Memorandum

Date: June 26, 2023

To: Development Services, RER

From: Nathan Kogon, AICP Assistant Director
Development Services Division
Department of Regulatory and Economic Resources

Subject: **Implementation and Interpretations of the Live Local Act regarding zoning and land use (SB 102)**

The Florida Legislature recently adopted the Live Local Act, Laws of Florida Ch. 2023-17, which has an effective date of July 1, 2023. The Live Local Act preempts certain County regulations pertaining to the procedures and standards that govern affordable housing developments, to require the County to administratively approve applications for multifamily rental residential developments that meet the statutory qualifications and to prohibit public hearings on such applications. The qualifying multifamily rental developments must: (1) be located on property that is currently zoned for commercial, industrial, or mixed uses; (2) provide a minimum of 40% of its residential units as "affordable" residential units as defined in the Florida Statutes; and (3) if they are mixed-use developments, dedicate a minimum of 65% of the total square footage of the development for residential use. The purpose of this memorandum is to provide a general interpretation and guidance for the implementation of the Live Local Act as it relates to the County's land use and development processes. Because of the breadth of the changes the legislation makes to the County's standard development review processes and standards, this interpretation is subject to change as further analysis and implementation occurs.

Statutory Requirements:

1. **Affordable multifamily and mixed-use residential developments must be approved if they meet certain conditions – "**A County **must** authorize 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 [of the Florida Statutes]." Furthermore, "For mixed-use residential projects, at least 65 percent of the total square footage must be used for residential purposes." Section 125.01055(7)(a), Fla. Stat.

Interpretations/comments:

1) *Multifamily Rental Use* - The development, or residential portion of a mixed-use development, must be multifamily in nature, must consist of rental units, and must satisfy the statutory affordability requirements for at least 30 years.
    a. The statutory definition of affordable is different than the County's workforce housing income range.
    b. **Section 33-196.6(10) of the County Code** provides for an income range "**up to 140 percent** of the most recent area median income for the County."
    c. By contrast, **Section 420.0004(3) and (12), Florida Statutes**, limit the qualifying income range to "**less than 120 percent** of the median annual adjusted gross income for households within the state, or 120 percent of the median annual adjusted gross income 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."
    d. For single-use developments, **40 percent of the residences must be restricted based on the statutory affordability requirements and must be rentals**.
    e. For mixed-use developments, in addition to the residential component complying with the requirements for single-use residential developments, the **residential component must comprise at least 65 percent of the square footage of the mixed-use development**. **But only 40 percent of those residential units would be required to be restricted** to the statutory affordability requirements.

2) *Monitoring affordable units* - The County will monitor the development's compliance with the statutory affordability requirements by requiring an **Annually Renewable Certificate of Use (C.U.)**. The holder of the C.U. shall be responsible for submitting agreements, covenants, or other evidence from the agency that monitors their rentals to demonstrate continued compliance with the affordability requirement.

3) *Multifamily requirement* – The statute does not apply to single-family homes, duplexes, or townhomes.

4) *Locations of qualifying residential multifamily projects or mixed-use developments* **– Developments that meet the foregoing requirements shall be permitted on properties zoned commercial, industrial, or mixed-use** without requiring a rezoning, special exception, conditional use approval, variance, or CDMP amendment for the uses, densities, or building height authorized by the statute. Qualifying County zoning districts include at least all properties zoned BU, IU, OPD, RU-5, and Urban Center (but not in land use categories that permit only residential uses) and, for the RTZ District,

properties that have obtained a special exception and are not restricted to residential uses.

a. The statute does not define "mixed-use."
b. The Agricultural (AU) District is not a "mixed-use" zoning district. AU provides for a range of like and compatible uses, just as other traditional zoning districts do; this is in contrast to urban center and RTZ zoning districts, which explicitly provide for the vertical and horizontal mixing of different uses that would have been divided into separate districts under traditional zoning.

5) *Mixed-Use Districts* - If a mixed-use development in one of the County's mixed-use districts (e.g., RTZ, Urban Center, MCD) does not provide for 65 percent of the development to be residential and for 40 percent of those units to be affordable as defined in the statute, such mixed-use development would not be exempt from any public hearing or other requirements. But a single-use residential development that meets the other statutory criteria and is located in one of those mixed-use districts would be exempt.

6) *Properties in the Rapid Transit Zone (RTZ) District* – Properties that either do not require a public hearing, or have already obtained a special exception and are not otherwise restricted through those approvals to residential uses, are zoned appropriately, likely as mixed use. But if the property has simply been added to the RTZ District by ordinance and has not gone through the public hearing process, the underlying zoning will govern whether it qualifies.

