

Practice Update

Florida Live Local Act

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On March 29, 2023, Governor Ron DeSantis signed Senate Bill 102 (the Act), otherwise known as the Live Local Act, into law. The Act becomes effective on July 1. This broad-ranging legislation is intended to incentivize the development of affordable housing across the state of Florida, and appropriates \$1.5 billion in state funding over 10 years for that purpose. This practice update summarizes the key components of the Live Local Act that may be relevant for real estate development throughout Florida in the immediate future, including funding and appropriation for its programs, preemption of local zoning regulations, and tax incentives for affordable housing development.

Funding and Appropriation

The Florida Housing Finance Corporation (FHFC) administers Florida's two largest affordable housing programs, the State Apartment Incentive Loan (SAIL) program and the State Housing Initiatives Partnership (SHIP) program. The Act adds two additional board members to the FHFC appointed by the Florida Legislature (one by the President of the Senate and one by the Speaker of the House). Additionally, the Act appropriates the following funds:

- Up to \$150 million in recurring funds for the SAIL program, which must be used for affordable mixed-use projects that address urban infill, provide housing near military installations, and

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other criteria. This appropriation will be funded by increased revenue from the State Housing Trust Fund as a result of the Act.

- \$109 million in non-recurring funds for the SAIL program for the 2023–2024 fiscal year.
- \$252 million in non-recurring funds for the SHIP program for the 2023–2024 fiscal year.
- \$100 million in non-recurring funds for the FHFC for the 2022–2023 fiscal year, to implement a competitive loan program (Construction Inflation Response Viability Funding) aimed to help affordable housing construction projects which have not yet commenced construction due to inflation-related cost increases.
- \$100 million in non-recurring funds for the implementation of the Florida Hometown Hero Program, which reduces down-payment and closing costs for eligible first-time homebuyers (employed in Florida as law enforcement, first responders, healthcare providers, teachers, etc.) with household incomes that do not exceed 150 percent of the state median income or local median income, whichever is greater.

Finally, the Act requires an annual reporting on the amount of state funds necessary to use all federal housing funds anticipated to be received by, or allocated to, the state in the fiscal year in order to maximize the production of new, affordable multifamily housing units in Florida.

Preemption of Local Zoning Regulations

For most locations, the Act requires that local governmental authorities (both counties and municipalities) must approve affordable multifamily residential land uses (including mixed-use projects) in areas that are zoned for commercial, industrial, or mixed use, if the project includes at least 40 percent of its residential units as affordable housing for at least 30 years.[1] For mixed-use projects, at least 65 percent of the total square footage must be used for residential purposes.

Under Section 420.0004 of the Florida Statutes, “affordable” means that monthly rents or mortgage payments do not exceed a certain percentage of median adjusted gross annual income (AMI) for various households (extremely low income persons, very low income persons, low income persons, moderate income persons).[2] The Act includes no stated requirement to “blend” the AMI categories within an affordable development. Thus, all qualifying units could potentially be up to 120 percent of AMI (moderate income). For purposes of the Act, AMI includes the greater of the median income for households within the entire state, the metropolitan statistical area (MSA) in which the project is located, or the county if the project is outside a MSA.

The Act amends Chapter 125 (for counties) and Chapter 166 (for municipalities) of the Florida Statutes as it relates to zoning and development approval procedures. These provisions require that local governments follow streamlined procedures for approving the affordable housing developments, and they preempt local zoning regulations that do not allow the land uses, density, and building height permitted under the Act. Under the Act, a local government:

- may not restrict the unit density of a proposed affordable housing development below the highest allowed density on any land in the same local zoning jurisdiction;
- may not restrict the building height of a proposed affordable housing 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;
- may not require a proposed affordable housing development to obtain a rezoning, comprehensive plan amendment, special exception, variance, or other public hearing approval for the land uses,

density, and building height allowed in qualifying projects;

- must instead administratively approve qualifying projects if they satisfy all other land development regulations for multifamily developments in areas zoned for such use and otherwise are consistent with the local comprehensive plan;
- may still enforce all other land development regulations, including but not limited to setbacks and parking requirements, building intensity (FAR or FLR), lot coverage, open space, etc.; and
- must “consider” reducing parking requirements if the proposed affordable housing development is located within one-half mile of a major transit stop accessible to the site.

The zoning preemptions above are effective beginning on July 1, 2023, and currently set to expire on October 1, 2033. All projects must comply with the local comprehensive plan unless explicitly preempted by the land uses, density, and building height allowed under the Act. Therefore, concurrency requirements (such as sufficient traffic, water, sewer, and stormwater capacity) may independently restrict the ability to develop such an affordable housing project even if the Act permits the land use and density desired.

Pursuant to the Act, these statutory preemptions also prohibit local governments from enacting rent control ordinances, require local governments to update and electronically publish on their websites any publicly owned properties appropriate for affordable housing development, and require local governments to maintain a policy outlining procedures for expedited approval of affordable housing development orders and building permits.

State and Local Tax Incentives

The Act also amends Chapter 196 (relating to tax exemptions) and Chapter 212 (relating to sales taxes) of the Florida Statutes. The Act provides for various

tax incentives for developers to construct affordable housing projects, including the following:

- A tax refund of up to \$5,000 for sales tax paid on building materials used in the construction of affordable housing units, funded through the FHFC, which serve households whose annual household income does not exceed 80 percent of AMI.
- A new tax donation program which will allow corporate taxpayers to direct certain tax payments to the FHFC, up to \$100 million annually, in order to fund the SAIL program. \$25 million of such directed funds may be dedicated specifically to provide loans for the construction of large-scale projects of significant regional impact.
- Increases in the amount of tax credits available through the Community Contribution Tax Credit Program, which provides assistance for affordable housing development, from \$14.5 million to \$25 million annually.
- An ad valorem property tax exemption for land owned by a non-profit entity that is leased for a minimum of 99 years and is predominately used (more than 50 percent of the square footage of all improvements on the land) for the purpose of providing affordable housing.
- An ad valorem property tax exemption for newly constructed developments (completed within five years of the first request for certification or application for exemption, whichever is earlier), of which more than 70 units are used to provide affordable housing. If the units are used to provide affordable housing to households whose annual household income does not exceed 80 percent of AMI, then the property is eligible for an ad valorem tax exemption of up to 100 percent. If the units are used provide affordable housing to households whose annual household income is between 80 percent and 120 percent of AMI, then the property is eligible for an ad valorem tax exemption of up to 75 percent.

- Authorization for local governments to offer an ad valorem property tax exemption for affordable housing developments containing more than 50 units, of which at least 20 percent must be used to provide affordable housing to households whose annual income does not exceed 60 percent of AMI. If all units are used to provide affordable housing, then the local government may exempt up to 100 percent of the assessed value of each unit. If fewer than all the units are used to provide affordable housing, the local government may exempt up to 75 percent of the assessed value of each unit used to provide affordable housing.
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[1] The Act includes some exemptions for local governments that designate less than 20 percent of their land for commercial or industrial uses, and the Act does not apply to property defined as working waterfront and that is zoned industrial under Section 342.201(2)(b) of the Florida Statutes.

[2] See here for state reporting of relevant income limits: <https://www.floridahousing.org/owners-and-managers/compliance/income-limits>

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