,786.00	$641.00	$6.07	$15,177.00	48,138
Highlands	Y		x	$6,594.00		$758.59	$914.86	$747.10	$5,801.00	$244.62	$6.02	$15,060.17	2,449
Martin	Y		x	$2,815.00		$599.00	$760.00	$2,632.00	$5,567.39	$1,182.97	$5.42	$13,556.36	12,113
Sarasota	Y		x	$4,840.52		$452.00	$1,319.02	$2,780.18	$2,052.32	$1,335.39	$5.11	$12,779.43	5,437
Clay	Y		x	$5,735.00					$7,034.00		$5.11	$12,769.00	27,380
Palm Beach	Y		x	$4,717.00				$859.83	$6,608.00	$465.67	$5.06	$12,650.50	172,057
Seminole	Y		x	$2,714.00		$497.00			$9,000.00	$395.00	$5.04	$12,606.00	36,628
Lake	Y		x	$2,706.00		$390.00		$222.00	$8,927.00	$291.00	$5.01	$12,536.00	86,904
Polk	Y		x	$2,380.00		$358.00	$503.00	$417.00	$7,798.00	$169.00	$4.65	$11,625.00	122,951
Nassau	Y		x	$1,150.00		$411.00	$299.00	$2,048.90	$5,430.60	$962.00	$4.12	$10,301.50	17,038

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ATTACHMENT 2 Florida County Residential Impact Fees by Fee Rate *continued*

County	Fee Y/N	Per Sq. Ft.	Per Unit	Transport.	Water	Fire	Law	Parks	Schools	Other*	Total / Sq. Ft	Total / Unit	Pop. Growth 2010-20
Indian River	Y		x	$6,632.00		$278.00	$196.00	$819.00	$1,310.00	$608.00	$3.94	$9,843.00	21,760
Brevard	Y		x	$4,353.00		$54.08	$38.65		$5,096.50	$295.83	$3.94	$9,838.06	63,236
Volusia	Y		x	$5,432.45		$293.73			$2,941.75	$596.33	$3.71	$9,264.26	58,950
Broward	Y		x	$1,679.88					$7,047.00		$3.49	$8,726.88	196,309
Hernando	Y		x	$1,269.00		$235.00	$86.00	$418.00	$3,176.00	$573.00	$2.30	$5,757.00	21,737
Citrus	Y		x	$1,815.00		$315.00	$342.00	$668.00	$1,660.00	$613.00	$2.17	$5,413.00	12,607
Marion	Y		x	$1,397.00					$3,967.00		$2.15	$5,364.00	44,610
Flagler	Y		x	$1,438.10				$268.45	$3,600.00		$2.12	$5,306.55	19,682
Santa Rosa	Y		x						$5,000.00		$2.00	$5,000.00	83,386
Charlotte	Y		x	$3,025.00		$333.00	$250.00	$610.00		$455.00	$1.87	$4,673.00	26,869
Alachua	Y	x		$1.40		$0.08		$0.13			$1.60	$4,002.50	31,132
Wakulla	Y		x	$1,048.00		$518.17	$1,495.74	$329.18		$288.89	$1.47	$3,679.98	2,988
Columbia	Y		x						$3,500.00		$1.40	$3,500.00	2,167
Gilchrist	Y		x	$1,750.00					$750.00	$1,000.00	$1.40	$3,500.00	925
Bay	Y		x		$2,812.50						$1.13	$2,812.50	6,364
Sumter	Y		x	$2,666.00							$1.07	$2,666.00	36,332
Dixie	Y	x		$0.25		$0.35	$0.25	$0.10		$0.05	$1.00	$2,500.00	337
Levy	Y		x	$1,410.00		$53.08		$150.21	$816.60		$0.97	$2,429.89	2,114
Duval	Y		x	$2,249.00							$0.90	$2,249.00	131,304
Pinellas	Y		x	$1,679.00							$0.67	$1,679.00	42,565
Baker	Y		x						$1,500.00		$0.60	$1,500.00	1,144

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ATTACHMENT 2 Florida County Residential Impact Fees by Fee Rate *continued*

County	Fee Y/N	Per Sq. Ft.	Per Unit	Transport.	Water	Fire	Law	Parks	Schools	Other*	Total / Sq. Ft	Total / Unit	Pop. Growth 2010-20
Monroe	Y		x	$633.00		$105.00		$340.00			$0.43	$1,078.00	9,84
Walton	Y		x			$220.04	$481.25				$0.28	$701.29	20,262
Jefferson	Y	x				$0.25					$0.25	$625.00	-251
Bradford	N	n/a	n/a										-217
Calhoun	N	n/a	n/a										-977
DeSoto	N	n/a	n/a										-886
Escambia	N	n/a	n/a										24,286
Franklin	N	n/a	n/a										902
Gadsen	N	n/a	n/a										-2,563
Glades	N	n/a	n/a										-758
Gulf	N	n/a	n/a										-1,671
Hamilton	N	n/a	n/a										-795
Hardee	N	n/a	n/a										-2,404
Hendry	N	n/a	n/a										479
Holmes	N	n/a	n/a										-274
Jackson	N	n/a	n/a										-2,427
Lafayette	N	n/a	n/a										-644
Leon	N	n/a	n/a										16,711
Liberty	N	n/a	n/a										-391
Madison	N	n/a	n/a										-1,256
Okaloosa	N	n/a	n/a										30,846

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ATTACHMENT 2 Florida County Residential Impact Fees by Fee Rate *continued*

County	Fee Y/N	Per Sq. Ft.	Per Unit	Transport.	Water	Fire	Law	Parks	Schools	Other*	Total / Sq. Ft	Total / Unit	Pop. Growth 2010-20
Okeechobee	N	n/a	n/a										-352
Putnam	N	n/a	n/a										-1,043
Suwannee	N	n/a	n/a										1,923
Taylor	N	n/a	n/a										-774
Union	N	n/a	n/a										612
Washington	N	n/a	n/a										422

** Public buildings, such as libraries and other administrative offices, as well as miscellaneous administrative fees*

*** Miami-Dade County charges a flat rate for transportation, fire, law enforcement, schools, and parks; the county also collects $0.918 additional per square foot (capped at 3800 sq ft per unit)*

ATTACHMENT 3

Florida County Residential Impact Fees by Population Growth

Based on the impact fees collected for the development of a single-family detached residential structure of approximately 2500 square feet in area

