

January 6, 2025

New Jersey Housing and Mortgage Finance agency Adopts Interim Amendments to the Uniform Housing Affordability Control Rules

The New Jersey Housing and Mortgage Finance Agency adopted interim amendments to the Uniform Housing Affordability Control (UHAC) rules on December 19, 2024. The UHAC rules were last updated in December 2004. These regulations play a crucial role in how developers plan projects and the economics involved with funding a development. The rules set forth provisions on how affordable units are built, where they may be located within a development, determinations on how affordable homes are marketed, standards for who qualifies, and provisions related to deed restrictions. These new rules were effective as of December 19 and are in response to the new Fourth Round legislation adopted in early 2024.

One of the most notable changes to the regulations is the new occupancy standards. Section 5:80-26.5 sets forth specific requirements for affordable rental units that are part of an inclusionary development. Below are some examples of these requirements:

- Affordable rental units must contain the same building standards (plumbing, insulation, siding) as market-rate units.
- Affordable rental units must be the same type (flat, townhome) and within the same development, except that they may use different interior finishes.
- Affordable rental units may not be concentrated in less-desirable locations. Further, they cannot be physically clustered and must be interspersed throughout the development, except that age-restricted and supportive housing may be physically clustered to allow for on-site medical services or on-site social services; and
- Affordable rental units must be of at least the same size as the most common market-rate unit(s) of the same type and bedroom count within the same development, but shall not be less than 90 percent of the minimum size prescribed by the applicable municipal code or Neighborhood Preservation Balanced Housing rules, whichever prescribes the greater minimum size.

For developments containing for-sale units, including a mix of rental and for-sale units, the above shall govern the rental units, while for-sale affordable units must adhere to certain other requirements, including but not limited to the following:

- Affordable for-sale units may be clustered, provided that the buildings or housing product types containing the affordable for-sale units are integrated throughout the development and not concentrated in an undesirable location or undesirable locations.
- Affordable for-sale units may be of different housing product types than market-rate for-sale units, provided that the developments containing market-rate townhomes or single-family homes offer affordable housing options that also include townhomes or single-family homes.
- Affordable for-sale units must use the same building standards as market-rate for-sale units of the same type (for example, flat, townhome, single-family home), except that affordable for-sale units and market-rate for-sale units may use different interior finishes.

- Affordable for-sale units must meet the minimum square footage required for the number of inhabitants for which the unit is marketed and the minimum square footage required for each bedroom, as set forth by the applicable municipal code or Neighborhood Preservation Balanced Housing rules, whichever prescribes the greater minimum size.

The UHAC rules now include a phasing schedule for inclusionary developments similar to the current Council on Affordable Housing (COAH) phasing schedule, except that the initial phase requires that no more than 10 percent of the market-rate units be completed prior to completion of at least one affordable unit and no more than 25 percent of the market-rate units, plus one, may be completed prior to the completion of 25 percent of the affordable units. The rest of the phasing schedule remains the same as the COAH rules for completion of 50 percent, 75 percent, and 100 percent of the affordable units, except that there is a caveat at the end that states if the phasing schedule is not feasible due to the nature of the development, all the affordable units shall be completed prior to completion of the market-rate units.

The requirements above may be waived or altered with written approval from the Division of Local Planning Services if they do not result in a material deviation from the municipal housing element and fair share plan. If there is a material deviation, there must be written approval from the Dispute Resolution Program or, if the municipality does not participate in the program, from a county-level housing judge.

Some other notable provisions include changes to the affordability control periods. The control period for new affordable for-sale units shall be a minimum of 30 years. The affordability control period for an affordable for-sale unit terminates at the first nonexempt sale after the end of the deed-restricted affordability period if the municipality does not exercise the right of first refusal to extend the control period. If the municipality wants to exercise the right of first refusal, it must:

- notify the owner in writing of its intent to extend the affordability controls no later than 180 days prior to the end of the deed-restricted affordability control period;
- issue a new deed restriction extending the control period for not less than 30 years or, if the original control period and extended control period in combination total at least 60 years, not less than 20 years; and
- either purchase the affordable unit and convey it to a very-low, low, or moderate-income purchaser at a price not to exceed the maximum allowable restricted sale price or compensate the homeowner no less than \$20,000 from the municipal affordable housing trust fund to support the preservation of the unit.

Finally, the rules set forth bedroom distribution requirements, which are very similar to the prior UHAC bedroom distribution requirements except that fractional numbers may be rounded up or down to the nearest whole number in either direction.

This alert is meant only as a brief summary of the recently adopted interim amendments to the UHAC rules and is not an exhaustive discussion of all the changes. Any inquiries concerning the interim amendments and their applicability to a project should be directed to the authors or any of Day Pitney's land use attorneys listed in the sidebar.

Authors



Katharine A. Coffey
Partner

Parsippany, NJ | (973) 966-8323
kcoffey@daypitney.com



Craig M. Gianetti
Partner

Parsippany, NJ | (973) 966-8053
cgianetti@daypitney.com



Carly M. Clinton
Associate

Parsippany, NJ | (973) 966-8123
cclinton@daypitney.com