2026 Uniform Housing Affordability Controls Frequently Asked Questions

- Why was UHAC amended twice from 2024 to 2025?
  - Prior to 2024, the New Jersey Fair Housing Act required both the New Jersey Housing and Mortgage Finance Agency (NJHMFA) and the Council on Affordable Housing (COAH) to participate in UHAC promulgation and adoption. For a time, COAH lacked a quorum. COAH was then declared moribund by the New Jersey Supreme Court. As a result, COAH was unable to fulfill its statutory role in the Round Three rule promulgation process and no such rules could be adopted. Therefore, the 2004 UHAC rules were frozen in place for 20 years.
  - In March 2024, Governor Murphy signed Assembly Bill 4 (A4) which, in part, delegated authority to promulgate UHAC to NJHMFA, in consultation with the Department of Community Affairs (DCA). The new law mandated that the existing UHAC rules be amended, first, through a special rulemaking process and published by December 20, 2024, and then again through the full Administrative Procedures Act (APA) process by no later than one year thereafter.
  - The 2004 UHAC rules were inconsistent with statutory changes that had occurred over the subsequent 20 years, including adjustments to the New Jersey Fair Housing Act made by the passage of A4. The inclusion of the special adoption process was an acknowledgement by the New Jersey Legislature that the 2004 UHAC rules needed to be updated to ensure the law and regulations were consistent. Timing was crucial because municipalities needed to complete their Round Four planning and negotiations during 2025. The standard regulatory promulgation process, inclusive of EO63 compliance, formal proposal, public comment, and adoption – in addition to the necessary research and drafting – was not realistically feasible prior to the start of Round Four. For this reason, NJHMFA was directed to utilize a special adoption process immediately following the enactment of A4.
  - The special adoption changes brought UHAC into alignment with the statutory changes that have occurred since its last update, especially the changes to the New Jersey Fair Housing Act made in A4. The special adoption rules also included changes aligning administrative functions with processes for other existing affordable housing programs and updating advertising activities to reflect 20 years of technological changes. Delaying those changes until the formal APA process would have forced municipalities to adopt housing elements and fair share that incorporated outdated processes, formulae, and technology. The second round of amendments, enacted through the full APA process, included further technical adjustments and clarifications, and adjusted the affordable housing procedures for affordable ownership units, but fit within the overall regulatory framework outlined in the special adoption rules promulgated in 2024.

- How does UHAC impact a municipality's determination of housing need under the *Mt. Laurel Doctrine* and the New Jersey Fair Housing Act?
    - UHAC does not dictate a municipality's housing obligation. A4 amends the New Jersey Fair Housing Act, authorizing DCA to calculate and issue non-binding guidance numbers and allowing municipalities to calculate and adopt their own binding numbers that may be the same or different from the DCA numbers. If municipal numbers are challenged, the legislation created an alternative dispute resolution process to avoid litigation. If the municipality chooses not to go through that process, it will resolve any disputes through litigation as they have done in the past. UHAC does not govern that process.
    - UHAC governs how a municipality meets its housing need, once defined, and how affordable housing units in a municipality's plan are administered. UHAC addresses crediting only when implementing specific provisions in the Fair Housing Act that explicitly require compliance with UHAC in order for a municipality to earn bonus credits.

- Are projects that were planned as part of a Third-Round obligation subject to the new rules?
    - All units that are subject to Mt. Laurel deed restrictions, regardless of round, must adhere to requirements regarding unit administration, advertising, and income-certification. Generally speaking, any such matter of administration is subject to the new rules, without exception for prior round units. The new rules leave many existing requirements unchanged.
    - For matters concerning unalterable aspects of a housing project, such as the distribution of units or the construction of a unit, the rules do not seek to disrupt existing settlement agreements between the municipality and the developer. Existing deed restrictions (including length of term), income and bedroom distributions, and minimum building standards remain undisturbed and subject to the requirements of 2004 UHAC for Third Round projects that were set in motion prior to NJHMFA's amendments to UHAC, as defined in the rules.

- Does a municipality have to meet the income and bedroom distribution requirements at all times? Do all small developments need to be developed as a single scattered-site development?
    - No. As required by statute, municipalities must plan their housing elements and fair share plans such that there is a realistic opportunity that statutorily required distributions will be met. This means it applies to the plan and is not a phasing schedule.