County	Per Sq. Ft.	Per Unit	Transport.	Water	Fire	Law	Parks	Schools	Other*	Total / Sq. Ft	Total / Unit	Pop. Growth 2010-20
Orange		x	$3,898.00		$339.00	$502.00	$1,721.00	$9,148.00		$6.24	$15,608.00	283,952
Hillsborough		x	$7,346.00		$335.00		$1,815.00	$8,227.00		$7.09	$17,723.00	230,536
Miami-Dade	x	x	$10,093.68		$447.01	$593.31	$4,154.34	$612.00	$2,295.00	$7.28	$18,195.34	205,332
Broward		x	$1,679.88					$7,047.00		$3.49	$8,726.88	196,309
Palm Beach			$4,717.00				$859.83	$6,608.00	$465.67	$5.06	$12,650.50	172,057
Lee		x	$9,996.00		$821.00		$884.00	$5,484.00		$6.87	$17,185.00	142,068
Duval			$2,249.00							$0.90	$2,249.00	131,304
Polk		x	$2,380.00		$358.00	$503.00	$417.00	$7,798.00	$169.00	$4.65	$11,625.00	122,951
Osceola		x	$9,999.00		$391.00		$2,304.72	$11,823.00		$9.81	$24,517.72	119,971
Pasco		x	$11,235.00	$4,291.00	$248.45		$891.82	$8,328.00	$385.36	$10.15	$25,379.63	97,194
Lake		x	$2,706.00		$390.00		$222.00	$8,927.00	$291.00	$5.01	$12,536.00	86,904
Santa Rosa		x						$5,000.00		$2.00	$5,000.00	83,386
Manatee		x	$6,891.00			$825.00	$1,298.00	$6,127.00	$421.00	$6.22	$15,562.00	76,877
Brevard		x	$4,353.00		$54.08	$38.65		$5,096.50	$295.83	$3.94	$9,838.06	63,236
Volusia		x	$5,432.45		$293.73			$2,941.75	$596.33	$3.71	$9,264.26	58,950
St. Johns		x	$8,927.00		$618.00	$331.00	$1,429.00	$5,016.00	$710.00	$6.81	$17,031.00	54,558
Collier		x	$7,870.36	$6,696.00	$142.07	$1,086.14	$3,628.15	$8,789.54	$1,270.39	$11.79	$29,482.65	54,232
Sarasota		x	$4,840.52		$452.00	$1,319.02	$2,780.18	$2,052.32	$1,335.39	$5.11	$12,779.43	51,437
St. Lucie		x	$5,130.00		$667.00	$246.00	$1,707.00	$6,786.00	$641.00	$6.07	$15,177.00	48,138

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Florida County Impact Fee Study | January 2022

By Samuel P. Braverman *1000 Friends of Florida Intern*

ATTACHMENT 3 Florida County Residential Impact Fees by Population Growth *continued*

County	Per Sq. Ft.	Per Unit	Transport.	Water	Fire	Law	Parks	Schools	Other*	Total / Sq. Ft	Total / Unit	Pop. Growth 2010-20
Marion		x	$1,397.00					$3,967.00		$2.15	$5,364.00	44,610
Pinellas		x	$1,679.00							$0.67	$1,679.00	42,565
Seminole		x	$2,714.00		$497.00			$9,000.00	$395.00	$5.04	$12,606.00	36,628
Sumter		x	$2,666.00							$1.07	$2,666.00	36,332
Alachua	x		$1.40		$0.08		$0.13			$1.60	$4,002.50	31,132
Clay		x	$5,735.00					$7,034.00		$5.11	$12,769.00	27,380
Charlotte		x	$3,025.00		$333.00	$250.00	$610.00		$455.00	$1.87	$4,673.00	26,869
Indian River		x	$6,632.00		$278.00	$196.00	$819.00	$1,310.00	$608.00	$3.94	$9,843.00	21,760
Hernando		x	$1,269.00		$235.00	$86.00	$418.00	$3,176.00	$573.00	$2.30	$5,757.00	21,737
Walton	x				$0.25					$0.25	$625.00	20,262
Flagler		x	$1,438.10				$268.45	$3,600.00		$2.12	$5,306.55	19,682
Nassau		x	$1,150.00		$411.00	$299.00	$2,048.90	$5,430.60	$962.00	$4.12	$10,301.50	17,038
Citrus		x	$1,815.00		$315.00	$342.00	$668.00	$1,660.00	$613.00	$2.17	$5,413.00	12,607
Martin		x	$2,815.00		$599.00	$760.00	$2,632.00	$5,567.39	$1,182.97	$5.42	$13,556.36	12,113
Monroe		x	$633.00		$105.00		$340.00			$0.43	$1,078.00	9,784
Bay		x		$2,812.50						$1.13	$2,812.50	6,364
Wakulla		x	$1,048.00		$518.17	$1,495.74	$329.18		$288.89	$1.47	$3,679.98	2,988
Highlands		x	$6,594.00		$758.59	$914.86	$747.10	$5,801.00	$244.62	$6.02	$15,060.17	2,449
Columbia		x						$3,500.00		$1.40	$3,500.00	2,167
Levy		x	$1,410.00		$53.08		$150.21	$816.60		$0.97	$2,429.89	2,114
Baker		x						$1,500.00		$0.60	$1,500.00	1,144

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ATTACHMENT 3 Florida County Residential Impact Fees by Population Growth *continued*

County	Per Sq. Ft.	Per Unit	Transport.	Water	Fire	Law	Parks	Schools	Other*	Total / Sq. Ft	Total / Unit	Pop. Growth 2010-20
Gilchrist		x	$1,750.00					$750.00	$1,000.00	$1.40	$3,500.00	925
Dixie	x		$0.25		$0.35	$0.25	$0.10		$0.05	$1.00	$2,500.00	337
Jefferson		x			$110.02					$0.04	$110.02	-251

** Public buildings, such as libraries and other administrative offices, as well as miscellaneous administrative fees*

*** Miami-Dade County charges a flat rate for transportation, fire, law enforcement, schools, and parks; the county also collects $0.918 additional per square foot (capped at 3800 sq ft per unit)*