2. Additional public hearings for qualifying residential developments are prohibited – "Notwithstanding any other law, local ordinance, or regulation to the contrary, a county 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 section." Section 125.01055(7)(a), Fla. Stat.

Interpretations/comments:

1) The statute does not supersede covenants that were accepted as part of a quasi-judicial zoning proceeding. If a covenant must be modified or deleted to allow the proposed development, then an application for covenant modification will still be necessary. Covenants need to be reviewed case by case.
2) The statute does not supersede conditions of a previously approved quasi-judicial zoning resolution, such as for a variance. But if a development that meets the

statutory requirements can be built without relying on any such prior zoning approval, then the site may be able to be developed without modifying the resolution.

3) A county is prohibited from requiring a public hearing to obtain the use, height, and density permitted by the statute for qualifying developments on properties that are already zoned commercial, industrial, or mixed-use.
4) Although qualifying developments are not subject to use, density, or height restrictions beyond those provided in the statute, they **are** subject to all other land development regulations, including but not limited to environmental regulations, traffic engineering reviews, and concurrency. Section 125.01055(7)(g), Fla. Stat.

3. **Density at the statutory minimum must be approved -** "A county may not restrict the density of a proposed development authorized under this subsection below the highest allowed density on any unincorporated land in the county where residential development is allowed." Section 125.01055(7)(b), Fla. Stat.

Interpretations/comments:

1) The County is prohibited from restricting density on a qualifying development below what the statute authorizes.
2) The CDMP's highest allowed density on "unincorporated land" is 250 units per acre, which is the maximum for a Metropolitan Urban Center. The CDMP's Regional Urban Center covers only lands that are entirely incorporated and thus does not apply to the statutory density requirement.
3) "Highest allowed density" does not include stacking any bonuses provided under any other county program that allows a development to exceed the maximum CDMP Land Use Plan map density upon compliance with certain conditions.
4) Site-specific density bonuses authorized by the CDMP and the County's Workforce Housing Development Program under chapter 33, article XIIA may be permitted through the ASPR only if the development relies on the underlying density authorized by the CDMP and Zoning Code rather than relying on the density allowed by the Live Local Act.

4. **Building height at the statutory minimum must be approved -** "A county 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." Section 125.01055(7)(c), Fla. Stat.

Interpretations/comments:

1) In contrast to the density provision, which refers to "any **unincorporated** land," the statutory height requirement refers to "development located **in its jurisdiction**." That means maximum allowed height includes properties within an incorporated area over which the County exercises zoning jurisdiction, such as in the RTZ.
2) The statutory height requirement **does not supersede other massing controls**, such as, but not limited to, floor-area ratio (FAR), open space, lot coverage, setbacks, and landscaping requirements. Section 125.01055(7)(g), Fla. Stat., expressly provides, "Except as otherwise provided in this subsection, a development authorized under this subsection must comply with all applicable state and local laws and regulations."
3) Should the maximum height within a mile of the site be the zoning district on the subject parcel, then that height should prevail.
4) "Highest currently allowed height" does not include stacking any bonuses provided under any other county program that allows a development to exceed the maximum height allowed in a zoning district upon compliance with certain conditions.
5) Site-specific height bonuses authorized by the County's Workforce Housing Development Program under chapter 33, article XIIA, may be permitted through the ASPR only if the development complies with the height requirements provided under the zoning code rather than the height allowances provided by the Live Local Act. Thus, a development can add the workforce housing height bonus to the maximum permitted height for the property under the property's zoning district, but cannot add it to height permitted under SB 102 should that height be greater than the permitted height for that zoning district.

5. **Qualifying developments must be approved administratively –** "A proposed development authorized under this subsection **must be administratively approved** and no further action by the board of county commissioners is required **if the development satisfies the county'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." Additionally, **"**Except as otherwise provided in this subsection, **a development authorized under this subsection must comply with all applicable state and local laws and regulations**." Section 125.01055(7)(d), Fla. Stat.

