ROUND UP: WHAT DEVELOPERS SHOULD KNOW ABOUT THE LATEST UHAC AMENDMENTS

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Last year, Governor Murphy codified sweeping amendments to the Fair Housing Act ("FHA"), substantially changing how affordable housing will be addressed across New Jersey.[1] While the Fourth Round is set to officially begin on July 1, 2025, the wheels have already been set in motion under the new processes implemented via the Amended FHA and Directive #14-24 from the Affordable Housing Dispute Resolution Program.[2]

It is no secret that the amendments to the FHA have significantly altered affordable housing in New Jersey. In light of this seismic shift in the affordable housing world, developers and land use processionals alike would be well served to understand the many intricacies of the forthcoming Fourth Round.

One such aspect of this new world of affordable housing that warrants examination comes with regard to the construction, marketing, and design of inclusionary developments. In December of 2024, the New Jersey Housing and Mortgage Finance Agency adopted amendments to the Uniform Housing Affordability Control ("UHAC") rules. While many of the standards prescribed in the prior UHAC rules under the Council on Affordable Housing ("COAH") remain in tact, there are several key differences.

a. Mandatory Integration of Affordable Housing Units

One of the biggest changes to the Fourth Round UHAC regulations is that affordable rental units can no longer be physically clustered within a development or located in a less desirable area of the development than the market rate units.[3] Instead, the affordable units must be interspersed with the market rate units and in those same buildings.[4] There is an exception, however, for age-restricted and supportive housing, as affordable rental units within those types of developments can be clustered if the reason for the clustering is to allow for on-site medical or social services.[5] In contrast, for-sale affordable units can be clustered so long as the building and housing type for the affordable units is also integrated throughout the development for the market-rate for-sale units.[6] For example, if a cluster of affordable townhome units are provided within a development, the market-rate units must also offer townhomes and cannot be exclusively made up of single-family homes.

b. Equivalent Building Standards

Another notable aspect of the revised rules relates to building standards. First, affordable rentals must have the same building standards as the market rate units in a given development.[7] Building standards are referred to in the rules as items such as plumbing, insulation, or siding.[8] In addition, affordable units within a development must be the same size as the most common market-rate unit of the same type and bedroom count.[9] Every bedroom provided must contain at least one window, and a bedroom must be able to be occupied by at least one person.[10]

c. Phased Construction

The revised regulations also contain stringent requirements for phased construction, which requires an acceleration of the time to develop the affordable housing units. New to the Fourth Round, one affordable unit must be completed before the completion of more than 10% of the market rate units.[11] The balance of the phasing requirements remains the same as in the Third Round. No more than 25% plus one unit of the market-rate units can be constructed prior to the completion of 25% of the affordable units, 50% and 75% of the affordable units need to be completed at the same time that 50% and 75% of the market rate units are completed, and all affordable units must be completed before no more than 90% of the market rate units.[12] The new regulations also note that in the event the phasing schedule is not feasible, all of the affordable units must be completed before the market rate units.[13]

d. Bedroom Distribution Increased

There are also a number of changes as it pertains to bedroom distributions. Now, the total number of bedrooms within the affordable units must be at least double the total number of the units themselves.[14] Further, of the total number of units, at least half of them must be two- or three-bedroom units.[15] In age-restricted and supportive housing inclusionary developments, the number of bedrooms provided in the affordable units must be at least equal to the number of affordable units provided, and in developments that house 20 or more units, two- and three-bedroom units must be at least 5% of the total affordables.[16] Fractional numbers for these requirements are to be rounded up to the nearest whole number.[17]

e. Affordability Controls

Also notable are changes that were made to the control period regulations for for-sale affordable units. While still subject to a 30-year minimum, the control period can be specified in the deed restriction itself, and the control period does not cease until the end of that period so specified unless the municipality elects to extend it.[18] The control period begins on the date the household takes title to the unit and will terminate at the end of the control period at the time of the first non-exempt sale unless the municipality exercises its right of first refusal to extend the control period.[19] Rental units are now subject to a 40-year minimum (instead of the prior 30-year minimum), and the units may be released following the expiration of control period.[20] As with for-sale unit control periods, the municipality maintains a right of first refusal to extend the period.[21] As it pertains to affordable rental units, the control period begins on the first date the certificate of occupancy is issued and ends at the expiration of the control period set forth in the deed restriction or when the municipality releases the unit from the control period after a period of 40 years.[22]

The foregoing is a high-level overview of the recently enacted amendments. Developers seeking a deeper dive or more in-depth explanation of the new regulations should seek the advice of legal counsel.

References:

[1] See P.L. 2024, c. 2; N.J.S.A. 52:27D-301 et seq.; [2] See N.J. Administrative Office of the Courts, Directive #14-24 (2024); [3] N.J.A.C. 5:80-26.5(b)(2)(ii)(iii); [4] Ibid.; [5] N.J.A.C. 5:80-26.5(b)(2)(iii); [6] N.J.A.C. 5:80-26.5(b)(3)(i); [7] N.J.A.C. 5:80-26.5(b)(2)(i); [8] Ibid.; [9] N.J.A.C. 5:80-26.5(b)(2)(viii); [10] N.J.A.C. 5:80-26.5(b)(2)(vi); 5:80-26.5(c)(1); [11] N.J.A.C. 5:80-26.5(b)(4)(i); [12] N.J.A.C. 5:80-26.5(b)(4)(ii)-(v); [13] N.J.A.C. 5:80-26.5(b)(4)(vi); [14] N.J.A.C. 5:80-26.4(e)(1), [15] N.J.A.C. 5:80-26.4(e)(2); [16] N.J.A.C. 5:80-5:80-26.4(f); [17] N.J.A.C. 5:80-26.4(b); [18] N.J.A.C. 5:80-26.6(a); [19] N.J.A.C. 5:80-26.6(b); [20] N.J.A.C. 5:80-26.12(a); [21] N.J.A.C. 5:80-26.12(f); [22] N.J.A.C. 5:80-26.12(a), (b), (e).

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