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ATTACHMENT 4

Links to County Impact Fee Schedules

County	Impact Fee Schedule
Alachua	https://growth-management.alachuacounty.us/formsdocs/impactfees/IF_Admin_Manual.pdf
Baker	https://library.municode.com/fl/baker_county/codes/code_of_ordinances? nodeId=COOR_CH22IMFE&wdLOR=cDD825FD5-DF64-4DBE-BD71-96E71D4E15D2
Bay	https://library.municode.com/fl/bay_county/codes/code_of_ordinances?nodeId=BAY_CO_CODE_CH25UT_ARTIICOWASESY_DIV2INCOIMFE&wdLOR=cEDAB7ADA-3E7B-41FF-9206-0E96A52F383E
Brevard	https://www.brevardfl.gov/docs/default-source/planning-development/residential-impact-fees.pdf?sfvrsn=ff8a0f69_4 ; https://www.brevardfl.gov/docs/default-source/planning-development/2007commercialimpactfeesforcounty.pdf?sfvrsn=77b853c0_4
Broward	https://www.broward.org/Planning/FormsPublications/Documents/DevPermitAppFees.pdf ; https://www.broward.org/Planning/FormsPublications/Documents/RoadFees.pdf ; https://www.broward.org/Planning/FormsPublications/Documents/SchoolFees.pdf
Charlotte	https://www.charlottecountyfl.gov/core/fileparse.php/384/urlt/impact-fee-schedule-adopted-6-22-21-effective-6-21-21.pdf
Citrus	https://www.citrusbocc.com/departments/growth_management/land_development_division/impact_fees/index.php
Clay	https://www.claycountygov.com/government/planning-and-zoning/impact-mobility-fees/school-concurrency/school-impact-fees ; https://www.claycountygov.com/government/planning-and-zoning/impact-mobility-fees/mobility-fee-effective-2-1-2021/mobility-fee-rate-schedules-per-district
Collier	https://www.colliercountyfl.gov/your-government/divisions-a-e/capital-project-planning-impact-fees-and-program-management/impact-fees-1586
Columbia	https://library.municode.com/fl/columbia_county/codes/code_of_ordinances?nodeId=COOR_CH56IMFE
Dixie	https://library.municode.com/fl/dixie_county/codes/code_of_ordinances?nodeId=COOR_CH20IMFE
Duval	https://jaxzoningapplication.coj.net/MobilityFee#/app
Flagler	https://library.municode.com/fl/flagler_county/codes/code_of_ordinances?nodeId=FLCOCOOR_CH17IMFE&wdLOR=c258056F7-0594-4CD6-9BC9-3BF48A8166ED
Gilchrist	https://library.municode.com/fl/gilchrist_county/codes/land_development_code?nodeId=ART11IMFE&wdLOR=cD6AEE100-5A6C-45FA-9DD1-B759DBDA1533

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ATTACHMENT 4 Links to County Impact Fee Schedules *continued*

County	Impact Fee Schedule
Hernando	https://www.hernandocounty.us/home/showpublisheddocument/2802/637614357726270000
Highlands	https://library.municode.com/fl/highlands_county/codes/code_of_ordinances?nodeId=COOR_CH13IMFE&wdLOR=c6188330C-136A-445B-9E72-356112C2C05E
Hillsborough	https://www.hillsboroughcounty.org/library/hillsborough/media-center/documents/development-services/permits-and-records/fees/residential-impact-mobility-fee-assessment-6-30-2021.pdf
Indian River	https://ircgov.com/communitydevelopment/Applications/Impact_Fee/New-Impact_Fee_Schedule-070120.pdf
Jefferson	https://library.municode.com/fl/jefferson_county/codes/code_of_ordinances?nodeId=COOR_CH19IMFE&wdLOR=cFED0DDAE-9B58-4FF9-A449-66A404107738
Lake	https://www.lakecountyfl.gov/pdfs/growth_management/impact_fees/Residential-Impact-Fee-Schedule-ADA.pdf
Lee	https://www.leegov.com/dcd/BldPermitServ/ImpFees
Levy	https://library.municode.com/fl/levy_county/codes/code_of_ordinances?nodeId=COOR_CH47IMFE&wdLOR=c1DEC9FF4-5291-403E-9E41-AC396AB3483E
Manatee	https://p1cdn4static.civiclive.com/UserFiles/Servers/Server_7588306/File/Departments/County%20Administration/Impact%20Fees/Co-Sch-Impact-Fees-11-13-17.pdf
Marion	https://library.municode.com/fl/marion_county/codes/code_of_ordinances?nodeId=CH10LITAMIBURE_ARTXIIMFETRFA_DIV1GE_S10-282IN&wdLOR=c99586244-0C81-4656-8C36-B8C2F58BF465
Martin	https://www.martin.fl.us/resources/impact-fee-schedule-pdf ; https://www.martin.fl.us/resources/school-impact-fees-pdf
Miami-Dade	https://www.miamidade.gov/zoning/library/fees/2020-09-impact-fee-rates.pdf
Monroe	https://library.municode.com/fl/monroe_county/codes/land_development_code?nodeId=CH126IMFE#:~:text=Middle%20Keys%20impact%20fee%20subdistrict,the%20City%20of%20Key%20West.
Nassau	https://www.nassaucountyfl.com/DocumentCenter/View/3428/Impact-FeesMobility-Fees ; https://www.nassaucountyfl.com/DocumentCenter/View/17913/County-Mobility-Fee-Schedule--2014-2019
Orange	http://www.orangecountyfl.net/PermitsLicenses/Permits/ImpactFeesAtAGlance.aspx#.YTJOSp1KjlV
Osceola	https://www.osceola.org/core/fileparse.php/2731/urlt/061521_Impact-Fee-Table-Res-2021-Effective-Mar-1-ADA.pdf
Palm Beach	https://discover.pbcgov.org/pzb/administration/ImpactFees/Fee-Schedules-2020.aspx
Pasco	https://www.pascocountyfl.net/1340/Chapter-1300-Concurrency-Mobility-Imp-Fe

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ATTACHMENT 4 Links to County Impact Fee Schedules *continued*

