

ORDINANCE 27- 2020

ORDINANCE OF THE BOROUGH OF MADISON AMENDING THE AFFORDABLE HOUSING PROVISIONS OF CHAPTER 195 SECTIONS 47 AND 48 OF THE MADISON BOROUGH CODE ENTITLED “LAND DEVELOPMENT ORDINANCE”

WHEREAS, the Borough of Madison has a long-standing commitment to the provision of affordable housing, and in furtherance of that objective, and in line with regulatory changes and judicial decisions, the Borough believes its commitment to affordable housing is best advanced by updating and replacing Sections 195-47 and 195-48 of the Borough Code; and

WHEREAS, the Planning Board recommends to the Borough Council the adoption of these amendments and finds that they are substantially consistent with the Master Plan or designed to effectuate such plan elements, and/or if they are wholly or partially inconsistent, that an affirmative vote of the majority of the full authorized membership of the governing body has been received in recognition of the substantial public benefits as cited in the Statement of Purpose section of this Ordinance.

NOW, THEREFORE, BE IT ORDAINED by the Council of the Borough of Madison, in the County of Morris and State of New Jersey, as follows:

SECTION 1: Sections 195-47 and 195-48 of the Madison Borough Code entitled “Affordable Housing Growth Share Requirements” shall be deleted in their entirety and the following provisions shall be inserted in their place:

§ 195-47. Affordable housing policies, procedures and administration

- A. Intent. It is the intent of this article to regulate the development and management of low- and moderate-income housing units constructed in compliance with the Housing Element of the Master Plan of the Borough of Madison. This section of the Borough Code sets forth regulations regarding the low and moderate income housing units in the Borough consistent with the provisions known as the “Substantive Rules of the New Jersey Council on Affordable Housing”, N.J.A.C. 5:93 et seq., the Uniform Housing Affordability Controls (“UHAC”), N.J.A.C. 5:80-26.1 et seq. except where modified to address the statutory requirement to provide very-low income units equal to 13% of affordable units approved and constructed after July 1, 2008, to be affordable to households at 30% of the regional median income, overrides the UHAC requirement that 10% of all low- and moderate-income units must be affordable at 35% of the regional median income, and the Borough's constitutional obligation to provide a fair share of affordable housing for low and moderate income households. In addition, this section applies requirements for very low income housing as

established in P.L. 2008, c.46 (the "Roberts Bill", codified at N.J.S.A. 52:27D-329.1).

B. This Ordinance is intended to assure that very-low, low- and moderate-income units ("affordable units") are created with controls on affordability over time and that very-low, low- and moderate-income households shall occupy these units. This Ordinance shall apply to all inclusionary developments and 100% affordable developments (including those funded with low-income housing tax credit financing) except where inconsistent with applicable law.

C. Definitions. As used herein the following terms shall have the following meanings:

"Act" means the Fair Housing Act of 1985, P.L. 1985, c. 222 (N.J.S.A. 52:27D-301 et seq.).

"Adaptable" means constructed in compliance with the technical design standards of the Barrier Free Subcode, N.J.A.C. 5:23-7.

"Administrative agent" means the entity responsible for the administration of affordable units in accordance with this ordinance, N.J.A.C. 5:91, N.J.A.C. 5:93 and N.J.A.C. 5:80-26.1 et seq.

"Affirmative marketing" means a regional marketing strategy designed to attract buyers and/or renters of affordable units pursuant to N.J.A.C. 5:80-26.15.

"Affordability average" means the average percentage of median income at which restricted units in an affordable housing development are affordable to low- and moderate-income households.

"Affordable" means, a sales price or rent within the means of a low- or moderate-income household as defined in N.J.A.C. 5:93-7.4; in the case of an ownership unit, that the sales price for the unit conforms to the standards set forth in N.J.A.C. 5:80-26.6, as may be amended and supplemented, and, in the case of a rental unit, that the rent for the unit conforms to the standards set forth in N.J.A.C. 5:80-26.12, as may be amended and supplemented.

