Live Local Act Year Two

Where Are We Now and How Have Local Governments Pushed Back

Valerie Vicente, Esq.
Plantation Office
Cell: (954) 257-4888
Email: vvicente@ngnlaw.com

Nabors Giblin & Nickerson P.A.
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A photo illustration of a proposed LLA project in Hollywood, FL (14 story building with 198 units) *currently developed as a used car sales center*

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The Act
SB102 (2023)

Purpose: "ensure that citizens have access to affordable housing"

(I) The Act allocated significant funding and incentives for affordable housing, for example:

- $711 million in appropriations to the Florida Housing Finance Corporation (FHFC), for various affordable housing programs (including SHIP & SAIL)
- Tax donation program and sales tax refunds for building materials used in affordable housing
- Also introduced 3 ad valorem property tax exemptions
  - Fiscal Impacts to Local Governments (loss of tax revenue)

(II) Local Government Preemptions:

- Revised §166.04151 (for Cities) and §125.01055 (for Counties), to create a new subsection (7), preempting a local government's ability to apply its **use, height, and density restrictions** and **hearing processes** to "qualifying developments" with affordable housing units

- Zoning preemptions became effective beginning on 07/1/23

"Qualifying Development"

To be considered a "qualifying development":

- At least 40% percent of the units in the proposed multi-family development must be affordable housing
  - "Affordable Housing" as defined in §420.0004, F.S.
- mixed-use residential projects utilizing the Act must set-aside at least 65% of the total square footage for residential purposes
- Commitment to affordability requirements for at least 30 years

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The Act
SB102 (2023)

1) **Use** – Allows multifamily rental or mixed-use residential uses in commercial, industrial, or mixed-use zones without a zoning change, land use change, or comprehensive plan amendment. [even mixed-use districts that already allow residential?]

2) **Density** – A municipality cannot restrict a qualifying development below the *highest density allowed on any land* in the municipality where residential development is "allowed." [bonuses? Nonconforming density?]

3) **Height** – The multi-family building height for a qualifying development may not be restricted *below the highest "currently allowed" height for a commercial or residential development located in its jurisdiction within 1 mile of the proposed development or 3 stories, whichever is higher*. [bonuses? Nonconforming height?]

4) **Approval Process** – Qualifying developments must be approved administratively (i.e., cannot require City Council approval). [Variances and special exceptions exempted from admin process. But what about bonuses?]

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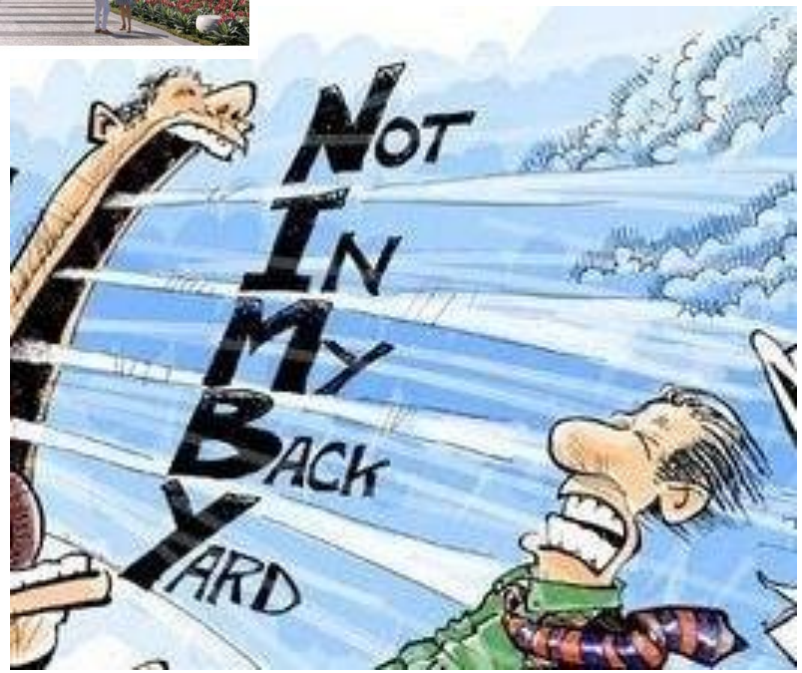
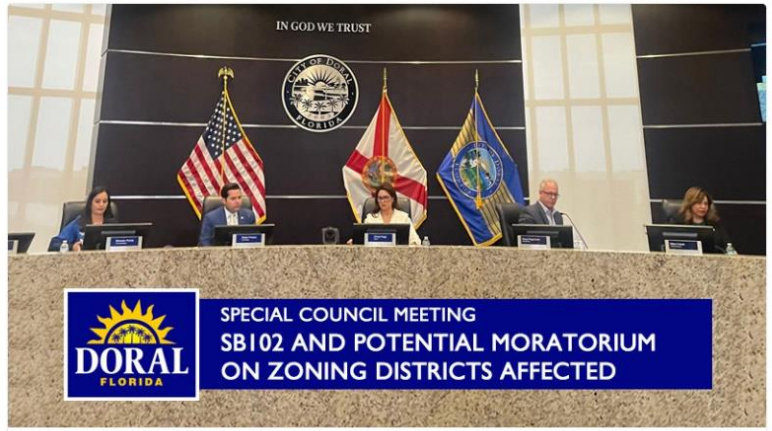
The Fall Out – City of Doral Case Study

