



To: Gina Clayton, Planning & Development Director
From: Lauren Matzke, Planning & Development Assistant Director
Date: November 15, 2023
Re: Senate Bill 102: Live Local Act & Other Affordable Housing Legislation

In recent years, the Florida Legislature has taken several steps to address the state’s housing affordability crisis. The most recent legislation is Senate Bill 102, the Live Local Act, which was approved by Governor DeSantis on March 29, 2023, and became law on July 1, 2023.

The Live Local Act refines prior statutory changes made through House Bill 1339 (2020) and Senate Bill 962 (2022) that sought to streamline the approval process for income-restricted affordable housing projects (see Section 166.04151(6), Florida Statutes (F.S.)). In addition, the Live Local Act preempts a local government’s ability to regulate zoning, density and height for certain multi-family and mixed-use affordable housing developments. These new provisions are found in Section 166.04151(7), F.S.

The primary focus of this memo is to provide guidance on the city of Clearwater’s process for implementation of the Live Local Act to prospective applicants and other interested parties, for which a summary of development standards and approval processes is provided at the end. The memo also provides a brief overview of the other affordable housing provisions that preceded, but were also modified by, the Live Local Act. The information within is aggregated from materials made available by the Florida Housing Coalition, Florida Attorney General’s Office, Florida Chapter of the American Planning Association, and Florida League of Cities.

City of Clearwater Community Development Code Overview

The city’s Community Development Code (the “CDC” or “Code”) differs from most communities in that it is a performance-based code which prescribes “flexibility” for certain uses or development standards (e.g., lot size, setbacks, parking). That flexibility varies by zoning district and, when available, additional criteria must be met. Some flexibility may be requested through an administrative process, while other flexibility requires a public hearing.

Article 4, Division 3 of the city’s Code establishes the approval process for the city’s “Level One” applications which are administrative reviews where authority to approve or deny an application is granted to the Community Development Coordinator (i.e., Planning & Development Director).

A Level One Minimum Standard Development application, sometimes referred to as a BCP, can proceed to the submittal of a building construction permit application without a separate site plan review process. Level One Flexible Standard Development applications, or FLS applications, are reviewed by the city's Development Review Committee (DRC) first, and that committee makes a recommendation to the Community Development Coordinator. DRC meetings are open to the public, but no public comment is taken.

Additional information is provided later in this memo regarding how the city will apply its "flexible" code to eligible projects pursuant to the Live Local Act.

Live Local Act Overview

The Live Local Act entitles eligible affordable housing rental projects to certain use, density and height standards and such projects must be approved administratively.

To be eligible, a project must meet the following criteria:

1. Be in an area zoned for commercial, industrial, or mixed-use.
2. Be a multi-family or mixed-use rental development.
3. At least 40% of the residential units must be affordable¹ to households up to 120% area median income (AMI) for a period of at least 30 years.
4. If mixed-use, at least 65% of the total square footage must be residential.

Affordable housing projects meeting these criteria are entitled to the following:

1. Use: Permitted to build multi-family or mixed-use rental projects on any land zoned for commercial, industrial, or mixed-use without a zoning change.
2. Density: Permitted the same density as the highest residential density allowed in the city where residential development is permitted.
3. Height: Permitted the same building height as what is currently allowed for a residential or commercial project within one mile of the proposed development, or three stories, whichever is higher.
4. Parking: Required off-street parking *may* be reduced if a project is located within one-half mile of a major transit stop.²

While these entitlements are granted by statute, the city's other Community Development Code standards continue to apply, including setbacks, minimum parking requirements, concurrency,

¹ Affordable as defined in [Section 420.0004](#), F.S.

² Live Local Act requires municipalities to "*consider* reducing parking requirements" within ½-mile of a "major transit stop" which is not defined by the Live Local Act or currently defined in the city's Community Development Code (emphasis added).

etc. Provided these other regulations are met, the Live Local Act requires an eligible project to be approved administratively.