"Affordable development" means a housing development all or a portion of which consists of restricted units.

"Affordable housing development" means a development included in the Housing Element and Fair Share Plan, and includes, but is not limited to, an inclusionary development, a municipal construction project or a 100% affordable development.

"Affordable housing program(s)" means any mechanism in a municipal Fair Share Plan prepared or implemented to address a municipality's fair share obligation.

“Affordable unit” means a housing unit proposed or created pursuant to the Act, credited pursuant to N.J.A.C. 5:93, and/or funded through an affordable housing trust fund.

“Agency” means the New Jersey Housing and Mortgage Finance Agency established by P.L. 1983, c. 530 (N.J.S.A. 55:14K-1, et seq.).

“Age-restricted unit” means a housing unit designed to meet the needs of, and exclusively for, the residents of an age-restricted segment of the population such that: 1) all the residents of the development where the unit is situated are 62 years or older; or 2) at least 80% of the units are occupied by one person that is 55 years or older; or 3) the development has been designated by the Secretary of the U.S. Department of Housing and Urban Development as “housing for older persons” as defined in Section 807(b)(2) of the Fair Housing Act, 42 U.S.C. § 3607.

“Alternative living arrangement” means a structure in which households live in distinct bedrooms, yet share kitchen and plumbing facilities, central heat and common areas. Alternative living arrangement includes, but is not limited to: transitional facilities for the homeless, Class A, B, C, D, and E boarding homes as regulated by the New Jersey Department of Community Affairs; residential health care facilities as regulated by the New Jersey Department of Health; group homes for the developmentally disabled and mentally ill as licensed and/or regulated by the New Jersey Department of Human Services; and congregate living arrangements.

“Assisted living residence” means a facility licensed by the New Jersey Department of Health and Senior Services to provide apartment-style housing and congregate dining and to assure that assisted living services are available when needed for four or more adult persons unrelated to the proprietor and that offers units containing, at a minimum, one unfurnished room, a private bathroom, a kitchenette and a lockable door on the unit entrance.

“Certified household” means a household that has been certified by an Administrative Agent as a low-income household or moderate-income household.

“COAH” means the Council on Affordable Housing, which is in, but not of, the Department of Community Affairs of the State of New Jersey, that was established under the New Jersey Fair Housing Act (N.J.S.A. 52:27D-301 et seq.).

“DCA” means the State of New Jersey Department of Community Affairs.

“Developer” means any person, partnership, association, company or corporation that is the legal or beneficial owner or owners of a lot or any land proposed to be included in a proposed development including the holder of

an option to contract or purchase, or other person having an enforceable proprietary interest in such land.

“Development” means the division of a parcel of land into two or more parcels, the construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any use or change in the use of any building or other structure, or of any mining, excavation or landfill, and any use or change in the use of any building or other structure, or land or extension of use of land, for which permission may be required pursuant to N.J.S.A. 40:55D-1 et seq.

"Fair Share Plan" means the plan that describes the mechanisms, strategies and the funding sources, if any, by which the Township proposes to address its affordable housing obligation as established in the Housing Element, including the draft ordinances necessary to implement that plan, and addresses the requirements of N.J.A.C. 5:93-5.

"Housing Element" means the portion of the Borough's Master Plan, required by the Municipal Land Use Law ("MLUL"), N.J.S.A. 40:55D-28b(3) and the Act, that includes the information required by N.J.A.C. 5:93-5.1 and establishes the Township's fair share obligation.

“Inclusionary development” means a development containing both affordable units and market rate units. This term includes, but is not necessarily limited to: new construction, the conversion of a non-residential structure to residential and the creation of new affordable units through the reconstruction of a vacant residential structure.

“Low-income household” means a household with a total gross annual household income equal to 50% or less of the median household income.

“Low-income unit” means a restricted unit that is affordable to a low-income household.

“Major system” means the primary structural, mechanical, plumbing, electrical, fire protection, or occupant service components of a building which include but are not limited to, weatherization, roofing, plumbing (including wells), heating, electricity, sanitary plumbing (including septic systems), lead paint abatement or load bearing structural systems.