County	Impact Fee Schedule
Pinellas	https://library.municode.com/fl/pinellas_county/codes/code_of_ordinances?nodeId=PTIIILADECO_CH150IMFE_ARTIIMUIMFE&wdLOR=c7147AC99-1EAD-44B2-8129-24FBF9D0C883
Polk	https://www.polk-county.net/building/fees
Santa Rosa	https://www.santarosa.fl.gov/768/Impact-Fee-Information
Sarasota	https://www.scgov.net/Home/ShowDocument?id=34480
Seminole	https://www.seminolecountyfl.gov/departments-services/development-services/fees-calculators/building-permit-impact-fees/county-impact-fees.stml ; https://www.seminolecountyfl.gov/news/new-impact-fees.stml
St. Johns	https://www.sjcfl.us/GrowthManagement/media/ImpactFees.pdf
St. Lucie	https://www.stlucieco.gov/Home/ShowDocument?id=1332
Sumter	https://www.sumtercountyfl.gov/672/Road-Impact-Fees ; https://library.municode.com/fl/sumter_county/codes/code_of_ordinances?nodeId=COCO_CH20ROBR_ARTIIIROIMFE_DIV4IMFESC
Volusia	https://www.volusia.org/core/fileparse.php/6204/urlt/2021-Residential-Impact-Fees.pdf ; https://www.volusia.org/core/fileparse.php/6204/urlt/2021-Commercial-Impact-Fees.pdf
Wakulla	https://library.municode.com/fl/wakulla_county/codes/code_of_ordinances?nodeId=PTIICOOR_CH24PLDE_ARTVIMFE_DIV6RO_S24.114.1DE&wdLOR=c53BCB963-A81E-45BB-BF35-F68E015AC3E7
Walton	https://www.swfd.org/fire-life-safety/impact-fees

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ATTACHMENT 4
Florida Impact Fee Study Metadata

ATTRIBUTE	DESCRIPTION
County	County Name
Fees (Y/N)	Yes (Y): the county implements impact fees; No (N): the county does not implement impact fees
Per Sq. ft	x: the county charges fees by square foot
Per Unit	x: the county charges fees by unit type
Transportation	Impact fee for transportation projects
Water	Impact fee for water projects
Fire	Impact fee for fire departments and services
Law	Impact fee for law enforcement departments and services
Parks	Impact fee for parks projects
Schools	Impact fee for schools projects
Other	Public buildings, such as libraries and other administrative offices, as well as miscellaneous administrative fees
Total / Sq. Ft.	Impact fee total per square foot of new development of a 2500 square foot single family detached home
Total / Unit	Impact fee total per unit of new development of a 2500 square foot single family detached home
Population Growth (2010-20)	County population growth between 2010 and 2020, as determined by Census data
Date Effective	Date that the most current impact fee schedule was adopted
Fee Schedule	Link to where info on impact fees was collected

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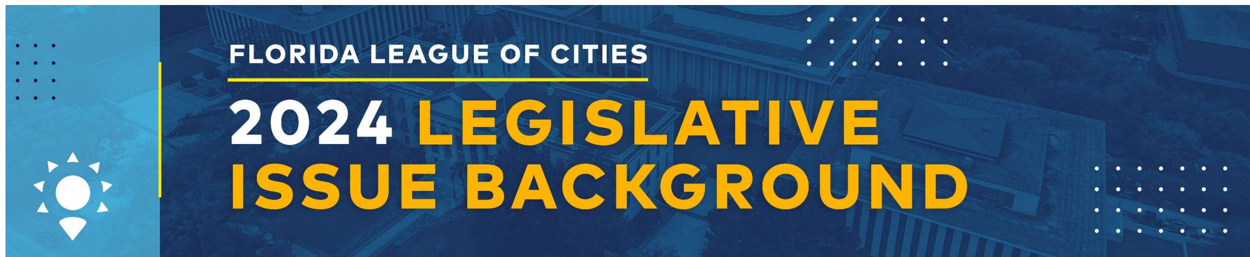
HB 1621 (2024) Unlawful Demolition of Historical Structures



Unlawful Demolition of Historical Structures

CS/CS/HB 1621 (2024 Session) tried to enhance penalties for the unauthorized demolition of buildings listed on the National Register of Historic Places in Florida. The bill aimed to protect historic structures by allowing local governments to impose significantly higher fines when these buildings are demolished without proper permits.

Local governments cannot prevent or restrict private property owners from obtaining permits to demolish single-family homes, if the home is in a flood-prone area and meets building and safety code requirements. However, demolition permits can be restricted for homes that are listed on the National Register of Historic Places or designated as historic.

Under current law, local governments in Florida rely on code enforcement boards to investigate and address violations of municipal codes, including unauthorized construction and demolition. These boards can impose fines ranging from $250 per day for first-time violations to $5,000 for violations deemed irreparable or irreversible. In larger municipalities (over 50,000 residents), fines can be increased, with potential fines of up to $15,000 for severe violations.

However, the current penalties have proven insufficient in some cases to prevent unlawful demolitions, particularly in areas where redevelopment is lucrative.

Supporters, including the City of St. Augustine back the bill as a critical measure to preserve Florida’s historical assets. Although it did not advance to the House floor in the 2024 session, there are plans to reintroduce it in the 2025 legislative session with hopes of securing broader support.

The goal would be to reintroduce a bill to enhance penalties specifically for the unauthorized demolition of structures listed on or contributing to the National Register of Historic Places. The legislation will authorize that if a demolition occurs without proper approvals and is not the result of a natural disaster, a code enforcement board or special magistrate can impose fines of up to 20% of the property's fair market value, based on the property appraiser’s evaluation.

1 A bill to be entitled
2 An act relating to unlawful demolition of historical
3 structures; amending s. 162.09, F.S.; authorizing
4 enhanced fines for the unlawful demolition of certain
5 historical structures; providing that fines may not
6 exceed a specified amount; providing an effective
7 date.
8
9 Be It Enacted by the Legislature of the State of Florida:
10
11 Section 1. Paragraph (e) is added to subsection (2) of
12 section 162.09, Florida Statutes, to read:
13 162.09 Administrative fines; costs of repair; liens.—
14 (2)
15 (e) The demolition of a structure individually listed on,
16 or contributing to, the National Register of Historic Places may
17 be the basis for an enhanced fine if the code enforcement board
18 or special magistrate makes specific findings based on
19 competent, substantial evidence that the demolition of the
20 historic structure was not permitted and was not the result of a
21 natural disaster. Fines imposed by the code enforcement board or
22 special magistrate may not to exceed an amount that is 20
23 percent of the value of the property as identified in the
24 property appraiser's evaluation of its fair market value.
25 Section 2. This act shall take effect July 1, 2024.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 1621 Unlawful Demolition of Historical Structures
SPONSOR(S): State Affairs Committee, Local Administration, Federal Affairs & Special Districts Subcommittee, Beltran
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local Administration, Federal Affairs & Special Districts Subcommittee	16 Y, 0 N, As CS	Mwakyanjala	Darden
2) State Affairs Committee	20 Y, 0 N, As CS	Mwakyanjala	Williamson

SUMMARY ANALYSIS

Code enforcement is a function of local government intended to enhance the economy and quality of life of counties and municipalities by protecting the health, safety, and welfare of the community. Four areas of Florida law create mechanisms counties and municipalities may utilize for code and ordinance enforcement. Under each statutory mechanism, a local government designates code inspectors or code enforcement officers, tasked with investigating potential code violations, providing notice of violations, and issuing citations for noncompliance, but not possessing police powers. These statutes provide permissible code enforcement mechanisms that may be used by local governments in any combination they choose.

