An Overview of Amendments to the New Jersey Aspire Program

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What You Need to Know

- The New Jersey Aspire Program has been amended to incentivize developers seeking to close project financing gap costs associated with commercial, mixed use, and residential real estate development projects throughout the state.
- The amendments include an increased cap on tax credits available under the program, as well as new requirements related to affordable housing and changes in residential project eligibility and community benefit provisions.
- Applications to the Aspire Program must be submitted prior to March 1, 2029.

On July 6, 2023, New Jersey Governor Phil Murphy signed into law new legislation amending multiple sections of the New Jersey Economic Recovery Act of 2020 (ERA), most specifically related to the New Jersey Aspire Program and related funding requirements. The adoption of the ERA and the creation of the Aspire Program as a successor to New Jersey's Economic Redevelopment & Growth (ERG) Program more than two years ago was intended to help close the gap for redevelopment projects in New Jersey. The reality, however, has been that the onerous conditions of the Aspire Program have resulted in no more than a handful of successful applicants to the program. The new amendments are, in part, an effort to make the Aspire Program more available to developers in New Jersey struggling to fill the financing gap on their projects and will hopefully lead to more successful applications to the Aspire Program.

The following is an overview of the latest amendments to the Aspire Program, and is a supplement to our previous Client Alert dated February 25, 2021.

Cap on Tax Credits

The most significant amendment to the Aspire Program increases the cap on tax credits that can be awarded to $90,000,000 for up to 60% of project costs for projects that are utilizing low income housing tax credits (LIHTC), and $60,000,000 for projects that are not utilizing LIHTC. The notable exceptions to this increase are for projects proposed in "government-restricted municipalities" (Paterson, Trenton or Atlantic City), which will now have a cap of $120,000,000 for up to 80% of project costs.

The increase in the tax credit cap comes with new requirements that developers must meet. However, developers are permitted to apply under the prior Aspire Program rules for 121 days following the effective date of the new amendment provided they have also obtained all applicable land use approvals under the Municipal Land Use Law. They will then be able to obtain the higher tax credit caps detailed in the amendment. This is advantageous for developers who were eligible for the Aspire Program funding prior to the amendment but would not be able to comply with new affordable housing requirements outlined below.

Affordable Housing Requirements

The amendment requires that the EDA adopt rules and regulations concerning the affordable units included in residential projects. These rules are required to be, at a minimum, consistent with the New Jersey Fair Housing Act and the Uniform Housing Affordability Controls (UHAC). These rules must include requirements for bedroom distributions, affordability averages, affirmative marketing, and deed restrictions.

This is a significant change for projects that were not subject to the UHAC requirements prior to this amendment. For example, UHAC requires (1) at least 50% of the affordable units to be for low income households (50% annual median income); (2) minimum bedroom distribution requirements for each type of unit offered (including requiring at least 20% of the units to be 3-bedroom units); and (3) specific deed restriction requirements for units, whether rented or owned by a qualifying household. The only exception to the UHAC requirements would be for any residential project that receives a federal historic rehabilitation tax credit or a state tax credit for same. In this case, the project would not have to comply with the UHAC bedroom distribution requirement.

Shorter Eligibility Period for Residential Projects

Municipal agencies are permitted to shorten the 10-year eligibility period for a residential project as long as such a reduction would "reduce the total value of tax credits needed to reimburse a developer for all or part of the project financing gap of a redevelopment project." This determination is made at the discretion of the applicable municipal agency.

Community Benefit Agreement Limitations

The amendment would make a community benefit agreement unnecessary if the governing body of the municipality finds that the project provides economic and social benefits to the community. In order to do so, the municipality must adopt a resolution after holding a public meeting in which members of the public and stakeholders are allowed to participate. This provides a developer with more flexibility and the ability to work with the municipality to create a project that further benefits the community at large.

Updated Program Requirements

The following are the amendments to the general requirements for all projects submitting an application under the Aspire Program:

- Projects which contain any kind of retail establishment, hospitality establishment or distribution and one or more labor organizations must institute a labor harmony agreement. There are certain provisions that must be included in such an agreement, including (1) the labor organization and its members agree not to picket, stop work, boycott or otherwise economically interfere with the applicable business; and (2) the business agrees not to voice any opinion on the participating labor organization and agrees to allow such organization access to its employees as the exclusive collective bargaining representatives of said employees.
- All applications must be submitted before March 1, 2029.

The following are requirements which are now additionally applicable to commercial projects comprised of only healthcare or health services centers (note that these requirements originally applied only to residential projects):

- These projects are exempt from the net benefit test calculation.
- The project must meet the following total minimum project costs:
  - $17,500,000 if the project is located in a municipality with a population greater than 200,000.
  - $10,000,000 if the project is located in a municipality with a population less than 200,000.
  - $5,000,000 if the project is located in a qualified incentive tract or government restricted municipality.

The following are updated requirements applicable only to transformative projects:

- The project must have a minimum total cost of $150,000,000 and contain the following square footage depending upon location:
  - For any project in a government restricted municipality, it must be at least 200,000 square feet of new or substantially renovated industrial, commercial or residential space.
  - For any film studio project, it must be at least 250,000 square feet of film studios, professional stages, television studios, recording studios, screening rooms, or other infrastructure for film productions.

- For any project in an enhanced area, it must be at least 300,000 square feet of new or substantially renovated industrial, commercial or residential space.
- For any other project in any other location, it must be at least 500,000 square feet of new or substantially renovated industrial, commercial or residential space.

- Depending upon its location, a project must meet the following residential unit requirements:
    - For any project in a government restricted municipality, it must have at least 200 new residential units.
    - For any project in an enhanced area, it must have at least 300 new residential units.
    - For any mixed-use project, it must have at least 400 new residential units. Additionally, there must be at least 50,000 square feet of commercial space.
    - For any other residential project in any other location, it must have at least 700 new residential units.
- For any transformative commercial project, the New Jersey Economic Development Authority (EDA) will determine the project's "special economic importance as measured by the level of new jobs, new capital investment, opportunities to leverage leadership in a high-priority targeted industry, or other state priorities."

We will keep you apprised of relevant rule and regulation changes and the related actions of the EDA related to the Aspire Program. Please contact the authors of this Alert with questions concerning the incentives outlined in this Alert or to discuss your specific business circumstances.

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