

“Reconsider the Vote” on the 3 changes to our Zoning Code to complete due diligence on litigation risk and financial exposure of that risk:

A. Legal Analysis of Litigation Risk & Costs

The Town Staff should **not** proceed with drafting, and Town Council should not proceed with adopting zoning-code amendments until a full legal risk assessment is completed. Specifically, the Council should:

- 1. Obtain a formal written legal opinion from the Town Attorney** evaluating:
 - The litigation risk created by SB 180; The likelihood that unrelated third parties could file suit; The financial exposure (attorney fees, potential prevailing-party fees, uninsured losses); and The specific risks associated with the **six-paragraph motion** approved 3-2 on November 12, 2025.
- 2. Require the opinion to include strategies to reduce litigation risk,** including whether delaying any action until statewide uncertainty around SB 180 is resolved would substantially lower the Town’s exposure.

B. Land Use Planning Analysis Needed Before Any Ordinance Drafting

If the legal analysis shows that the Council may proceed—and the Council elects to do so despite the risks—the next step must be to:

- 3. Engage an experienced land use planning firm** to assist with drafting ordinance language.
Professional planning support is essential because zoning amendments are permanent, high-impact policy decisions. A qualified planner would ensure that any code amendments:
 - Comply with our Comprehensive Plan; Follow planning and regulatory best practices;
 - Provide clarity and internal consistency; Avoid unintended impacts across zoning districts; Incorporate defensible standards; and
 - **Mitigate litigation risk** through precise, defensible, and technically sound language.

C. Timing Strategies to Reduce Litigation Risk

To further minimize exposure under SB 180, the Town Council should delay zoning-code amendments until:

4. **The constitutional challenge to SB 180 is resolved**, clarifying whether the law is enforceable; or
5. **The 2026 Legislative Session (beginning in January) determines whether corrective legislation will modify or narrow SB 180.**

Waiting for these two developments would significantly reduce the probability that any new Town ordinance becomes the target of SB 180 litigation.

Audit and Disclosure Requirement

At minimum, if the Town Council chooses to move forward **before** these legal uncertainties are resolved, then:

- The Town Attorney must provide a written opinion quantifying the financial exposure; and
- This exposure must be included in the Town's **annual audit disclosures** as a significant, known legal and financial risk created by Council action.

Workshop 12-3-2025

To: Town Council

From: Diana Davis, Vice Mayor Pro Tem

Correction to the proposed Organizational Chart.

First, the highest authority in Florida makes it clear that it is the residents, our voters and taxpayers, who belong at the top of our organizational chart.

Article I, Section 1 of the Florida Constitution begins with a simple, powerful statement:

"All political power is inherent in the people."

That is the foundation of every decision we make. The power we exercise does not originate with Council or staff — it comes from the people of Juno Beach, who have delegated authority to us through their votes.

- First Tier are "Residents of Juno Beach."
- Second Tier are "Town Council."
- Third Tier are Town Manager – Town Attorneys, then staff groups.

MEMORANDUM

To: Town Council - Mayor Wheeler, Vice Mayor Callaghan, Councilmember Hosta, and Councilmember Halpern

From: Vice Mayor Pro Tem Diana Davis

Date: December 3, 2025

Subject: Litigation Risk Assessment for Drafting New Zoning Ordinances Under Florida Senate Bill 180 (SB 180)

I. Purpose of This Memo

This memorandum outlines the **significant litigation risks** associated with drafting or adopting new zoning ordinances at this time, due to the **Florida Senate Bill 180**, which substantially expands standing, increases exposure to attorney-fee claims, and creates an environment where **frivolous or opportunistic litigation cannot be prevented**.

The Town Council in our Town Charter is given a fiduciary responsibility to our residents. This responsibility requires that the financial burden of potential litigation risk be included within the discussion for actions to adopt changes to our zoning code. This memo questions whether the Council persons who voted to adopt three new zoning ordinances included within their deliberations at the November 12, 2025, meeting to determine the potential financial burden of the litigation risk that the Town was assuming by this action.

II. Overview of SB 180 and Its Expanded Litigation Exposure

SB 180 (2023) fundamentally changed Florida's zoning litigation landscape by:

- **Eliminating traditional standing requirements (page 36, lines 1041-1043).**
A person or entity **does not need to be an affected party**, adjoining owner, or property-owner within the municipality to file suit.
- **Permitting lawsuits by unrelated outside entities.**
This opens the door to lawsuits filed by parties with **no connection to Juno Beach**, similar to past "cottage industry" litigation—such as the well-known wave of lawsuits from individuals who sued many municipalities over ADA website compliance costing hundreds of thousands of dollars to the municipalities.
- **Mandating prevailing-party attorney fees (page 36, line 1041 – page 37-line 1066).**
If the challenger prevails **in whole or in part**, the Town must pay **their attorney fees in addition to our own defense costs**.

