CITY OF DORAL
Office of the City Manager
Letter to Council

LTC No. 013-2023

To: The Honorable Mayor and Members of the City Council

From: Barbie Hernandez, City Manager

Date: July 24, 2023

Subject: Live Local Act – Evaluation Process

This Letter to Council (LTC) serves to update the Mayor and Members of the City Council regarding the evaluation process of the Live Local Act (the "LLA" or the "Act") for "qualifying developments" as per the City's administrative site plan review process outlined in Chapter 53, Administration, Article III - Development Procedures, Section 53-184, Approval of Development Plans.

Background

As outlined in the enclosed legal analysis, the LLA supersedes a local government's authority to enforce its use, height, and density restrictions, as well as hearing processes, for qualifying developments that incorporate affordable housing units and meet the criteria of the LLA.

However, "the Act does not preempt the City's other comprehensive plan and land development regulations. Therefore, even if a development qualifies for additional height or density under the Act, or is permitted in an area it would have otherwise been prohibited, the development must still comply with all of the other City land development regulations. For example, setback requirements, lot coverage requirements, buffering, floodplain standards, environmental regulations, parking, traffic study, and design regulations. Moreover, except for densities, height, and land use, the development must otherwise be consistent with the comprehensive plan and land development code." (City Attorney, Legal Memo – SB 102).

Administrative Site Plan Review Process

The Planning and Zoning Department will oversee the evaluation of "qualifying development" projects within the industrial, commercial, and mixed-use zoning districts. The Department is evaluating whether to update the administrative review process, but in the interim, the LLA Applicants falling under these categories will be required to follow the application process outlined below:

1. Site Plan Application and Review Fee: The LLA Applicant must submit a site plan application accompanied by the corresponding review fee. This application serves as the initial step in the evaluation process.

2. Project Narrative and Supporting Plans: The applicant is expected to provide a comprehensive project narrative along with supporting plans and documentation. These documents must demonstrate the project's alignment with the LLA requirements.

3. Affidavit of Commitment: To ensure compliance with the City and LLA requirements regarding affordable housing, the applicant must furnish restrictive covenant committing to the affordable housing restrictions, along with the process for monitoring and complying with these requirements.

Upon formal submission of the development application, the Planning and Zoning Department will collaborate with the City Attorney's Office to evaluate the proposed "qualifying development." This assessment involves interpreting and applying the City's Code to determine the applicable zoning district requirements, including height and density.

To facilitate the evaluation process, the Department has developed two GIS templates, specifically for future land use and zoning district maps. These templates will be utilized to accurately determine the potential applicable zoning district, allowable density, and height that align with both the City and LLA requirements.

Sample GIS templates, highlighting future land use and zoning district mapping, are provided in Exhibits A and B for reference.

Conclusion

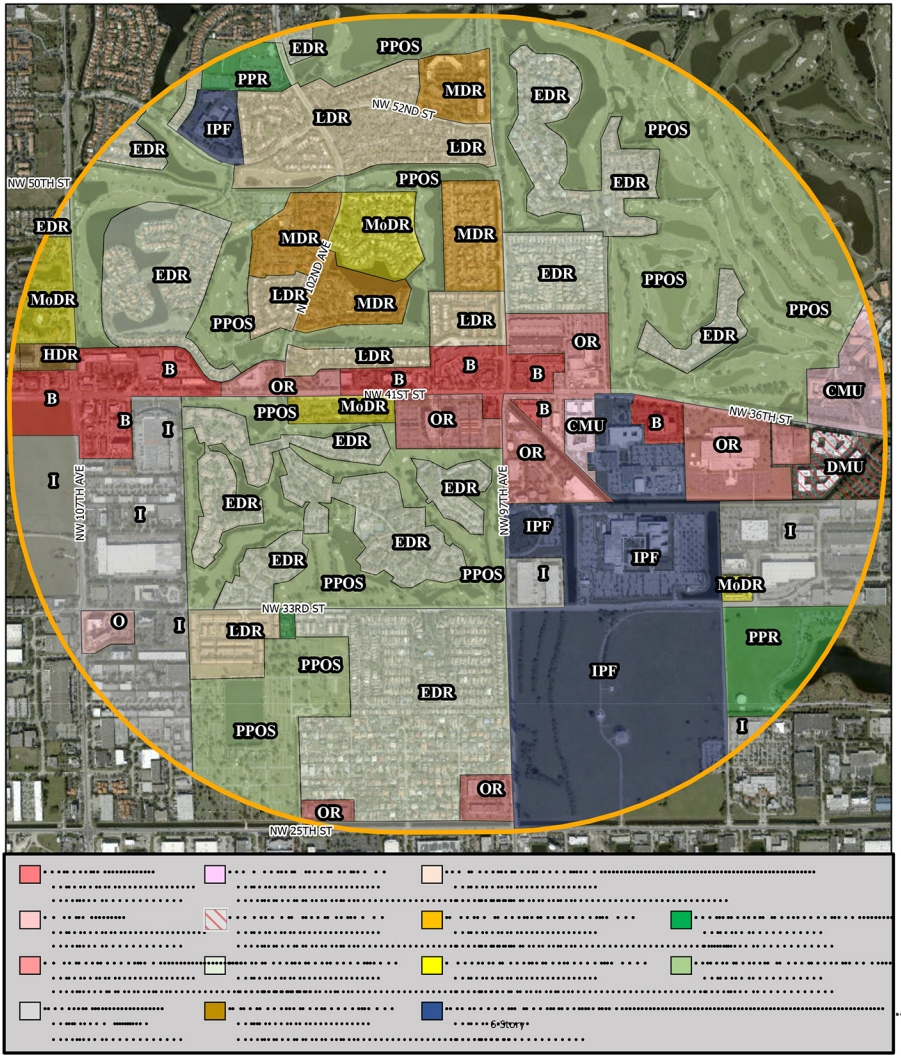
The Planning and Zoning Department remains committed to upholding a just, thorough, and consistent evaluation process for all development projects governed by the Live Local Act. They will continue their collaborative efforts with the City Attorney's Office to ensure the strict enforcement of all relevant land development regulations and comprehensive plan policies.