Interpretations/comments:

1) The property must be zoned appropriately at the time of the application. Future Land Use Designations on the Comprehensive Development Master Plan (CDMP) Land Use

Plan map are generally not considered. The CDMP does, however, affect the zoning on parcels outside of the Urban Development Boundary, which are generally designated as Agriculture, Open Land, or Environmental Protection.

a. In the urbanized area, the CDMP generally deems pre-existing zoning to be consistent with the property's Future Land Use Designation.
b. But for properties that are CDMP-designated as Agriculture or Open Land, the pre-existing zoning is **not** deemed wholly consistent with the Land Use Plan map designation. Instead, the CDMP provides that, while "all existing lawful uses and zoning are deemed consistent with this Plan" unless a subsequent planning study finds to the contrary,
    i. in the Open Land areas: "[t]his [allowance] does not . . . authorize the expansion of any use inconsistent with the specific provisions for the applicable Open Land subarea. To the contrary, it is the intent of this plan to contain and prevent the expansion of such inconsistent development in Open Land areas"; and
    ii. in the Agriculture areas: "[t]his [allowance] does not . . . authorize the expansion of any use inconsistent with this plan. To the contrary, it is the intent of this Plan to contain and prevent the expansion of inconsistent development in the Agriculture area."
c. For properties that are CDMP-designated as "Environmental Protection," the CDMP does not deem all existing lawful uses and zoning to be consistent with the Future Land Use Designation. Instead, the CDMP provides, "Uses permitted within these areas must be compatible with the area's environment and the objectives of the Comprehensive Everglades Restoration Plan, and shall not adversely affect the long-term viability, form or function of these ecosystems. Residential development in this area shall be limited to a maximum density of one unit per five acres, and in some parts of this area lower densities are required to protect the fresh water supply and the integrity of the ecosystems."
d. Section 125.01055(7)(d), Fla. Stat. requires that a proposed development be "otherwise consistent with the comprehensive plan," **and section 125.01055(7)(g) requires that "a development must also comply with local laws and regulations."**
e. Because inconsistent zoning is **not** deemed consistent with the comprehensive plan in these land use designations, multi-family development is not permitted on properties with a Future Land Use Designation of Agriculture, Open Land, or Environmental Protection regardless of whether they have BU or IU zoning (or are zoned GU and trended to one of those districts) and whether they are located inside or outside the UDB.

2) **Applications for approval pursuant to the Act shall be processed though an Administrative Site Plan Review (ASPR).**
3) Other than use, height, and density, the development must meet all other zoning and land development regulations of the zoning category applicable to the underlying property.
4) If the subject property already permits multifamily development, then those standards shall be used, such as the BU zoning district. As discussed below, RMD and MCD standards may also be used in some cases.
5) ASPR decisions can be appealed in accordance with section 33-311(A)(2).
6) In zoning districts that do not permit multifamily development, such as OPD and IU, the zoning standards from the RU-4, High Density Apartment House District, may be used regardless of location. In addition, where a property falls within a CDMP-designated Mixed-Use Corridor or Urban Center, the Residential Modified District (RMD) or Mixed-Use Corridor District (MCD) standards may be used, subject to FAR limitations as set forth in the CDMP and summarized below. Properties zoned BU may also use the following FAR standards but, where BU authorizes residential uses, will be subject to other BU development standards.
    a. Major or Mixed-Use Corridor: For a property that is located in a Major/Mixed-Use Corridor or Rapid Transit Corridor (Smart Corridor), the following table shall be used to determine maximum FAR if the property is being developed with the BU, RMD or MCD zoning regulations.

Mixed-Use Developments Located Within:	Floor Area Ratio Range	Maximum Residential Density (dwelling units)
Major Corridors	from 1.0 to 1.5	36
Mixed-use Corridors identified in an area plan	Up to 2.0	60
Rapid Transit Activity Corridors		
Within one-quarter mile	Up to 2.0	60
Between one-quarter and one-half mile	Up to 1.5	36
Between one-half and one mile (East-West Corridor)	Up to 1.25	18

    b. Within an Urban Center Radius: If a property is located within the radius of a CDMP-designated but unzoned urban center, the following table shall be used to determine maximum FAR if the property is being developed with the BU, RMD or MCD zoning regulations. The RU-4 standards, including FAR, may still be used.

	Average Floor Area Ratios (FAR)	Max. Densities Dwellings per Gross Acre
Regional Activity Centers	greater than 4.0 in the core not less than 2.0 in the edge	500
Metropolitan Urban Centers	greater than 3.0 in the core not less than 0.75 in the edge	250
Community Urban Centers	greater than 1.5 in the core not less than 0.5 in the edge	125

c. Outside of Major/Mixed-Use or Rapid Transit Corridor or Urban Center Radius: If a property is located outside of a CDMP-designated Major/Mixed-Use or Rapid Transit Activity Corridor or Urban Center radius, the following table shall be used to determine maximum FAR if the property is being developed with the RMD zoning regulations. Maximum FAR shall be the maximum permitted for non-residential development. The RU-4 standards, including FAR, may still be used and in excess of these thresholds. Because the RMD and MCD districts rely on the underlying CDMP FAR standards, the below table is the only mechanism to regulate maximum FAR when not located in either a CDMP Mixed-Use Corridor or Urban Center Radius. Properties that are zoned BU shall be subject to the BU zoning standards, including FAR, unless utilizing the MCD standards where permitted in the Rapid Transit Activity Corridor.

