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Live Local Act Makes It Easier to Develop Affordable Housing in FL

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Background

On March 29, 2023, Governor Ron DeSantis signed Senate Bill 102, otherwise known as the Live Local Act ("LLA" or "Act"), into law, representing a large investment for housing efforts, one of the largest in Florida history. There are many aspects to the Bill including provisions that provide incentives to developers constructing affordable and workforce housing in Florida, as well as zoning and planning restrictions on local governments who are approving projects with multi- family elements. The new law takes effect July 1, 2023.

The bipartisan effort behind this legislation is to increase the supply of affordable housing in the state. While cutting red tape at the local zoning level, it will immediately increase the number of properties eligible for development of affordable housing and also deploy public funds for housing and major private incentives. Moreover, the Act expands an existing program to loan funds at zero interest for down-payments and closing costs to a broad segment of Florida workers.

The bill, filed as CS/SB 102, was passed unanimously by the Florida Senate and with a 103-6 vote of the Florida House of Representatives. This bill was a priority of Senate President Kathleen Passidomo who said, "We are shutting down affordable housing stereotypes and creating attainable housing options needed by the majority of our workforce, the backbone of Florida's economy."

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This summary provides a general outline of the Act's key provisions. While it offers numerous opportunities for the private residential developer, there are nuances that will inevitably be debated with local governments. Thus there are some aspects to the Act that will require further analysis.

Preemption of Local Zoning and Land Use Restrictions

The cornerstone of the Act is its preemption of local land use and zoning requirements for certain types of affordable housing developments. The Act mandates that counties must allow qualifying multifamily rental developments in any area that is zoned for commercial, industrial, or mixed use.

Such qualifying developments are those multifamily residential and mixed-use residential projects where at least 40% of the residential units are, for at least 30 years, "affordable" under Florida law. Moreover, for mixed-use residential projects, at least 65% of the total square footage must be used for residential purposes.

For private, non-subsidized development, the greatest potential for using this law will probably be for moderate income households. As explained below, rents for a 2-bedroom, moderate income affordable housing unit can be upwards of $2000/month.

Whether housing is considered "affordable" under the Act is based on household income level. Specifically, "affordable" housing rents are intended to not exceed 30% of household income for extremely-low-income, very-low-income, low-income, and moderate-income households, as those certain terms are defined by the state. These definitions are in turn based on "median adjusted gross annual income" (also called the area median income, or AMI). For example, a low-income person's income is between 50 and 80% of the median annual adjusted gross income for households within the local area.

Those certain households whose rents cannot exceed 30% of their income to be considered "affordable" include the following:

- Extremely-low-income persons: income does not exceed 30% of AMI
- Very-low-income persons: income is between 30 – 50% of AMI
- Low-income persons: income is between 50 – 80% of AMI
- Moderate-income persons: income is between 80 – 120% of AMI

In terms of the density and height allowed for these affordable developments, the Act incorporates some local limits. For density, the affordable development must be below the highest density allowed for residential developments in the county. As for height, the height must be below the highest currently allowed height for a commercial or residential development within one mile of the proposed development or three stories, whichever is higher.

Note that despite preempting zoning and land use approvals, the Act does not preempt a local government's concurrency requirements. Counties have routinely approved concurrency and proportionate share agreements, as required by Florida law. We hope that in light of the need for affordable housing and

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federal and state fair housing laws, these concurrency approvals will remain routine. More particularly, the zoning requirements are as follows:

A. County approval for affordable housing (Section 3 of the Bill):

- Amends Section 01055

Current Law and Amendments:

