

## AFFORDABLE HOUSING INCENTIVES: PROPERTY TAX AND BEYOND

### I. Affordable Housing Incentives

#### A. Generally

- Affordable housing incentives are tools used to make housing more accessible and generally fall into two categories:
  - Financial incentives:
    - Tax credits and exemptions
    - Subsidies
    - Reduced interest rates for developers
  - Regulatory incentives:
    - Zoning variances
    - Density bonuses
    - Streamlined approval processes

#### B. Examples

- Federal—Low Income Housing Tax Credit (LIHTC)
- State—Ad valorem exemptions and assessment reductions
- Local—Enterprise agreements with local housing authorities

### II. Florida's Live Local Act

#### A. Senate Bill 102

- "Live Local Act"
  - Deleting the authority of local governments to adopt or maintain laws, ordinances, rules, or other measures that would have the effect of imposing controls on rents
  - Providing for certain ad valorem taxation exemptions
  - Authorizing local governments to adopt ordinances to provide an ad valorem tax exemption for portions of property used to provide affordable housing meeting certain requirements
  - Suspending, for a specified period, the General Revenue Fund service charge on documentary stamp tax collections
  - Authorizing the Governor to approve state or local public infrastructure projects to facilitate the development or construction of affordable housing, etc.
  - Appropriation: \$711,000,000
- Governor DeSantis: Live Local was enacted to promote affordable housing for teachers, police, fire fighters, nurses and service workers after housing costs spiked in Florida due to the pandemic so they would not have long commutes to their jobs
- Chapter 780, Part 6 of the City of Jacksonville's Ordinance Code entitled "Local Option Affordable Housing Tax Exemption": During the 2023 legislative session, the Legislature of the State of Florida approved Senate Bill 102, commonly known as the "Live Local Act" (the "Act"), to make various changes and additions to affordable housing related programs and policies at both the state and local level. The Act was signed into law on March 29, 2023, and created F.S. § 196.1979, which authorizes

local governments to adopt an ordinance that exempts those portions of property used to provide affordable housing for natural persons or families meeting the income limits subject to certain criteria. The City of Jacksonville desires to implement this tax exemption to provide an additional incentive for development of affordable housing to meet the needs of the City's residents.

B. Fla. Stat. § 196.1978

- Florida law: Unless expressly exempted, all real property is subject to taxation. Statutory tax exemptions can only be created expressly, not by inference.
- Passed into legislation in 1999, section 196.1978 sets forth five types of property tax exemptions for affordable housing and has been amended eleven times since enactment:
  - AFH owned and operated by non-profits
  - AFH for land owned by non-profits and leased for 99 years
  - Multifamily projects subject to a recorded agreement with the Florida Housing Finance Corporation for AFH and eligible after 15<sup>th</sup> year of agreement
  - Multifamily projects subject to a recorded agreement with the Florida Housing Finance Corporation for AFH for 99 years
- Fla. Stat. § 196.1978(3)(a): portions of property in a multifamily project are considered property used for a charitable purpose and are eligible to receive an ad valorem property tax exemption if such portions provide AFH and are within a newly constructed multifamily project that contains more than 70 units.
- “Newly constructed” means an improvement to real property which was substantially completed within 5 years before the date of an applicant’s first submission of a request for certification or an application for an exemption pursuant to this section, whichever is earlier.
- “Substantially completed” means that “the improvement or some self-sufficient unit within it can be used for the purpose for which it was constructed.”
- What is a newly constructed” improvement?
  - New construction only (ground up)
  - Renovation, rehabilitation, conversion, restoration not contemplated
  - Cf. Fla. Stat. § 212.08 (“New construction” means improvements to real property which did not previously exist. The term does not include the reconstruction, renovation, restoration, rehabilitation, modification, alteration, or expansion of buildings already located on the parcel on which the new construction is built.)
- Duval County’s experience
  - Statutory interpretation
  - Manatee County VAB opinion vs. Orange County
  - # of newly constructed AFH projects that qualify
  - # of projects that did not qualify due to units or renovation

### III. Affordable Housing Exemptions in Other States

- A. Illinois—35 ICLS 200/15-178—reduction in assessed value for qualifying new construction and rehabilitation (with certain thresholds)
- B. Washington—RCW 84.14.007—It is the purpose of this chapter to encourage increased residential opportunities, including affordable housing opportunities, in cities that are required to plan or choose to plan under the growth management act within urban centers where the governing authority of the affected city has found there is insufficient housing opportunities, including affordable housing opportunities. It is further the purpose of this chapter to stimulate the construction of new multifamily housing and the rehabilitation of existing vacant and underutilized buildings for multifamily housing in urban centers having insufficient housing opportunities that will increase and improve residential opportunities, including affordable housing opportunities, within these urban centers.
- C. New York—original 421-a program provided partial property tax exemptions for new housing developments in New York City, encouraging the creation of affordable units alongside market-rate housing. After expiration in 2022, replaced with the 485-x program, known as the “Affordable Neighborhoods for New Yorkers Program,” to encourage the construction of new affordable housing and revive multifamily development (rehab)
- D. New Jersey—Payment in Lieu of Taxes (PILOT) program
- E. Georgia—OCGA § 8-3-8—offers a property tax exemption for eligible housing units within projects specifically designed for low-income residents. This exemption is designed to support housing projects under a “Private Enterprise Agreement” with a local housing authority, providing essential tax relief for developments focused on affordable housing.

### IV. Discussion Points

- A. If exemption is limited to new construction, are developers actually incentivized?
  - Economic viability—does exemption actually offset rent reduction?
  - Availability of land for new construction
  - Are developers even including exemption in overall financial decisions (increase in value from renovations takes years to realize under income approach)
- B. Alachua County lawsuit—student housing issue—does it qualify?
- C. Bal Harbour lawsuits challenging violations of home rule power
  - What happens if non-compliant structure is no longer AFH?
  - Local government work around