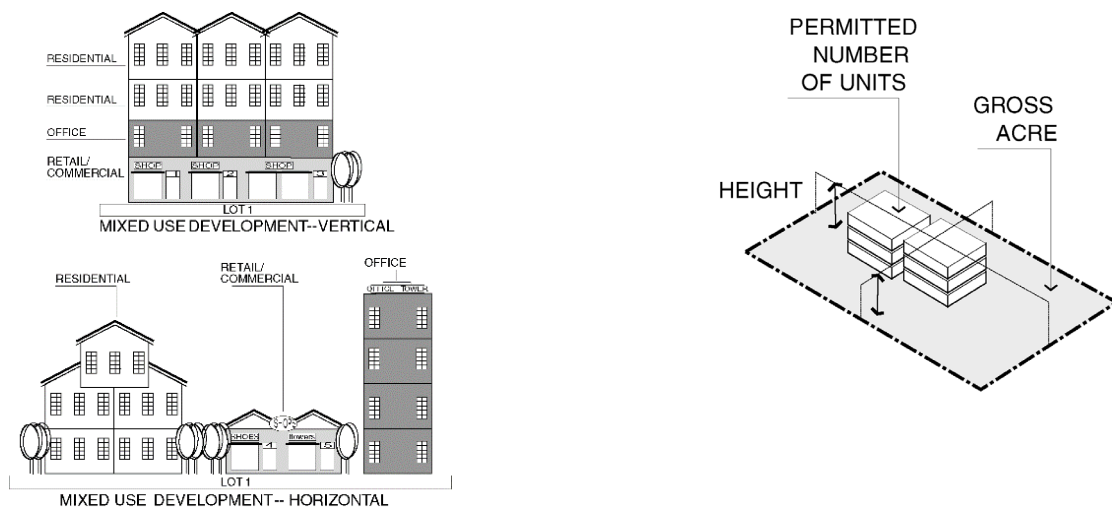
Live Local in Clearwater

The Live Local Act preempts certain regulations for all municipalities and therefore is written in broad terms, relying on local governments to provide additional guidance to the development community and residents. This also necessitates interpretations of the Act's provisions and how local regulations and procedures apply.

Tables 1 and 2 summarize the Live Local entitlements, as well as applicable approval processes and key development standards by city eligible zoning district for each Live Local use (multi-family, in Clearwater called attached dwellings, and mixed-use). A more detailed description of the processes and standards follows the tables.

The city's Community Development Code Article 8. Definitions and Rules of Construction define the following terms which are pertinent to Live Local projects:

- *Dwelling, attached* means a dwelling unit that shares common walls with at least one other dwelling unit. [Within this memo, this is referred to more commonly as attached dwellings.]
- *Mixed use* means a combination of residential and non-residential uses on a single property. [Illustrated in Figure 1]
- *Density* means the measure of permitted residential development expressed as a maximum number of dwelling units per gross acre of land.
- *Floor area ratio (FAR)* means a measurement of the intensity of building development on a site. A floor area ratio is the relationship between the gross floor area on a site and the gross land area. The FAR is calculated by adding together the gross floor area of all buildings on the site and dividing by the gross land area. [illustrated in Figure 2]



Eligible Live Local projects may be located within the following zoning districts (i.e., those zoned for commercial, industrial, or mixed-use³).

- Commercial (C)
- Tourist (T)
- Downtown (D)
- US 19
- Industrial, Research & Technology (IRT)

Table 1 Live Local Eligible Project - Multi-Family (Attached Dwellings) Use (Min. 40% Affordable Rental Units for 30 Years)

