



State of New Jersey
Council on Affordable Housing

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JON S. CORZINE
Governor

JOSEPH V. DORIA JR.
Commissioner
LUCY VANDENBERG
Executive Director

October 30, 2008

Re: Affordable Housing Reform Statute, P.L.2008, c.46 – Guidance Document

Dear Mayor:

On July 24, 2008, COAH sent you correspondence summarizing the major provisions of P.L.2008, c.46, which was signed by Governor Corzine on July 17, 2008, and makes significant changes to the provision of affordable housing in New Jersey, including amendments to the Fair Housing Act, N.J.S.A. 52:27D-301 et seq. As noted in that correspondence, P.L. 2008, c.46, provides a comprehensive reform of New Jersey housing law by establishing a Statewide non-residential development fee, eliminating Regional Contribution Agreements, promoting the creation of very low-income housing, creating incentives for inclusionary development, providing new authority for regional planning entities to work with municipalities to create affordable housing and requiring a 20 percent affordable housing set-aside for state-funded initiatives and residential development within the jurisdiction of regional planning entities.

Subsequently, on September 12, 2008, COAH sent you correspondence regarding the Statewide Non-Residential Development Fee Act, including guidance on the imposition, collection, and use of development fees. Model documents are available on COAH's website at <http://www.nj.gov/dca/coah/round3resources.shtml>.

We are now writing to provide you with further guidance on the implementation on P.L.2008, c.46, as it relates to fair share plans being submitted to meet COAH's December 31, 2008 deadline. COAH is in the process of preparing amendments to its regulations to comply with the new statute. Guidance is offered in the following areas:

Very low income housing:

P.L.2008, c.46, creates a requirement that at least 13 percent of affordable housing units be reserved for occupancy by very low income households, defined as households with a gross household income equal to 30 percent or less of area median income for households of the same size within the housing region.

Third Round Housing Elements and Fair Share Plans must address the 13% very low-income requirement of the growth share obligation. Pursuant to N.J.A.C. 5:97-3.3, at least 50% of the units addressing a municipality's fair share obligation must be affordable to low-income households. The 13% of the total obligation that must be deed restricted for occupancy by very low income households under the statute may be a part of this 50% low-income requirement.

In keeping with COAH's current rules at N.J.A.C. 5:97-3.9 requiring that 50 percent of the growth share obligation be addressed with family housing and the new statutory requirement for 13% very low income housing, your plan will need to provide at least 50 percent of the very-low income housing requirement through family housing. The balance could be met with age-restricted units or supportive and special needs housing.

Examples of ways your municipality can address the very-low income requirement include: project-based Section 8 vouchers for rental units where the units are deed restricted for occupancy by very-low income households; providing additional incentives or a direct subsidy to subsidize the creation of affordable rental housing priced and reserved for very-low income households in a zoning ordinance or specified in a developer's or redeveloper's agreement; buying down the cost of a unit to very-low income households through a market-to-affordable program; a municipally sponsored 100 percent affordable project where a portion of the units are priced to be affordable to very-low income households; supportive and special needs housing reserved for very-low income households; and accessory apartments that are priced and reserved for very-low income households. In addition, any funds from the municipal affordable housing trust fund that are used to subsidize a unit to make it a very-low income unit would also qualify as addressing the municipality's very-low income affordability assistance requirement in N.J.A.C. 5:97-8.8(a).

N.J.A.C. 5:97-3.7(a), which permitted bonuses for all very low income units meeting the criteria of this section, is no longer effective given the enactment of P.L.2008, c.46. In keeping with P.L.2008, c. 46, and COAH's current regulations at N.J.A.C. 5:97-3.7(b), municipalities may now only receive a bonus for each very-low income family affordable unit addressing the growth share obligation that is built after June 6, 1999 in excess of the very-low income requirement. Very low-income bonuses are provided for family units created under the provisions of N.J.A.C. 5:97-6.4, 6.5, 6.6, 6.7, 6.9, 6.13 or 6.15.

The requirement to address the very-low income requirement will be monitored biennially by COAH at the municipal Plan Evaluations pursuant to N.J.A.C. 5:96-10.1.

Regional planning entities:

P.L.2008, c.46, requires that developments within the jurisdiction of any regional planning entity, including but not limited to the New Jersey Meadowlands Commission, the Pinelands Commission, the Fort Monmouth Economic Revitalization Planning Authority, and the Highlands Water Protection and Planning Council, shall be required to reserve at least 20 percent of the residential units constructed for affordable housing to the extent economically feasible.

In determining economic feasibility, as required by the statute, the Council will be considering the presumptive densities and set-asides in COAH's rules pursuant to N.J.A.C. 5:97-6.4(b)2 (for-sale housing) and N.J.A.C. 5:97-6.4(b)6 (rental housing). A site zoned for inclusionary development would be presumed to be economically feasible if it meets these minimum densities and maximum set-asides. The Council will work cooperatively with each of the regional planning entities to tailor these presumptive densities and set-asides, as necessary, to ensure consistency with each entity's regional master plan while preserving a realistic opportunity for the 20 percent affordable housing set-aside to be created.