“Market-rate units” means housing not restricted to low- and moderate-income households that may sell or rent at any price.

“Median income” means the median income by household size for the applicable county, as adopted annually by COAH or approved by the NJ Superior Court.

“Moderate-income household” means a household with a total gross annual household income in excess of 50% but less than 80% of the median household income.

“Moderate-income unit” means a restricted unit that is affordable to a moderate-income household.

“Random selection process” means a process by which currently income-eligible households are selected for placement in affordable housing units such that no preference is given to one applicant over another except for purposes of matching household income and size with an appropriately priced and sized affordable unit (e.g., by lottery).

“Regional asset limit” means the maximum housing value in each housing region affordable to a four-person household with an income at 80% of the regional median as defined by adopted/approved Regional Income Limits.

“Rehabilitation” means the repair, renovation, alteration or reconstruction of any building or structure, pursuant to the Rehabilitation Subcode, N.J.A.C. 5:23-6.

“Rent” means the gross monthly cost of a rental unit to the tenant, including the rent paid to the landlord, as well as an allowance for tenant-paid utilities computed in accordance with allowances published by DCA for its Section 8 program. In assisted living residences, rent does not include charges for food and services.

“Restricted unit” means a dwelling unit, whether a rental unit or ownership unit, that is subject to the affordability controls of N.J.A.C. 5:80-26.1, as may be amended and supplemented, but does not include a market-rate unit financed under UHORP or MONI.

“Special master” means an expert appointed by a judge to make sure that judicial orders are followed. A master’s function is essentially investigative, compiling evidence or documents to inform some future action by the court.

“UHAC” means the Uniform Housing Affordability Controls set forth in N.J.A.C. 5:80-26.1 et seq.

“Very low-income household” means a household with a total gross annual household income equal to 30% or less of the median household income.

“Very low-income unit” means a restricted unit that is affordable to a very low-income household.

“Weatherization” means building insulation (for attic, exterior walls and crawl space), siding to improve energy efficiency, replacement storm windows, replacement storm doors, replacement windows and replacement doors, and is considered a major system for rehabilitation.

D. Affordable Housing Compliance/Administration

- (1) The Borough shall designate by resolution of the Governing Body, subject to the approval of the Superior Court, one or more Administrative Agents to administer the Borough's compliance in meeting the affordable housing obligation.
- (2) The Mayor and Borough Council may appoint, constitute and designate the Madison Housing Authority ("MHA") or any other entity to serve as the Borough's Administrative Agent.
 - (a) The Borough may delegate the administration of all or part of the duties named in this section to the Department of Community Affairs, a nonprofit organization or another qualified entity.
 - (b) When appointed, the MHA or other qualified entity shall adopt all such rules, regulations and procedures as are necessary to effectuate the foregoing and to meet the intent of performing all the responsibilities, functions and duties of the Affordable Housing Policy set forth in Article VIII.
 - (c) Where approved by the Borough, sales and rental transactions of affordable housing units may be administered by the developer under the advisory review of the Borough's Affordable Housing Administrator as per this section.
- (3) The Administrative Agent shall perform the duties and responsibilities of an administrative agent as are set forth in UHAC, including those set forth in N.J.A.C. 5:80-26.14, 16 and 18 thereof, which includes but is not limited to the following:
 - (a) Review regulations pertaining to the sale and rental of affordable housing units.
 - (b) Review requests from federal, state, county or local agencies regarding funding or applications for funding.
 - (c) Provide recommendations to the Borough Council regarding how Borough funds or funds collected from developer's contributions for affordable housing should be spent and propose priorities for such expenditures.
 - (d) Review all affirmative marketing plans submitted by any developer, applicant or owner, or prepare such affirmative marketing plans in connection with affordable housing under the auspices of COAH or NJ Superior Court.
 - (e) Administer all resale and re-rental transactions of affordable units.
 - (f) Conduct household certification.