Maximum Allowable Non-Residential Development Intensity

Inside the Urban Infill Area UIA	2.0 FAR
Urbanizing Area, UIA to Urban Development Boundary (UDB)	1.25 FAR
Outside UDB	0.5 FAR

6. **Certain properties with industrial zoning are not entitled to develop pursuant to the Live Local Act –** "This subsection does not apply to property defined as recreational and commercial working waterfront in s. 342.201(2)(b) in any area zoned as industrial."
   1) Section 342.201(2)(b), Fla. Stat., provides: *"Recreational and commercial working waterfront" means a parcel or parcels of real property that provide access for water-dependent commercial activities or provide access for the public to the navigable waters of the state. Recreational and commercial working waterfronts require direct access to or a location on, over, or adjacent to a navigable body of water. The term includes water-dependent facilities that are open to the public and offer public access by vessels to the waters of the state or that are support facilities for recreational, commercial, research, or governmental vessels. These facilities include docks, wharfs, lifts, wet and dry marinas, boat ramps, boat hauling and*

repair facilities, commercial fishing facilities, boat construction facilities, and other support structures over the water."

2) Certain industrial-zoned properties along Biscayne Bay and the Miami River may be excluded from development under the Live Local Act.

7. **Properties remain subject to airport zoning regulations, as set forth in article XXXVII of chapter 33 Miami-Dade County Code –** Section 125.01055(7)(d), Fla. Stat. requires that a proposed development be "otherwise consistent with the comprehensive plan," and Section 125.01055(7)(g), Fla. Stat., requires that "a development must also comply with local laws and regulations."

Interpretations/comments:

1) Section 333.03(1)(a), Fla. Stat., requires Miami-Dade County to "adopt, administer, and enforce . . . airport protection zoning regulations for such airport hazard area."
2) Section 333.04(2) further provides, "In the event of conflict between any airport zoning regulations adopted under this chapter and any other regulations applicable to the same area, whether the conflict be with respect to the height of the structures or vegetation, the use of the land, or any other matter…**the more stringent limitation or requirement shall govern and prevail**."
3) The County adopted article XXXVII of chapter 33 pursuant to these statutory requirements.
4) The legislative intent of the County's airport zoning regulations, set forth in section 33-330(A) of the County Code, includes the following findings:
   a. "The capability of an efficient, safe airport system and associated industry and businesses, acting in conjunction with other urban services, including public and private educational facilities, to establish general development trends, is well recognized."
   b. "[H]eight restrictions within identified areas around airports were developed in coordination with the Federal Aviation Administration and the City of Miami. The height restrictions are at the maximums tolerable under the current state of aviation technology."
   c. "This Board acknowledges and adopts as its own those legislative findings in Chapter 333, Florida Statutes, that airport hazards and the incompatible use of land in airport vicinities should be prevented in the interest of the public health, public safety, and general welfare."
   d. "The purpose of these regulations is to provide both airspace protection and land uses compatible with airport operations; to promote the coordinated use of lands and foster an orderly development within the County; to protect the

health, safety and welfare of the County's residents and visitors; to ensure the economic benefits and capacity of the County's system of airports; and to ensure compliance with all federal, state, and local aviation regulations."

5) Section 33-333 of the County Code specifies, among other requirements, the land use compatibility regulations and height/airspace regulations that apply to the areas around each airport, as applied within the specific restriction zones identified in article XXXVII around each airport.
   a. As set forth in section 33-333(A), "The land use compatibility regulations contained herein seek to address the impact of aircraft operations on surrounding uses, to safeguard the quality of life in the surrounding communities while increasing the efficiency of airports as economic generators."
   b. Similarly, as set forth in section 33-333(B), "The objective of these height/airspace regulations is to ensure that airspace in Miami-Dade County is safe, navigable, and free of obstructions."
6) In furtherance of these objectives, which are related to, among things, the safety and economic viability of airport operations, the County's airport zoning regulations restrict the development of new residential construction and of the height of structures within the applicable airport restriction zones.
7) The Live Local Act recognizes that developments must continue to comply with these local laws and regulations, which relate to airport operations and safety.

8. **Other tax incentives -** The Statute provides various property tax and building material tax exemptions. Questions on these programs should be directed to the Miami-Dade Property Appraiser's Office, the Miami-Dade County Tax Collector's Office, the Florida Department of Economic Opportunity (DEO), or the Florida Housing Finance Corporation.