

# Inclusionary Zoning & HB 7103 FAQ

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The 2019 Legislative Session produced House Bill 7103, which changed how cities and counties in Florida can develop and implement inclusionary zoning (IZ) ordinances. The Florida Housing Coalition supports IZ as a best practice for boosting the supply of affordable housing in growing or rapidly gentrifying communities. Local governments and housing advocates must understand HB 7103 and what it means for IZ, especially its requirements around cost offsets for developers and its explicit permission for cities and counties to incorporate IZ.

## What is Inclusionary Zoning (IZ)?

- Inclusionary zoning is a local land use regulation that requires some market-rate developers to include a percentage of affordable housing within a market-rate development.
- IZ can come in a variety of forms. IZ can be an ordinance that covers an entire jurisdiction, an overlay district over a redeveloping area with affordable housing requirements, a negotiated development agreement, or another method.
- Most IZ structures provide for flexibility in implementation including:

- 1) allowing developers to build the required affordable units **offsite** at another location;
- 2) providing an option to pay a **fee in-lieu** of the production of affordable units;
- 3) allowing developers to donate **land in-lieu** of production; and
- 4) offering a **mix of incentives** to offset the costs associated with IZ.

### What is mandatory IZ and how is it different than voluntary IZ?

- A mandatory IZ ordinance requires a market rate developer to include a percentage of affordable housing or below-market rate units within a market-rate development.
- By contrast, voluntary IZ ordinances aim to *encourage* the private sector to build affordable housing. A voluntary IZ ordinance offers incentives such as density bonuses, height bonuses, parking reductions, or other zoning bonuses in exchange for the developer building affordable housing units.
- Mandatory IZ is more successful than voluntary programs in developing affordable housing. Typically, voluntary programs are only utilized by developers already in the business of building affordable housing and do not attract market-rate developers. Market-rate developers often leave voluntary incentives on the table and opt to continue to build market-rate units.

### What are the common characteristics of a mandatory inclusionary zoning ordinance?

- *Threshold number of market rate units* that activate the IZ requirement w/a corresponding percentage of affordable units required;
- Requirement that affordable units are *comparable in quality and aesthetics* to market rate units;
- *Benefits or incentives* to assist the private sector in providing the affordable units;
- Provision for *payment in-lieu* where nature of development makes it practically infeasible to include affordable units;
- Housing trust fund as the *depository for the payments in-lieu*;
- *Term of affordability*; and
- Policies for *administration* of the program and opportunity for appeal.

It is important to note that an IZ ordinance should provide for long-term or permanent affordability; the affordable units produced under an IZ program must be preserved for the long haul. An inclusionary housing ordinance that delivers developer benefits in exchange for required affordable housing but fails to require the housing stay affordable long-term is not an ordinance worth adopting. Failure to provide long term affordability will create a windfall to the lucky owner of the affordable home when the land use restriction agreement expires. The local government will have given away valuable incentives and find that it has nothing to show for it.

### How did House Bill 7103 change inclusionary zoning practices in Florida?

House Bill 7103 became law on July 1, 2019 and in part, amended Florida's inclusionary zoning statutes (F.S. 125.01055 for counties and F.S. 166.04151 for municipalities). The new statutory

language explicitly allows cities and counties to implement mandatory inclusionary zoning ordinances. In exchange, HB 7103 requires local governments to provide incentives to “fully offset all costs” to the developer as a result of the affordable housing requirement.

For example, if there is a 100-unit market-rate development and a 10% inclusionary requirement, the local government would need to “fully offset all costs” associated with the 10 required affordable units. Local government can do so by providing incentives such as a density or intensity bonus, reducing or waiving fees, or by granting other incentives. Local government can also offset costs by granting an up-zoning that raises the value of the developer’s property.

How does a local government offset all costs associated with a mandatory IZ ordinance?

There are different methods in which a local government can keep developers economically whole when implementing IZ. Local governments can offer density bonuses, height bonuses, reduce or waive fees, and grant other incentives. The main issue will be how a local government *calculates* the amount of costs that are being offset.

The Florida Housing Coalition created a four-step process for compliance with HB 7103. This is only one method to calculate cost offsets; there can be other methods of compliance.

