

March 29, 2023 –

Live Local Act (SB 102) Signed Into Law

Over the past decade, Florida has seen incredible growth in both economy and population. Those of us who remember the impacts of the Great Recession can appreciate the need to have diversified our economy. During this unprecedented growth, we have seen several factors impact the price of housing. One critical impact is one of the simplest economic realities – supply and demand. Demand for housing has risen; supply has not moved in an equal curve. At the same time, those moving to our state have often had greater means to pay. The impacts are that many Floridian's, particularly in some of our denser populated areas, are being priced out of housing. Our workforce cannot afford to live near where they work. While more supply will help with this problem – and it must come – it has become politically difficult to obtain. This also means that we must do more to provide housing that is affordable to our workforce. As a statewide problem, the Florida Legislature has stepped in.

Affordable housing is that which will not cost a person more than 30% of their annual income. The United States Department of Housing and Urban Development has identified that the 2022 Median Area Income for the State of Florida for a family of four is \$78,300. This is overall a great sign for Florida's economy. Half of Floridian's make above that annual income, half below. As the cost of housing has risen, the half below that annual income has had difficulty affording a place to live. Florida considers various income levels to determine what is "affordable:"

- Extremely low income: earning up to 30% AMI (for Florida, up to \$23,500)
- Very low income: earning from 30% to 50% AMI (for Florida, between \$23,501 and \$39,150)
- Low income: earning from 50% to 80% AMI (for Florida, between \$39,151 and \$62,650)
- Moderate income: earning from 80% to 120% AMI (for Florida, between \$62,651 and \$94,000)

Consider that the average pay for a public-school teacher in our state is approximately \$53,000, that puts them in the low-income category. Similarly, the average salary for a Firefighter II is approximately \$60,000 and for a police officer \$55,000. As an example, then, a police officer and teacher with two children would be making \$108,000 per year. For their housing to be affordable for that family of four, they should not need to spend more than \$32,400 per year – \$2,700 per month – on housing. The reality in Florida is that housing in that range is simply not available.

The question has been raised as to how to help make housing more affordable for all Floridians. Florida Senate President Passidomo made it a priority in the 2023 legislative session to try to help answer this question. The result is Senate Bill 102, the Live Local Act, Governor Desantis signed into law on March 29, 2023. The provisions become law on July 1, 2023, with some minor exceptions.

The Live Local Act includes amendments to multiple provisions of Florida Statutes related to the development of affordable housing and economic incentives to do so. Some of the critical elements for developers and builders are discussed below.

Amendments to Chapter 125 (Counties) and Chapter 166 (Municipalities)

Sections 125.01055(6) and 166.04151(6) were amended to provide that a county/municipality is allowed to approve affordable housing (as defined in 420.0004, Florida Statutes)[1] that is part of a mixed-use residential development on any parcel that is zoned for commercial or industrial use, so long as at least 10% of the units included are affordable. This removes the allowance on properties zoned for residential use. This amendment also removes the prior requirement that the developer not apply for or receive funding under Section 420.5087.[2]

Sections 125.01055(7) and 166.04151(7) create identical provisions specific to developments that include at least 40% of the residential units for rent are restricted as affordable for at least 30 years (the “40% Requirement”). *Id.* at (7)(a). In such cases, where the 40% Requirement is met the county/municipality:

- a. Must authorize multi-family and mixed-use residential (where at least 65% of the total square footage is used for residential purposes[3]) in any area zoned for commercial, industrial,[4] or mixed uses;[5] *Id.*
- b. May not require zoning or land use changes, special exceptions or conditional use approvals, variances, or comprehensive plan amendments for height, zoning or density; *Id.*
- c. May not limit density of a development below the highest density allowed in the jurisdiction where residential density is allowed; *Id.* at (7)(b).
- d. May not restrict the height below the highest allowed for either commercial or residential development within the jurisdiction, within one mile of the proposed development, or three stories, whichever is higher; *Id.* at (7)(c).
- e. Must administratively approve – without public hearings or meetings – if the regulations applicable to multifamily development in areas zoned for that use are met (including, but not limited to, setbacks and parking) and is “otherwise consistent with the comprehensive plan,” except for density, height, and land use. *Id.* at (7)(d).

In addition, the county/municipality is required to “consider” reduced parking for developments meeting the 40% Requirement if within ½ mile of a major transit stop (as that term may be defined in the local government regulations) that is accessible from the proposed development. *Id.* at (7)(e). The provisions of each subsection 7 automatically expire on October 1, 2033. *Id.* at 7(i).

Amendments to Chapter 196 (Ad Valorem Taxes)

A new ad valorem tax exemption is created by Section 196.1978(2)(b), Florida Statutes for the 2024 tax year through the 2059 tax year. This provision provides that any land owned entirely by a charitable entity qualified pursuant to 501(c)(3) of the Internal Revenue Code and in compliance with applicable IRS regulations and which is leased for at least 99 years for the purpose of – and is

predominantly used for[6] – housing for extremely-low, very low-, low-, or moderate-income purposes as set forth in Section 420.0004, Florida Statutes is entirely exempt from ad valorem taxes. We note that the use of “or” indicates that not all of the applicable ranges are required to be met.