The Local Government Code Enforcement Boards Act allows each county and municipality to create local government code enforcement boards by ordinance. Code enforcement proceedings are initiated by code inspectors notifying the alleged violator of the specific violation. Violators are granted a reasonable period to correct the violation. Those failing to correct the violation are reported to the enforcement board and a hearing is requested. At the conclusion of the hearing, the code enforcement board issues finding of fact and provides an order stating the relief granted, which may include the imposition of fines. These fines may not exceed $250 per day for a first violation, $500 per day for a repeat violation, and $5,000 for a violation that is irreparable or irreversible in nature. Boards of counties or municipalities with a population greater than 50,000 may adopt an ordinance imposing greater fines.

The bill authorizes code enforcement boards to impose an enhanced fine for the demolition of a structure individually listed on, or contributing to, the National Register of Historic Places. A code enforcement board or special magistrate must make specific findings based on competent, substantial evidence that the demolition of the historic structure was not permitted and was not the result of a natural disaster to impose the fine. The enhanced fine may not exceed 20 percent of the fair market value of the property, as identified in the property appraiser's evaluation.

The bill does not appear to have a fiscal impact on state government and may have a positive fiscal impact on local governments.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives .

STORAGE NAME: h1621c.SAC
DATE: 2/21/2024

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

County and Municipal Code Enforcement

Code enforcement is a function of local government intended to enhance the economy and quality of life of counties and municipalities by protecting the health, safety, and welfare of the community.[1] Four areas of Florida law create mechanisms counties and municipalities may utilize for code and ordinance enforcement.[2] Under each mechanism, a local government designates code inspectors or code enforcement officers, tasked with investigating potential code violations, providing notice of violations, and issuing citations for noncompliance. Code inspectors and enforcement officers do not possess police powers. These statutes provide permissible code enforcement mechanisms that may be used by local governments in any combination they choose.[3]

The Local Government Code Enforcement Boards Act[4] allows each county and municipality to create local government code enforcement boards by ordinance.[5] A code enforcement board is an administrative board composed of members appointed by the governing body of a county or municipality[6] with the authority to hold hearings and impose administrative fines and other non-criminal penalties for violations of the jurisdiction's codes or ordinances.[7] A code enforcement board may adopt rules for the conduct of its hearings; subpoena alleged violators, witnesses, and evidence to its hearings; take testimony under oath; and issue orders having the force of law necessary to bring a violation into compliance.[8] Each code enforcement board has seven members, except that a county or municipality with fewer than 5,000 residents may elect to appoint a board of five members. The local governing body may appoint up to two alternate members for each code enforcement board to serve on the board in the absence of board members.

Members of the code enforcement board must be residents of the county or municipality creating the board.[9] Members must include an architect, a businessperson, an engineer, a general contractor, a subcontractor, and a realtor, if possible.

Code enforcement proceedings are initiated by code inspectors.[10] The process begins with a code inspector notifying the alleged violator of the specific violation. The violator is granted a reasonable period to correct the violation.[11] If the violation is not corrected within the period specified in the notice, the code inspector informs the enforcement board and requests a hearing. The code enforcement board schedules the hearing and must provide written notice, by certified mail or personal service, to the alleged violator.[12] A period for corrective action is not required if the violation is a repeat violation;

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[1] S. 162.02, F.S.
[2] Ch. 125, Part II, F.S. (county self-government), ch. 162, Part I, F.S. (Local Government Code Enforcement Boards Act), ch. 162 Part II (supplemental procedures for county or municipal code or ordinance enforcement procedures), and s. 166.0415, F.S. (city ordinance enforcement).
[3] *See* ss. 125.69(4)(i), 162.13, 162.21(8), and 166.0415(7), F.S.
[4] Ch. 162, Part I, F.S.
[5] S. 162.05(1), F.S.
[6] *Id.*
[7] S. 162.03, F.S.
[8] S. 162.08, F.S.
[9] S.162.05(2), F.S.
[10] S. 162.06(1)(a), F.S. A "code inspector" is "any authorized agent or employee of the county or municipality whose duty it is to assure code compliance." S. 164.04(2), F.S.
[11] S. 162.06(2), F.S.
[12] Ss. 162.06(2) and 162.12(1), F.S. The code enforcement board may also provide additional notice by publication in a newspaper of general circulation in the county or posting on the property where the alleged violation occurred and on the front door of th e courthouse or main county governmental center (for a county) or primary municipal government office (for a mun icipality). Ss. 162.06(2), 162.12(2), F.S.

presents a serious threat to public health, safety, and welfare; or is irreparable or irreversible in nature.[13]

In each matter heard before a code enforcement board, the case is presented and testimony is taken from both the code inspector and alleged violator.[14] At the conclusion of the hearing, the board issues findings of fact and provides an order stating the relief granted.[15] The board may include a notice that repairs must be completed by a specified date and fine the violator for each day the order has not been complied with after the completion date or each day that a repeat violation occurs.[16] All final administrative orders of the code enforcement board may be appealed to the circuit court within 30 of the execution of the order.[17]

As an alternative to a code enforcement board, the act allows counties and municipalities to adopt a code enforcement system giving code enforcement officials or special magistrates the authority to hold hearings and assess fines against violators of the local government's codes or ordinances.[18] Each of these methods may be used at the local government's discretion, but a local government may choose any method to enforce codes and ordinances.[19]

Administrative Fines for Code Enforcement Violations

A code enforcement board may, upon notification by the code inspector that repairs have not been completed by a specified date or upon finding that repeat violations have occurred, order violators to pay a fine for each day of the continued violation. If the violation presents a serious threat to the public health, safety, and welfare, the code enforcement board must notify the local governing body, which may make all reasonable repairs to bring the property in compliance and charge the violator the reasonable cost of those repairs in addition to the fine imposed. If, after due notice and hearing, a code enforcement board finds a violation to be irreparable or irreversible in nature, it may order the violator to pay a fine.[20]

Administrative fines may not exceed $250 per day for a first violation and may not exceed $500 per day for a repeat violation.[21] If the board finds the violation is irreparable or irreversible in nature, the board may impose a fine of up to $5,000. When determining the amount of the fine, the board may consider the following factors:

