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Governor Signs SB 328, Reinforcing Florida's Live Local Act To Spur Mixed Income Housing Development

After swift action and near unanimous support from the Florida Legislature, on May 16, 2024, Gov. Ron DeSantis signed into law Senate Bill 328, a bill aimed at reinforcing Florida's Live Local Act to spur mixed-income housing development in communities across the state of Florida. Originally adopted in 2023, Florida's Live Local Act (the LLA) was a major step toward addressing the state's growing housing affordability crisis. In addition to funding the state's existing affordable housing programs and creating new ad valorem tax rebates, the landmark bill included statewide preemption of local zoning ordinances to significantly boost development capacity for qualifying mixed-income multifamily development. This landmark bill, widely supported by the Florida Legislature and Florida housing advocates, encourages the development of mixed-income projects with at least 40 percent of all dwelling units designated as affordable for households earning less than 120 percent of area median income (AMI). The LLA imposed two key directives that modify city and county zoning regulations for qualifying projects: (1) allowing for the maximum density (dwelling units per acre) afforded anywhere within the jurisdiction and (2) allowing for maximum height permitted within 1 mile or three stories, whichever is greater. Recognizing blind spots in the original LLA, SB 328, sponsored by Sen. Alexis Calatayud (R-Miami), aims to clarify provisions under the LLA and, most notably, adds to the LLA framework by providing for additional floor area ratio for qualifying mixed-income projects commensurate with height and density bonuses. Prior to being sent to Gov. DeSantis for signature, SB 328 passed unanimously in the Florida Senate and passed 112-1 in the Florida House. Below is a summary of key amendments to the LLA under SB 328.

I. Land Use and Zoning Preemptions

- **LLA supersedes floor area ratio standards.** SB 328 preempts a local government's floor area ratio (or floor lot ratio, depending on the applicable jurisdiction) for qualified developments to allow up to 150 percent of the maximum floor area ratio permitted within the jurisdiction.
- **Height increases affirmed at 1-mile radius, except for projects adjacent to predominantly single-family neighborhoods.** After considering reducing the proximity zone, SB 328 maintains the 1-mile radius for measuring maximum height of a qualifying LLA project; however, for projects adjacent on two sides or more to a single-family zone with 25 or more contiguous single-family homes, height is limited to 150 percent of the tallest adjacent building or three stories, whichever is greater.
- **Parking reductions for qualifying projects in areas served by transit.** Although certain cities and counties in Florida have adopted parking reductions for transit-oriented development (TOD) areas into local zoning ordinances, many local governments still impose high minimum parking requirements, which often act as an impediment to affordable/workforce housing. SB 328 includes a tiered framework for by-right parking reductions available to LLA projects.
    - Parking requirements are eliminated for mixed-use LLA projects within a true TOD area, as defined by the applicable county.
    - Parking requirements are able to be reduced by 20 percent for LLA projects within one-half mile of a major transportation hub so long as on-street or off-street parking facilities are available to residents within 600 feet.

- **Flexibility for qualifying projects to include "for sale" units.** The LLA, as originally adopted, limited qualifying projects to those with 100 percent rental units. In an effort to broaden the types of development and end products, SB 328 allows for inclusion of owner-occupied units, including single-family homes, townhomes and condominiums, as long as the minimum required 40 percent of units are set aside for multifamily rentals.
- **Protections for airport flight path and military installations.** SB 328 prohibits qualified developments within one-quarter mile of a military installation from utilizing the LLA's administrative approval process. Additionally, LLA zoning benefits are not permitted in airport flight paths, defined as areas extending one-quarter mile wide from each side of a runway and extending 10,000 feet from the end of the runway; in airport noise zones; or for projects that exceed airport height restrictions.
- **Restrictions on bootstrapping of development bonuses; allows local governments to approve bonuses administratively upon compliance with criteria.** SB 328 clarifies that a local government's "currently allowed" density, height and floor area ratio do not automatically include density, height and/or floor area achieved by bonuses, variances or other special exceptions provided in respective zoning regulations – ensuring against double dipping of development capacity increases. However, SB 328 also makes clear that local governments shall consider applications for development bonuses associated with LLA projects and may approve such requests administratively if the proposed development satisfies established criteria to receive the bonus.
- **Creates vested rights for qualifying LLA projects.** In a clear effort to mitigate perceived risk and provide confidence to real estate investors and lenders, SB 328 asserts that qualifying mixed-income developments authorized and constructed under the LLA shall be treated as a conforming use and structure even after expiration of the development's affordability period and after the expiration of the LLA governing statutes. It also mandates that if the development is found to violate the maximum rents or other LLA requirements at any point during the 30-year affordability period, the development be allowed a reasonable time to cure such violation.

II. Property Tax Exemptions

As adopted in 2023, the LLA introduced new ad valorem property tax exemptions to further incentivize the production of affordable housing and rehabilitation of naturally occurring affordable housing. SB 328 makes the following changes, which may impact developers of affordable and mixed-income housing utilizing the LLA's tax benefits.

- **Affirms authority of property appraisers to grant tax exemption.** SB 328 clarifies that the Florida Housing Finance Corporation's duties are ministerial in certifying eligibility for exemptions and establishes that county property appraisers maintain authority to grant and calculate tax exemptions.
- **Creates a lower threshold of 10 units in the Florida Keys to qualify for tax exemption.** SB 328 includes an amendment to Section 1978 (3)(b)2.b, Florida Statutes, requiring only 10 units, rather than 70 units, be set aside for income-limited persons and families in mixed-income developments constructed in areas of critical state concern – the Florida Keys – to qualify for the exemption.
- **Establishes methodology for property appraisers to determine values of tax exempt units.** Expanding on the original language added to Section 196.1978(3)(d), Florida Statutes, SB 328 requires the property appraiser to apply the tax-exempt status of each unit based on AMI classification; this means the property appraiser shall exempt (i) 75 percent of the assessed value of the units designated for households earning from 80 to 120 percent AMI and (ii) 100 percent of the assessed value of the units designated for households earning less than 80 percent AMI. Furthermore, "[w]hen determining the value of a unit for purposes of applying an exemption pursuant to this paragraph, the property appraiser must include in such valuation the proportionate share of the residential common areas, including the land, fairly attributable to such units."

Conclusion and Effectiveness

SB 328 addresses and clarifies questions surrounding practical application of the Live Local Act that have come to light since its adoption in 2023, solidifying the LLA as a viable tool for developers interested in developing mixed-income projects. SB

328 may also expand the types of projects that can qualify to now include a mix of rental and for-sale units within the same development, while maintaining the overall mix of affordability originally contemplated within the LLA – giving comfort to developers who may have been sitting on the sidelines until now. SB 328 takes effect immediately on the date the governor signed the bill into law. Notably, the clarifications to the Ad Valorem Tax Exemptions under both Sections 196.1978 and 196.1979, Florida Statutes, apply retroactively to January 1, 2024, thereby benefiting both filed and pending applications. This client alert provides a summary of key components of SB 328 and is not intended as legal advice. For more information on zoning and ad valorem tax benefits under the LLA and SB 328, or how the LLA and SB 328 may be applicable to a specific property in Florida, contact **Steven J. Wernick, Esq., AICP**, or **Joseph A. Ruiz, Esq.**, in Day Pitney's Miami office.

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