

Live Local Act: Incentives to Build More Affordable Housing in Fla.

Daily Business Review

Miami

5.8.23

This [article](#) appeared in the Daily Business Review on May 4, 2023.

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The Live Local Act (SB 102), which was signed into law on March 29 by Gov. Ron DeSantis, has been heralded by many as one of the most significant affordable housing laws in decades. The act seeks to spur additional development of affordable housing by increasing funding, preempting certain local land use and zoning regulations, and providing new tax exemptions. The act also prohibits local governments from enacting rent control regulations such as those seen in New York City and San Francisco.

In the course of fielding questions from colleagues, property owners and developers regarding the act, questions have centered on three of the law's features: the increased height and density afforded to projects satisfying the "40% Rule," eligibility for the new ad valorem tax exemptions, and calculation of the sales tax exemption. Each is addressed below. First, we set forth below a quick primer on what qualifies as "affordable housing."

A rental housing unit is "affordable" under Florida law if: it is restricted to households not making more than a specified percentage of the area median income (AMI), adjusted for household size, and the monthly rents (including utilities) do not exceed 30% of the tenant's income. While affordable housing programs often target households making no more than 60% or 80% of AMI, the act targets households making up to 120% of AMI. For reference, 120% of AMI in Miami-Dade County for 2022 was \$81,960 for an individual and \$117,000 for a family of four. Using those 2022 income figures, the maximum rents (including a utility allowance) that could be charged to tenants at 120% of AMI in Miami-Dade would be approximately \$2,049 for the individual, or \$2,925 for the family of four.

The act's criteria for qualifying as an affordable housing project are notable for a few reasons. Including households making up to 120% of AMI in the definition of "affordable" provides significant economic latitude for developers. Projects that were previously not feasible due to the high cost of land and construction in many Florida jurisdictions may now make economic sense thanks to the density, height and tax benefits provided by the Act. Indeed, the Act may spawn a new segment of affordable housing developers that are not tied to the traditional model of applying for federal low-

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income housing tax credits through Florida Housing Finance Corp. (FHFC). Additionally, by allowing developers the freedom to elect where the affordable units are placed within a project, the number of bedrooms for such units, and also whether to rent or sell the market rate units, the developer can react to market demands. This flexibility is in stark contrast to many traditional affordable housing programs, which can be highly rigid and onerous.

The 40% Rule—Increased Height and Density, Administrative Approval for Eligible Projects

In exchange for agreeing to restrict at least 40% of a multifamily rental development's residential units as affordable (with tenants at or below 120% of AMI) for a period of at least 30 years (the 40% Rule), the act provides significant benefits. For projects satisfying the 40% Rule, a local government:

1. Must authorize multi-family and mixed-use residential (where at least 65% of the total square footage is used for residential purposes) in any area zoned for commercial, industrial (with limited exclusions) or mixed uses.
2. May not limit density of a development below the highest residential density permitted in the jurisdiction.
3. May not restrict the height below the highest height permitted for either commercial or residential development within the jurisdiction within one mile of the proposed development or three stories, whichever is higher.
4. May not require zoning or land use changes, special exceptions or conditional use approvals, variances, or comprehensive plan amendments to obtain the height, density or use benefits provided for under the act.
5. Must administratively approve a proposed project—without public hearings—if the zoning code and comprehensive plan provisions applicable to multifamily development are met (including, but not limited to, setbacks and parking) except for density, height, and land use.
6. Must consider reduced parking for developments meeting the 40% Rule, to the extent such development is within ½ mile of a major transit stop (as that term may be defined in the local government's laws).

Starting on July 1, (the applicable effective date), a practitioner could use this provision to obtain significant increases in height and density. This will require working closely with local zoning and planning officials, who may still be digesting the act. The fact that the act does not expressly address some major zoning metrics such as floor area ratio (FAR) will surely be the subject of discussions in the coming months, and we would not be surprised to see the legislature address this in a clarification bill.

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New Ad Valorem Property Tax Exemptions

The act provides two new ad valorem exemptions for “newly constructed” multifamily projects containing more than 70 units dedicated to affordable housing:

1. 100% exemption of the ad valorem taxes attributed to units rented to households earning less than 80% of AMI, and
2. 75% exemption of the ad valorem taxes attributed to units rented to households earning between 80% and 120% of AMI.

To receive either exemption, the property owner must first submit a request to FHFC to certify that the project is eligible, and then apply to the local property appraiser. The following additional criteria apply:

- Affordable housing developments that already have an agreement with FHFC that is recorded against the property are not eligible for this exemption.
- “Newly constructed” means an improvement to real property which was substantially completed within five years before the date of an applicant’s first submission of a request for certification from FHFC or an application for an exemption, whichever is earlier.
- A rental market study identifying the fair market value of each unit for which the property owner seeks an exemption must be obtained.
- Rents charged at the units for which an exemption is sought cannot exceed either: the most recent rent limit chart posted by FHFC, or 90% of the fair market value rent as determined by the rental market study.

The act also authorizes local governments to enact a new ad valorem exemption for projects with a minimum of 50 units, where at least 20% of the units are rented to households earning not more than 60% of AMI, and where rent charged does not exceed either: the most recent rent limit chart posted by FHFC, or 90% of the fair market value rent as determined by a rental market study. A qualifying property may receive an ad valorem property tax exemption of: up to 75% of the assessed value of each residential unit used to provide affordable housing if less than 100% of the project’s residential units are set aside as affordable units, or up to 100% of the assessed value if 100% of the project’s residential units are set aside as affordable units.

Local governments have some flexibility in enacting this optional ad valorem exemption and can modify it to target local needs. Property owners, developers and their counsel will want to engage with local elected officials to determine whether there is an appetite for adopting this exemption.

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Sales Tax Exemption for Building Materials Used for Affordable Housing

The act provides a new sales tax exemption for building materials used for the development of a newly constructed affordable housing unit. After the unit is substantially completed, the refund is obtained via application to the Florida Department of Revenue. In the event that the building materials are paid for utilizing grant proceeds, the refund belongs to the government.

The refund is calculated on a per-unit basis and is capped at either \$5000 or 97.5% of sales or use tax paid, whichever is less. In sum, Florida's Live Local Act creates significant value propositions for property owners and developers seeking to alleviate the State's affordable housing crisis. The prudent practitioner will continue to monitor implementation guidance from FHFC and local governments.

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