

# Florida's Live Local Act

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## Policy Issues With Live Local Act

- Local governments that already provide appropriate opportunities for multifamily/mixed use housing should not see preemptions that allow housing to consume key parcels available for jobs, industry and commerce.
- Loss of home rule power to protect and shape local identity – Undermines vision
- Impact on coastal cities:
  - Increasing permanent density on barrier island, which violates decades-old state policy
  - Area is prone to flooding and highly vulnerable to the rising seas and storm surge driven by climate change
  - Reaches gridlock in season already - Affects evacuation time.

# Live Local and the 2025 Legislative Session

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# Zoning and Land Use Issues Under Live Local Act

- Applies to industrial, commercial and mixed use zoning.
  - 2025 Amendments result in applicability to Planned Unit Developments (“PUD”)
  - If gov’t agrees, adjacent parcels that do not qualify on their own
  - If gov’t agrees, any parcel regardless of zoning owned by a religious institution with a place of worship if 10% affordable.



## Zoning and Land Use Issues Under Live Local Act

Commercial uses? Defined. Must be zoned for by right, without variance/waiver. Not accessory, ancillary, incidental, or temporary uses. Name of the category is irrelevant.

- **Commercial:** activities associated with the sale, rental, or distribution of products or the sale or performance of related services. The term includes, but is not limited to, retail/wholesale sales, rental goods/svcs, restaurant, hotels (25+ rooms), office, entertainment, food service, sports, theaters, tourist attraction, and other for-profit business activities.
  - NOT home based business or cottage food, vacation rental.
  - NOT recreation (e.g., golf, tennis, pool, clubhouse)

# Zoning and Land Use Issues Under Live Local Act

- What are industrial and PUD uses? Defined. Must be zoned for by right, without variance/waiver. Not accessory, ancillary, incidental, or temporary uses. Name of the category is irrelevant.
  - **Industrial:** activities associated with the manufacture, assembly, processing, or storage of products or the performance of related services. The term includes, but is not limited to, auto/boat manufacturing or repair, junkyards, meat packing, citrus/produce processing/packing, electrical/water/sewage plant, landfill.
  - **PUD:** As defined by s. 163.3202(5)(b): “Planned unit development” or “master planned community” means an area of land that is planned and developed as a single entity or in approved stages with uses and structures substantially related to the character of the entire development, or a self-contained development in which the subdivision and zoning controls are applied to the project as a whole rather than to individual lots.



## Zoning and Land Use Issues Under Live Local Act

- What is an area zoned for mixed use?
- Clearly, more than one nonresidential use qualifies.
- Mixed with residential? Less clear – statutory analysis does not support (“mixed use **residential** projects” vs “mixed use zoning districts”). Preemption not needed, since residential use is already allowed.
  - Mixed use now defined to include nonresidential **with residential**, without consideration of accessory, etc. Cannot require more than 10% nonresidential in mix.
    - ““Mixed-use” means “any use that combines multiple types of approved land uses from **at least two** of the residential use, commercial use, and industrial use categories.” Excludes accessory, ancillary, temporary, recreational, incidental to the allowable uses.



## Zoning and Land Use Issues Under Live Local Act

- Where can LLA projects not go, regardless of zoning?
  - Airport-impacted areas (FS 333.03)
  - Recreational/commercial working waterfront zoned industrial
  - Wekiva Study Area, Everglades Protection Area
  - Recreational is **not** a commercial use, not eligible





## Zoning and Land Use Issues Under Live Local Act

- What zoning standards apply?
  - For the residential component, the Act says that development follows the multi family development regulations in areas zoned for such use, otherwise consistent with comp plan except for density (**without TDR**), FAR, height and land use.
  - Displaces standards designed for urban mixed residential development, and instead applies some multifamily district that contemplates a suburban apartment complex?