- Current law allows a county to circumvent its comprehensive plan and zoning regulations when approving the development of affordable housing on any parcel zoned for residential, commercial, or industrial use, subject to certain conditions.
- Specifically, current law provides that a county **may approve** a residential project on any parcel zoned as residential, commercial or industrial without the need to follow local rules and regulations (for example, without the need to rezone the parcel) as long as: (i) at least 10% of the units included in the project were used for affordable housing; and (ii) the developer did not apply for or receive SAIL funding.
- The amendment removes a county's ability to approve affordable housing developments pursuant to the statutory process on parcels zoned in residential areas, but also removes the restriction on developers who have applied for/or received SAIL funding for parcels zoned in commercial or industrial use areas.
- The amendment also provides that a county **must authorize** proposed multifamily and mixed-use residential projects as an allowable use in **any area zoned for commercial, industrial, or mixed use** if the project will provide the following:

1. At least 40% of the residential units are affordable;
2. Affordable means: that the monthly rents, including taxes, insurance, and utilities do not exceed 30% of the AMI for extremely-low-income persons (i.e., 30% AMI) ("ELI"), very-low-income persons (i.e., 50% AMI) ("VLI"), low-income persons (i.e., 80% AMI) ("LI"), and moderate-income persons (120% AMI) ("MI");
3. Period of at least 30 years; and
4. For a mixed-use project at least 65% of the total square footage of the improvement on the parcel must be used for residential purposes.

- For proposed multifamily developments meeting the above requirements and that are to be located in areas zoned for commercial, industrial, or mixed use, a county may no longer require the owner to obtain a zoning or land use change, special exemption, conditional use approval, variance, or comprehensive plan amendment for building height and densities. With respect to density and building height, a county may not:
  - Density – restrict density below the highest allowed density on any unincorporated land in the county where residential development is allowed;
  - Height – restrict the height of the proposed development below the highest allowed height for a commercial or residential development located in its jurisdiction within one mile of the proposed development, or three stories, whichever is higher.

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- It should be noted that a proposed development authorized under this section must still satisfy the county's land development regulations (i.e., setback, parking, etc.) and be administratively approved, with the exception of provisions establishing allowable densities, height, and land Further, there is no requirement to blend the AMI limits. All of the units could be 120% AMI.
- A county also must consider a reduced parking requirement for projects containing at least 40% affordable units if the parcel is located within a half-mile of a major transit stop.

Sunset:

- Amendment will expire on 1, 2033

To Summarize: A county must administratively authorize a proposed residential or mixed-use project on any parcel zoned as commercial, industrial, or mixed-use, without any comprehensive plan amendments, rezoning or other special approvals needed, provided that: (i) the project contains at least 40% affordable units at (ii) a density that does not exceed the highest density allowed on any parcel where residential use is allowed with (iii) a building height that does not exceed than the highest allowable building height for residential or commercial structures within one mile of the parcel and (iv) the project satisfies all other applicable land development regulations. If any other applicable land development regulations cannot be satisfied, then further action by the county may be required to obtain the necessary relief, but in no event shall a county require a comprehensive plan amendment or rezoning (or other special approval) to allow the use, building height, or density.

B. Municipal approval for affordable housing (Section 5 of the Bill):

- Identical to Section 3 of the bill (County approval requirements as outlined above), but applies to municipalities, except that for municipalities which are predominately residential (that is, less than 20% of the total land area is designated as either commercial or industrial), the municipality must approve pursuant to this subsection only if the proposed development is a mixed-use project).

Tax Exemption for Newly Constructed Affordable Housing Units

In addition to land use and zoning preemption, the Act includes enticements for developers in the form of tax exemption. In particular, the law provides an limited time, partial exemption from ad valorem (property) taxes for owners of "newly constructed" multifamily (but not single family detached) developments containing affordable housing. This exemption is based on compliance with certain objective criteria and confirmed by certification from the Florida Housing Finance Corporation (FHFC).

To be eligible, a multifamily project must be newly constructed, meaning it was substantially completed within five years before the owner's first application for the tax exemption. By logical extension, once a project is no longer "newly constructed," it will no longer be eligible for this exemption, meaning a project can receive a tax exemption for a maximum of five years. The project must also contain more than 70 units that are designated as "affordable," and the owner must submit a sworn statement that these units will remain affordable for no less than three years—not the thirty years required for zoning preemption.