A new provision, 196.1978(3) is also created, also for the 2024 through 2059 tax years. This provision provides that portions of a multifamily project are considered as a matter of law to be charitable, and therefore eligible for an ad valorem tax exemption as follows:

- a. Where providing affordable housing to person or family between 80 and 120% of AMI within the metropolitan statistical area or, if not within such an area, the county, the portion providing that housing is eligible for a 75% ad valorem tax exemption; *Id.* at (d)(1)
- b. Where providing affordable housing to a person or family up to 80% of AMI within the metropolitan statistical area or, if not within such an area, the county, the portion providing that housing is entirely exempt from ad valorem taxes; *Id.* at (d)(2)

This eligibility applies to multi-family units that are within a newly constructed project containing more than 70 units dedicated to people within the noted categories and are rented for the lesser of (1) an amount that does not exceed that posted by the Florida Housing Finance Corporation or (2) 90% of the fair market rent as determined by a rental study meeting the requirements in subsection 196.1978(3)(m). *Id.* at (b)2 and 3.

Notwithstanding the forgoing, any unit that is subject to an agreement with the Florida Housing Finance Corporation pursuant to Chapter 420, Florida statutes that is recorded in the public records of the county in which the property is located is not eligible for the exemption. *Id.* at (k). Similarly, any property receiving an exemption pursuant to Section 196.1979 is not eligible. *Id.* at (l)

As with other exemptions available, the property owner must submit an application on a prescribed form no later than March 1 of the applicable tax year, along with a certification notice from the Florida Housing Finance Corporation. *Id.* at (e). The statute identifies the requirements to obtain the required certification. *Id.* at (f).

A new section 196.1979 is also created that allows for a county or municipality to except portions of property providing affordable housing meeting certain requirements from ad valorem taxes. *Id.* at (1) (a). These requirements are:

- a. Housing for a person or family with an annual income up to 30% or between 30% and 60% AMI in a metropolitan statistical area – or if not in a metropolitan statistical area, within the county in which the person resides;
- b. Is within a multifamily development of at least 50 residential units, of which at least 20% are within affordable ranges noted above;
- c. Rent no more than specified in most recent programs income and rent limit chart from the Multifamily Tax Subsidy Projects Income Limits from HUD, or 90% of fair market rent by a study meeting the requirements of subsection 4 of the statute;
- d. No outstanding code violations;
- e. No unpaid fines or charges related to code violations

Id. at (1)(a)(1)-(6). If these elements are met, where fewer than 100% of the units are affordable, the ad valorem exemption can be up to 75%. If 100% of the units are affordable, the ad valorem exemption can be up to 75%. *Id.* at (1)(b).

Amendments to Chapter 212, Chapter 220, and Chapter 624 (Tax Credits)

A new subsection (v) is added to Section 212.08(5) related to sales taxes for building materials^[7] used in construction of affordable housing units within the extremely low-, very low- or low-income limits as set forth in 420.0004. Section 212.08(v)(1)a, Florida Statutes. Building materials used in a unit within a newly constructed affordable housing development are exempt from sales tax, by way of a refund provided by the department of revenue after completion upon application of the owner at the time the unit is substantially completed. *Id.* at 212.08(v)(2). In the event that the building materials are paid for out of funds from a community development block grant, State Housing Initiatives Partnership Program, or similar grant, the refund belongs to the government. *Id.* at (v)(3). The refund may only be had once per unit and must be between \$500 and \$5000 or 97.5% of sales or use tax paid, whichever is less.

A new Section 220.1878 is added for credits related to contributions to the Live Local Program that is created by Section 420.50872. For any tax year from or after January 1, 2023, 100% of eligible contributions to the Live Local Program may be credited against any taxes due under chapter 220, Florida Statutes. Section 220.1878(1), Florida Statutes.

Amendments to Chapter 420 (Florida Housing Finance Corporation)

Section 420.0003 is substantially rewritten and restated. The intent is to have state and local governments work in partnership with communities and private sector on financial and regulatory commitments (at a minimum) to meet the policies identified. *Id.* at (1). This includes that state and local governments are required to provide incentives to encourage the private sector to be the primary delivery vehicle for the development of affordable housing. *Id.* at (2)(a)1.

Amendment to Section 553.792 (expedited building permitting and development orders)

Section 553.792(1)(a) is amended only to provide that the local governments are required to maintain on their websites the policy and procedures for expedited building permitting and development orders. This will be helpful for a developer looking for any expedited permitting within a local jurisdiction.

Please direct any questions or observations to Co-Chair of Gunster's Real Property Practice, Brian Seymour.

[1] Section 420.0004, Florida Statutes defines "affordable" as monthly rent or mortgage not exceeding 30% of the median adjusted gross annual income for a household in one of four categories, extremely low, very low, low, and moderate. These are each discussed above.

[2] This is the State Apartment Incentive Loan Program to provide first, second, or other subordinate mortgages that provide housing that meets the very-low-income category.

[3] “Residential purposes” is undefined. However, it is reasonable to conclude that this would not apply only to the specific units, which are already noted at 40%, but could also include related elements such as hallways, stairways, and amenities that are part of the residential square footage.

[4] This does not apply to property zoned industrial that is defined as recreational or commercial working waterfront in Section 342.201(2)(b), Florida Statutes. Section 125.01055(7)(h) and 166.04151(7)(h).

[5] Notably, this does *not* refer to zoning, but where the identified uses are allowed regardless of the terminology of the zoning category.

[6] The land is predominantly used for the purposes if more than 50% of all of the square footage on the land is used for the applicable housing. *Id.*

[7] Building materials means tangible personal property that becomes part of an a newly constructed unit in an affordable housing development, including appliances. Plants, fencing, landscape, and hardscape are not included. Section 212.08(v)(1)b & c, Florida Statutes.

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