Mixed-Use Oasis At Doral Planned For 4090 N.W. 97th Ave., Doral, FL

DORAL
familyjournal

HOME | COMMUNITY | NEWS | EDUCATION | INMIGRATION | BUSINESS | LIFESTYLE





City of Doral Council approves moratorium on Senate Bill 102

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The 2024 "Glitch Bill"

Miami Herald

NEWS SPORTS BUSINESS POLITICS OPINION OBITUARIES PUBLIC NOTICES BANKING HOME SERVICES GUIDES

FLORIDA POLITICS

Miami legislators seek changes to law that spurred Ocean Drive high-rise proposal

BY **AARON LEIBOWITZ**
UPDATED JANUARY 05, 2024 2:41 PM

A rendering shows a proposal for an 18-story tower at the site of the Clevelander and Essex hotels on Ocean Drive in Miami Beach. *Courtesy of Jesta Group*

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SB 328 (2024)
The Act 2.0

- **Clarification Provided** - As used in the Act, "currently allowed" density, height, and floor area ratio does **not** include any bonuses, variances, or other special exceptions provided in their regulations

- **Height Limitations** – Projects adjacent to, on at least two sides, a single-family zoned residential parcel with at least 25 contiguous single-family homes, restrict project height to either 150% of the tallest adjacent building, the tallest height on the property, or 3 stories.
  - Note, "adjacent to" is defined as sharing more than one point of a property line, but does not include properties separated by a public road.

- **Military Installation** - Prohibits qualifying developments within 1/4 mile of a military installation from utilizing the act's administrative approval process

- **Airport-Impacted Areas** - Exempts certain airport impacted areas from the Act's zoning benefits

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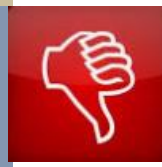
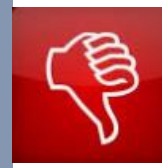
SB 328 (2024)
The Act 2.0

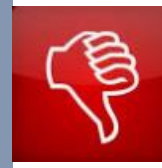
- **Preemption on FAR** - A local government may not restrict the FAR of a qualified development below 150% of the highest currently allowed FAR where development is allowed



- **Admin Approval of Development Bonuses** – Clarifies that the Act does not preclude a project from receiving local development bonuses for density, height or FAR, and such bonuses "must be approved administratively without further action".
  - Practical Issues



- **Transit Oriented Parking Reductions** – Parking requirements are eliminated for mixed-use residential qualified projects within a Transit Oriented Development ("TOD") areas. Parking requirements are also reduced by 20% for a qualified project within 1/2 mile of a major transportation hub. "Major transportation hub" means "any transit station, whether bus, train or light rail, which is served by public transit with a mix of other transportation options."



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The Act 2.0

- **For Sale Market Rate Units Permitted** – The word "rental" was removed from the required types of allowable multifamily developments to permit for sale market rate units. Affordable units must still be rental at max 120% AMI
- **Website Notice re: Administrative Approval** – Each municipality is required to maintain on its website a policy containing procedures and expectation for administrative approval
- **Conformity and Grandfathering** – Provides Live Local Act projects must be treated as conforming uses even after the expiration of the affordability period (30 years)
- **Violations of Affordability** – Notice and opportunity to cure. If not cured, development is non-conforming

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SB 328 (2024)
The Act 2.0

Adds Sec. 196.1978(3)(o) to the Florida Statutes – Opt out "Missing Middle Tax Exemption."