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Furthermore, the rents cannot be greater than (i) the affordable housing rents published by FHFC, or (ii) 90% of the fair market value rent as determined by a rental market study meeting the requirements of the Act, whichever is less.

As noted above, whether housing is "affordable" depends on various household income thresholds, which also correspond to different tax treatment under the Act. For tax exemption purposes, housing that is affordable at the moderate-income level (from 80 to 120% of AMI), the Act will provide an ad valorem property tax exemption of 75% of the assessed value. For housing that is affordable at the low-income level (up to 80% of AMI), however, the Act provides a complete tax exemption.

To qualify for the exemptions, an owner must first request a certification from FHFC and submit to them a rental market study as referenced above and a list of the eligible units with the rents received of, if vacant, the published rent. The owner must then file an application (together with the FHFC certification) with the property appraiser by March 1.

The Act also imposes certain penalties on the unlawful use of the tax exemptions, granting property appraisers a 10-year lookback with 50% penalties and 15% annual interest on the unpaid taxes. The Act also provides the FHFC rulemaking authority to implement these tax exemption provisions, so further guidance may be forthcoming.

Local Government May Grant Tax Exemptions for Low & Very-Low Income Affordable Housing

In addition to the tax exemption for newly constructed units, the Act provides local governments the option of adopting a similar program to grant partial ad valorem exemptions to projects with a mix of affordable (qualifying) multifamily housing and market-rate housing, to households earning not more than 60% of AMI. The key distinctions are that (a) the local government exemptions would be on a long-term basis, rather than just for new construction, and (b) it is only for very-low and/or low-income households, depending on the adopted local program. Qualifying multifamily projects must have 50 or more units, at least 20% of which provide affordable housing otherwise meeting the requirements. Note that other exemptions exist for subsidized housing developed using low-income housing tax credits and the like.

Florida Hometown Hero Program Expanded: Down Payment Assistance to Florida Workers

The expanded "Florida Hometown Hero Program" provides loans for down payment assistance and closing costs of $10,000 and up to 5 percent of the first mortgage loan, not exceeding $35,000, at 0% interest through the term of the first mortgage. The current Hometown Hero program generally applies to first responders, educators, childcare employees, healthcare professionals, active military and veterans. The Live Local Act broadly expands eligibility to include:

1. Households with incomes not exceeding 150% of the state median income or local median income, whichever is greater;
2. Purchasing a primary residence;

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3. As a first-time homebuyer, or an active duty servicemember of the armed forces or the Florida National Guard, or a veteran;
4. Who is a Florida resident;
5. And is employed full-time (35 hours or more per week) by a “Florida-based ”

The Live Local Act authorizes an initial funding of $100 Million for the expanded program. See: https://www.floridahousing.org/programs/homebuyer-overview-page/hometown-heroes

Also see the following link for other helpful financial and incentive related information: https://www.floridahousing.org/live-local-act

Banning Rent Control

Also under the new law, local governments are prohibited—under any circumstances— from imposing rent controls. Orange County previously used a statutory exception to implement a rent control ordinance approved by its voters last November, and it may continue to litigate whether their ordinance can remain in place. The Act recognizes that local governments may continue to adopt ordinances intended to increase the supply of affordable housing such as through inclusionary housing ordinances.

Conclusion

The Act is a significant step towards increasing the supply of affordable housing in the state. It presents new opportunities for multifamily housing developers to locate their projects in areas where local approvals may have been difficult to obtain, and grants tax relief for newly constructed projects that qualify. But many of the reasons why such a statewide law was needed— particularly increased NIMBY-ism on the local level—will likely cause numerous disputes as it is implemented and as new projects come online. Nevertheless, given the Act’s bipartisan (and nearly unanimous) support, it's clear that affordable housing has a brighter future in Florida than ever before.