- **Removing most municipal immunities.**

These suits are **not covered by standard municipal insurance**, including the Town of Juno Beach's liability policies; the Town pays entirely out-of-pocket.

This statutory environment makes even a **meritless lawsuit** costly to defend and difficult to dismiss early.

III. Practical Implications: You Cannot Prevent Frivolous or Opportunistic Lawsuits

Under SB 180:

- Anyone, anywhere in Florida, can sue a municipality for adopting or enforcing zoning regulations.
- The plaintiff does **not** need to show injury, property impact, or any nexus to Juno Beach.
- The Town cannot screen or preempt filing through procedural defenses that were available before SB 180.
- Plaintiffs can be advocacy groups, political organizations, or individuals with **no stake in Juno Beach's built environment.**

This is the same dynamic previously seen in the *ADA website litigation wave*, in which one or two individuals sued many municipalities for hundreds of thousands of dollars each.

SB 180 recreates this environment—this time targeting land development regulations.

IV. Risk to the Town if We Proceed with New Zoning Ordinances Now

1. Mandatory Repeal of Adopted Codes

If any portion of the new ordinances is successfully challenged, the court may order repeal of the adopted regulations. Because the proposal before Council involves **three new zoning ordinances**, this exposes multiple sections of our code to invalidation.

2. Spillover Risk to Other Zoning Districts

If litigation invokes SB 180 and challenges the validity, enforceability, or procedural compliance of the Town's zoning framework, this could endanger:

- Architectural review standards
- Harmony review criteria
- Appearance review provisions

- Definitions and tables that apply across zoning districts

Even if the litigation begins in one district (e.g., single-family), the **entire chapter** becomes vulnerable once it is opened.

3. Financial Exposure: Attorney Fees and Uninsured Losses

Because these suits are **not covered by the Town's insurance**, Juno Beach would pay:

- All of our attorneys' fees to defend the case
- Potentially **the plaintiff's attorney fees** if we do not prevail completely
- Staff time, consultant costs, and delays in processing applications

For a small municipality, even one such action could exceed tens or hundreds of thousands of dollars.

4. Increased Uncertainty for Residents and Developers

Paradoxically, the effort to "clarify" or revise certain standards may lead to:

- Greater regulatory uncertainty due to the threat of code sections being stricken
- Confusion among applicants, builders, and residents
- Delayed projects during litigation
- Risk of inconsistent application of remaining code provisions

This is especially concerning because the proposal affects code sections central to **mass, bulk, scale, architectural design, and appearance**—the very standards that protect existing homeowners.

V. Timing Concerns: Active Lawsuit Against the State and Forthcoming Legislative Session

Two major factors suggest that **waiting** is the prudent and fiscally responsible choice:

1. Ongoing Constitutional Challenge to SB 180

A lawsuit has already been filed challenging SB 180 as unconstitutional state overreach into local zoning powers.

Until the courts rule, municipalities statewide face uncertainty.

2. Legislative Session Begins in January

Multiple legislators have signaled interest in introducing corrective legislation to fix or narrow SB 180.

Possible outcomes include:

- Reinstating traditional standing
- Removing mandatory attorney fees
- Clarifying the scope of permissible challenges
- Limiting suits to affected parties

Waiting 60–90 days could dramatically reduce the Town’s exposure.

VI. Key Policy Question: Will Drafting New Ordinances Now Expose the Entire Zoning Chapter?

Yes.

Drafting any new zoning ordinance invites scrutiny of:

- The new language
- The procedural process
- The underlying zoning framework

If challenged, a court may review the entirety of the zoning chapter, which may lead to:

- Invalidation of related sections
- Repeal of vital protective standards
- Collateral impacts on commercial, multifamily, and single-family districts

This risk is **substantial** and **cannot be quantified** at this time.

VII. Conclusion and Recommendation

Given the expansion of standing, the prevalence of opportunistic litigation, the uninsured exposure to attorney-fee awards, and the active statewide uncertainty surrounding SB 180, **proceeding now with new zoning ordinances presents extreme litigation risk.**

The potential financial exposure to the Town is unknown and potentially very large. The potential regulatory damage—including invalidation of code sections unrelated to the proposal—is equally uncertain.

Recommendation:

The Town Council should **delay any zoning-code amendments** until:

1. The constitutional challenge to SB 180 is resolved; or
2. The 2026 Legislative Session clarifies or amends SB 180; or
3. Engage a land use planner to assist in drafting the proposed ordinance language to prevent unwanted consequences for ordinance and code amendments that will be forever decisions for the Town. A land use planning firm, if engaged to help with code language drafting can assure that the language complies with our comprehensive plan, incorporates planning best practices, provides clarity, mitigates to provide a lower risk of litigation, responsive to modern trends, and gives the Town operational flexibility.

*At minimum, if the Town Council proceeds despite the legal risks, we need a Town Attorney opinion that quantifies the financial exposure of the potential SB 180 litigation, and this financial exposure should be reported in the Town's **annual audit disclosure** as a significant known legal exposure created by Council action.