YIMBY LAW

October 2025

Zoning Authority on Trial: What Tampa's Case Means for Housing in Florida

A Florida lawsuit could reshape zoning authority, strengthen accountability, and improve housing outcomes

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Acknowledgements

YIMBY Law would like to thank former Legal Interns Rasika Sriram and Cooper Andrews for conducting research in support of this report. Special thanks to Rasika Sriram for her work on charter reviews.

A final thanks to Andrew Gothard, Ph.D., for editing this report. In addition to his role as YIMBY Action Director of Advocacy, Andrew serves as YIMBY Law Managing Editor on an array of print materials.

About YIMBY Law

YIMBY Law is the legal arm of the pro-housing movement and is housed in YIMBY Action's 501c3 affiliate, Yes In My Back Yard. YIMBY Law was established in 2019 to enforce housing law compliance, particularly the pro-housing laws recently fought for and won with YIMBY activism to address the housing shortage and affordability crisis.

Introduction

An ongoing lawsuit in Florida may reshape how cities across the state handle zoning and land use decisions. The case, *Liberty Hospitality v. City of Tampa*, questions whether city councils, as legislative bodies, can legally oversee quasi-judicial zoning hearings. These hearings are intended to provide due process to property owners throughout the zoning application and review process; however, Tampa currently places this administrative authority in the hands of elected officials whose primary role is lawmaking, creating an environment that both undermines traditional separation of powers and opens opportunity for conflicts-of-interest.

The Florida Constitution and Tampa's City Charter both require separation of legislative, judicial, and administrative powers. By blurring those lines, Tampa's council has concentrated lawmaking, enforcement, and adjudication into a single political body. This mingling of authority undermines impartial decision-making while raising the risk of corruption, inefficiency, and costly delays. If the courts rule against Tampa, the City will be forced to transfer zoning hearings to independent boards or commissions, a change that would not only comply with constitutional principles but also improve transparency.

The immediate effects of this ruling would be limited – only a few of Florida's largest cities with similar charters would need to restructure – but the broader implications are profound. Our analysis of Florida charters and the ongoing case shows that these changes would improve, rather than disrupt, city processes. For Tampa and the few other cities directly affected, the ruling would mean better decisions, more public trust, and fewer barriers to housing production. For the rest of the country, it offers a reminder that respecting separation of powers is not just a constitutional technicality; it is a safeguard against political dysfunction, ensuring that housing and land use decisions serve the broader public good.

Understanding Liberty Hospitality and Its Impact on Tampa's Zoning Authority

The Liberty Hospitality case began with a common occurrence in cities in Florida and across the country: Liberty Hospitality Management LLC sought approval for a zoning change to allow multifamily development on its property. Bowing to opposition from the property's neighbors, the Council denied that request, leading to a lawsuit challenging the denial. Subsequently, Liberty Hospitality's attorneys requested a writ of certiorari from Florida's 13th Circuit Court directing the Council to comply with existing law by rescinding its denial. In a decision that surprised both parties, the Court found it could not issue such a writ because the Council did not have authority over zoning actions.

Though neither party raised council authority as an issue, courts are always required and empowered to examine subject matter jurisdiction (i.e. a court's power to take action over a given issue), and in this case, the review led to a complete rethinking of the role Tampa's City Council plays in zoning decisions. After review, the court held that it did not have authority to issue what it considered an illegal order. Florida's Constitution Article V, Section 5 grants certiorari "only to review the actions of courts, boards, or officers exercising functions clearly judicial or quasi-judicial."[1] As courts are judicial and not legislative bodies, they may not order legislative actions, like passing a particular law. Similarly, city councils may not exercise administrative or judicial powers. Therefore, any order to a city council via certiorari would be invalid.

The court's decision is especially important because this case hinged on both the nature and authority of quasi-judicial hearings and decisionmakers. Quasi-judicial (or court-like) decisionmakers are executive or administrative bodies that apply rules established by the legislature to particular proposals. These decisionmakers rely upon strict procedural limitations, in part to protect constitutional property rights. They are meant to interpret legislation only as far as necessary to serve the functions granted to them: in this case, (a) deciding whether to allow a zoning variance, (b) disseminating proper notice as to hearings, and (c) providing interested parties with an opportunity to be heard. Quasi-judicial bodies must be impartial and are not entitled to inject personal discretion into their decisions. However, city council members, as politicians, are inherently partial, weighed down by incentives that contradict their role as hearing officers. The court's ruling recognized this conflict of interest and set in motion a reconsideration of the Tampa City Council's quasi-judicial decision-making authority.

[1] *Fla. Motor Lines v. Railroad Com'rs*, 100 Fla. 538, 543 (Fla. 1930).