- Allows local governments to opt out of the middle-income affordable housing exemption with a two-thirds vote of the governing body if the county has an adequate supply of affordable housing units.
- The opt-out provision would apply to the middle-income units in an affordable housing project which are leased to tenants with income of more than 80% but not exceeding 120% of median income (which middle-income units would otherwise be eligible for a 75% exemption).
- The opt-out does not apply to the exemption for units occupied by tenants with 80% or less of median income (which are eligible for a 100% exemption).
- Meaning, if a county has an adequate number of affordable housing units, as determined by the Shimberg Center for Housing Studies, then the county and/or municipality, by a two-thirds vote, reject the exemption for their share of the taxes on the middle-income units (i.e., affordable project would still be required to pay the city's share of the tax on the middle-income units)
- The opt-out election by the local jurisdictions must be voted on every year
- Resources:

  Multifamily Middle Market Certification (floridahousing.org)

  FHC-Summary.-New-Multifamily-Middle-Market-Tax-Exemption-Opt-out-3.8.24.pdf (flhousing.org)

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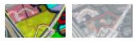
Practical Implications

Residents not happy about approved 98 new townhouses near I-95

County commissioners approved project last week

Martin County commissioners have approved a project that would add 98 townhouses near Interstate 95 in Stuart, prompting traffic concerns from some residents.



By: Ethan Stein

Posted 12:00 AM, Nov 14, 2023 and last updated 10:28 AM, Nov 14, 2023

STUART, Fla. — A new 98-unit townhouse development has been approved by Martin County commissioners, but some residents are not

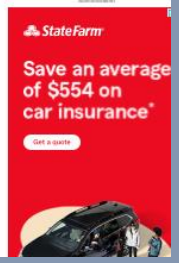
At WPTV, It Starts with Listening

'They are not going to beat us down:' New law could revive twice-defeated Riviera Beach redevelopment

The Live Local Act allows developers to get zoning changes to build projects without council approval. WPTV spoke to residents who have been fighting this development.

Florida's Live Local Act could allow developers to bring this project back a third time.

At WPTV, It Starts with Listening



By: Ethan Stein

Posted 12:57 PM, Sep 09, 2024

RIVIERA BEACH, Fla. — Riviera Beach City Council twice denied zoning changes to developers looking to build around 200 housing units on an abandoned golf course.

However, developers could still build using a relatively new state law: the Live Local Act. It allows developers to get zoning changes to build projects without council approval if a certain percentage of the units have rents tied to the area median income.

Developers have used the law as a threat to push projects in Martin County, Jupiter and now Riviera Beach

New Florida law could revive defeated Jupiter housing development

Senate Bill 102 allows developers to build apartments regardless of local rules in some cases

A new Florida law makes it possible to build affordable housing units in Jupiter despite the town council rejecting the plan.

By: Ethan Stein

Posted 12:54 AM, Sep 22, 2023 and last updated 12:56 AM, Sep 22, 2023

JUPITER, Fla. — A plan to create 520 apartments in Jupiter was rejected Tuesday night by the Town Council, but a recently passed Florida law could revive the plan.

HOUSING RESOURCES

- County-by-county resource for renters facing eviction
- OUR Florida - Emergency Rental Assistance Relief Program
- Palm Beach County Department of Housing and Economic Development
- Palm Beach County Community Services
- Boca Raton
- St. Lucie County
- Martin County
- Indian River County

SEEKING SOLUTIONS

- **'Priced Out of Paradise'**

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Is All Hope Lost?

- Act does not preempt other applicable local laws and regulations
- Therefore, even if a project is entitled to excess height, density, FAR or proposes residential use allowed in an area that would not otherwise allow residential use, the project **must still comply with all of the other applicable land development regulations**.
- Nothing in the Act precludes a local government from adopting land development regulations specific to Qualified Projects, providing for **additional or more restrictive requirements that aren't preempted** (examples include landscaping, buffers, setbacks, lot coverages, etc.)