If you have any questions or need additional information, please do not hesitate to contact us.

Thank you for your attention to this matter.

Enclosed Documents:

- Legal Memo – SB 102
- Exhibit A – Sample GIS Radius Map, Future Land Use
- Exhibit B – Sample GIS Radius Map, Zonin Districts



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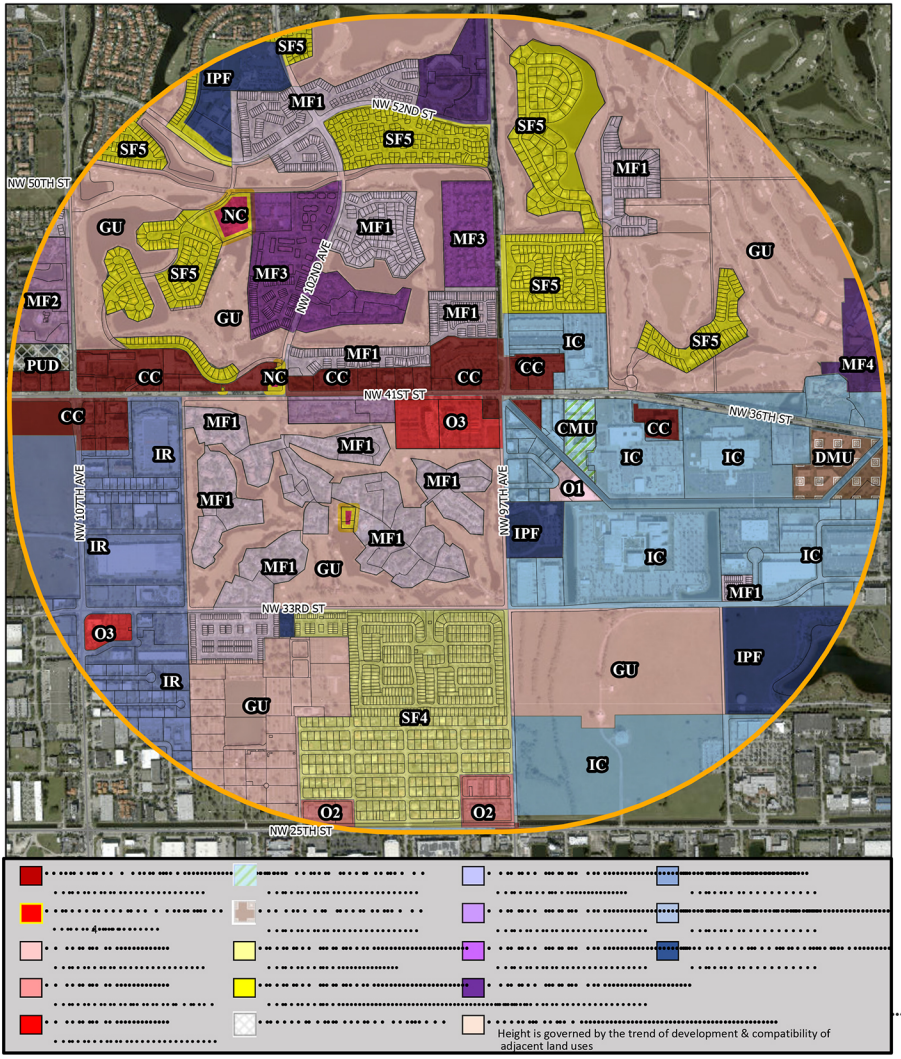
Future Land Use Map