Eligible Zoning Districts	Commercial	Tourist	Downtown	US 19	Industrial, Research & Technology
Live Local Entitlements					
Density	75 units per acre ¹				
Height	Highest currently allowed via Minimum Standard (BCP) or Flexible Standard (FLS) Development for commercial or residential development within 1 mile of proposed eligible project, or three stories, whichever is higher. If requesting height only available through FLS application, must meet the applicable criteria for increased height. Height transitions established in Downtown and US 19 Districts apply.				
Approval Process					
BCP and/or FLS	FLS ²	FLS ³	BCP/FLS ⁴	BCP/FLS ⁴	FLS ²
Currently Permitted Use (Y/N)	No	Yes	Yes	Yes	No
Flexible Standard Devt. (FLS) Standards					
Min. Lot Area (SF)	15,000	10,000	None	None	15,000
Min. Lot Width (ft.)	150	100	None	None	150
Front Setback (ft.)	25 min.	10-15 min.	Based on Frontage Type	Based on street Frontage Type	25 min.
Side Setback (ft.)	10 min.	10 min.	Based on Frontage Type	Based on street Frontage Type	10 min.
Rear Setback (ft.) ⁵	10-15 min.	10-20 min.	Based on Frontage Type	Based on street Frontage Type	10-15 min.
Off-Street Parking	2 per unit ⁶	2 per unit ⁶	1 per unit	1.5 per unit ⁶	2 per unit ⁶
Notes:					
<p>1. Restrictions to density on parcels in the Downtown (D) District designated with the Neighborhood Infill Frontage (Appendix C, Figure 2. Regulating Plan - Street Types & Key Corners)</p> <p>2. Not currently permitted in zoning district. Level One Flexible Standard Development (FLS) application required. May request flexibility (must meet criteria for attached dwellings in the High Density Residential (HDR) District in Section 2-503.B).</p> <p>3. Currently permitted in zoning district as Level One Flexible Standard Development (FLS) use. May continue to request existing flexibility (must meet criteria for attached dwellings in Section 2-802.C).</p> <p>4. Currently permitted in zoning district as Level One Minimum Standard Development (BCP) use <u>and</u> Level One Flexible Standard Development (FLS) use. May continue to request flexibility, if available in the district, through FLS application.</p> <p>5. The Building Code may require the rear setback on a waterfront lot to be at least 18 feet from a seawall.</p> <p>6. May request reduction to 1.25 spaces per unit for certified affordable housing units where project is within 1/2-mile (2,640 feet) of a transit stop providing service at a frequency of 30-minute or more frequent service during peak hours and 60-minute or more frequent service during off-peak hours. When reduced, must provide 0.5 long-term bike parking spaces per unit for which the parking ratio is reduced, unless private garages are provided. Market rate units must meet minimum parking standard for attached dwellings.</p>					

³ Determination of mixed-use districts in Clearwater informed by State of Florida Attorney General's opinion letter dated July 20, 2023.

Table 2 Live Local Eligible Project - Mixed-Use Project (Min. 65% Total SF Used for Residential & Min. 40% Affordable Rental Units for 30 Years)

Eligible Zoning Districts	Commercial	Tourist	Downtown	US 19	Industrial, Research & Technology
City & Live Local Entitlements					
Density	75 units per acre ¹				
Intensity (FAR) for Non-Residential Uses	Based on the underlying future land use category				
Mixed-Use Calculation (CDC Section 3-902.F)	Proportionate Share	Proportionate Share	Proportionate Share; Vertical Mixed-Use Exempt	Proportionate Share; Vertical Mixed-Use Exempt	Proportionate Share
Height	Highest currently allowed via Minimum Standard (BCP) or Flexible Standard (FLS) Development for commercial or residential development within 1 mile of proposed eligible project, or three stories, whichever is higher. If requesting height only available through FLS application, must meet the applicable criteria for increased height. Height transitions established in Downtown and US 19 Districts apply.				
City Approval Process					
BCP and/or FLS	BCP/FLS ²	FLS ³	BCP/FLS ⁴	BCP/FLS ⁴	FLS ⁵
Currently Permitted Use (Y/N)	Yes	Yes	Yes	Yes	No
Minimum Standard Devt. (BCP)					
Min. Lot Area (SF)	10,000	–	None	None	–
Min. Lot Width (ft.)	100	–	None	None	–
Front Setback (ft.)	25 min.	–	Based on Frontage Type	Based on Frontage Type	–
Side Setback (ft.)	10 min.	–	Based on Frontage Type	Based on Frontage Type	–
Rear Setback (ft.)	20 min.	–	Based on Frontage Type	Based on Frontage Type	–
Off-Street Parking	2 per unit ⁶ + parking required for specific use(s) ⁷	–	1 per unit + parking required for specific use(s)	1.5 per unit + parking required for specific use(s)	–
Flexible Standard Devt. (FLS)					
Min. Lot Area (SF)	5,000-10,000	5,000-10,000	None	None	5,000-10,000
Min. Lot Width (ft.)	50-100	50-100	None	None	50-100
Front Setback (ft.)	25 min.	0-15 min.	Based on Frontage Type	Based on Frontage Type	25 min.
Side Setback (ft.)	0-10 min.	0-10 min.	Based on Frontage Type	Based on Frontage Type	0-10 min.
Rear Setback (ft.)	10-20 min.	10-20 min.	Based on Frontage Type	Based on Frontage Type	10-20 min.
Off-Street Parking	2 per unit ⁶ + parking required for specific use(s) ⁷	2 per unit ⁶ + parking required for specific use(s) ⁷	1 per unit + parking required for specific use(s)	1.5 per unit ⁶ + parking required for specific use(s)	2 per unit ⁶ + parking required for specific use(s) ⁷
Notes:					
<p>1. Restrictions to density on parcels in the Downtown (D) District designated with the Neighborhood Infill Frontage (Appendix C, Figure 2. Regulating Plan - Street Types & Key Corners)</p> <p>2. Currently permitted in zoning district as Level One Minimum Standard Development (BCP) use <u>and</u> a Level One Flexible Standard Development (FLS) use. May continue to request existing flexibility (must meet criteria for mixed-use projects in Section 2-703.L).</p> <p>3. Currently permitted in zoning district as Level One Flexible Standard Development (FLS) use. May continue to request existing flexibility (must meet criteria for mixed-use projects in Section 2-803.P).</p> <p>4. Certain nonresidential uses are permitted in zoning district as Level One Minimum Standard Development (BCP) use or Level One Flexible Standard Development (FLS) use. Process will depend on selected use(s). May continue to request flexibility, if available in the district, through FLS application.</p> <p>5. Not currently permitted in zoning district. Level One Flexible Standard Development (FLS) application required, may request flexibility (must meet criteria for mixed-use project in the Commercial (C) District in Section 2-703.L).</p> <p>6. May request reduction to 1.25 spaces per unit for certified affordable housing units where project is within 1/2-mile (2,640 feet) of a transit stop providing service at a frequency of 30-minute or more frequent service during peak hours and 60-minute or more frequent service during off-peak hours. When reduced, must provide 0.5 long-term bike parking spaces per unit for which the parking ratio is reduced, unless private garages are provided. Market rate units must meet minimum parking standard for attached dwellings.</p> <p>7. Minimum off-street parking requirement for any nonresidential use provided based on the parking standards established in the Commercial (C) District Table 2-703. Flexible Standard Development Standards. Applicable flexibility criteria for any reduction in parking, if requested, shall apply.</p>					

