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Developers May Be Forced to Participate in Affordable Housing Program

by Tyler W. Mullen

A proposed amendment to the Philadelphia Code (the Code) could require some Philadelphia developers to participate in a mandatory affordable housing program beginning July 1, 2018.

Philadelphia's City Council will vote on Bill No. 170678 (the Bill) in late January. If passed and signed by Mayor Jim Kenney, the Bill would require, subject to limited exceptions, that projects located in some residential or commercial zoning districts involving the construction of 10 or more dwelling units include affordable units reserved for low- to moderate-income households (defined in relation to the area's median income levels). A dwelling unit is considered affordable if the unit's total cost does not exceed 30 percent of the maximum income level of eligible tenants or purchasers.

As currently drafted, the Bill mandates that at least 10 percent of a qualifying project's dwelling units be subsidized for low- to moderate-income families to rent or buy for at least 50 years. The affordable units must be dispersed throughout the project such that no floor will have a disproportionate number of affordable units, and the quality of all affordable units must be comparable – in terms of size, design and overall construction – to market-rate units. Those occupying affordable units are also entitled to the same amenities as market-rate units.

In lieu of incorporating affordable units into new projects, the Bill allows developers to pay into Philadelphia's Housing Trust Fund (the Trust), which helps support Philadelphia's existing affordable housing projects. Payments into the Trust would range between $11,250 and $30,400 per affordable unit, depending on the unit's size and whether the unit is reserved for a low- or moderate-income household.

One aspect of the Bill with which developers may be pleased are new floor area and height bonuses available for multiunit projects in RM-4 and RMX-3 zoning districts. The Code currently includes a voluntary scheme whereby developers receive floor area and height bonuses for providing affordable housing but are not penalized for declining to do so. Under the new scheme, developers would be forced to take a more active role in Philadelphia's affordable housing program, either by including affordable units in new projects or paying into the Trust. However, in addition to the current bonuses available for CMX-3, CMX-4 and CMX-5 zones, the aforementioned RM-4 and RMX-3 bonuses would also be available.

Though the Bill can still be amended, critics believe that the additional bonuses included in the current version are insignificant and fail to incentivize developers to incorporate affordable housing into their new projects. Some even feel that the Bill could have a negative impact, stalling development and decreasing a supply of both market-rate and affordable housing throughout Philadelphia. Proponents of the Bill argue that many have been priced out of gentrified neighborhoods and that the additional size bonuses will offset any perceived deterrent to development. The fate of the Bill remains to be seen, but it will surely be something that many in Philadelphia's real estate sector anxiously await in the coming weeks.

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