

## *Florida's Live Local Act is a Big Deal for Affordable Housing*

Since 2020, Florida has seen one of the largest increases in the cost of housing across the United States. According to data published by Florida Trend Magazine, over the past five years, Florida home prices have increased over 73%. In January 2023, the Miami Herald reported that Miami is now the most-competitive rental market in the country.

In response to Florida's growing affordability crisis, on March 29<sup>th</sup>, 2023, Governor Ron DeSantis signed into law Senate Bill 102 ("*Live Local Act*")—a comprehensive bill passed with near unanimous support by the Florida legislature to promote statewide development of affordable and mixed-income housing. Championed by affordable housing advocates and building industry organizations alike, the *Live Local Act* provides new and expanded funding into state programs, incentives and tax exemptions, along with broad-sweeping pre-emption of county and municipal zoning jurisdiction to expand the production of affordable housing.

**I. Funding Injection into State Programs for Affordable Housing.** The *Live Local Act* invests \$711 million, the largest investment for housing in state history, into multiple state and local-administered housing programs. Much of the *Live Local Act* involves bolstering the budget of the Florida Housing Finance Corporation ("FHFC"), a public-private entity that administers two of the largest statewide affordable housing programs: the State Apartment Incentive Loan ("SAIL") Program and the State Housing Initiatives Partnership ("SHIP") Program. Allocations include:

- \$259 million for the SAIL Program, with up to \$150 million annually for infill projects near military installations;
- \$252 million for the SHIP Program for local government administered P3s to facilitate preservation of existing affordable housing stock.
- Creates a new tax donation project to allow corporate taxpayers to direct tax payments up to \$100 million annually to fund the SAIL program;
- Broadens the ability for the FHFC to invest in affordable housing developments for individuals aging out of foster care;
- Increases the amount of tax credits available through the Community Contribution Tax Credit Program up to \$25 million annually; and
- Expands the Job Growth Grant Fund to authorize public infrastructure projects that support affordable housing.

**II. Pre-Emptive Strike on Local Zoning to Kickstart Affordable Housing Development.** While a few jurisdictions (including City of Miami and Miami-Dade County) have enacted density bonus systems in recent years in efforts to incentivize development of affordable and workforce housing, with the adoption of the *Live Local Act*, the State Legislature has taken more aggressive measures,

creating a 10-year pre-emption of local zoning schemes to incentivize multifamily and mixed-use projects with at least 40% of units designated for households with incomes less than 120% AMI.

- **Pre-empts County and City zoning laws to explicitly authorize Residential Development with at least 40% of Units Affordable up to 120% AMI.** The *Live Local Act* amends Section 125.01055, Florida Statutes (as applied to Counties) and Section 166.04151, Florida Statutes (as applied to Cities), to mandate that counties and municipalities authorize multifamily and mixed-use residential development as allowable uses by right in any area zoned for commercial, industrial or mixed-use if at least 40% of dwelling units in a rental project are designated "Affordable", as defined in Section 420.004, Florida Statutes, for a committed period of at least 30 years, and at least 65% of the total square footage of the development is allocated for residential purposes. Based on Section 420.0004, Affordable units under the *Live Local Act* means up to 120% Area Median Income ("AMI"). Waterfront industrial sites are excluded.

Even for less ambitious projects, a county or city may authorize projects with a minimum of 10% affordable units being developed in a zoning district that permits commercial or industrial use without requiring a code amendment, rezoning or other public hearing approval otherwise required under applicable land development regulations.

- **Supercharged Development Rights for Qualified Affordable Housing Developments.** For qualifying projects, the additional development rights can be substantially greater than under existing rules and regulations depending on the jurisdiction and proximity to more intensive zones. *See* Section 125.01055(7) and Section 166.04151(7), Florida Statutes.
  1. ***Residential Density up to maximum allowed in jurisdiction.*** A county or city may not restrict density below the maximum allowed anywhere within such jurisdiction. This is a significant change as residential densities are the strongest state mandated land use control, which typically require changes to a county's or city's future land use map and/or zoning map, involving multiple public hearings. Depending on the density variability of a particular local government, this could range anywhere from a small bump in units per acre to a 500% increase.
  2. ***Height up to maximum allowed within 1 mile or 3 stories, whichever is greater.*** Again, this change could be significant, particularly in jurisdictions with successional zoning requirements where a development site would otherwise be unable to even seek such a height increase.
  3. ***Consideration of parking reductions for projects within one-half mile of a major transit stop.*** Given the broad landscape of parking reductions, this could range from percentage reduction of minimum parking requirements to payments in lieu to stacking and other benefits.

- **Applications for development must be administratively approved; No public hearing approval required.** The *Live Local Act* makes clear its intent to prevent a county or city from placing additional hurdles in front of qualifying projects beyond administrative site plan approval and building permit requirements. No public hearings shall be required to entitle or vest a project to the maximum density or intensity made available under Section 125.01055, Florida Statutes and Section 166.04151, Florida Statutes.
- **Local Rent Control Ordinances Prohibited.** Additionally, Section 6 of the *Live Local Act*, amends Section 166.043, Florida Statutes, to explicitly prohibit counties and cities from enacting ordinances to directly impose local rent controls or rent caps on private property.

III. **New Ad Valorem Property Tax Exemptions.** The *Live Local Act* also introduces three (3) new ad valorem property tax exemptions to further incentivize the production of affordable housing and rehabilitating naturally occurring affordable housing.

1. ***Nonprofit Land Lease Exemption.*** An ad valorem tax exemption for land owned by a nonprofit entity that is leased for a minimum of 99 years for the purpose of providing affordable housing.
2. ***Exemption for Newly Constructed Units Providing Affordable Housing.*** An ad valorem tax exemption that applies to rent-restricted units within newly constructed or substantially rehabilitated developments setting aside at least 70 units for affordable housing for households earning 120% of AMI or less.
3. ***Local Option Affordable Housing Exemption.*** Authorizes counties and municipalities to offer, through ordinance, an ad valorem tax exemption to property owners who dedicate units for affordable housing for households earning 60% of AMI or less.

IV. **Conclusion.** The bulk of the *Live Local Act* is scheduled to go into effect on July 1, 2023, with tax exemptions retroactive to January 1, 2023.

The *Live Local Act* is a monumental bill for the State of Florida and an unprecedented exercise of state police powers to override county and city zoning authority that will have a significant impact on affordable housing opportunities throughout Florida over the next 10 years.

While it is still too soon to know how local governments will respond to the State's pre-emption of local zoning authority, and what additional processes may be enacted by counties and/or cities, this will no doubt create new opportunities for projects in areas of South Florida that were previously off the table to bolster Florida's housing supply.

Link to enrolled Senate Bill 102 ([Chapter 2023-17](#)).

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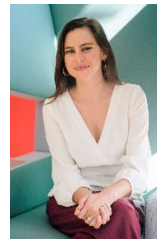
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