



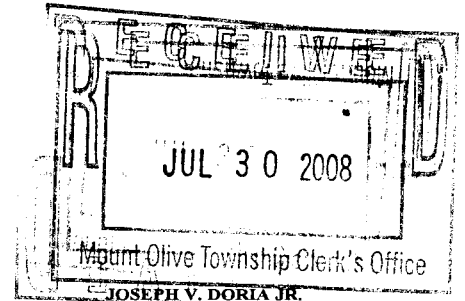
(C)

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

July 24, 2008

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

Dear Mayor:

On July 17, 2008, Governor Corzine signed P.L.2008, c.46, which 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. 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.

COAH is reaching out to all municipalities to explain the statutory changes in order to assist municipalities in complying with the December 31, 2008 deadline for third round plan submission. Although the statutory amendments do not effect the calculation of the need, the ratios or the municipal projections, there are some areas where the statute and the recently adopted COAH regulations are different. In those areas, municipalities will need to conform their affordable housing plans to the statutory requirements rather than the regulations. The Department of Community Affairs (DCA) and Treasury have already contacted municipal tax assessors and construction officials to notify them of certain changes. The letters, dated June 26, 2008, may be found at COAH's website at <http://www.state.nj.us/dca/coah/nrdf/assessormemo.pdf> and <http://www.state.nj.us/dca/coah/nrdf/constructionletter.pdf>.

The major statutory amendments are as follows:

- **Non-residential development fees:** Sections 32 through 37 of P.L. 2008, c.46, create the Statewide Non-residential Development Fee Act whereby non-residential development throughout the State must be assessed a fee equal to two and one-half percent of the equalized assessed value of the land and improvements on an unimproved



lot or a two and one half percent fee of the increase in equalized assessed value of additions to existing non-residential structures.

Any provision of a local ordinance that imposes a development fee greater than 2.5 percent or a payment in lieu on non-residential property, including ordinances previously approved by COAH, is no longer valid as of July 17, 2008, the effective date of P.L. 2008, c.46. No affordable housing obligation shall be imposed concerning a mixed use development that would result in an affordable housing obligation greater than the obligation generated by the residential portion of the development alone.

Those municipalities that are under the jurisdiction of the Council or the New Jersey Superior Court may retain the non-residential development fees they have collected. The Council shall maintain and regularly update a list of municipalities authorized to use development fees collected. This list is currently available on COAH's website at www.nj.gov/dca/coah/legislation.shtml. In municipalities which are not under the Council's or the Court's jurisdiction the non-residential development fee shall be paid to the Treasurer, State of New Jersey. Any municipality that is not in compliance with the requirements regarding the non-residential development fee as set forth in the Act or the Council's regulations may forfeit any or all funds remaining in its municipal affordable housing trust fund into the New Jersey Affordable Housing Trust Fund.

Non-residential property that received a certificate of occupancy prior to July 17, 2008, shall not be required to pay the non-residential development fee. Additionally, a non-residential development that has received approvals or that has an executed developer's agreement pursuant to the Municipal Land Use Law prior to July 17, 2008, shall not be subject to the non-residential development fee if the developer has paid a fee of at least one percent of the equalized assessed value of the improvements.

Properties and buildings used for religious and educational purposes, parking structures, non-residential buildings which provide an amenity to be made available to the public, and construction resulting from the relocation of a nonprofit hospital or nursing home are exempt from this development fee. The following developments are also exempt from the fee: projects located in a specifically delineated transit hub, projects located within an eligible urban transit hub municipality when a majority of the project is located within a one-half mile radius of the midpoint of a platform area for a light rail system, and projects located in a designated Transit Village by the State inter-agency Transit Village Task Force. These delineations are available on COAH's website at www.nj.gov/dca/coah/legislation.shtml.

A non-residential developer that has made or committed itself to make a financial or other contribution relating to the provision of housing affordable to low and moderate income households prior to July 17, 2008, must have his or her non-residential development fee reduced by the amount of the financial contribution and the fair market value of any other contribution made or committed to be made by said developer.

- **Overall Development fees:** Many of the current provisions regarding how development fees may be expended remain unchanged, with a few significant exceptions. P.L.2008, c.46, states that the Council shall establish a time by which all development fees collected by a municipality must be expended, provided they are committed to be spent within four years of the date of collection.

