



New Kansas City, Missouri Affordable Housing Ordinance Goes Into Effect

Developers Need to Consider New Affordable Housing Requirements Materially Impacting Project Feasibility

As demand for affordable housing continues to grow throughout the country, municipalities are increasingly faced with decisions of how best to structure and incentivize affordable housing development. Recently, Kansas City, Missouri passed Ordinance No. 201038 (“Ordinance”) on January 28, 2021 which sets forth requirements for residential development projects seeking incentives to require affordable housing components. It took effect on April 8, 2021. The Ordinance provides in part that projects “seeking economic incentives in the nature of the capture and redirection, abatement or exemption of taxes or other City financing contain an minimum number of affordable housing units” to qualify for those incentives. Only projects that have not submitted an application by April 8, 2021 (the “Effective Date”) seeking incentives (as defined below) will be impacted, although projects that have applied earlier will be subject to the Ordinance if the project takes longer than three years from the Effective Date to receive final approval.

The Ordinance is applicable to multifamily housing projects with 12 or more residential units regardless of the site location or phasing plan of the project and that seek economic incentives from the City. These incentives may include tax abatements, bond issuances, grants, or other City-backed financing (the “Incentives”). When a project subject to the Ordinance seeks Incentives, it will be required to designate a minimum of 10% of the residential units being created as “affordable housing” and 10% of the residential units being created as “extremely affordable housing” (collectively the “Affordable Housing Units”). The Ordinance goes on to define “affordable housing” as a household at or below 70% of the United

States Department of Housing and Urban Development (“HUD”) Median Family Income (“MFI”) for metropolitan Kansas City and “extremely affordable housing” as 30% of HUD MFI. However, for affordability determination purposes, it is assumed that rent (including utilities) would not be affordable if it exceeds 30% of the respective HUD MFI described above.

For example, if the HUD MFI for the Kansas City metropolitan area was \$86,600 for fiscal year 2021, then the affordable housing income limit would be \$60,620 and the extremely affordable housing income limit would be \$25,980. Dividing each of those income limits by 12 provides \$5,052 and \$2,165 of monthly income, respectively. The rent (including utilities) that may be assessed for these units is then limited to 30% of those income limits. The maximum rent (including utilities) for an affordable housing unit would then be \$1,516/month and \$650/month for an extremely affordable housing unit.

A developer is not necessarily required to include the Affordable Housing Units in their project while seeking Incentives. The Ordinance provides the developer with the option of making a payment to the City in lieu of including the Affordable Housing Units. The amount of this payment is determined by multiplying the number of Affordable Housing Units that would be required under the project plans (rounded down) by 110% of the actual cost of those units as determined by the City Manager’s established production costs for market equivalent units. The Ordinance does not provide the formula by which the City Manager will determine those production costs.

Additional Criteria

The Ordinance provides criteria for Affordable Housing Units design. The units: (i) must be located on principal project site; (ii) must be mixed with and not segregated from market rate units; (iii) must be at least one-bedroom units or equal to the size of at least 25% of the project units; (iv) any phased developments must include concurrent development of the affordable and market rate units so as to avoid the Affordable Housing Units being constructed last; (v) quality of in-unit finishes and systems must be comparable with all project units; and (vi) exterior appearance must be similar with substantially the same type and quality of materials and finishes.

There are additional criteria pertaining to regulatory matters of the Affordable Housing Units. Of particular note are the following:

- the developer must covenant that the Affordable Housing Units remain subject to the requirements surrounding that designation for no less than the same period receive the Incentives provided;
- discrimination in housing practices is prohibited, as that is defined in Section 38-105(d) of the City's Code of Ordinances, including source of income discrimination; and
- the developer must use a process of income verification at the time a unit is leased to determine the income eligibility of that resident qualifying for an Affordable Housing Unit. The City, or its designee, shall have a right to audit any such income verification procedure.

Exemptions from the Ordinance

Importantly, projects that utilize Low Income Housing Tax Credits administered by the Missouri Housing Development Commission or that involve the renovation or rehabilitation of a property designated as a local or national historic landmark are exempt from the requirements of the Ordinance.

Impact of the Ordinance

It is yet to be determined what flexibility or discretion the City will have in the application of the Ordinance requirements. Nonetheless, this Ordinance will have a significant impact on real estate development and the ability of those developments to generate sufficient cash flow, especially in this era of rising land acquisition and development costs. Additionally, developers may be faced with implementing management strategies to process income verification tasks that they are unfamiliar with. Early communication and planning with the City and their development representatives is vital to the process of refining financial projections that incorporate the Ordinance requirements as well as avoiding unnecessary political entanglements. Developers will need to engage in these prudent actions to ensure that their projects are feasible, and seek Incentives in amounts and timeframes that can support and justify the inclusion of the Affordable Housing Units.

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