- (g) Administer affordability controls.
 - (h) Conduct affirmative marketing.
 - (i) Record retention.
 - (j) Processing requests from unit owners; and
 - (k) Enforcement, although the ultimate responsibility for retaining controls on the units rests with the Borough.
- E. The Borough may charge a reasonable fee to program participants for the administration of its affordability controls program.
- F. Municipal Housing Liaison.
- (1) The position of Municipal Housing Liaison for the Borough of Madison is hereby established. The Municipal Housing Liaison shall be appointed by duly adopted resolution of the Borough Council and be subject to the approval by the Superior Court.
 - (2) The Municipal Housing Liaison must be either a full-time or part-time employee of the Borough of Madison.
 - (3) The Municipal Housing Liaison must meet the requirements for qualifications, including initial and periodic training found in N.J.A.C. 5:93.
 - (4) The Municipal Housing Liaison shall be responsible for oversight and administration of the affordable housing program for the Borough of Madison, including the following responsibilities which may not be contracted out to the Administrative Agent:
 - (a) Serving as the Borough's primary point of contact for all inquiries from the State, affordable housing providers, Administrative Agents and interested households;
 - (b) When applicable, supervising any contracting the Administrative Agent.
 - (c) Monitoring the status of all restricted units in the Borough of Madison's Fair Share Plan;
 - (d) Compiling, verifying and submitting annual reports as required by the Superior Court;
 - (e) Coordinating meetings with affordable housing providers and Administrative Agents, as applicable; and

- (5) Attending continuing education opportunities on affordability controls, compliance monitoring and affirmative marketing as offered or approved by the Superior Court.
- G. Compliance Monitoring. The Fair Housing Act includes two provisions regarding action to be taken by the Borough during the ten-year period of protection anticipated in a Borough agreement with Fair Share Housing Center (hereinafter "FSHC") and/or a Judgment of Repose. The Borough agrees to comply with those provisions as follows:
- (1) The Borough must prepare within the required time a midpoint realistic opportunity review, as required pursuant to N.J.S.A. 52:27D-313, which the Borough will post on its municipal website, with a copy provided to FSHC, a status report as to its implementation of its Plan and an analysis of whether any unbuilt sites or unfulfilled mechanisms continue to present a realistic opportunity. Such posting shall invite any interested party to submit comments to the Borough, with a copy to FSHC, regarding whether any sites no longer present a realistic opportunity and should be replaced and whether any mechanisms to meet unmet need should be revised or supplemented. Any interested party may by motion request a hearing before the Court regarding these issues. In the event the Court determines that a site or mechanism no longer presents a realistic opportunity and should be replaced or supplemented, then the Borough shall have the opportunity to supplement or revise its plan to correct any deficiency.
 - (2) Within 30 days of the third anniversary of any settlement agreement with FSHC, the Borough will post on its municipal website, with a copy provided to Fair Share Housing Center and the service list previously used in this matter, a status report as to its satisfaction of its very low income requirements, including the family very low income requirements referenced herein. Such posting shall invite any interested party to submit comments to the Borough and Fair Share Housing Center on the issue of whether the Borough has complied with its very low-income housing obligation under the terms of this settlement.
 - (3) Trust fund activity. On the first anniversary of any settlement agreement with Fair Share Housing Center (FSHC) in the Borough's declaratory judgment action (Docket No. MRS-L-1694-15) and every anniversary thereafter through the end of the repose period, the Borough shall provide annual reporting of its affordable housing trust fund activity to the New Jersey Department of Community Affairs, Council on Affordable Housing or Division of Local Government Services, or other entity designated by the State of New Jersey, with a copy provided to FSHC and posted on the municipal website, using forms developed for this purpose by the New Jersey Department of Community Affairs, Council on Affordable Housing or Division of Local Government Services. The reporting shall include an accounting of all affordable housing trust fund activity, including the source and amount of funds collected and the amount and purpose for which any funds have been expended.