Future Land Use & Density

Multi-Family Residential Density (Residential Only Projects)

The Central Business District (CBD) future land use category, which is applied to parcels comprising the city’s Downtown, establishes residential density at a maximum of 75 units per acre by right within the

Downtown Core Character District, pursuant to the *Clearwater Downtown Redevelopment Plan*. This is the maximum residential density established in the city and therefore will be the density permitted for eligible projects. The density restrictions established in the Downtown (D) District for projects located on streets designated with the Neighborhood Infill Frontage (Appendix C, Figure 2. Regulating Plan - Street Types & Key Corners) shall not apply.

Mixed-Use Residential Density & Intensity

A proportionate share of residential density (units per acre) and non-residential intensity (floor area ratio or FAR) established by the consistent underlying future land use category shall be used for eligible mixed-use projects, pursuant to CDC Section 3-902.F. Vertical mixed-use projects in the Downtown (D) District may utilize their full residential density and non-residential intensity.

Affordable Housing Density Bonus (Existing City Bonus)

Eligible projects availing themselves of the density “bonus” provided through the Live Local Act will not be permitted to also utilize the city’s affordable housing density bonus set forth in CDC Section 3-920.

Allowable Height

The Live Local Act states that the city may not restrict height below the highest currently allowed for either commercial or residential development within city limits and within one mile of an eligible project, or three stories, whichever is higher. Community Development Code Article 2. Zoning Districts sets forth maximum permitted heights for the majority of the city’s zoning districts. Heights for projects in the Downtown (D) or US 19 Districts are found in Appendix B or Appendix C, respectively. The city’s *Beach by Design* plan governs certain properties on Clearwater Beach. Maximum permitted heights range from 30 feet in many residential districts to unlimited height for properties in the Downtown Core Character District.

The city will utilize the eligible project’s property boundary to establish a one-mile buffer. This buffer will be used to determine which zoning district(s) are located within one mile of the project and the maximum allowable height permitted in those districts as either a Minimum Standard Development (BCP) or Flexible Standard Development (FLS); however, projects seeking to utilize greater heights that may be available through an FLS request must meet the flexibility criteria for additional height (e.g., additional height results in an improved site plan, landscaping areas in excess of the minimum required or improved design and appearance).

Process for Approval & Applicable Development Standards

The Live Local Act states that projects that meet the eligibility criteria as established in the act *and* that satisfy the municipality’s land development regulations for multi-family developments in areas zoned for such use *and* are otherwise consistent with the comprehensive plan must be approved administratively. This allows residential and mixed-use projects in zoning districts where development standards are not already established. In such circumstances, the standards for attached dwellings in the High Density Residential (HDR) District will apply to residential only projects, and the standards for mixed-use projects in the Commercial (C) District will apply to those projects.