Planning & Zoning Department

SOURCE: PLANNING & ZONING DEPARTMENT, 2023



Height is governed by the trend of development & compatibility of adjacent land uses

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Zoning Districts Map

Planning & Zoning Department

PLANTATION
8201 Peters Road
Suite 1000
Plantation, Florida 33324
(954) 315-0268 Tel

Nabors Giblin & Nickerson P.A.
ATTORNEYS AT LAW

TAMPA
2502 Rocky Point Drive
Suite 1060
Tampa, Florida 33607
(813) 281-2222 Tel
(813) 281-0129 Fax

TALLAHASSEE
1500 Mahan Drive
Suite 1500
Tallahassee, Florida 32308
(850) 224-4070 Tel
(850) 224-4073 Fax

MEMORANDUM

To: Honorable Mayor and Councilmembers

From: Valerie Vicente, City Attorney

Subject: SB 102 - Live Local Act

Date: July 21, 2023 (Updated)

During the City Council Zoning Meeting of June 28, 2023, the City Council requested that the City Attorney's Office provide a legal analysis of Senate Bill 102, commonly referred to as the Live Local Act (the "Act"), as codified in Chapter 2023-17, Laws of Florida. This legal analysis provides an overview of what the Act provides for, how the Act will be applied to the City of Doral ("City"), the validity of the Act, and whether there is a basis for challenging it.

Please note that the information contained herein is based upon our initial review and analysis of SB102, and is subject to change as our office and the City's Planning and Zoning Department work through this novel legislation.

I. SUMMARY OF THE ACT

The Act took effect on July 1, 2023, and makes various changes and additions to affordable housing related programs and policies at both the state and local level with the intent of addressing Florida's affordable housing needs. However, the portion of the Act that will most critically impact the City and other municipalities in Florida is Section 5, which preempts a local government's ability to apply its use, height, and density restrictions and hearing processes to qualifying developments with affordable housing units.

In the simplest of terms, the Act provides for the following:

1. **Use** – Allows multifamily rental or mixed-use residential uses in commercial, industrial, or mixed-use zones without a zoning or land use change, special exception, conditional use approval, variance, or comprehensive plan amendment.

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.

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.

4. **Approval Process** – Qualifying developments must be approved administratively (i.e., cannot require City Council approval).

To be considered a "**qualifying development**," at least 40% percent of the units in the proposed multi-family development must be affordable housing for at least 30 years. Additionally, mixed-use residential projects utilizing the Act must set-aside at least 65% of the total square footage which must be used for residential purposes.

Notably, the Act **does not preempt** the City's other comprehensive plan and land development regulations. Therefore, even if a development qualifies for additional height or density under the Act, or is permitted in an area it would have otherwise been prohibited, **the development must still comply** with all of the other City land development regulations. For example, setback requirements, lot coverage requirements, buffering, floodplain standards, environmental regulations, parking, traffic study, and design regulations. Moreover, except for densities, height, and land use, the development must otherwise be consistent with the comprehensive plan and land development code.

II. THE ACT AS APPLIED TO THE CITY

As a result of the aforementioned preemptions, the following are the as-applied use, density, and height regulations for qualifying developments:

1. **Use** – Qualifying developments may potentially be located in all of the City's office (O1, O2, O3), commercial (NC, CC), and industrial (IC, I, IR) zoning districts. [1]

2. **Density** – Qualifying developments shall be entitled to a maximum of 25 dwelling units per gross acre[2], which is the highest density allowed on any land in the City where residential development is allowed (i.e., Downtown Mixed-Use).

3. **Height** – Depends on the location of the qualifying development. See Section (I)(3) above. Height for a qualifying development may not be restricted below the highest currently *allowed height* for a commercial or residential development located in the City within 1 mile of the proposed development or 3 stories, whichever is higher.