## Zoning and Land Use Issues Under Live Local Act

- What zoning standards apply?
- Cannot require rezoning, land use change, special exception, conditional use, variance.
  - Also “may not require “transfer of density or development units, amendment to a development of regional impact, amendment to a municipal charter”

# Zoning and Land Use Issues Under Live Local Act

- Not a complete preemption of local regulation?
  - Allows qualifying developments to go into zoning districts where they would not otherwise be allowed (use).
  - Otherwise preempts height, density and FAR only.
    - FAR defined to include lot coverage
  - Currently allowed residential density – e.g., not hotel units. Not nonconforming. Not bonus/variance/incentive (2024 clarifies this). or as of July 1, 2023.
  - 150% of currently allowed FAR. or as of July 1, 2023.
  - Currently allowed height –or as of July 1, 2023.
  - **Historic:** Properties with contributing buildings/structures within historic district listed nationally before 1/1/2000 (Miami Beach art deco district) and those individually listed nationally – height limited to highest allowed as of July 1, 2023 in any zoning district regardless of conditions within  $\frac{3}{4}$  mile.



# Zoning and Land Use Issues Under Live Local Act

## Not a complete preemption of local regulation?

Special rules for height next to single family zoning:

If the proposed development is **adjacent to, on two or more sides**, a parcel **zoned for single-family residential** use that is within a single-family residential development with **at least 25 contiguous single-family homes**, the municipality may restrict the height of the proposed development to **150 percent** of the tallest building on any property **adjacent** to the proposed development, the **highest currently allowed height** for the property provided in the municipality's land development regulations, **or 3 stories**, whichever is higher. For the purposes of this paragraph, 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.

- Also excludes separated by body of water.
- Allows height as of July 1, 2023.
- Height capped at 10 stories.



## Zoning and Land Use Issues Under Live Local Act

- Not a complete preemption of local regulation?
  - Other local regulations apply.
  - Avoids public hearings for approval unless related to another request, such as a variance or plan amendment.
    - 2024 requires website posting re administrative approval
    - Prohibits action by “any quasi-judicial or administrative board or reviewing body”
    - Administrative approval for demolishing structures on the property



## Zoning and Land Use Issues Under Live Local Act

### Not a complete preemption of local regulation? Parking

- Must **consider** reduction – within  $\frac{1}{4}$  mile of a transit stop and accessible, and must **reduce** by at least 20% - within  $\frac{1}{2}$  mile of major transportation hub (defined) safely accessible to pedestrians, has parking available with 600 feet of development? **No.**
- **Must reduce** parking on request of applicant by **15%** if near a transit stop and accessible, **or** within  $\frac{1}{2}$  mile of major transportation hub (defined) safely accessible to pedestrians, **or** has parking available with 600 feet of development



## Zoning and Land Use Issues Under Live Local Act

Not a complete preemption of local regulation?

### Moratoria

- Cannot “enforce a building moratorium that **has the effect of delaying** the permitting or construction of” an LLA project.
- Prevailing party **attys fees/costs** if violate this.
- Still allowed: an ordinance for no more than **90 days in any 3-year** period, after preparing an **assessment** of current affordable housing **need** in the community and **5-year projections**, to be **posted** on website and **presented** at moratorium adoption hearing, and **included** in the business impact estimate.
- Still allowed: moratoria imposed or enforced to address **stormwater or flood water** management, to address the **supply of potable water**, or due to the necessary **repair of sanitary sewer** systems, if such moratoria **apply equally** to all types of multifamily or mixed-use residential development.



## Zoning and Land Use Issues Under Live Local Act

- Attorneys fees for violating preemption? Likely no under Section 57.112.
  - Attorneys' fees are available for violation of express preemption under new amendment to Section 57.112(2), Fla Stat.: "reasonable attorney fees and costs and damages to the prevailing party".
  - Opportunity to cure following notice and avoid attorneys fees, by amending or repealing what has been preempted.
  - No limit on amount of fees/costs/damages.
  - Most ordinances re Live Local preemption are likely zoning or land use ordinances, so would be exempt.
    - (6) Does not apply to local ordinances adopted pursuant to **part II of chapter 163**, s. 553.73 (bldg.), or s. 633.202 (fire).





Thank you.

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