The requirement to include 20 percent affordable housing in residential developments within the jurisdiction of regional planning entities will be monitored biennially by COAH at the municipal Plan Evaluations pursuant to N.J.A.C. 5:96-10.1.

In addition, pursuant to P.L.2008, c.46, a new program to foster regional planning entities has been created, through which the regional planning entities listed above, as well as Atlantic County, shall identify and coordinate affordable housing opportunities in partnership with municipalities. The regional planning program allows for up to 50 percent of the municipality's affordable housing obligation to be provided outside the municipality but within that region. Affordable units under this regional planning process may not be provided in urban aid municipalities or in Abbott districts. The New Jersey Sports and Exposition Authority in the Meadowlands District is exempt from this 50 percent limitation.

To address this provision of the statute, municipalities may use the Affordable Housing Partnership Program (to be renamed Regional Partnership Program) provided in COAH's rules at N.J.A.C. 5:97-6.13 up to the 50 percent limitation.

In addition, some of the regional planning entities, such as the New Jersey Meadowlands Commission, have issued guidance and/or are soliciting input from experts, to help identify suitable affordable housing sites and programs within the context of their respective regional master plans. COAH has entered or will be entering into Memoranda of Understanding with the affected regional planning entities to further the implementation of P.L.2008, c. 46.

State-funded planning initiatives:

Pursuant to P.L.2008, c.46, projects consisting of newly constructed residential units financed in whole or in part with State funds, including transit villages, units constructed on State-owned property, and urban transit hubs, are required to provide at least a 20 percent set aside of units for low and moderate income households, unless the municipality has received substantive certification from the Council or a judgment of compliance or repose from the court, and the set-aside is not required under the approved affordable housing plan.

Such state-funded planning initiatives must be identified at the time of petition or in accordance with the municipality's implementation schedule and proposed zoning ordinances or redevelopment plans, as applicable, must include a minimum 20 percent set-aside for affordable housing.

The requirement to include 20 percent affordable housing in residential developments financed in whole or in part with State funds will be monitored biennially by COAH at the municipal Plan Evaluations pursuant to N.J.A.C. 5:96-10.1.

Non-residential to residential zone change:

Pursuant to P.L.2008, c.46, if a municipality changes the zoning of a site from non-residential to residential within 24 months of an application for residential development, the Council shall require a percentage, to be determined by the Council based on economic feasibility, be reserved for occupancy by low and moderate income households.

Municipalities must document at the time of petition sites that are proposed to be rezoned from nonresidential to residential uses as follows: all sites that were rezoned from nonresidential to residential uses since July 17, 2006 where a developer has made an application for development after July 17, 2008. This would include both applications to the municipal planning board and to the municipal zoning board. Such sites shall include affordable housing as a percentage of the units constructed on-site based on economic feasibility.

In determining economic feasibility, as required by the statute, the Council will be considering the presumptive densities and set-asides in COAH's rules pursuant to N.J.A.C. 5:97-6.4(b)2 (for-sale housing) and N.J.A.C. 5:97-6.4(b)6 (rental housing). A site zoned for inclusionary development would be presumed to be economically feasible if it meets these minimum densities and maximum set-asides.

The requirement to address include affordable housing on sites rezoned from non-residential to residential will be monitored biennially by COAH at the municipal Plan Evaluations pursuant to N.J.A.C. 5:96-10.1.

Incentives for inclusionary development:

As noted above, P.L.2008, c.46 imposes a new inclusionary development requirement for several regions of the State (Highlands, Meadowlands, Pinelands, and Fort Monmouth), as well as for a variety of new development types (non-residential to residential rezonings and State-funded planning initiatives). Further, under P.L.2008, c.46, municipalities choosing to meet their affordable housing obligation through inclusionary zoning must now provide specific incentives to developers in the form of increased densities and reduced costs. A municipality and a developer may apply to the Council for reduced affordable housing set-asides or increased densities to ensure the economic feasibility of an inclusionary development.

In order to provide increased incentives to both developers and municipalities to create affordable housing through inclusionary development and ensure the economic feasibility of the inclusionary developments now required by the statute, COAH will permit any additional market-rate units that result from a rezoning to permit increased density to accommodate affordable housing to be exempted from the actual growth share obligation. In such circumstances, provided the affordable set-aside complies with COAH's standards, the increased density provided in an inclusionary zone would not generate a growth share obligation. Only the base density before the rezoning would generate a growth share obligation.

Example: A site in Planning Area 2 that does not include affordable housing permits four dwelling units per acre. The municipality rezones the site using COAH's presumptive density of six dwelling units per acre for Planning Area 2, an increase of two dwelling units per acre. The four dwelling units per acre would generate a growth share obligation, but the additional two dwelling units per acre would not.

This correspondence is intended to provide you with guidance on implementing the newly adopted Fair Housing Act amendments and other statutory changes. COAH will also be taking the necessary steps to conform the COAH regulations to the new statutory requirements. Please be sure to check COAH's website at www.nj.gov/dca/coah/legislation.shtml for additional updates.

We look forward to working with you over the coming weeks as you prepare to meet COAH's December 31, 2008 deadline for third round plan submission.

Sincerely,



Lucy Vandenberg
Executive Director