

Affordable Housing Planning and Appeal Act (310 ILCS67/) **Legal Framework**

What is the Illinois Affordable Housing Planning and Appeal Act?:

Signed into law on August 26, 2003, the Affordable Housing Planning and Appeal Act (310 ILCS67/) was passed to recognize the importance of mixed income communities for the vibrancy of our State's economy and culture and to addresses the mismatch between location of job growth and affordable housing. The Affordable Housing Planning and Appeal Act (AHPAA) requires local governments with less than 10% affordable housing to adopt plans that promote the development of more affordable housing. The AHPAA has been amended twice since its passage, but the primary reason for the amendments has been administrative.

The Role of IHDA:

The Illinois Housing Development Authority (IHDA) is named the State-administering agency in the Affordable Housing Planning and Appeal Act. IHDA does not endorse or renounce this Act, and serves solely in an administrative rather than advocacy role. As administrator, IHDA must identify which local governments are affected (non-exempt) by the AHPAA, must publish an annual list of non-exempt local governments, and review local government's submitted Affordable Housing Plans.

What is "Affordable Housing" According to the AHPAA?:

Housing is considered to be affordable when an occupant pays no more than 30% of their income for housing costs. The AHPAA classifies rental units as affordable when a household earning up to 60% of the Area Median Income (AMI) can afford the rent, and it classifies ownership units as affordable when a household earning up to 80% of the AMI can afford the principal and interest of any mortgages placed on the unit, property taxes, and insurance, as well as homeowner, neighborhood, or condominium association fees.

Who Must Comply?:

All communities in Illinois with less than 10% affordable housing (and a population greater than 1,000) are "non-exempt" from the Affordable Housing Planning and Appeal Act. Currently 49 of 1,287 Illinois municipalities are "non-exempt" from the Act. See additional handout.

Determining non-exempt communities requires calculations to determine the number of rental units affordable to households earning 60% of the Area Median Income and the number of homeownership units affordable to households earning 80% of the Area Median Income within each community in Illinois. Calculations must be based on Decennial Census Data (currently still using 2000 Data, though that will soon change). The total of these two counts is divided by the total number of housing units in the community to provide the affordable housing percentage for each community.

IHDA contracted with an unbiased 3rd party to make this determination, and plans to do so again when all new census data is made available.

Complying with the AHPAA: Planning Component:

All non-exempt communities are required to submit an Affordable Housing Plan in Conjunction with the Act. This plan is required to include the following:

- 1) A statement of the total number of affordable housing units needed to exempt the local government from the 10% requirement
- 2) The identification of land and structures for affordable housing construction, conversion and renovation
- 3) Local incentives to be provided to attract affordable housing development
- 4) A goal for the municipality that is at least one of the following:
 - 10% overall affordable housing; or
 - 15% minimum of affordable housing on all new developments or redevelopments; or
 - A 3% increase in the amount of affordable housing

For the current Determination of Non-Exempt Communities, local Affordable Housing Plans were to be adopted by April 1, 2005 and submitted to IHDA for review within 60 days after adoption or amendment. IHDA reviewed the plans to make sure the content contained the prescribed elements only.

The State Housing Appeals Board:

The AHPAA also creates a State Housing Appeals Board. Affordable housing developers will have the opportunity to appeal local government decisions from Non-Exempt communities that impact affordable housing to this board. Non-Exempt communities are also given the right to appeal the determination of non-exempt status to the board.

The State Housing Appeals Board is comprised of Seven Governor-appointed representatives of local government, county government, zoning boards of appeals, plan commissions, housing developers, and housing advocates and is chaired by a retired judge. The Board was first eligible to hear appeals in January 2009. The Board has not yet been fully appointed. No appeals have been submitted.

Developer bears the burden of showing that the development was “unfairly denied,” or “unreasonable conditions” have been placed upon the development that makes the development infeasible. IHDA anticipates that communities that have adopted a plan and met the goal(s) outlined in their plan are NOT subject to the authority of the Appeals Board. IHDA has encouraged communities to document progress towards their goal(s) for this reason. Appeals are to be dismissed if the community has met AHPAA planning requirement and stated planning goal(s). An appeal is also to be dismissed if the reason for appeal is a “non-appealable local government requirement” pertaining to the protection of public health, safety, or the environment

Home Rule:

Since the passage into law of the Affordable Housing Planning and Appeal Act, IHDA has received a number of inquiries about whether this new law applies to home rule municipalities and counties in Illinois. The law does not specifically provide for a home rule exemption.

AHPAA-related bills passed by both houses of the Illinois Legislature were silent on this issue - in neither case did a legislator request a Home Rule Note, a process administered upon legislative request, to make a determination of home rule applicability to that particular bill. Municipalities or counties wanting further legal clarification should consult their own legal counsel.