If a municipality fails to commit to expend the fees within the four-year time frame, the remaining balance will be transferred into the New Jersey Affordable Housing Trust Fund and the money will be made available to other municipalities.

Additionally, municipal development fees may not be expended to reimburse municipalities for activities that occurred prior to authorization to collect the fees. As already set forth in COAH's regulations, a portion of the development fee trust account must be set aside by the municipality to provide affordability assistance to low-and moderate-income households in existing units, providing, for example, down payment assistance, security deposit assistance, low interest loans, common maintenance expense assistance, or rental assistance.

P.L. 2008, c.46, also provides specific assistance to very low income households, allowing a municipality to use development fees set aside for affordability assistance to buy down the cost of low income units included in a fair share plan so that they are affordable to households earning 30 percent or less of median income. P.L. 2008, c.46, authorizes the Council to promulgate regulations regarding the establishment, administration and enforcement of the expenditure of development fees by municipalities. Except for funds forfeited into the New Jersey Affordable Housing Trust Fund, the Council shall have exclusive jurisdiction over the enforcement of the regulations.

- **Payments in lieu:** P.L.2008, c.46, requires that a municipality must commit to spend payments in lieu within four years of the date of collection. The Council may extend this time frame if the municipality provides proof of permits or other efforts such as land acquisition. If a municipality does not commit to spend payments in lieu within the four years required in the statute, the money shall be transferred to the New Jersey Affordable Housing Trust Fund.
- **New Jersey Affordable Housing Trust Fund:** Section 20 of P.L.2008, c.46, renames the Neighborhood Preservation Nonlapsing Revolving Fund the New Jersey Affordable Housing Trust Fund. The New Jersey Affordable Housing Trust Fund will be a nonlapsing, revolving trust fund and will act as the repository for all State funds appropriated for affordable housing purposes.

Sections 11 through 13 of P.L. 2008, c. 46, establishes the Urban Housing and Assistance Program. The first \$20,000,000 collected from the Statewide non-residential development fee each year will be deposited into the Urban Housing Assistance Fund, to be established through the Housing Rehabilitation and Assistance Program Act. This funding is dedicated for affordable housing for the 57 urban aid municipalities.

Municipalities that have petitioned COAH for substantive certification will have priority status for funding from the New Jersey Affordable Housing Trust Fund (over and above the \$20 million earmarked for the Urban Housing Assistance Fund).

- **Regional Contribution Agreements (RCA):** P.L.2008, c.46, eliminates RCAs, and the Council shall not consider any RCAs which were not granted approval by COAH or the Court prior to July 17, 2008.
- **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 the gross household income for households of the same size within the housing region.

The requirement is not project specific. Municipalities may receive bonus credits for the provision of very low income units in excess of the 13 percent requirement (not for every very low-income unit, as is permitted by the current regulations).

- **Incentives for inclusionary development:** Municipalities choosing to meet their affordable housing obligation through inclusionary zoned sites must provide specific incentives to developers. 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.
- **Non-residential to residential zone change:** 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.
- **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, the Casino Reinvestment Development 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 addition, a new program to foster regional planning entities has been created, through which regional planning entities 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 within that region, exempting the New Jersey Sports and Exposition Authority in the Meadowlands from the 50 percent limitation. Affordable units under this regional planning process may not be provided in urban aid municipalities or in Abbott districts.

- **State funded planning initiatives:** 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.
- **Low income housing tax credits:** The affordable portion of any mixed-use development that is part of a fair share plan or included in a court judgment will be permitted to receive tax credits, provided the market-rate residential units are unable to internally subsidize the affordable units.
- **Vacant land adjustments:** P.L.2008, c.46, sets forth additional exclusions to be considered in the Council's vacant land adjustment review including historically and architecturally important sites listed on the State Register of Historic Places or the National Register of Historic Places, agricultural lands restricted by covenant, sites designated for active recreation, and environmentally sensitive land where development is prohibited by any State or Federal Agency.

This correspondence is intended to update you on the requirements of the newly adopted Fair Housing Act amendments and other statutory changes. In the near future, COAH will be providing additional guidance to municipalities on implementation of the statute. 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 months as you prepare to meet COAH's December 31, 2008 deadline for third round plan submission.

Sincerely,



Lucy Vandenberg
Executive Director