Under the trial court's logic, Tampa's City Council can pass ordinances and budgets, but it may not make determinations applying those ordinances. Legislative actions create the rules by which other bodies are to be governed, and in this case, such rules consist of individual zoning ordinances, comprehensive plans, and budgets. Once policies (or legislative rules) are passed by legislators, parties may bring suits to court to adjudicate questions of law. Separately, courts then make determinations based on those allegations and the rule of law, evaluating whether the actions in question are legal. The Florida Constitution and Tampa Charter both require separation of powers between the legislative, executive, and judicial branches. Consolidating power within the City Council empowered elected officials, who are inherently political actors, with decisions that must legally be insulated from political interests. The Council, as city legislators, made rules that they could decide to follow or ignore, violating separation of powers and creating authority over which they themselves were to conduct oversight. Thus, the court ruled that by combining all of these roles, Tampa's City Council had a clear conflict of interest and had exceeded its quasi-judicial authority.

Moreover, if the court's decision is upheld, it would mean that Tampa's City Council does not have *any* authority to serve quasi-judicial functions. Under existing Florida law, the council was never granted authority to make quasi-judicial rulings. Article V, Section 1 of the state Constitution makes no express provision for a legislative body to exercise quasi-judicial power, and no other part of the Florida Constitution has been identified that could rationally be considered the express constitutional permission required by Article II, Section 3 before a legislative branch could also exercise judicial power. Article II, Section 3 states that no person who has the power of one branch of government "shall exercise any powers appertaining to either of the other branches unless expressly provided herein." While Article VIII, Section 2(b) allows a municipality to "exercise any power for municipal purposes except as otherwise provided by law," the legislative branch of municipal government cannot exercise all the powers of the municipality.

Therefore, under the ruling, Tampa's City Council was acting without authority, which violates separation of powers provisions within the Florida State Constitution and Tampa City Charter. Because the council members were acting illegally, and cannot administer zoning hearings within the City, the judge stated that she could not issue relief as either party requested, leaving both parties unsure about how to proceed.

Current Status of the Lawsuit

Without a decision from a higher court, Tampa's officials have made no changes to local policy. Tampa has appealed the trial court's ruling to the Second Judicial District, which has scheduled oral arguments for October 21st, 2025. Public court records contain briefs arguing either side of the case, but the court will not issue any decisions until after hearing oral arguments and deliberating on the state of the law. While it's possible that the court could issue a nuanced opinion that doesn't cleanly satisfy either party, the most likely outcomes are ruling for or against Tampa. If the city wins, it is likely the city council will return to business as usual by continuing to hold quasi-judicial hearings that must be appealed through lawsuits in local courts. If the city loses, and the court determines the city council can only legislate zoning issues, Tampa's future land use process must change.

What happens if Tampa loses?

If the City loses its appeal, the resulting changes to Tampa's local government structure would be relatively minimal. As outlined in YIMBY Law's recent brief, simply placing an administrative body, like a hearing board or committee, in charge of zoning hearings would sufficiently resolve the legal conflict. And it may not be necessary to create a totally new hearing body. The City already has hearing boards which could be expanded or reorganized, like the Variance or Architectural Review Commissions. This shift would also bring Tampa into alignment with similarly-sized cities both within and without Florida that already have quasi-judicial hearings conducted by such commissions. Moreover, Tampa could use these pre-existing norms as a model for its new hearing structure, ensuring a smooth transition of authority.

Beyond Tampa, the decision would also reshape land use authority around the state. Although Florida's Constitution generally calls for a separation of legislative, executive, and judicial powers, only a handful of city charters expressly incorporate this principle in their land use governance. YIMBY Law's review of the twelve most populous cities in Florida (other than Tampa itself) indicates that Orlando, Miami, Tallahassee, Fort Lauderdale, and Gainesville would be unaffected because they already conduct quasi-judicial zoning hearings through appointed boards or commissions. However, Jacksonville, St. Petersburg, and Port St. Lucie would need to make changes to their zoning approval process because each of these cities vests some quasi-judicial authority in their councils, either through explicit charter provisions or local ordinances. Should Tampa's appeal fail, these cities

would also be required to redirect zoning hearings away from their councils and into independent administrative bodies, just as Tampa would. The scope of these changes is narrow but important: councils would continue legislating zoning rules and comprehensive plans, but the application of those rules in individual hearings would shift to professional boards or commissions.

Thus, if the city loses its appeal in Liberty Hospitality v. Tampa, only a small number of Florida's cities would be legally compelled to adjust their land use processes; however–and more importantly–the precedent set by this case would improve the ability of pro-housing officials and advocates to insulate zoning decisions from political interference statewide. This change is key in Florida's struggle for more housing, as removing quasi-judicial hearings from elected bodies improves efficiency, limits corruption, and ensures decisions are guided by objective criteria rather than political pressure. Even in cities not immediately affected, the ruling could serve as a catalyst for reform, encouraging municipalities to adopt structures that respect separation of powers and promote fairer, more transparent land use decisions.

