New Legislation, Programs Incentivize Affordable Housing Developers

Owners who understand the nuances of tax incentives, abatements and exemptions can gain an upper hand in reducing their property taxes.

Molly Phelan, Esq.

The Low-Income Housing Tax Credit (LIHTC) has long been a key device in the affordable housing tool chest. Although it has been the primary source of financing for the construction and preservation of affordable housing, the tax credit has not allowed the vast expansion of affordable housing development that many communities need to keep up with rapidly growing demand.

With rents and materials costs rising amid rapid U.S. inflation, cities and rural areas alike need more resources to help keep many Americans in quality affordable housing.

According to the National Low Income Housing Coalition, only two states (West Virginia and Arkansas) have housing costs that put a two-bedroom rental within the reach of a full-time worker earning less than $15 per hour.

The recent spike in residential real estate prices and now increasing interest rates are forcing more potential home buyers to rent. This has left fewer units available, which drives up rents and further reduces the supply of affordable housing throughout the country. As of April 2022, more than half of U.S. consumers were living paycheck to paycheck, reports financial services company LendingClub.

According to the U.S. Department of Housing and Urban Development, the Federal Reserve Bank of St. Louis and the U.S. Census Bureau, the national median rent increased more than 145 percent from 1985 to 2020, while median income increased by only 35 percent.

Clearly, more needs to be done to assist developers in the construction of affordable housing. Fortunately, many cities and states are implementing new legislation and programs that will directly assist developers who expand the affordable housing market.

State, Local Initiatives

Texas — In Austin, Affordability Unlocked is a development bonus program that waives or modifies some development restrictions in exchange for providing affordable housing.

In return for setting aside half of a development's total units as affordable, developers can receive increased height and density limits, parking and compatibility waivers and reductions in minimum lot sizes for the project.

The program is designed to increase the number of affordable housing units developed in Austin and to fully leverage public resources by allowing housing providers to build more units in developments that include significant amounts of affordable housing.

Washington, D.C. — Tax abatements for affordable housing are available that provide a reduction equivalent to 75 percent of the difference between the property tax owed before and after development. To be eligible, at least 5 percent of the units in the development must be reserved for low-income households, and an additional 10 percent of units must be reserved for households earning up to 60 percent of area median income (AMI).

The tax abatement is good for 10 years. The affordability requirements apply for at least 20 years, with a $10,000 penalty per year for each unit that does not meet income set-aside requirements during the final 10 years.

Illinois — In 2021, Illinois enacted legislation to develop and coordinate public and private resources targeted to meet the affordable housing needs of low-income and very low-income residents. The act applies to all counties within the state and allows each county to administer the applications for the property tax incentive.

In Cook County, for example, property owners with seven or more multifamily units may apply for the Affordable Housing Incentive, if they can prove a set of conditions that would qualify the property for one of three tiers of relief.

For example, an applicant with a pre-existing building that has spent more than $8 per square foot on rehabilitation of major building systems and has at least 15 percent of the units available at or below 60 percent of AMI qualifies for the "15 Percent Tier" incentive.

Major building systems include heating and cooling, electricity, windows, elevators and more. This incentive will reduce the property tax assessment by 25 percent for 10 years and can be renewed for two consecutive terms.

New York — Although state lawmakers allowed New York's longstanding 421a abatement to expire in June 2022, some property owners can still qualify for relief under the New 421a Program. The New 421a is available to projects that began construction between Jan. 1, 2016, and June 15, 2022, and will be completed on or before June 15, 2026.

MOLLY PHELAN
Siegel Jennings Co., L.P.A.

Projects that commenced construction on or before Dec. 31, 2015, also may opt into the new program if they are not currently receiving 421a benefits. Applications must be filed within one year after completion, and construction benefits would be retroactive.

Benefits of the New York program include a construction period tax exemption of up to three years, plus post-construction exemptions of 10 years (two years full, plus an eight-year phase-out period); 15 years (11 years full, plus a four-year phaseout); 20 years (12 years full, plus an eight-year phaseout); or 25 years (21 years full, plus a four-year phaseout).

In post-construction periods, qualifying properties are exempt from the increase in real estate taxes resulting from the work. The length of benefits depends on location, commencement of construction and affordability within the project.

All market-rate rental units become subject to rent stabilization for the duration of the benefits, with initial rents approved by the Department of Housing Preservation and Development. Affordable rental units are rent stabilized for 35 years.

Massachusetts — Multifamily property owners can claim a tax exemption for any portion of the property used for affordable housing purposes. The exemption is calculated by multiplying the amount of tax ordinarily due by the percentage of floor area set aside for affordable housing purposes.

The exemption is granted on a year-to-year basis for units serving households earning up to 80 percent of AMI, and the local board of assessors reviews tenants' income information to confirm eligibility. Because the exemption is granted on a year-to-year basis, there is no long-term affordability requirement.

Oregon — The Multiple-Unit Limited Tax Exemption Program requires that at least 20 percent of rental units be affordable to households earning 60 percent of AMI, or 80 percent of median family income in high-cost areas, for the 10-year term of the exemption.

Hundreds of programs throughout the country offer tax credits, abatements or other incentives. In markets that are happy to assist willing partners in providing affordable rental housing for their communities, developers can gain an upper hand by learning to fully understand and navigate the application process. ●

Molly Phelan is a partner in the Chicago office of the law firm of Siegel Jennings Co. L.P.A., the Ohio, Illinois and Western Pennsylvania member of American Property Tax Counsel (APTC) , the national affiliation of property tax attorneys. She can be reached at mphelan@siegeltax.com.

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delays, are prolonging construction periods and putting projects on hold, says Osborne.

More broadly, the economic climate is pressuring developers and architects to value engineer projects. Development teams are focused on keeping equipment, finishes and space designs as generic as possible instead of emphasizing specialization and the newest and most popular brands and trends, says Roark.

"In the case of refrigerators and other appliances, you're seeing people take more of a commodification approach and steer away from exotic choices because in many cases we don't know what will be available to go into certain spaces," he says. "So, we design it to fit a common size and hope for the best."

Indeed, shortages of cement, copper and other construction materials are common, but manufacturers are also having a hard time finding components as granular as oven or stove knobs, which can hold up projects just as effectively, says Torney. Consequently, architects and contractors are ordering equipment and materials to mitigate availability problems as soon as a project gets a green light.

"Supply chain issues have affected absolutely everything, and it's an added factor we didn't have to think about before," she acknowledges. "But I think we have become a lot more nimble and more creative about substitutions and design changes during construction." ●