Additionally, in keeping with the spirit of the Live Local Act, the city does not want to “penalize” projects utilizing the Live Local Act entitlements if the project would otherwise be eligible to apply as a Level One Minimum Standard Development (BCP) or Level One Flexible Standard Development (FLS) project, both of which are administrative approvals. The city will permit requests for flexibility to those standards for which it is available through an FLS application, but the project must meet the applicable flexibility criteria.

Commercial (C) District Projects

Multi-family (attached dwellings) projects are not currently permitted in the Commercial (C) District; therefore, projects shall comply with the standards in the High Density Residential (HDR) District and requests will be processed as Flexible Standard Development (FLS) applications and will be reviewed by the DRC prior to a final decision by the Community Development Coordinator.

Mixed-use projects are currently both minimum standard and flexible standard uses and will follow the appropriate approval process based on whether or not flexibility is being requested.

Tourist (T) District Projects

The city’s Tourist (T) District does not have *any* Minimum Standard Development (BCP) uses; however, both attached dwellings and mixed-use projects may be permitted through a Flexible Standard Development (FLS) application and will be reviewed by the DRC prior to a final decision by the Community Development Coordinator.

Downtown (D) District & US 19 Projects

Multi-family (attached dwellings) projects are currently permitted in the Downtown (D) and US 19 Districts as a Minimum Standard Development (BCP) use when all applicable development standards are met and as a Flexible Standard Development (FLS) use if flexibility is requested. The city will utilize the same processes for eligible projects, requiring DRC review prior to a final decision by the Community Development Coordinator only when flexibility in meeting design standards is being requested.

While neither the Downtown (D) nor US 19 Districts specifically include “mixed-use” use in their use tables (see Appendix B, Table 2. Use & Off-Street Parking and Appendix C, Table 1. Use & Off-Street Parking, respectively), the Districts’ are intended to be mixed-use areas. The applicable approval process for non-residential uses varies by use. The city will utilize the same processes for eligible Live Local projects. For those requesting flexibility for the design standards or those for which a Flexible Standard Development (FLS) application is required for the non-residential component, DRC review prior to a final decision by the Community Development Coordinator will be required.

Industrial, Research & Technology (IRT) District Projects

Neither multi-family (attached dwellings) or mixed-use projects are permitted in the Industrial, Research & Technology District through a Level One application; therefore, requests to construct Live Local projects this district will be processed as a Flexible Standard Development (FLS) application and will be reviewed by the DRC prior to a final decision by the Community Development Coordinator. Multi-family projects shall meet the standards of the High Density Residential (HDR) District, and mixed-use projects will meet the Commercial (C) District standards.

Parking Reductions

The Live Local Act requires local governments to “consider” reduced parking for eligible projects within one-half mile (2,640 feet) of a “major transit stop”, which, as previously noted, is not a defined term in the city’s Community Development Code or by the act.

The city has already established parking reductions for projects utilizing the city’s existing affordable housing bonus for two situations, pursuant to CDC Section 3-920.B:

1. Within 1,000 feet of a transit stop, parking may be reduced to between 1.5 and 1 space(s) per unit if affordable housing units are designated for senior citizens or disabled persons; or
2. Within 1,500 feet of a transit stop with 30-minute or more frequent service during peak hours and 60-minute or more frequent service during off-peak hours, parking may be reduced to 1.25 spaces per unit for all other affordable housing projects.

Those attached dwellings that receive the existing affordable housing bonus and receive reductions in required off-street parking must provide 0.5 long-term bike parking spaces per unit for which the number of parking spaces is reduced unless private garages are provided for the attached dwelling units.

In keeping with the spirit of the Live Local Act, the city will permit eligible projects to reduce off-street parking to 1.25 parking spaces per certified affordable unit provided within one-half mile (2,640 feet) of a transit stop that provides the transit level of service (frequency) defined in scenario two above. Market rate units within an eligible project must continue to meet the minimum parking standard for attached dwellings pursuant to the applicable zoning district or as stated in Tables 1 and 2.

When a reduced parking ratio is provided, long-term bike parking shall be provided at a ratio of 0.5 long-term bike parking spaces per unit for which the parking ratio is reduced, unless private code-compliant garages are provided for the unit.

