2025 Uniform Housing Affordability Controls (**UHAC**)

FREQUENTLY ASKED QUESTIONS

Q Why was UHAC amended twice during the past year?

A Prior to 2024, the New Jersey Fair Housing Act required both the New Jersey Housing and Mortgage Finance Agency (NJHMFA) and the Council on Affordable Housing (COAH) to participate in UHAC promulgation and adoption. For a time, COAH lacked a quorum. COAH was eventually declared moribund by the New Jersey Supreme Court. As a result, COAH was unable to fulfil its statutory role in the Round Three rule promulgation process and no such rules could be adopted. Therefore, the 2004 UHAC rules were frozen in place for 20 years.

- In March 2024, Governor Murphy signed A4 which, in part, delegated authority to promulgate UHAC to NJHMFA, in consultation with the Department of Community Affairs (DCA). The new law mandated that the existing UHAC rules be amended through a special interim adoption process by December 20, 2024, and then again through the full Administrative Procedures Act (APA) process by no later than one year thereafter.

- The 2004 UHAC rules were inconsistent with statutory changes that had occurred over the preceding 20 years, including adjustments to the New Jersey Fair Housing Act made by the passage of A4. The inclusion of the special adoption process was an acknowledgement by the New Jersey Legislature that the 2004 UHAC needed to be updated to ensure the law and regulations were consistent. Timing was crucial because municipalities needed to complete their Round Four planning and negotiations during 2025. The standard regulatory promulgation process, inclusive of EO63 compliance, formal proposal, public comment, and adoption, in addition to the necessary research and drafting, was not realistically feasible prior to the start of Round 4. For this reason, the Agency was directed to utilize a special adoption process immediately following the enactment of A4.

- The special adoption changes brought UHAC into alignment with the statutory changes that have occurred since its last update, especially the changes to the New Jersey Fair Housing Act made in A4. The interim rules also included changes aligning administrative functions with processes for other existing affordable housing programs and updating advertising activities to reflect the technological changes of the last 20 years. Delaying those changes until the formal APA process would have resulted in municipalities being forced to adopt housing elements and fair share plans in a state of uncertainty and reliant on outdated processes, formulae, and technology. The second round of amendments, which are going through the full APA process, make technical adjustments and clarifications and adjust the for-sale affordable housing procedures, but fit within the overall regulatory framework outlined in the Interim rules.

Q How does UHAC impact a municipality's determination of housing need under the *Mt. Laurel* doctrine and the New Jersey Fair Housing Act?

A UHAC does not dictate a municipality's obligation. Pursuant to the changes made to the New Jersey Fair Housing Act by A4, DCA issues non-binding guidance numbers and then municipalities adopt binding local numbers of their own that may be the same or different from the DCA numbers. If municipal numbers are challenged, the legislation created an alternative dispute resolution process to avoid litigation. If the municipality chooses not to go through that process, it will resolve any disputes through litigation as they have done on the past. UHAC does not govern or pertain to that process.

- UHAC governs how a municipality meets its housing need once defined, and how affordable housing units in that town's plan are administered. The limited instances where UHAC addresses crediting implement specific provisions in the Fair Housing Act that require compliance with UHAC in order for a municipality to earn bonus credits.

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Q Are projects that were planned as part of a Third-Round obligation subject to the new rules?

A All units that are subject to *Mt. Laurel* deed restrictions, regardless of round, must adhere to requirements regarding unit administration, advertising, and income-certification. Generally speaking, any such matter of administration is subject to the new rules, without exception for prior round units. The new rules leave many existing requirements unchanged.

- For matters concerning unalterable aspects of a housing project, such as the distribution of units or the construction of a unit, the rules do not seek to disrupt existing settlement agreements between the municipality and the developer. Existing deed restrictions (including length of term) income and bedroom distributions, and minimum building standards remain undisturbed and subject to the requirements of 2004 UHAC for Third Round projects that were set in motion prior the Agency's amendments to UHAC, as defined in the rules.

Q Does a municipality have to meet the income and bedroom distribution requirements at all times? Do all small developments need to be developed as a single scattered-site development?

A No. As required by statute, municipalities must plan their housing elements and fair share plans such that there is a realistic opportunity that statutorily required distributions will be met. This means it applies to the plan and is not a phasing schedule.

- Section 24 of P.L.2024, c.2 (C.52:27D-311), particularly subsection l., and Section 29 of P.L.2024, c.2 (C.52:27D-329.1) established town-wide minimum percentages.