- The gravity of the violation.
- Any actions taken by the violator to correct the violation.
- Any previous violations committed by the violator.[22]

A code enforcement board may choose to reduce the amount of the fine initially imposed.[23]

A county or municipality with a population of 50,000 or greater may adopt, by a majority vote plus one of the entire governing body, an ordinance that allows code enforcement boards or special magistrates to impose fines in excess of the above limits. The ordinance may provide for fines of up to $1,000 per day per violation for a first violation, $5,000 per day per violation for a repeat violation, and up to $15,000 per violation if the code enforcement board or special magistrate finds the violation to be irreparable or irreversible in nature. In addition to such fines, a code enforcement board or special

[13] S. 162.06(3) and (4), F.S.
[14] S. 162.07(2) and (3), F.S.
[15] S. 162.07(4), F.S.
[16] S. 162.09(1), F.S.
[17] S. 162.11, F.S.
[18] S. 162.03, F.S.
[19] The Attorney General has opined, "once a municipality has adopted the procedures of ch. 162, F.S., to enforce its municipal codes and ordinances, it may not alter or amend those statutorily prescribed procedures but must utilize them as they are set forth in the statutes." Op. Att'y Gen. 2000-53 (2000). A local government may, however, maintain a ch. 162, F.S., code enforcement board and still decide to enforce a particular violation by bringing a charge in county court, or any other means provided by law. *Goodman v. County Court in Broward County, Fla.* 711 So.2d 587 (Fla. 4th DCA 1998).
[20] S.162.09(1), F.S.
[21] S.162.09(2)(a), F.S.
[22] S.162.09(2)(b), F.S.
[23] S.162.09(2)(c), F.S.

magistrate may impose additional fines to cover all costs incurred by the local government in enforcing its codes and all costs of repairs. Any ordinance imposing such fines must include criteria to be considered by the code enforcement board or special magistrate in determining the amount of the fines.[24]

A certified copy of an order imposing a fine, including any repair costs incurred by the local government, may be recorded in the public records and constitutes a lien against the land on which the violation exists and upon any other real or personal property owned by the violator. Upon petition to the circuit court, the order is enforceable in the same manner as a court judgment, including execution and levy against the personal property of the violator, but such order cannot be deemed to be a court judgment except for enforcement purposes. A lien arising from such a fine runs in favor of the local governing body, and the local governing body may execute a satisfaction or release of lien entered.[25]

National Register of Historic Places

The National Register of Historic Places is an official list of sites and properties throughout the country that reflect the prehistoric occupation and historical development of our nation, states, and local communities. More than 1,700 properties and districts in Florida are listed on the National Register. Nominations for properties in Florida are submitted to the National Park Service through the Division of Historical Resources within the Department of State following review and recommendation by the Florida National Register Review Board. Listing in the National Register does not, in itself, impose any obligation on the property owner, or restrict the owner's basic right to use and dispose of the property as he or she sees fit, but does encourage the preservation of significant historic resources.

Demolition Permits

It is unlawful for a person, firm, or corporation to construct, erect, alter, repair, secure, or demolish any building without first obtaining a building permit from the local government or from such persons as may, by resolution or regulation, be directed to issue such permit, upon the payment of reasonable fees as set forth in a schedule of fees adopted by the enforcing agency.[26]

A local law, ordinance, or regulation may not prohibit or otherwise restrict the ability of a private property owner to obtain a building permit to demolish his or her single-family residential structure provided that:

- Such structure is located in a coastal high-hazard area, moderate flood zone, or special flood hazard area according to a Flood Insurance Rate Map issued by the Federal Emergency Management Agency for the purpose of participating in the National Flood Insurance Program.
- The lowest finished floor elevation of such structure is at or below base flood elevation as established by the Building Code or a higher base flood elevation as may be required by local ordinance, whichever is higher.
- Such permit complies with all applicable Building Code, Fire Prevention Code, and local amendments to such codes.[27]

However, a local law, ordinance, or regulation may restrict demolition permits for a:

- Structure designated on the National Register of Historic Places;
- Privately owned single-family residential structure designated historic by a local, state, or federal governmental agency on or before January 1, 2022; or
- Privately owned single-family residential structure designated historic after January 1, 2022, by a local, state, or federal governmental agency with the consent of its owner.[28]

[24] S.162.09(2)(d), F.S.
[25] S.162.09(3), F.S.
[26] S. 553.79(1), F.S.
[27] S. 553.79(26)(a), F.S.
[28] S. 553.79(26)(d), F.S.

Effect of Proposed Changes

The bill authorizes code enforcement boards to impose an enhanced fine for the demolition of a structure individually listed on, or contributing to, the National Register of Historic Places. A code enforcement board or special magistrate must make specific findings based on competent, substantial evidence that the demolition of the historic structure was not permitted and was not the result of a natural disaster to impose the fine. The enhanced fine may not exceed 20 percent of the fair market value of the property as identified in the property appraiser's evaluation.

B. SECTION DIRECTORY:

Section 1: Amends s. 162.09, F.S., relating to administrative fines; costs of repair; liens.

Section 2: Provides an effective date of July 1, 2024.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The bill may increase local government revenues to the extent additional fines are collected for code enforcement violations.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The bill neither provides authority for nor requires rulemaking by executive branch agencies.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

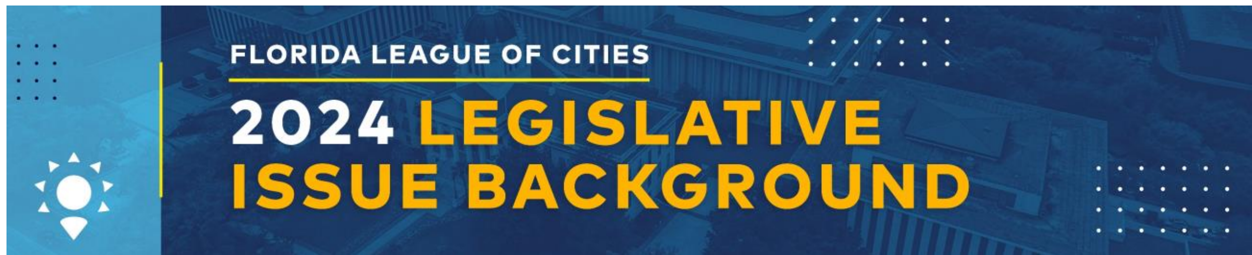
IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On January 31, 2024, the Local Administration, Federal Affairs & Special Districts Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment removed language that would have allowed a code enforcement board to assess an enhanced fine for an individually listed local historic landmark.

