

SUMMARY OF NEW COAH THIRD ROUND RULES EFFECTIVE OCTOBER 20, 2008

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On September 22, 2008, COAH adopted amendments to the new Third Round regulations it adopted in May of 2008. The amendments took effect on October 20, 2008. Based upon the recently adopted Affordable Housing Reform Law (Bill A500), it is anticipated that additional amendments will be forthcoming.

The following is a brief summary of COAH's new Third Round regulations:

- New growth share ratios are 1 affordable unit among 5 units (or 1 affordable unit for every 4 market rate units) and 1 affordable unit for every 16 jobs (previously ratios were 1 among 9 units and 1 for every 25 jobs). N.J.A.C. 5:97-2.4. This is how a municipality's growth share obligation is calculated.
- Municipalities no longer project their own growth; COAH projects growth and assigns an obligation based upon an independent study. N.J.A.C. 5:97-2.4.
- Municipalities may adopt "inclusionary zoning ordinances" which must contain the following presumptive minimum densities and maximum affordable housing set-asides for inclusionary developments:

PA-1: minimum 8 units per acre with maximum 25% setaside.

PA-2 & designated centers: minimum 6 units per acre with 25% setaside.

Outside PA-1 & 2: minimum 4 units per acre with 25% setaside.
(must be within sewer service area)

PA-3 thru 5: 40% increase in existing density with 20% setaside.
(outside sewer service area)

Urban Centers: minimum 22 units per acre with 20% setaside.

The inclusionary zoning ordinances can also provide an option to build for-sale or rental housing. If a rental option is offered, the presumptive minimum density is 12 units per acre with a 20% setaside. N.J.A.C. 5:97-6.4(b)(6).

- The inclusionary zoning ordinances still must provide a compensatory benefit / incentive to a developer providing affordable housing, such as decrease in bulk standards or clustering / lot size averaging provisions. N.J.A.C. 5:97-6.4(b).
- The payment-in-lieu-of-construction amounts are set based upon housing regions, with an average of \$161,000 per affordable unit. N.J.A.C. 5:97-6.4(c). For instance, Monmouth and Ocean County are in Region 4, which is \$152,277 per unit. The municipality may request a higher number; however, the request has to be reviewed and approved by COAH.
- For projects not providing affordable housing, municipalities are permitted to increase residential development fees from 1% of equalized assessed value (EAV) to 1 ½% of EAV for residential development. Nonresidential development is governed by Bill A500 which has a statewide mandatory 2.5% fee on nonresidential development.
- The age-restricted cap for municipalities was returned to 25% of total obligation. N.J.A.C. 5:97

For a complete review, please go to the following link for a PDF copy of the entire new Third Round COAH rules, www.ghclaw.com/coah. Please visit our website for periodic updates on this continually evolving issue. This information is not to be construed as legal advice.