A. Other Land Development Standards

As indicated above, the Act does not preempt the City from applying its other comprehensive plan and land development regulations. The Act, however, does provide that a proposed development authorized under the Act

[1] Although SB102 specifically provides that qualifying projects shall be permitted in mixed-use zoning districts, the City's current mixed use districts already provide residential uses with height and density requirements. Therefore, it is our position and interpretation at this time that because the mixed-use districts in this City already provide for residential uses, the preemptions applicable in SB102 for height and density for qualified projects do not apply in said districts.

[2] After further review of the Act, my office is of the opinion that the maximum density of 35 dwelling units per acre provided for pursuant to Section 86-83 of the City's land development code, as more particularly set forth in the Comprehensive Plan is a discretionary bonus for use of creative excellence, and is *not* an entitlement for purposes of the preemption under the Act. Any project that will seek additional density in excess of 25 dwelling units per acre will require City Council approval.

must be administratively approved without further action of the governing body if the development satisfies the municipality's land development regulations for multifamily developments in areas zoned for such use. The Planning and Zoning Department is reviewing the City's zoning regulations closely to identify which multifamily standards it will apply to qualifying developments. At this time, it appears that the development standards for Multi-Family Residential 3 and 4 zoning districts are the most applicable; however, this is still being evaluated. With respect to mixed-use developments, at this time, the City is considering utilizing the development standards for the DMU zoning district, as it is the most applicable; however, as with the above, this is still being evaluated.

B. Administrative Approval Process

For purposes of the City's administrative approval process, the City will use the current administrative approval process already set forth in Article III, Development Procedures, Division 2, Development Order and Development Permit, Sec. 53-184, Approval of Development Plans of the City's land development code, which has historically been utilized for minor development approvals. Meaning, the applicant will still be required to submit an application with the appropriate application fee, and supporting plans and information sufficient for the Planning and Zoning Department to ascertain that the application satisfies the Act, the City's land development code, and the City's Comprehensive Plan. As with all typical administrative site plan approvals, there will be a multi-department and Miami-Dade County review to ensure compliance with the applicable regulations (i.e., public works, building, DERM, Fire and WASD etc.).

Nevertheless, the Planning and Zoning Department is currently reviewing the City's existing administrative approval process to ascertain whether it should be amended to provide for additional notice requirements.

C. Establishing and Monitoring Compliance with the Act

As indicated above, a development only qualifies for the preemptions set forth in the Act if it provides the requisite affordable housing for a period of 30 years.

To that end, the City intends to apply portions of its existing workforce housing regulations to qualifying developments brought forward pursuant to the Act. Specifically, the City will be applying Section 74-890 of the City Code, which provides:

> (a) Workforce dwelling units shall be built on the same site as the proposed development.
> (b) Workforce units must be reasonably dispersed throughout the project, and not clustered together or segregated in any way, from the market-rate units.
> (c) On average, workforce dwellings must contain the same number of bedrooms and quality of construction as the other market-rate units in the development.
> (d) Workforce units shall be developed simultaneously with or prior to the development of the other market-rate units.
> (e) The number of efficiency, one, two and three or more bedroom workforce units shall be proportional to the number of efficiency, one, two and three or more bedroom market-rate units (e.g., if 50 percent of market-rate units have two bedrooms, then approximately 50 percent of the workforce units must be two bedroom units).
> (f) If the development is phased, the phasing plan shall provide for the construction of workforce units proportionately and concurrently with the market-rate units.
> (g) The exterior appearance of workforce units shall be similar to the market-rate units and shall provide exterior building materials and finished of substantially the same type and quality.
> (h) The interior building materials and finishes of the workforce units shall be substantially the same type and quality as market-rate.

Furthermore, with respect to monitoring and continuing to assure that the above requirements are met, the City will require that the applicant provide and record a restrictive covenant for the benefit of the City, with rights of enforcement, setting forth the applicant's obligations to ensure compliance with the City's Code and the Act's requirements, including an annual reporting requirement.

III. MORATORIUM

A planning moratorium is a freeze on land development imposed for land-use planning purposes. A Citywide moratorium for an unspecified length of time broadly citing the Act will expose the City to potential litigation. If, however, there are specific and articulable issues the City needs to address in its zoning code or comprehensive plan requiring a pause in development approvals for planning purposes, then it may consider implementing a reasonable temporary moratorium for the specifically identified purpose. At this time, City staff is in the process of analyzing its land development regulations and comprehensive plan, and identifying supplemental regulations that are needed to address the implementation of SB102. To that end, if there is a basis for enacting a moratorium, a recommendation for the same will be brought to the City Council for the Council's consideration.

