

UHAC Information for Municipalities Adopting Ordinances

Municipalities are strongly advised to review:

- The Uniform Housing Affordability Controls (UHAC) promulgated by the New Jersey Housing and Mortgage Finance Agency at N.J.A.C. 5:80-26 *et seq.*;
- The amended Fair Housing Act at N.J.S.A. 52:27D-301 *et seq.*;
- The Fair Housing Act Regulations promulgated by the Department of Community Affairs, Division of Local Planning Services (“LPS”) at N.J.A.C.5:99 *et seq.*; and
- The statutorily upheld existing regulations of the former Council on Affordable Housing (“COAH”) at N.J.A.C.5:93 and 5:97.

Any municipal ordinance that sets forth regulations regarding the controls on very low-, low- and moderate-income housing units in the adopted municipal Fourth Round Housing Element and Fair Share Plan (“HEFSP”) should ensure that the controls are consistent with the aforementioned statutes, rules, and regulations, as the ordinance may not supersede such rules.

While municipalities have extensive discretion to determine how they wish to incorporate the statutes, rules, and regulations into their ordinances; municipalities should be advised that the statutes and regulations may be updated from time-to-time. Memorializing specific provisions in the municipal code rather than referencing the requirements to follow such statutes, rules, and regulations, may result in future conflict between state and local rules. Therefore, municipalities may wish to consider a more general reference to the governing rules rather than including a degree of specificity which was necessary in the absence of statewide round three governing rules but which may be more likely to necessitate reintroduction and adoption of revised ordinances following any regulatory update.

Beyond referencing the governing statutes and regulations with which the municipality’s affordable housing plan must comply, a non-exhaustive list of additional items that the municipality may wish to consider within their HEFSP municipal ordinance includes:

- Municipality-wide set asides for multifamily developments, if this is not already covered elsewhere in the municipal code;
- Whether the minimum 13 percent very-low-income distribution required to be met municipality-wide as required by N.J.A.C. 5:80-26.4 will be applied to each individual multifamily project;
- Whether to allow preferences within the Affirmative Marketing Plan, which are only permitted to be veteran’s preference, regional preference, New Jersey resident preference, and/or a preference for displaced residents during rehabilitation. Please note that municipal resident preference is not allowable under N.J.A.C. 5:80-26.17(k)(2);
- The establishment of a process for selecting an administrative agent and delineation of responsibility for paying administrative agent fees; and/or
- Developer fees for multifamily developments, if this is not already contemplated elsewhere in the municipal code.