Fences

The city’s maximum fence height and other fence design standards found in CDC Article 3, Division 8 shall continue to apply.

Landscaping & Trees

The city’s landscaping and tree protection standards found in CDC Article 3, Division 12 shall continue to apply.

Opportunities in Clearwater

Ultimately, the Live Local Act applies in five zoning districts, permitting residential density in areas where it is not currently allowed. Because of the nature of these zoning districts, they are primarily located along or near arterial or collector streets, on which PSTA has located several of its bus routes. Overall, the Live Local “eligible” zoning districts comprise approximately 3,286 acres of land (22.5% of the city) and 10,150 parcels. Of those parcels, only 743 are vacant (as of November 2023). Figures 3 and 4 show all parcels (vacant and otherwise) where Live Local projects could be constructed in the city.

Figure 3 Live Local Eligible Zoning Districts, Western Half of Clearwater

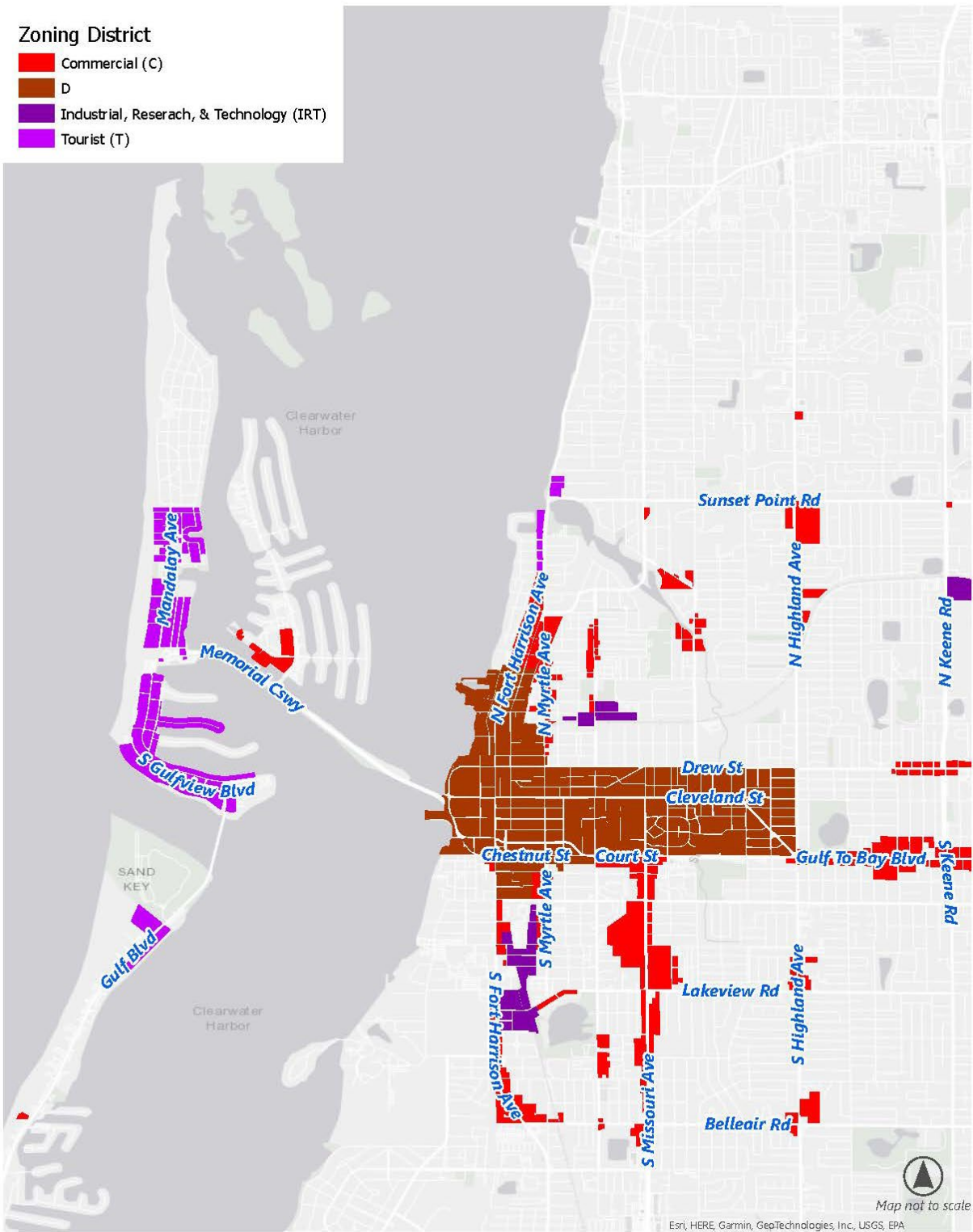
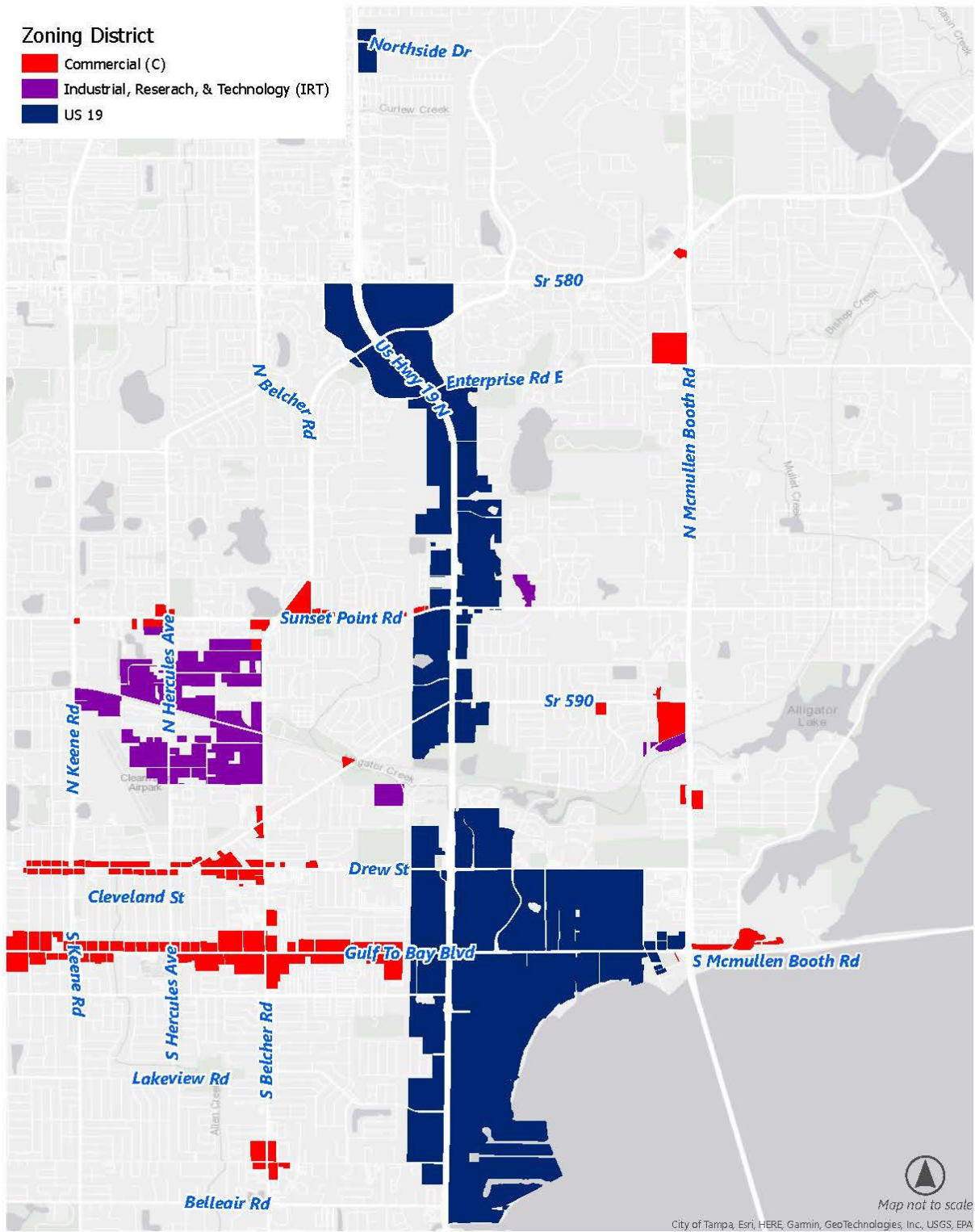


Figure 4 Live Local Eligible Zoning Districts, Eastern Half of Clearwater



Additional Legislative Incentives for Affordable Housing (HB 1339 & SB 962)

Section 166.04151(6), F.S., allows a local government to approve any residential or mixed-use residential development on any parcel zoned for commercial or industrial use as long as 10% of the housing units are set aside for affordable housing, regardless of any zoning or other regulations that are in place. This section was amended through the Live Local Act to remove parcels zoned for residential use (among other changes made in 2023). While this streamlined approach is authorized, it is not *required* by the Statute, nor does the Statute dictate an administrative approval process like it does for Live Local Act projects.