Why is Separation of Powers Vital to Florida's Land Use Decisions?

It is a basic principle of American democracy that the public interest cannot be ensured if the same body that drafts laws also adjudicates their application. This principle is expressed clearly in Florida's land use case law, specifically the Florida Supreme Court's *Board of County Commissioners of Brevard County v. Snyder* ruling, in which the court held that zoning decisions require a method of review and a check against local agency discretion.[2] As a result, the court's ruling instituted a required review system via the quasi-judicial hearing process because it recognized that a history of highly deferential review of local zoning led to decisions that were not only inconsistent with but also harmful to public needs.[3] Moreover, the decision observed how "rank political influence" led to "sloppy and self-serving decisions with well-defined adverse consequences without offsetting benefits." Thus, the quasi-judicial zoning process set down in *Snyder* applied greater procedural protections to property owners and a higher level of scrutiny to zoning

[2] *Board of County Commissioners of Brevard County v. Snyder*, 627 So. 2d 469 (Fla. 1993).
[3] *Id*. at 472.

decisions than pure rational basis.[4] Those protections are not available if they are administered by the same body that instituted them–an evident conflict-of-interest the *Snyder* court was attempting to curtail.

Enforcing separation of powers in Tampa's local governance ensures the public interest is not infected with illegitimate, corrupt, or improper land use decisions, which will greatly benefit Tampa's future. And the drafters of Tampa's charter were forward thinking in their effort to separate legislated zoning laws from the application of those laws in a fair, equitable manner. Historically, America's housing shortage has been driven by the undue influence of a small and wealthy minority with disproportionate political capital, and Tampa is no exception.[5] Influence over zoning decisions is afflicted with an inherent power imbalance between (a) financially secure homeowners who already live in a given area and (b) otherwise eligible residents kept excluded by rezoning denials. City councils respond to the voices they hear most loudly and frequently, voices that send a consistent, exclusionary message. The result is an overwhelming number of local decisions that add up to one truth: the powerful voices of exclusion have fueled a political climate that serves the interests of a minority of empowered homeowners at the expense of other residents and cities themselves.[6] Good governance requires a balance of interests, but the goals of the city residents who are immediately impacted by new development are perennially in conflict with the planning needs and property rights at issue in land use decisions. Compared to the narrow harm of different neighborhood aesthetics, cities stand to gain tax revenue, reduce the strain on infrastructure, lower housing costs, and give families options to live closer to one another.[7]

Separation of powers makes land use decisions fairer and more efficient. When government officials can dictate how land is used, they functionally hold a monopoly to

[4] *Id.* at 475. Rational basis scrutiny will approve a local decision as long as there is some reasonable justification for it, even if that is not the justification actually used. Courts use this level of scrutiny in many cases because they are in place to say whether a law is legal, not whether it is a good idea or not. That factual evaluation is left to the legislatures who make said laws.

[5] Grant M. Glovin, *Power and Democracy in Local Public Participation Law*, American Bar Association, (Jul. 7, 2021), https://www.americanbar.org/groups/state_local_government/resources/urban-lawyer/51-1/power-democracy-local-public-participation-law/, (Last accessed Aug. 1, 2025).

[6] Josiah Madar, Simon McDonnell, *Urban Land-Use Regulation: Are Homevoters Overtaking the Growth Machine?*, 11 NYU Law Rev. 2 177 (Jun. 2014).

[7] Brad Boberg, *Growing Up and Not Out: The Fiscal Benefits of Higher Density Development*, National Association of Realtors, (Nov. 14, 2014), https://www.nar.realtor/articles/growing-up-and-not-out-the-fiscal-benefits-of-higher-density-development, (Last Accessed Aug. 7, 2025).

determine the value of that land. Subsequently, as courts give high deference to local decisions, limiting review, the result has been generations of corruption by American city councils, a problem that is far easier to avoid by keeping responsibilities separate than it is to respond to innumerable individual actions. Even where council members are appropriately motivated, it is not the best use of their time to have them review minute details of city code at council meetings. Professional planning staff can render decisions on individual variances more quickly and with better expertise than city councils, who in many cases have to hold long, complicated meetings on individual development proposals while they also have to do the work of running their cities overall. Separating responsibilities makes land use decisions faster, better informed, and insulated from corruption.