- The special adoption rules' treatment of small developments within a given municipality as a "scattered site affordable development" only related to the calculation of the statutorily required set-asides. This treatment was intended to help municipalities plan their distributions. To avoid confusion, the proposed permanent rules remove all mention of "single-family development," "multifamily development," and "scattered-site." However, the substance of the provision is unchanged.

- In the final rule proposal, N.J.A.C. 5:80-26.4(a) states: "This aggregation affects only the calculations of affordability and bedroom counts for small developments and is not to be construed to require that the restricted units be developed or administered as one affordable development."

Q Why do units built for the Fourth Round have to meet minimum unit sizes?

A The *Mt. Laurel* doctrine is premised not on raw unit counts, but on providing equal access to housing opportunity. Housing units developed as part of, or subject to, this process must meet certain minimum quality standards, including building materials, windows in bedrooms, and sufficient livable space. Currently, the Neighborhood Preservation Balanced Housing program sets minimum per unit sizes of 550 square feet for studio units, 600 square feet for one-bedroom units, 850 square feet for two-bedroom units, 1150 square feet for three-bedroom units, and 1250 square feet for four-bedroom units. So, UHAC would require, for example, that an affordable one-bedroom unit could be no smaller than 90% of that minimum square footage, or 540square feet. If a mixed income project wishes to construct units smaller than 90% of the square footage minimums required by the Neighborhood Preservation Balanced Housing Rules (N.J.A.C. 5:43-1.1 et seq.), UHAC would not prohibit building smaller market rate units; municipal code would govern in those instances. However as proposed, any reduction in affordable unit sizes that would fall below the minimum threshold would require application for and approval of a waiver through the DCA.

Q What happens to existing for-sale units under the new rules? Does UHAC affect the deed restrictions on these units?

A Nothing. Existing for-sale deed restrictions, including the length of the deed restriction and existing processes regarding the termination of said restrictions, remain the same. The only case in which the revised rules will impact existing for-sale unit deed restrictions is if the unit is extended for credit as part of the Fourth Round.

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Q Why do municipalities have to invest municipal funds to extend affordability controls when this has never been required before?

A Section 24.k.(7) of P.L.2024, c.2 (C.52:27D-311) created a new bonus credit for the extension of controls on existing affordable rental housing units. It expressly required that the extension comply with UHAC and that the municipality contribute monetarily to support the extension.

- This provision did not exist in previous iterations of the Fair Housing Act. Now that it does, the regulations have been adjusted accordingly. By establishing parameters, the proposed rules are intended to reduce ambiguity and litigation and ensure uniformity and fairness in the extension process.
- This UHAC requirement is applicable only if a municipality seeks to extend an existing affordable rental unit for *bonus* credits. If a municipality chooses to extend and not seek credit or if a municipality takes no action and lets the unit remain affordable, the municipal investment provisions do not apply.
- This UHAC requirement will apply to all Round 4 created units, however.
- With regard to for-sale units, the investment requirement was developed to address numerous recurring issues under the existing rules:
    - Need for standardization in the treatment of extensions of controls on for-sale units.
    - Balancing the desire for retention of controls against the equity and ownership interests of low- and moderate-income homeowners.
    - Encouraging maintenance of the quality of existing affordable housing units.

Q What happens at the end of a deed restriction for a Fourth Round for-sale unit that converts to market?

A The municipality can elect to take immediate action to preserve the unit. To this end, the municipality may extend the unit's controls by working with the resident to issue a new deed restriction. Alternatively, if the owner intends to sell the unit, the municipality may exercise a right to purchase the unit at the MRSP and resell the unit with a new deed restriction.

- If the municipality does not exercise either option, as of the expiration of controls the equity share model would govern any subsequent sale. This model utilizes length of tenancy and private investment into the property to allocate the percentage of the difference between the maximum allowable resale price and the market price between the resident and the municipality, with the majority returning to the municipality to fund reinvestment to replace the de parting affordable unit.

Q Do all affordable units need to be Americans with Disabilities Act (ADA) accessible?

A The UHAC rules do not and have never required ADA accessibility in all units as a condition of compliance. For applicability of the ADA to Mt. Laurel units, please refer to the ADA, the 2005 amendments to the New Jersey Fair Housing Act (C.52:27D-123.15) and the appropriate building codes.

Q If, after a plan is developed and accepted, changes are required during the implementation stage, how can a municipality seek relief?

A The municipality's plan is a court-approved planning document that fulfills a constitutional obligation as defined by statute. If one of the parties needs to alter the plan at a later date, and that alteration would result in a material deviation from the court approved plan, any such request would be submitted to the same entity, in this case county-level housing judges. Other requests may be evaluated via waiver application submitted to the Department of Community Affairs.

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