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Local Regulatory Responses

Counties and Cities have been formally adopting policies and amending their land development codes in response to the Act, which often include:

- Specific findings on how the Act will be implemented in the jurisdiction (i.e., specifying which districts are considered commercial, industrial, or mixed use, where qualified projects can be located)
- Providing for an administrative approval process
- Specifying which multifamily or mixed-use district standards will be applied to qualified projects
    - Example- New LLA multi-family project being proposed in a commercial zoning district– are you using the standards in your MF3, MF4, MF5 zoning code?

Local Regulatory Responses

- Requiring that affordable units
  - are a variety of unit types (not all studios)
  - are treated equitably to market rate units
    - quality of construction
    - access to common areas and amenities
  - are mixed within the same building as market rate units

Local Regulatory Responses

- Require a **Declaration of Covenants** providing for reporting requirements and enforcement mechanisms related to the affordability requirements

- Elements:
  - Commitment to having no fewer than 40% of the dwelling units as "affordable units" for a minimum of 30 years
  - CO contingent on the above
  - Owner to maintain accurate income records for occupants of affordable units, updated annually
    - Application for tenancy (names of each HH member, proof of ID, employment info, income and asset info)
    - Copy of the lease agreement
    - Verification that the applicant/renter meets the criteria for eligibility and that the rent is "affordable"
  - Annual report containing the following:
    - List of all affordable units with address; the Adjusted Gross Income of the persons residing in the affordable unit; the monthly rent charged; etc.
  - Provide for City/County right to inspect rental records
  - Enforcement
  - Recordation and covenant running with the land

- Example - Hillsborough County Declaration of Covenants and Restrictions (Land Use Restriction Agreement)
  - https://hcfl.gov/businesses/land-development/live-local-act

Sample Ordinances

- **City of Boca Raton** – Article XV, Division 14 of Chapter 28 LDCs (starts at Section 28-1637)
  - minimum dwelling unit square footage in order to provide reasonable living conditions
    - a) Efficiency: 400 square feet
    - b) 1 Bedroom: 550 square feet
    - c) 2 Bedrooms: 750 square feet

- **City of Doral** – Article VIII of Chapter 68 LDCs (starts at Section 68-991)
  - Provides for additional buffering and set back requirements

- **City of Miami Beach** – Article V of Chapter 2 of LDCs (starts at 2.5.5.1)
  - Minimum Notice Requirements. A minimum 30-day mail notice shall be required for all properties within 375 feet of the property that is the subject of the application. The applicant shall be responsible for satisfying this 30-day mail notice requirement(including all associated costs)
  - Provides for timing and procedures of appeal of Planning Director's determination

Local Legal Challenges

Village of Bal Harbour

- The Shops at Bal Harbour is an exclusive, high-fashion shopping center with ultra luxury retailers
- The Village is almost entirely residential, with a single Business District, and the Shops encompasses almost the entire District
- 2017, the Shops sought to expand, and entered into a Development Agreement, which was tied to a specific site plan
- January 9, 2024, the Shops filed an application to develop MF affordable housing in the subject Business District, which was the only Village zoning district that would qualify for affordable housing under the LLA
- In response, the Village Council
  - adopted resolutions to take "all necessary steps to protect the Village and in response [to the application]"
  - Retained lobbyist to fight the application
  - And directed Village Attorney to pursue a moratorium (notably, was not done)

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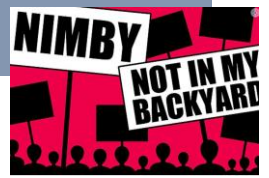

Local Legal Challenges – The Case to Watch

Bal Harbour Shops, LLC (the "Shops") v. Bal Harbour Village
Case No. 2024-001246-CA-01

- The Shops filed a Complaint seeking a writ of mandamus and declaratory relief

- Allege that the Village has a history of exclusionary zoning and housing that "go beyond a mere aversion to affordable housing" and that the Village views the addition of affordable housing as "antithetical to the Village's identity"

- Refers to a 2017 Site Plan by The Shops where they were "forced to agree to the Village's extortionate and unconstitutional demands" of "contributions" totaling $122,805,000.00, in order to get Village approval.