On February 21, 2024, the State Affairs Committee adopted a proposed committee substitute (PCS) and reported the bill favorably as a committee substitute. The PCS removed the word "landmark" in regards to unlawful demolition of structures individually listed on, or contributing to, the National Register of Historic Places.

This analysis is drafted to the committee substitute as passed by the State Affairs Committee.

Farmworker Housing



Farmworker Housing Summary

Several cities in Florida are facing challenges as agricultural companies purchase residential properties and convert them into housing for large groups of migrant farmworkers. A common scenario involves turning single-family homes, typically designed for a small family, into crowded residences for up to 20 workers. This trend has raised concerns among these local governments and residents about safety, zoning compatibility, and the preservation of residential neighborhood integrity. However, local authorities feel constrained by Florida Statute 381.00896, which preempts municipalities from enacting discriminatory land-use ordinances targeting farmworker housing.

Under Florida law, section 381.00896, municipalities must permit and encourage the development of farmworker housing to meet local needs. The statute broadly prohibits discriminatory zoning practices based on the occupation, race, or income of migrant workers. The Attorney General's Opinion (**AGO 99-18**) clarifies that while municipalities retain the authority to enforce zoning regulations for public safety and orderly development, such rules cannot prohibit or unduly restrict the placement of farmworker housing. Cities must ensure that they do not discriminate or limit the availability of sufficient housing for migrant workers, even in residential neighborhoods.

Proponents argue that local regulations should be allowed to limit the use of single-family homes as housing for large groups of farmworkers. The current statutory definitions of "migrant labor camp" and "residential migrant housing" should be amended to specifically exclude single-family residences. When these homes are repurposed to accommodate multiple unrelated workers, the boundaries between residential use and migrant labor camp use become blurred. As such, cities are proposing amendments to section 381.008 to clarify that single-family homes cannot be converted into migrant labor camps.

The proposed amendment seeks to adjust the definitions to prevent the use of single-family homes as migrant labor camps by restricting housing to traditional family use. This revision would allow cities to enforce local zoning laws more effectively while still adhering to the overarching goal of providing adequate and non-discriminatory farmworker housing. The balance between promoting sufficient housing for migrant workers and maintaining the character of residential neighborhoods remains at the core of this legislative issue.

Zoning, migrant farmworker housing

Number: AGO 99-18

Date: April 19, 1999

Subject:
Zoning, migrant farmworker housing

Mr. John D. Cassels, Jr.
Okeechobee County Attorney
Post Office Box 968
Okeechobee, Florida 34972

RE: MIGRANT FARMWORKER HOUSING--ZONING--COUNTIES--county's authority to zone property for migrant farmworker housing. ss. 125.01 and 381.00896, Fla. Stat.

Dear Mr. Cassels:

You ask substantially the following question:

Does section 381.00896, Florida Statutes, limit the county's authority to enact zoning regulations that may affect the placement of migrant farmworker housing facilities in residential areas?

In sum:

While section 381.00896, Florida Statutes, does not preclude a county from lawfully enacting and enforcing zoning regulations affecting the placement of migrant farmworker housing facilities in residential areas, the county's zoning laws may not prohibit or discriminate against the development of such housing and the zoning laws must be applied in a manner to ensure that there is sufficient housing to meet local needs.

Section 381.00896, Florida Statutes, sets forth a legislative policy of nondiscrimination in the development and use of migrant farmworker housing[1] in this state. The Legislature has made it clear that each county and municipality "must permit and encourage the development and use of a sufficient number and sufficient types of farmworker housing facilities to meet local needs."[2] The statute states, however, that "[a] municipality or county may not enact or administer local land use ordinances to prohibit or discriminate against the development and use of farmworker housing facilities because of the occupation, race, sex, color, religion, national origin, or income of the intended residents."[3] Section 381.00896(4), Florida Statutes, states "[t]his section does not prohibit the imposition of local property taxes, water service and garbage collection fees, normal inspection fees, local bond assessments, or other fees, charges, or assessments to which other dwellings of the same type *in the same zone* are subject." (e.s.)

Section 125.01, Florida Statutes, sets forth the powers and duties of the governing body of a noncharter county and bestows on such body "the power to carry on county government."[4] To the extent not inconsistent with general or special law, this power includes but is not limited to

the power to "[e]stablish, coordinate, and enforce zoning and such business regulations as are necessary for the protection of the public."[5] Section 125.01(1)(t), Florida Statutes, empowers the county to "[a]dopt ordinances and resolutions necessary for the exercise of its powers" and paragraph (w) of this subsection provides that a county has the power to "[p]erform any other acts not inconsistent with law, which acts are in the common interest of the people of the county, and exercise all powers and privileges not specifically prohibited by law." The powers and duties set forth in section 125.01(1), Florida Statutes, are to be liberally construed "to effectively carry out the purpose of this section and to secure for the counties the broad exercise of home rule powers authorized by the State Constitution."[6] Thus, a county's authority to zone land for a particular use may not contravene state law.

A review of the legislative history surrounding the passage of section 381.00896, Florida Statutes, shows as its goal the prohibition of discrimination against the development and use of farmworker housing facilities within their jurisdictions because of the lawful occupation, race, sex, color, religion, national origin, or income of the intended residents.[7] While the terms of the section must be interpreted in a manner that will carry out the Legislature's intent, it does not appear that the plain language of section 381.00896, Florida Statutes, or any other construction gleaned from its legislative history would prohibit a county from lawfully exercising its zoning authority and enforcing its zoning regulations such that migrant farmworker housing facilities could be located only in areas where zoning permitted such use. Had the Legislature wished to grant a blanket exemption to the placement of migrant farmworker housing facilities, it could easily have done so.[8]

Section 381.00896, Florida Statutes, would preclude a county from enacting zoning regulations that do not permit and encourage the development and use of sufficient numbers and types of farmworker facilities to meet local needs. Section 381.008(8), Florida Statutes (1998 Supplement), defines "Residential migrant housing" to mean "[a] building, structure, mobile home, barracks, or dormitory, and any combination thereof on adjacent property which is under the same ownership, management, or control, and the land appertaining thereto, that is rented or reserved for occupancy by five or more migrant farmworkers[.]" A "Migrant labor camp" is defined to mean one or more structures established or furnished as an incident of employment as living quarters for migrant farmworkers. In light of these definitions, a county would be precluded from enacting zoning regulations that disallowed such accommodations in areas that otherwise allowed such occupancy, such as multiple-family dwellings or commercial lodging establishments, or did not recognize such accommodations in any of its classifications.