(Bad) Lessons from Around the Country

Florida should avoid the many examples of land use processes without separation of powers–a failed system that has fueled long-standing municipal dysfunction.[8] For example, Fairfax, California is currently in the midst of a recall election for two City Councilmembers[9] who followed state law by voting to pass legally required updates to the Housing Element of their general plan, including a rezoning of a downtown site for multifamily, mixed income housing. However, a contingent of local voters are attempting to politically punish these councilors for following the law, which places city council members in a position where they must choose between violating state housing law or risking their elected positions. Beyond Fairfax, the outsized influence of local voices has driven many cities into logically unjustifiable decisions in ways that are often outright illegal. In Chicago, over three dozen aldermen have been indicted by federal grand juries over the past 50 years, often connected to their broad powers to approve or deny developments in their districts.[10] Los

[8] YIMBY Law is deeply familiar with California's housing woes through years of supporting YIMBY Action's local activists across the state.

[9] Town of Fairfax, *Notice of Intention to Recall Councilmember Stephanie Hellman*, *Notice of Intention to Recall Councilmember Lisel Blash*, (March 6, 2025) https://storage.googleapis.com/proudcity/fairfaxca/2025/04/Notice-of-Intent-to-Circulate-a-Recall-Petition-Hellman-3-6-25.pdf, https://storage.googleapis.com/proudcity/fairfaxca/2025/04/Notice-of-Intent-to-Circulate-a-Recall-Petition-Blash-3-6-25.pdf, (Last accessed Aug. 1, 2025).

[10] University of Chicago Center for Effective Government, *Power Begets Corruption on the City Council, Effective Government News*, (Apr. 3, 2023) https://effectivegov.uchicago.edu/news/power-begets-corruption-on-the-city-council, (Last accessed Aug. 1, 2025).

Angeles has had three city councilmembers convicted of criminal charges in the last 5 years, while another is under active investigation; these are among hundreds of public officials convicted of federal charges, part of a growing trend of land-use based corruption.[11] In addition to general corruption and irreconcilable political pressure, individual housing proposals also struggle within an imbalanced system. Recently, Philadelphia circulated an RFP to construct affordable housing for seniors.[12] The project spent 6 years in planning procedures alone before it obtained financing. It then received support from the city Housing Authority and the Zoning Board of Approval, as well as local unions, religious officials, and the area's state representative and senator. The local council then compared the project to the Tuskegee syphilis experiment and sued to stop it. Because of local advocate pressure, every avenue of support from the local community to city officials and beyond were in support, but a single city council member is working to override those voices based on criteria that are totally divorced from public policy.

These examples are but a snapshot of the damage political influence has wrought on America's cities; despite long-standing needs for housing, city councils have a culture of denial.[13] Meanwhile, housing cost is a top concern for a growing majority of Americans, regardless of party affiliation.[14] As a result, stitching land use decisions to political influence cannot address these concerns because such a combination can never be fair or equitable. And in this specific case, Tampa's separation of powers, if applied, would ensure that the needs of the entire city are met, instead of those favored by the empowered minority who hold sway over members of the council.

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[11] Moiz Hasan, *How a Real Estate Boom Drove Political Corruption in Los Angeles*, New York Times, (Aug. 29, 2024).
[12] Jake Blumgart, *How many meetings does it take in Philadelphia to build 57 affordable homes? A lot.*, Philadelphia Inquirer (May 5, 2025).
[13] Anika Singh Lemar, *The public hearing process for new housing is broken. Here's how to fix it.*, Brookings Institute, (May 4, 2022), https://www.brookings.edu/articles/the-public-hearing-process-for-new-housing-is-broken-heres-how-to-fix-it/, (Last accessed Aug. 1, 2025).
[14] Pew Research Center, *In tied presidential race, Harris and Trump have contrasting strengths, weaknesses*, Section 7: Economic ratings and concerns (Sept. 9, 2024), https://www.pewresearch.org/politics/2024/09/09/economic-ratings-and-concerns/#top-economic-concerns-food-and-consumer-prices-housing-costs, (Last Accessed Aug. 7, 2025).

Recommendations & Conclusion

The Liberty Hospitality case underscores a fundamental truth: separation of powers is not just a constitutional formality. It is a safeguard against corruption and inefficiency. Tampa's charter was designed to prevent elected officials from acting as both lawmakers and judges over land-use disputes. Respecting this design will result in faster, more predictable housing approvals, stronger protections for residents' rights, and a government better focused on policymaking rather than individual zoning disputes. Impacted cities can make small changes to create enormous benefits to their infrastructure and affordability. Transferring quasi-judicial zoning authority from the local city council to independent, mayor-appointed boards or commissions will empower trained planning staff to provide detailed analyses and recommendations in zoning hearings. And by insulating zoning determinations from councilmembers' political considerations, Tampa can reduce conflicts of interest, making housing approvals less vulnerable to obstruction. Even if the immediate impacts of the ruling are limited to a handful of Florida's largest cities, the broader implications are significant: by realigning land use authority with constitutional principles, Tampa can set an example of how structural reforms can produce better outcomes for housing, governance, and public trust.