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Local Legal Challenges

Bal Harbour Shops, LLC (the "Shops") v. Bal Harbour Village
Case No. 2024-001246-CA-01

- The Writ of Mandamus
  - a writ of mandamus against a governmental agency is appropriate if the following elements are satisfied:
    - (1) the petitioner has a clear and certain legal right to the performance of a particular duty by a government or a representative of the government [The Act]
    - (2) whose performance of that duty is ministerial and not discretionary [The Act requires admin approval if all requirements are met]
    - (3) who has failed to perform despite an adequate request [the Village refused to process the application] and
    - (4) who has left the petitioner with no other legal method for obtaining relief [The Shops were without remedy]

- Declaratory Relief
  - The Shops sought a declaration of its rights, based upon
    - the Act,
    - the 2017 Development Agreement,
    - Sections 163.3221 – 163.3243 of the Florida Statutes (the "Development Agreement Statute") and
    - That the Moratorium was preempted by the Act and its enactment was a violation of state law

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Local Legal Challenges

Bal Harbour Shops, LLC (the "Shops") v. Bal Harbour Village
Case No. 2024-001246-CA-01

The Village files a Motion to Dismiss (Feb. 2024)

- (Count I) – Petition for Writ of Mandamus Fails to State a Legally Sufficient Claim
  - The filing of the lawsuit only two weeks after submitting the Application renders the entire mandamus claim premature– the allowable time for the Village to review the application had not yet expired.
  - Also, the Shops had not exhausted all of its administrative remedies, as required for a mandamus petition.
    - Here, had they actually gone through the process and waited for an actual determination by the Village on their application, they would have been apprised of the administrative remedies available to them.
    - Also, the Development Agreement governs the relationship between the Village and the Shops, and imposes obligations on both parties, which carries a 30-year term, and any modification to the Development Agreement requires a valid amendment pursuant to the terms of the agreement
- (Count II) – Declaratory Relief Fails to State a Legally Cognizable Claim
  - The controversies that The Shops seeks declarations on "are figments of [their] imagination."
  - First, Village has not imposed moratorium
  - Second, the Village hasn't denied the application, and if it were to, it could be for reasons completely unrelated to the Development Agreement, so The Shops is improperly seeking an advisory opinion
  - Also alleged failure to join indispensable parties because the application would impact two major anchor tenants with long term leases – Saks and Neiman Marcus.

Local Legal Challenges

Bal Harbour Shops, LLC (the "Shops") v. Bal Harbour Village
Case No. 2024-001246-CA-01

Bal Harbour adopts a series of zoning ordinances, including "poor door" ordinance

- The Shops files an **Amended Complaint** in May 2024 – 9 counts, asking the Court to confirm or find that:
  - other than for height, density, and FAR, the land development regulations applicable to BHS' Live Local Act development are found in the RM-5 multifamily residential District and not the mixed-use Ocean Front District (Count I);
  - that a recently-enacted zoning ordinance applicable to development in the mixed-use Ocean Front District does not apply to the Application under the Live Local Act and the Village Code (Count II);
  - two Village ordinances enacted after the Application was submitted and which impose approval requirements upon Live Local Act projects which go beyond the requirements of the Act are preempted by the Live Local Act (Counts III, IX);
  - that three new ordinances passed by the Village after the passage of the Live Local Act which do not state they are to apply retroactively and which the Village promulgated in a targeted effort to interfere with proper Live Local Act development do not apply retroactively to the Application (Counts IV, V, and VI);
  - a 2017 development agreement entered into as part of a separate site plan approval between BHS and the Village and which specifically provides that BHS has the right to enjoy the benefit of any future legislative changes applicable to the subject property cannot be used by the Village to thwart [the Shops] separate Application under the Live Local Act (Count VII);
  - find that a recently-enacted ordinance which grants the Village unlimited unilateral discretion to create new requirements applicable to Live Local Act applications which go beyond the requirements of the Act is void for granting the Village arbitrary and unfettered discretion (Count VIII)
- City files a Motion to Dismiss the Amended Complaint
- September 18, 2024, Court DENIES Village's motion to dismiss, and provides the Village 20 days to Answer the Complaint

Questions?

Valerie Vicente, Esq.
Plantation Office
Cell: (954) 257-4888
Email: vvicente@ngnlaw.com

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