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Client Alert: Seven Interesting Things to Know About the City of Columbus' Proposed Incentives Policy

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By: **Christopher Knezevic**

Earlier this year, the City of Columbus announced it would be implementing a new incentives policy impacting residential post-1994 Community Reinvestment Areas (CRAs) in the city. The goal of the new incentives policy is to support affordable, mixed-use housing development within Columbus. The new policy will require developers with housing projects in certain CRAs to set aside 20% of units for affordable housing. Half of the 20% must be sold or rented to households making up to 80% of the area median income (AMI), and the other half must be sold or rented to households making up to 100% AMI. Projects that feature the rehabilitation of a property listed on the Columbus Register of Historic Properties are not subject to the affordable housing requirements. The city has drafted proposed legislation to implement the new incentives policy. Below are several highlights of the legislation.

1) Different Requirements for Different Areas

The city conducted a study to identify the growth of the neighborhoods within the post-1994 CRAs and determine what changes to existing incentives were needed to spur the development of affordable housing. As a result, the city decided to divide the CRAs into three categories. Each CRA still offers a maximum 15-year, 100% real property tax abatement to qualifying projects, but the categories create different requirements to qualify for the abatements. The categories and their requirements are:

- Market Ready
 - 10% of units affordable to and rented to households at or below 100% AMI.
 - 10% of units affordable to and rented to households at or below 80% AMI.
 - Projects containing four or more housing units, as well as rehabilitation projects with three or less housing units are eligible

for abatements.

- The value of the abatement reduces in the latter years of the abatement term due to newly required payments to the school districts. Payments to the schools are equal to a percentage of the school district tax that would otherwise be due according to the following schedule:
 - Year 11: 15%
 - Year 12: 30%
 - Year 13: 45%
 - Year 14: 60%
 - Year 15: 75%
- Ready for Revitalization
 - The same affordability requirements as the Market Ready category for projects with four or more housing units, although there are no required payments to the school districts.
 - All projects with three or fewer housing units are eligible for abatements (i.e., both new construction and rehabilitation projects).
- Ready for Opportunity
 - No affordable housing requirement exists. All projects are eligible for abatements.

2) Property Owners Can Earn Affordability Credits, or Even Buy Their Way Out

Property owners with projects in Market Ready and Ready for Revitalization areas have the opportunity to earn affordability credits, or even bypass the affordable housing requirements entirely. In both areas, property owners can receive credits equal to one affordable housing unit for each of the following: (i) for every \$1,000,000 of environmental remediation expenses associated with the project, and (ii) for every 25,000 square feet of Class A office space created as part of the development.

Property owners also have the ability to make payments to generate additional affordable housing credits, or to buy their way out of the affordable housing requirements entirely. In Market Ready areas, the affordable housing requirement will be waived if the property owner makes annual payments to the Affordable Housing Trust in an amount equal to 125% of the difference between the rent realized by the least-expensive units comprising 20% of the total market-rate units within the development and the annual rents that would have been collected on those units if they were affordable housing units.

While property owners in Ready for Revitalization areas do not have the ability to pay their way out of the affordable housing requirements, they can generate an additional housing credit by making a one-time payment of \$2,500 to a local Community Development Corporation (CDC). The Ready for Revitalization category also allows property owners to avoid the affordable housing requirements if the property owner partners with a local CDC or the Columbus Next Generation Corporation.

3) Developers Face Penalties if the Affordable Housing Requirements Are Not Met

The proposed legislation penalizes property owners if the affordability requirements are not met. If the affordable housing requirements for Market Ready and Ready for Revitalization areas are not met for a period of 180 days, the property owners shall make payment to the Affordable Housing Trust according to

the following table:

Affordable Housing Shortfall(by % below required number of units)

Required Payment(by % of annual real property tax abated)

Up to 25%

20%

>25% up to 50%

40%

>50% up to 75%

65%

>75%

90%

Additionally, if the number of affordable housing units rented or owned is below 50% of the affordable housing requirements for two consecutive years, the abatement may be terminated. In lieu of such termination, the property owner can make an annual payment equal to at least 175% of the difference between the rent realized by the least-expensive units comprising 20% of the total market-rate units within the development and the annual rents that would have been collected on those units if they were affordable housing units.

4) Additional Reporting Requirements for Property Owners

Property owners within the post-1994 CRAs will take on an increased administrative burden as they will be required to provide an annual report attesting that the households occupying affordable housing units in the development project are qualifying households. Property owners will also be subject to audit of any verification documentation required by the city. For owner-occupied affordable housing units, a statement attesting to occupation by a qualifying household will only be required upon transfer of title.

5) Affordable Housing Units Must Be Placed On a Level Playing Field as Market Rate Units

The proposed legislation not only requires 20% of units to meet affordability thresholds, but it also ensures that the affordable housing units are treated the same as, and are of comparable quality to, market rate units. For example, the proposed legislation requires affordable housing units to be dispersed throughout the development project (their location can change during the abatement term) and be of comparable design of market-rate units in terms of appearance, materials and finished quality. The affordable housing units must also be constructed within a similar timeline as market-rate units and shall have access to amenities and recreational facilities on equal terms to market-rate units. Lastly, any fee charged by the property owner to a prospective tenant or purchaser of an affordable housing unit must be a usual, customary transaction fee normally charged in a residential transaction.

6) Not Everything Has Been Determined (Yet)

So how will a property owner properly verify the annual household income of prospective tenants and purchasers of affordable housing units? That has not been yet determined. As is often the case with legislative or policy changes, there are still many details that need to be resolved, including the method by which property owners are expected to verify household income.

7) The CRA Designations Will Evolve

Just because a CRA received a certain designation by the city does not mean that the designation will be permanent, or even long-term. Under the proposed legislation, the city will reassess the designations every three years. During each reassessment, the distress criteria for each CRA will be reviewed and determinations will be made as to whether each area shall retain its designation or receive a new one. This review process will allow the city to make adjustments to account for the growth, or a lack thereof, within each CRA.

Vorys encourages you to review this alert and contact your Vorys attorney with any questions you may have. For questions on incentives matters, please contact: Scott J. Ziance, (614) 464-8287, sjziance@vorys.com; Christopher J. Knezevic, (614) 464-5627, cjknezevic@vorys.com.