- Section 24 of P.L.2024, c.2 (C.52:27D-311), particularly subsection l., and Section 29 of P.L.2024, c.2 (C.52:27D-329.1) established town-wide minimum percentages.
- The special adoption rules' treatment of small developments within a given municipality as a "scattered site affordable development" only related to the calculation of the statutorily required set-asides. This treatment was intended to help municipalities plan their distributions. To avoid confusion, the in the rules enacted December 15, 2025, NJHMFA removed all mention of "single-family development," "multifamily development," and "scattered-site." However, the substance of the provision is unchanged.
- In the operative rules, N.J.A.C. 5:80-26.4(b)1 states, "This aggregation affects only the calculations of affordability and bedroom counts for small developments and is not to be construed to require that the restricted units be developed or administered as one affordable development."

❖ <u>Why do units built for the Fourth Round have to meet minimum unit sizes?</u>

- The Mt. Laurel doctrine is premised not on raw unit counts, but on providing equal access to housing opportunity. Housing units developed as part of, or subject to, this process must meet certain minimum quality standards, including building materials, windows in bedrooms, and sufficient livable space. Currently, the Neighborhood Preservation Balanced Housing program sets minimum per-unit sizes of 550 square feet for studio units, 600 square feet for one-bedroom units, 850 square feet for two-bedroom units, 1,150 square feet for three-bedroom units, and 1,250 square feet for four-bedroom units. So, UHAC would require, for example, that an affordable one-bedroom unit could be no smaller than 90% of that minimum square footage, or 540 square feet. If a mixed income project wishes to construct units smaller than 90% of the square footage minimums UHAC does not prohibit building smaller market rate units; municipal code would govern in those instances. However, as proposed, any reduction in affordable unit sizes that would fall below the minimum threshold would require application for and approval of a waiver through the Division of Local Planning Services in DCA.

❖ <u>What happens to existing for-sale unit deed restrictions under the new rules?</u>

- Nothing. Existing for-sale unit deed restrictions, including the length of the deed restriction and existing processes regarding the termination of said restrictions, remain the same. The only case in which the revised rules will impact existing for-sale unit deed restrictions is in the case that the unit is extended for credit as part of the Fourth Round. In such a case, a new deed restriction must be executed in accordance with the operative rules and legal documents.

- Why do municipalities have to invest municipal funds to extend affordability controls when this has never been required before?
    - Section 24.k.(7) of P.L.2024, c.2 (C.52:27D-311) created a new bonus credit for the extension of controls on existing affordable rental housing units. It expressly required that the extension comply with UHAC and that the municipality contribute monetarily to support the extension.
    - This provision did not exist in previous iterations of the Fair Housing Act. Now that it does, the regulations have been adjusted accordingly. By establishing parameters, the UHAC rules are intended to reduce ambiguity and litigation and ensure uniformity and fairness in the extension process.
    - This UHAC requirement is applicable only if a municipality seeks to extend an existing affordable rental unit for bonus credits. If a municipality chooses to extend and not seek credit or if a municipality takes no action and lets the unit remain affordable, the municipal investment provisions do not apply.
    - This UHAC requirement will apply to all units created for Round Four or later, however. With regard to for-sale units, starting with units receiving new deed restrictions under the Fourth Round, or later, the investment requirement at the expiration of the new deed restriction was developed to address recurring issues under the existing rules such as:
        - Needing to standardize the approach to extending controls on for-sale units;
        - Balancing the desire to retain affordable units against the equity and ownership interests of low- and moderate-income homeowners; and
        - Encouraging maintenance of existing affordable housing units to ensure long-term quality and affordability

- What happens at the end of a deed restriction for a Fourth Round for-sale unit that converts to market?
    - The municipality can elect to take immediate action to preserve the unit. To this end, the municipality may extend the unit's controls by issuing a new deed restriction and paying the owner their "equity share amount" as defined in the rules Alternatively, if the owner intends to sell the unit, the municipality may exercise a right to purchase the unit at the maximum restricted sales price and pay the owner their "equity share amount," allowing the municipality resell the unit and issue a new deed restriction.
    - If the municipality does not exercise either option, as of the expiration of controls, the home may be sold at the fair market price with the seller retaining the equity share and the municipality recapturing the remaining amount.

- Do all affordable units need to be Americans with Disabilities Act (ADA) accessible?
    - The UHAC rules do not and have never required ADA accessibility in all units as a condition of compliance. For applicability of the ADA to Mt. Laurel units, please refer to the ADA, the 2005 amendments to the New Jersey Fair Housing Act (C.52:27D-123.15), and the appropriate building codes.

- If, after a plan is developed and accepted, changes are required during the implementation stage, how can a municipality seek relief?
    - The municipality's plan is a court-approved planning document that fulfills a constitutional obligation as defined by statute. If one of the parties needs to alter the plan at a later date, and that alteration would result in a material deviation from the court approved plan, any such request would be submitted to the same entity that provided the initial approval, in this case county-level housing judges. Other requests may be evaluated via waiver application submitted to the Division of Local Planning Services in DCA.