

Inclusionary Zoning Compliance with HB 7103

BY: KODY GLAZER

House Bill 7103, which became law on July 1, 2019 and addressed Florida Statute 125.01055 for counties and FS 166.04151 for municipalities, amends the express authorization for mandatory inclusionary zoning to provide a requirement that developers be kept economically whole in exchange for providing affordable housing. The news coverage about the amended law has created some confusion and the Florida Housing Coalition has been responding to local government questions over the last several months. This article offers an overview of HB 7103 and provides guidance for compliance with the amended law.

Inclusionary Zoning (IZ) is a local land use planning tool that requires a housing developer under certain circumstances to include a percentage or specified number of affordable housing units within a market-rate development. The IZ ordinance typically allows an alternative of contributing to a housing fund or development of off-site units in lieu of producing the affordable units on-site. The law now requires local governments to provide incentives to “fully offset all costs” to the developer as a result of the affordable housing requirement.

For example, in exchange for requiring a developer to provide affordable units as part of a development, the local government must provide incentives such as a density or intensity bonus, reducing or waiving fees, or by granting other incentives, to offset all costs. Local governments will need to calculate the costs of providing the affordable units as well as the value of various incentives to determine whether the requirement for affordable units is fully offset by benefits provided to the developer.

In the months after HB 7103’s passage, communities across the state are working to comply with the new statutory language. These communities, whether they are analyzing their existing IZ ordinances or considering enacting new ones, must implement policies to keep housing developers economically whole in exchange for the development of affordable units. Although this task may appear daunting from a local government perspective, the new statutory language provides more clarity and perhaps a level of comfort that should facilitate the adoption and implementation of inclusionary housing policies.

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What Costs Must Be Offset?

Inclusionary zoning requires market-rate developers building a certain size of development to build affordable homes along with the market rate homes. What exactly are the costs that a local government must offset?

To determine which costs to offset, the local government must understand all costs of development that are able to be impacted by local government action. Local government should identify a staff member with development experience to lead this analysis. If in-house staff does not have the time or expertise for this task, the Florida Housing Coalition can assist. These are some development costs for local government to consider:

Construction Costs	Construction Material, Labor, General Contractor Overhead
Land Costs	Per Acre, Total Cost, Cost per Unit
Parking Space Costs	Required Parking
Soft Costs	Impact Fees, Architectural & Engineering Costs, Planning Approval Fees, Environmental Clearance, Building Permit Fees, Legal & Insurance Fees
Other Development Costs	Required Landscaping, Outdoor & Common Area Amenities, Meeting Setback & Other Structural Standards

Sample development costs for a typical affordable housing project



The Florida Housing Coalition recommends each local government create a formula for how to assess these costs in conjunction with an inclusionary zoning ordinance. For example, if a developer is required to build 30 affordable units as part of a 200-unit complex, the local government should be able to use the formula to estimate the cost of development for the 30 units. Then, the expected revenue from the affordable units will be calculated. The expense to build the units minus the revenue gained from the disposition of the affordable units will be the total value that the local government will need to offset.

Expense to build AH Units – Revenue from Sale/Rental of AH Unit = Cost to Offset

What Incentives Can Be Provided to Offset the Costs?

To effectively comply with the new Inclusionary Zoning law, communities should target development costs directly related to the local government’s land use authority. Local governments can relax certain zoning and development requirements as incentives to offset the costs of an inclusionary zoning ordinance. Here are some of the key incentives to offer that relate directly to land use regulations:

Key Incentives

 <p>Density/Intensity Bonuses</p>	<p>Provide greater density than otherwise allowed.</p> <p>Allow for greater building heights.</p>
 <p>Fees</p>	<p>Waive or reduce impact fees.</p> <p>Expedite and lower the costs of various permitting procedures.</p>
 <p>Parking Requirements</p>	<p>Lower the cost of parking construction by reducing or altering the number of required spots.</p>
 <p>Lot Configuration</p>	<p>Allow flexible lot configurations for developers to build more units on a given lot.</p>

How Will This Work in Practice?

Once a local government identifies the costs of an affordable housing contribution and the incentives it can offer, it must then calculate the value of the incentives granted and how those incentives offset the costs of the IZ requirements. This will depend on local costs of development and the local housing market. The Florida Housing Coalition can assist in calculating these costs and help local governments comply with HB 7103. As a rule, we recommend that local governments err on the side of making the development more profitable than it was prior to the inclusionary requirement rather than just breaking even from the offsets provided.

One county in Florida, in the course of amending its existing inclusionary zoning ordinance, found that density bonuses alone more than offset the cost of compliance with IZ requirements. This county found that by allowing market-rate developers to build more units than otherwise stated in the zoning code, they could comply with HB 7103. If density bonuses alone will not offset the costs of a particular development, localities can reduce parking requirements, reduce fees, and provide other incentives to comply with state law.

Land Value Capture from Rezoning and Government Action

Land value capture (LVC) is a concept that enables communities to recover and reinvest increases in land value that result from public investment and other government action when local government uses its land use authority to increase the value of private land, it should capture a reasonable increment of that value for public benefit. For example, the act of rezoning a parcel of land from an agricultural use to a residential use substantially increases the parcel's value. Under LVC principles, a local government would recover some of this increase in value for public benefit.¹

Inclusionary zoning can be a vital tool for reinvesting property value increases created by government action. A local government could link IZ directly with local rezoning decisions. A locality could require the inclusion of affordable housing whenever it increases the value of land from actions such as rezoning agricultural land to residential, for example. This strategy can be particularly effective in rural and agricultural parts of the state that are prime for large-scale development due to development patterns and the planning for new roads. Land value capture should be included in the economic analysis for compliance with HB 7103. Local government should use the increase in land value due to rezoning and other land use decisions or government actions that increase the value of the property as part of the calculation to "fully offset all costs" associated with IZ requirements. In areas with low allowable densities and intensities, a rezoning to a more intense use, which would allow the developer to build more units, could cover the costs of an affordable housing contribution without the need for additional incentives.

Conclusion

Affordable housing development requires a healthy partnership between the public and private sector. By requiring local governments to "fully offset all costs" associated with a developer's affordable housing contribution, HB 7103 provides comfort and clarity for communities to adopt and implement inclusionary housing ordinances. Developers will have their costs fully offset and the community will see an increase in affordable housing production.

With over twenty years of inclusionary housing expertise, the Florida Housing Coalition is pleased to provide education to local governments and community stakeholders and assist in drafting and revamping inclusionary ordinances to comply with the new statutory framework.

¹ For more information on land value capture as a tool for financing affordable housing, read [Inclusionary Housing, Incentives, and Land Value Recapture](http://ebho.org/wp-content/uploads/2011/09/Calavita_and_Mallach_Inclusionary_Housing_Incentives_and_Land_Value_Recapture_2009.pdf) by Nico Calavita and Alan Mallach: http://ebho.org/wp-content/uploads/2011/09/Calavita_and_Mallach_Inclusionary_Housing_Incentives_and_Land_Value_Recapture_2009.pdf and [Land Value Capture: Tools to Finance Our Urban Future](https://www.lincolnst.edu/sites/default/files/pubfiles/land-value-capture-policy-brief.pdf) by Lourdes German and Allison Ehrich Bernstein: <https://www.lincolnst.edu/sites/default/files/pubfiles/land-value-capture-policy-brief.pdf>



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