**1. Identify the Costs**

- First, identify the costs of the affordable units.
- For example, if a developer is required to build 30 affordable units as part of 200-unit complex, identify the cost of the 30 units.
- This chart below shows some of the costs associated with development. Utilize a local government staff member or consultant with development expertise to lead this analysis on a project by project basis.

Construction Costs	Construction Materials 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 Setback & Other Structural Standards Infrastructure
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2. **Determine the Revenue Gained from the Affordable Units**

- Next, determine the revenue gained on the sale or rental of the required affordable units.
- Developers will still gain revenue from the required affordable units albeit not at market-rate.
- This is where we get the total cost to offset. The total cost the local government will need to offset is the cost to build the affordable units (step 1) minus the revenue on the sale or rental of the affordable units (step 2).

<p><b>Cost to Build Affordable Units (Step 1)</b></p> <p><b>- Revenue on Sale/Rental of Affordable Units (Step 2)</b></p> <hr style="width: 50%; margin: 0 auto;"/> <p><b>Cost to Offset under House Bill 7103</b></p>
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3. **Identify Which Costs Local Government Can Reduce**

- Once the local government knows how much in costs it needs to offset, the local government will need to identify which development costs they can reduce.
- Identifying the development costs that can be reduced will aid the final calculation in how a local government keeps developers economically whole under HB 7103.
- Using the chart in step 1, the bold items represent an example of certain development costs that can be reduced by the local government.

Construction Costs	Construction Materials Labor General Contractor Overhead
Land Costs	Per Acre Total Cost Cost per Unit
Parking Space Costs	<b>Required Parking</b>

Soft Costs	<b>Impact Fees</b> Architectural & Engineering Costs <b>Planning Approval Fees</b> <b>Environmental Clearance</b> <b>Building Permit Fees</b> Legal & Insurance Fees
Other Development Costs	<b>Required Landscaping</b> Outdoor & Common Area Amenities <b>Setback &amp; Other Structural Standards</b> <b>Infrastructure</b>

4. **Bundle Incentives to Keep Developer Economically Whole**

- Once the local government knows how much in costs it will need to offset and which development costs it can reduce, the local government can then bundle various incentives to comply with HB 7103.
- Common incentives include density/intensity bonuses, height bonuses, impact & other fee reductions, lower parking requirements, up-zoning.
- The local government should create a calculation tool to identify the value of various incentives and how they fully offset the costs of an inclusionary housing requirement.
- Using a development professional or consultant can be helpful.

It is important to note that density bonuses alone are likely to be more than enough to comply with HB 7103. If density bonuses do not completely offset costs, then add on the other incentives, such as reduced parking and fee waivers.

What is Land Value Capture? How does it come into play for compliance with HB 7103?

Land value capture (LVC) is a concept that enables communities to recover and reinvest increases in land values that result from public investment and other governmental action. 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.

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 government actions 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 development to build more units, could cover the costs of an affordable housing contribution without the need for additional incentives.

### [How does a local government best implement an in-lieu of fee? How do in-lieu fees work under HB 7103?](#)

The creation of an in-lieu fee depends on local preferences. It depends on whether the locality wants to encourage on-site development or whether it wants to collect the revenue for other affordable housing purposes. If an in-lieu fee is set too low, the market-rate developer will likely opt to pay the fee which in total may not be enough to provide housing assistance under an affordable housing program. Generally, the higher the fee, the higher chance that developers will choose to build units on site.

There are several ways to implement an in-lieu fee. One of which is called the “production costs method.” Under this method, the fee is based on the average amount invested to produce an additional off-site affordable unit. For example, if it generally costs \$300,000 to build a new unit and a qualified low income buyer could generally afford a \$200,000 home, the fee would be \$100,000. A fee could also be calculated by the difference in price between market rate and affordable units. Cities typically base their fees on a consultant report that estimates the market prices and rents for a given area.

Under HB 7103, in-lieu fees are more difficult to administer. Using our four-step compliance method found above, when a developer participates in an IZ program by physically producing the required affordable units, they are still receiving revenue from the disposition of those units. This revenue gained lowers the total cost the local government is required to offset. With an in-lieu fee, the developer is gaining no revenue and thus, the local government would need to offset dollar-by-dollar the amount paid.

As an example, if it cost \$1 million to construct the required affordable units and the developer received \$650,000 in revenue from the disposition of the units, the local government would need to offset \$350,000 in costs. However, if an in-lieu fee of \$1 million was paid, the local government would need to offset \$1 million in costs as the developer is not gaining any revenue from an in-lieu fee.