Although the city of Clearwater does not permit residential uses within the Commercial (C) or Industrial, Research & Technology (IRT) Districts by right, the city has established the Comprehensive Infill Redevelopment Project use (often called "Comp Infill") in the Code which may be used by applicants wishing to construct affordable housing projects in either of these districts, including those that meet the 10% set-aside requirements. Projects must meet the applicable Comp Infill criteria which address a myriad of items including, but not limited to, consistency with the city's Comprehensive Plan and Code; not impeding the normal and orderly development and improvement of surrounding properties; and compliance with one or more stated objectives including the provision of affordable housing.

In both zoning districts, Comp Infill projects require a Level Two Flexible Development application (referred to as an FLD application). Level Two applications require review by the DRC, which makes a recommendation regarding project approval. The authority for approval or denial is granted by the Code to the city's Community Development Board. Although this means that a public hearing is required, a future land use change and rezoning are not also required. This streamlines the process time that typically takes around six months for the map amendments to as little as three months for site plan review only, provided the FLD applications are complete, sufficient, and timely submitted according to city processes.

Comparison of Two "Tools"

The Florida Legislature has created two different tools through which the process for permitting affordable housing projects in commercial or industrial districts is "streamlined" in that no additional future land use or zoning changes are required (consistency addressed through legislation). It is likely that these provisions may evolve in future legislative sessions. The requirement and process vary, and thus different parties may choose to utilize one provision over another. However, both provide options to incentivize the inclusion of affordable units within projects, consistent with the city's previous policy direction incentivizing mixed-income projects.

The Florida Housing Coalition prepared the following summaries (design modified for this memo) that compare the Live Local Act (SB 102) and the existing tools for affordable housing as originally established through HB 1339 (2020) and amended by SB 102. These are provided for reference only.

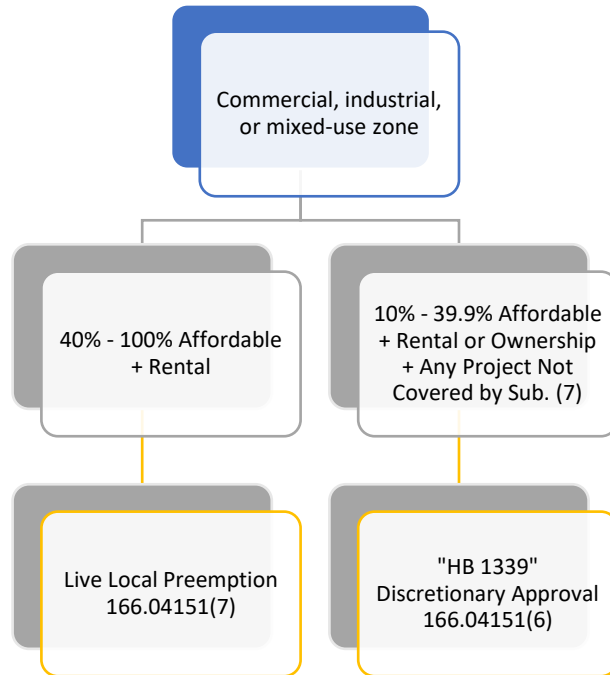


Table 3 Comparison of Live Local & HB 1339, as Amended

	166.04151(6), F.S. HB 1339 Tool, as Amended	166.04151(7), F.S. New Live Local Tool
Local Discretion	Yes	Not for use, density, or height
Eligible Zones	Commercial or industrial	Commercial, industrial, or mixed-use
Types of Development	Any multi-family or mixed-use residential project (rental or ownership)	Multi-family rental or mixed-use rental
Affordability Requirement	At least 10% of the units must be affordable	At least 40% of the units must be affordable for 30 years
Local Authority	Discretion to regulate in any manner	Preempted on certain standards regarding use, height, or density; All other state and local laws apply