IV. PREEMPTION, THE VALIDITY OF THE ACT, AND POTENTIAL CHALLENGES

The Florida Constitution and Section 166.021, Florida Statutes, provides for an expansive grant of home rule authority to all municipalities, except where expressly prohibited by law (i.e., subject to preemption). See Section 166.021, Florida Statutes, "Powers," which provides:

> (1) As provided in s. 2(b), Art. VIII of the State Constitution, municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal services, and may exercise any power for municipal purposes, <u>except when expressly prohibited by law</u>.

Therefore, the home rule powers of municipalities can be preempted or limited by both a general law or special act. Judicial analyses frequently divide legislative preemption into two types – express and implied. Legislative preemption can also occur when a conflict between a local government ordinance and state law exists.

In the instant case, SB 102 provides for an express preemption. The plain language of the statute states that municipalities "must" authorize qualified developments, and "may not" restrict density, or height, as specified therein:

> 166.04151 Affordable housing.—
>
> (7)(a) <u>A municipality must authorize</u> multifamily and mixed-use residential as allowable uses in any area zoned for commercial, industrial, or mixed use if at least 40 percent of the residential units in a proposed multifamily rental development are, for a period of at least 30 years, affordable as defined in s. 420.0004. Notwithstanding any other law, local ordinance, or regulation to the contrary, a municipality may not require a proposed multifamily development to obtain a zoning or land use change, special exception, conditional use approval, variance, or comprehensive plan amendment for the building height, zoning, and densities authorized under this subsection. For mixed-use residential projects, at least 65 percent of the total square footage must be used for residential purposes.
> (b) <u>A municipality may not restrict</u> the density of a proposed development authorized under this subsection below the highest allowed density on any land in the municipality where residential development is allowed.

(c) A municipality may not restrict the height of a proposed development authorized under this subsection 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.
(d) A proposed development authorized under this subsection must be administratively approved and no further action by the governing body of the municipality is required if the development satisfies the municipality's land development regulations for multifamily developments in areas zoned for such use and is otherwise consistent with the comprehensive plan, with the exception of provisions establishing allowable densities, height, and land use. Such land development regulations include, but are not limited to, regulations relating to setbacks and parking requirements.

Furthermore, the bill analysis specifically states that the bill "*Preempts* local governments' requirements regarding zoning, density, and height to allow for streamlined development of affordable housing in commercial and mixed-use zoned areas under certain circumstances. Developments that meet the requirements may not require a zoning change or comprehensive plan amendment."[3]

As such, it is clear the State legislature has expressly preempted municipalities in this area; therefore, it does not appear the City has any legal basis to challenge the subject legislation as an improper exercise of the State's authority.

Both the Florida League of Cities (FLC) and Florida Association of Counties (FAC) have strongly opposed SB 102 since its inception and introduction to the legislature on January 26, 2023. Notably, SB 102 was passed through both the senate and house in just under 2 months, and executed by the Governor in less than a week after being enrolled (approved by the Governor on March 29, 2023). Despite strong opposition to the bill by both the FLC and FAC, the City is unaware of any efforts by either organization to initiate or coordinate efforts to challenge the law, as it has with other legislation (such as in 2019, when the FLC joined a few municipalities in filing a lawsuit challenging in part a 2017 state law, as amended in 2019, on wireless preemption, i.e., the Advanced Wireless Infrastructure Deployment Act). Nevertheless, the City is closely monitoring this legislation, and our office will advise the City Council should a challenge be initiated by another jurisdiction.

V. CONCLUSION

While SB 102 precludes the City from applying the City's use, height, and density restrictions and hearing processes to qualifying developments with affordable housing units, the City will nevertheless strictly enforce all of its other applicable land development regulations and comprehensive plan policies, including but not limited to setback requirements, lot coverage requirements, buffering, floodplain standards, environmental regulations, parking, and design regulations.

The City's planning and zoning department has been working diligently to develop a strategy and clear processes, to ensure that any applications being presented to the City pursuant to SB 102 are treated consistently. With each application the City receives, the planning and zoning department will work closely with the City Attorney's Office to interpret and apply the City's Code, using accepted standards of interpretation and professional judgment, to apply the appropriate regulatory standards while meeting the statutory purpose of SB 102.

Should you have any questions, please do not hesitate to contact our office.

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