

## New Jersey Enacts Landmark Legislation to Overhaul Affordable Housing Laws

### What You Need to Know

On March 20, 2024, New Jersey enacted [legislation](#) which substantially revises the Fair Housing Act governing housing for low-income and moderate-income families in New Jersey. The new law is intended to streamline compliance and reduce delays for the construction of new affordable housing, and to provide municipalities and developers with more certainty to enable smarter planning for the location of affordable housing.

#### COAH is Abolished - What's Next?

Acknowledging the agency's failure to function in addressing affordable housing in the state, the new legislation abolishes the Council on Affordable Housing (COAH). The move is intended to facilitate a more expeditious operation throughout New Jersey to produce affordable housing with appropriate standards.

In place of COAH, municipalities will prepare and seek court approval of their fair share affordable housing obligations, in accordance with formulas established by the new law and with the guidance of calculations provided by the Department of Community Affairs (DCA).

The legislation provides for compliance pursuant to a new Affordable Housing Dispute Resolution Program and the appointment of designated judges to resolve disputes and determine municipal compliance. The program will consist of current or retired judges and other qualified experts and may retain special masters or staff to assist in rendering determinations and resolving disputes.

The Administrative Director of the Courts will establish procedures for the purpose of efficiently resolving disputes. The Chief Justice will also designate a Superior Court judge in each vicinage to serve as a county level housing judge to resolve disputes over the compliance of fair share plans and housing elements as well as disputes that arise with respect to ongoing compliance.

#### Calculation of Affordable Housing Obligations

The DCA is charged with conducting a calculation of regional need, and present and prospective municipal obligations, following the methodology utilized by Superior Court Judge Mary C. Jacobson in her March 8, 2018 [decision](#) in the Municipality of Princeton:

#### Expedited Timeframe

The DCA is required to provide a report on the calculations of regional need and municipal obligations within 7 months of the adoption of the new law. In order for the municipality to have immunity from exclusionary zoning litigation, the municipality must meet the following deadlines:

The municipality will maintain immunity from exclusionary zoning litigation so long as it complies with the deadlines. The municipality may obtain grace periods for delays due to circumstances beyond the control of the municipality. The length of the grace period will be determined on a case-by-case basis by the county level housing judge.

If a challenge is filed, the Administrative Director of the Courts will establish procedures for the consideration of the challenge and resolution of disputes, and standards to determine whether the municipality's calculation of its obligation complies with the requirements of the new law.

The goal is to obtain 'compliance certification' in the form of a judgment of compliance or judgment of repose, which will protect the municipality from exclusionary zoning litigation challenging the municipal fair share plan and housing element or seeking a builder's remedy.

### **Housing Incentives**

The new law provides a number of credits and bonuses for specified housing, and the municipality may satisfy up to 25% of its housing obligation through the use of credits. Credits and bonuses will be provided for:

Age-restricted housing is also encouraged, and the municipality may meet up to 30% of its obligation through age-restricted housing. The ultimate goal, however, is to address housing for families, and 50% of the municipal obligation must be addressed with housing for families with children.

The new law is also targeting areas that can be redeveloped and requires municipalities with vacant land adjustments to identify sufficient parcels that are likely to redevelop to address at least 25% of the prospective need, and must adopt realistic zoning to allow this or demonstrate why the municipality is unable to achieve this.

### **Reporting Requirements**

The new law requires municipalities to provide the DCA with an accounting of development fees collected and expended, and trust fund expenditures. Municipalities are required to provide this accounting within 180 days following enactment, and by February 15<sup>th</sup> each year thereafter. The DCA will publish on its website a municipal status report, with detailed summary of trust fund expenditures, collection of development fees, the balance in affordable housing trust funds, and the start and expiration dates of deed restrictions for affordable housing.

There are limitations on the use of affordable housing trust funds. Trust funds may not be expended until a municipality has immunity, and trust funds may not be expended on costs and attorney fees to obtain a judgment of repose to or contest a determination of the fair share obligation. There is also a 20% cap on the use of trust funds for administration expenses.

The DCA is also required to promulgate processes and standards for the certification of administrative agents and municipal housing liaisons and standards for measuring performance and enforcing compliance. The county level housing judge may issue fines and order corrective actions for violations.

### **Related Legislation**

Five companion bills were also enacted in connection with the satisfaction of affordable housing obligations, in order to facilitate development and reduce construction costs. This additional legislation includes bills which:

### **More to Come**

The new legislation provides for regulations to be adopted in 9 months, which may further refine the new affordable housing requirements. Moreover, given New Jersey's 50-year history of litigation involving affordable housing, there are likely to be challenges to the new legislation.

Since the dawn of the Fair Housing Act, the firm's real estate team has been guiding developers and property owners in evaluating properties for affordable housing opportunities and compliance with regulations. We will continue to monitor affordable housing developments and provide updates and guidance as new regulations

are adopted.

Please contact the author of this Alert with questions concerning affordable housing in New Jersey or the impact the new legislation may have on your specific circumstances.

## Related Attorneys

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