

FLORIDA'S LIVE LOCAL ACT | APRIL 5, 2023

# Live Local Act: Top 3 Zoning and Land Use Benefits

Nicholas Noto & Anthony De Yurre

## More Density, More Height and Less Bureaucracy

The Live Local Act (“**Live Local**” or the “**Act**”) makes unprecedented changes to zoning law that impact and limit local government power. The Act requires counties and municipalities (“**Local Government**”) to administratively approve multifamily and mixed-use residential projects as permitted uses in *any* area zoned commercial, industrial, or mixed-use so long as 40% of the residential units are restricted as “affordable” for at least 30 years (a “**Preemption Project**”). In mixed-use projects, at least 65% of the total square footage of the project must be used for residential purposes to qualify as a Preemption Project.

Not only does the Act expand the areas where affordable multifamily and mixed use developments are statutorily permitted by right without a public hearing, but it also provides unit density and building height benefits for Preemption Projects as summarized below:

**Preemption Project Maximum Unit Density:** Preemption Project unit density is permitted to the maximum currently allowed unit density for residential development within the Local Government’s jurisdiction. For example, if the maximum unit density in the applicable jurisdiction is 500 units per acre, then the Preemption Project is allowed that same unit density regardless of the maximum unit density that would otherwise apply to that location.

**Preemption Project Maximum Height:** Local Government cannot restrict the height of a Preemption Project below the highest currently allowed height for a commercial or residential development located in its jurisdiction and within one mile of the Preemption Project, or three stories, whichever is higher.

**Preemption Project Approval Process:** Critically important, a Local Government cannot require a proposed Preemption Project to obtain a zoning or land use

change, special exception, conditional use approval, variance or comprehensive plan amendment for building height, zoning, or densities permitted by Live Local. Further, Live Local also *requires that Preemption Projects be approved administratively*, without any further action by the Local Government, so long as the development (1) satisfies the Local Government's land development regulations for multifamily developments in areas zoned for such multifamily use and (2) is otherwise consistent with the comprehensive plan, except of course for the preempted items of unit density, height, and land use.

### **Other Considerations:**

- Beyond the unit density and height as per the Act, in order to obtain administrative approval, Preemption Projects must still comply with Local Government regulations, including but not limited to parking requirements, setbacks, and floor area limitations. Notwithstanding, the Act also requires a Local Government to consider reducing parking requirements for Preemption Projects located within one-half mile of a major transit stop, so long as such major transit stop is accessible from the development.
- While a Local Government is not required to follow the Live Local Act if a project contains less than 40% affordable units, a Local Government may still elect to use the Live Local Act to approve the development of affordable housing, on any parcel zoned for commercial or industrial use so long as 10% of the units in the project are affordable. This provision also applies to mixed-use residential projects that meet the 10% affordable requirement. Importantly, the 10% affordable project language of the Live Local Act is self-executing and does not require a Local Government to adopt any ordinance or regulation before approving a 10% project under the Act.

### **How to Qualify as "Affordable" Under the Act**

Live Local preemptions are mandated only for those projects with at least 40% of the project's residential units as "affordable" for a minimum of 30 years. "Affordable" is defined in Section 420.0004(3), Florida Statutes, as monthly rents or monthly mortgage payments including taxes, insurance, and utilities that do not exceed 30% of that amount which represents the percentage of the median

adjusted gross annual income for the households defined as: (1) extremely-low-income; (2) low-income; (3) moderate-income; or (4) very-low-income.

These “affordable” housing categories, are defined as:

**“Extremely-low-income persons”** means a household with a total annual household income that does not exceed 30% of the median annual adjusted gross income (“**AMI**”) for households within the state. It should be noted that the Act provides that the Florida Housing Finance Corporation may adjust this amount annually by rule to provide that in lower income counties, extremely low income may exceed 30% of AMI and that in higher income counties, extremely low income may be less than 30% of AMI.

**“Very-low-income persons”** means households with a total adjusted gross annual household income that does not exceed 50% of the AMI for households within the state, or 50% of the AMI for households within the metropolitan statistical area (“**MSA**”) or, if not within an MSA, within the county in which the person or family resides, whichever is greater.

**“Low-income persons”** means a household with total adjusted gross annual income that does not exceed 80% of the AMI for households within the state, or 80% of the AMI for households within the MSA or, if not within an MSA, within the county in which the person or family resides, whichever is greater.

**“Moderate-income persons”** means a household with a total adjusted gross annual income not exceeding 120% of the AMI for households within the state, or 120% of the AMI for households within the MSA or, if not within an MSA, within the county in which the person or family resides, whichever is greater.

The Act’s changes aim to significantly reduce the time (and related expense) associated with the entitlement process of qualifying projects. Allowing Preemption Projects in commercial and industrial areas has the potential for creative utilization of these properties in ways previously not possible. For more information or a consultation regarding your pending or considered projects please contact [communications@bilzin.com](mailto:communications@bilzin.com).

**Related People**



**Nicholas Noto**  
**Associate, Land Development & Government Relations**



**Anthony De Yurre**  
**Partner, Land Development & Government Relations**