### [How are inclusionary zoning ordinances different from linkage fees? Are linkage fees covered by HB 7103?](#)

In short, linkage fees are not governed by HB 7103. A linkage fee is a type of development exaction where a local government collects a fee, typically on non-residential development, to be placed in a housing trust fund. The foundation for the linkage fee is the connection between the workforce housing needs generated by the industrial, commercial, or other type of development that generates employment. The legal basis for linkage fees is found in the two-part *Nollan/Dolan* U.S. Supreme Court test.

Linkage fees are not inclusionary housing ordinances. An inclusionary housing ordinance is a land use regulation and need only be related to advancing a legitimate government purpose. A linkage

fee is an exaction, akin to an impact fee. This distinction between exactions and land use ordinances is important when understanding the impact of HB 7103. The new state mandate to “fully offset all costs” only applies to “inclusionary housing ordinances”; linkage fees are not inclusionary housing ordinances. Therefore, local governments do not need to provide cost offsets for linkage fees.

## [What is the Florida Housing Coalition’s role in inclusionary zoning?](#)

### **1. Education**

Mandatory inclusionary zoning is currently a relatively uncommon form of land use regulation found in the state of Florida. Less than a dozen local governments in Florida currently have mandatory inclusionary zoning policies. Although local governments are aware that inclusionary zoning ordinances are in operation in parts of the state, there has been reticence to adopt inclusionary housing policies due to push-back from the homebuilding industry and uncertainty about legal parameters. However, in a time where Florida is seeing an increase in population and an increase in the need for affordable housing, inclusionary zoning can be a valuable tool for creating affordable units.

Although IZ is still relatively uncommon in Florida, IZ ordinances are increasingly being considered for adoption by local governments as evidence mounts and consensus is reached that it is in the best interest of both employers and their workforce that residential developments provide a balance of market rate and below market rate housing. A main reason why the 2019 Legislative Session did not produce an outright ban on mandatory IZ is because an influential Hillsborough County Commissioner voiced her opposition to a full preemption of mandatory IZ. Her point, as was the point of local governments across the state, is that local governments should have mandatory IZ as a tool in their toolbox of methods to address the affordable housing crisis.

With over twenty years of inclusionary housing expertise, the Florida Housing Coalition is available to provide education on inclusionary zoning and its benefits for the affordable housing stock of our state. The Coalition is also available to provide training and technical assistance on HB 7103 and how a local government can comply with the new state requirements regarding mandatory inclusionary zoning.

### **2. Local Government Planning & Administration**

Affordable housing development requires a healthy partnership between the public and private sector. The same is true with an inclusionary zoning ordinance. Successful IZ ordinances engage the private sector to produce affordable units without deterring new housing development. HB 7103 provides a level of comfort that will enable counties and municipalities to add inclusionary housing policies to their toolkit. Because localities are now required to “fully offset all costs” associated with an IZ ordinance, the private sector will be more inclined to develop in areas with mandatory IZ.

Inclusionary housing policies are not simple to craft or administer, but they are essential for large scale developments and to prevent gentrification in areas of redevelopment. Inclusionary zoning

can be particularly useful in rural or agricultural areas that due to development patterns or planned new roadways, will see a substantial increase in housing development. The Florida Housing Coalition can assist in drafting and revamping inclusionary ordinances to comply with the new statutory framework found in HB 7103. The Coalition can also assist in strategies for implementing best practices to administer long-term affordability under an IZ ordinance.

### **3. Advocacy**

The 2019 Florida Legislative Session brought a statewide challenge to the legality of inclusionary zoning. In fact, the first iteration of the infamous HB 7103 contained an outright ban on mandatory IZ. Due to the hard work of the Florida Housing Coalition in partnership with the Florida League of Cities, Florida Association of Counties, 1000 Friends of Florida, local government advocates, and other housing professionals, we were able to stem the ban on mandatory IZ and reach the compromise found in HB 7103.

The Florida Housing Coalition will continue to advocate at the state and local level for IZ as one tool to increase the stock of affordable housing.

#### [Contact Us](#)

If you have any questions on Inclusionary Zoning and how the Florida Housing Coalition can assist your work, please contact us at [glazer@flhousing.org](mailto:glazer@flhousing.org) or 954-804-1320.