It is my opinion, therefore, that section 381.00896, Florida Statutes, does not preclude a county from lawfully enacting and enforcing zoning regulations that may affect the placement of migrant farmworker housing facilities in residential areas, if the county's zoning laws do not otherwise prohibit or discriminate against the development of such housing and there is sufficient housing to meet local needs.

Sincerely,

Robert A. Butterworth
Attorney General

RAB/tls

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[1] Section 381.008(8), Fla. Stat. (1998 Supp.), defines "Residential migrant housing" to mean:

"A building, structure, mobile home, barracks, or dormitory, and any combination thereof on adjacent property which is under the same ownership, management, or control, and the land appertaining thereto, that is rented or reserved for occupancy by five or more migrant farmworkers, except:

(a) Housing furnished as an incident of employment.
(b) A single-family residence or mobile home dwelling unit that is not under the same ownership, management, or control as other farmworker housing to which it is adjacent or contiguous.
(c) A hotel, motel, or resort condominium, as defined in chapter 509, that is furnished for transient occupancy.
(d) Any housing owned or operated by a public housing authority except for housing which is specifically provided for persons whose principal income is derived from agriculture."

A "Migrant labor camp" is defined in s. 381.008(5), Fla. Stat. (1998 Supp.), as:

"One or more buildings, structures, barracks, or dormitories, and the land appertaining thereto, constructed, established, operated, or furnished as an incident of employment as living quarters for seasonal or migrant farmworkers whether or not rent is paid or reserved in connection with the use or occupancy of such premises. The term does not include a single-family residence that is occupied by a single family."

[2] Section 381.00896(1), Fla. Stat.

[3] Section 381.00896(3), Fla. Stat.

[4] Section 125.01(1), Fla. Stat.

[5] Section 125.01(1)(h), Fla. Stat.

[6] Section 125.01(3)(b), Fla. Stat.

[7] Final Bill Analysis & Economic Impact Statement, HB 2183 (failed to pass the Legislature, but companion bill CS/SB 166 passed) House of Representatives Committee on Business and Professional Regulation, April 23, 1993.

[8] *Cf.* s. 125.0109, Fla. Stat., providing:

"The operation of a residence as a family day care home, as defined by law, registered or licensed with the Department of Health and Rehabilitative Services shall constitute a valid residential use for purposes of any local zoning regulations, and no such regulation shall require the owner or operator of such family day care home to obtain any special exemption or use

permit or waiver, or to pay any special fee in excess of $50, to operate in an area zoned for residential use."

Draft Farmworker Housing Legislation

Section 381.008 Definitions.

(5) “Migrant labor camp”—One or more buildings, structures, barracks, or dormitories, and the land appertaining thereto, constructed, established, operated, or furnished as an incident of employment as living quarters for seasonal or migrant farmworkers whether or not rent is paid or reserved in connection with the use or occupancy of such premises. The term does not include a**ny** single-family **residence** ~~**that is occupied by a single family**~~.

(8) “Residential migrant housing”—A building, structure, mobile home, barracks, or dormitory, and any combination thereof on adjacent property which is under the same ownership, management, or control, and the land appertaining thereto, that is rented or reserved for occupancy by five or more seasonal or migrant farmworkers, except:

(a) Housing furnished as an incident of employment.

(b) A single-family residence or mobile home dwelling unit ~~**that is occupied only by a single family and**~~ that is not under the same ownership, management, or control as other farmworker housing to which it is adjacent or contiguous.

(c) A hotel or motel, as described in chapter 509, that is furnished for transient occupancy.

(d) Any housing owned or operated by a public housing authority except for housing which is specifically provided for persons whose principal income is derived from agriculture.

381.00896 Nondiscrimination.—

(1) The Legislature declares that it is the policy of this state that each county and municipality must permit and encourage the development and use of a sufficient number and sufficient types of farmworker housing facilities to meet local needs. The Legislature further finds that discriminatory practices that inhibit the development of farmworker housing are a matter of state concern.

(2) Any owner or developer of farmworker housing which has qualified for a permit to operate, or who would qualify for a permit based upon plans submitted to the department, or the residents or intended residents of such housing may invoke the provisions of this section.

(3) A municipality or county may not enact or administer local land use ordinances to prohibit ~~**or discriminate**~~ against the development and use of ~~**farmworker housing**~~ **migrant labor camps or residential migrant housing** facilities because of the ~~**occupation**~~**,** race, sex, color, religion, national origin, or income of the intended residents.

(4) This section does not prohibit the imposition of local property taxes, water service and garbage collection fees, normal inspection fees, local bond assessments, or other fees, charges, or assessments to which other dwellings of the same type in the same zone are subject.

(5) This section does not prohibit a municipality or county from extending preferential treatment to farmworker housing, including, without limitation, fee reductions or waivers or changes in

architectural requirements, site development or property line requirements, or vehicle parking requirements that reduce the development costs of farmworker housing.

Key Dates

2024 - 2025 Key Legislative Dates

October 2024

4	FLC Policy Committee Meetings (Round 1) – Hilton Orlando, 6001 Destination Parkway, Orlando, FL 32819

November 2024

5	General Election
8	FLC Policy Committee Meetings (Round 2) Hilton Orlando, 6001 Destination Parkway, Orlando, FL 32819
13-16	National League of Cities City Summit – Tampa, FL

December 2024

2-6	Legislative Interim Committee Meetings (House of Representatives only)
4-6	FLC Legislative Conference – Hilton Orlando, 6001 Destination Parkway, Orlando, FL 32819; FLC Policy Committee Meetings on Dec. 5 (Round 3)
9-13	Legislative Interim Committee Meetings (Senate only)

January 2025

13-17	Legislative Interim Committee Meetings
21-24	Legislative Interim Committee Meetings

February 2025

3-7	Legislative Interim Committee Meetings
10-14	Legislative Interim Committee
17-21	Legislative Interim Committee
20	FLC Legislative Session Preview Webinar at 2:00 p.m. ET

March 2025

4	Regular Legislative Session Convenes
10-12	NLC Congressional City Conference – Washington, DC
24-26	FLC Legislative Action Days – Tallahassee, FL

May 2025

2	Last Day of Regular Legislative Session
15	FLC Post Legislative Session Review Webinar at 2:00 p.m. ET

For further details about the mentioned events or legislative information, contact medenfield@flcities.com.

Notes

Notes