- (4) Affordable housing activity. On the first anniversary of any settlement agreement with FSHC in the Borough’s declaratory judgment action (Docket No. MRS-L-1694-15) and every anniversary thereafter through the end of the repose period, the Borough shall provide annual reporting of the status of all affordable housing activity within the Borough through posting on the municipal website, with copies provided to FSHC, using forms previously developed for this purpose by the Council on Affordable Housing or any other forms endorsed by the court-appointed special master and FSHC.
- H. Submission of affordable housing plan. The developer of low- and moderate-income housing units shall submit the following items:
- (1) A description of the mechanism to be used to ensure that the required low- and moderate-income units are sold or rented only to low- and moderate-income households for a period of not less than 30 years and until such time after the initial 30 year period as the Borough elects by ordinance to release the unit from such requirements
 - (2) Draft deed restriction
 - (3) Identification of each proposed affordable housing unit and the affordability (very-low, low, or moderate income) and number of bedrooms.
- I. Phasing. Final site plan or subdivision approval and issuance of certificates of occupancy shall be contingent upon the affordable housing development meeting the following phasing schedule for low and moderate income units whether developed in a single phase development, or in a multi-phase development:

Maximum Percentage of Minimum Market-Rate and Moderate- Income	Percentage of Low- Units
<u>Completed</u>	<u>Units Completed</u>
25	0
25+1	10
50	50
75	75
90	100

- J. Design. In inclusionary developments, to the extent possible, low- and moderate-income units shall be integrated with the market units.
- K. Utilities. Affordable units shall utilize the same type of heating source as market units within the affordable development.

- L. Low/Moderate Split and Bedroom Distribution of Affordable Housing Units:
- (1) The fair share obligation shall be divided equally between low- and moderate- income units, except that where there is an odd number of affordable housing units, the extra unit shall be a low income unit.
 - (2) In each affordable development, at least 50% of the restricted units within each bedroom distribution shall be low-income units.
 - (3) In each affordable development, of the total number of affordable rental units, at least 13% shall be affordable to very low income households. Where an affordable development produces three or more very low income units, the Borough shall require an equal number of very low income units within each bedroom distribution, and any extra very low income units shall be two or three bedrooms. Affordable developments that are not age-restricted shall be structured in conjunction with realistic market demands such that:
 - (a) Not more than 20% of all low- and moderate-income units shall be one bedroom units;
 - (b) At least 30% of all low- and moderate-income units shall be two bedroom units; and
 - (c) At least 20% of all low- and moderate-income units shall be three bedroom units.
 - (4) Affordable developments that are age-restricted shall be structured such that the number of bedrooms shall equal the number of age-restricted low- and moderate-income units within the inclusionary development. The standard may be met by having all one-bedroom units or by having a two-bedroom unit for each efficiency unit.
- M. Accessibility Requirements:
- (1) The first floor of all new restricted townhouse dwelling units and all restricted multistory dwelling units attached to at least one (1) other dwelling unit shall be subject to the technical design standards of the Barrier Free Subcode, N.J.A.C. 5:23-7.
 - (2) All restricted townhouse dwelling units and all restricted multistory dwelling units attached to at least one (1) other dwelling unit shall have the following features:
 - (a) An adaptable toilet and bathing facility on the first floor;
 - (b) An adaptable kitchen on the first floor;
 - (c) An interior accessible route of travel on the first floor;

- (d) An interior accessible route of travel shall not be required between stories within an individual unit;
 - (e) An adaptable room that can be used as a bedroom, with a door or the casing for the installation of a door, on the first floor; and
 - (f) An accessible entranceway as set forth at P.L. 2005, c. 350 (N.J.S.A. 52:27D-311a et seq.) and the Barrier Free Subcode, N.J.A.C. 5:23-7, or evidence that the Borough has collected funds from the developer sufficient to make 10% of the adaptable entrances in the development accessible:
- (3) Where a unit has been constructed with an adaptable entrance, upon the request of a disabled person who is purchasing or will reside in the dwelling unit, an accessible entrance shall be installed.
- (a) To this end, the builder of restricted units shall deposit funds within the Borough of Madison's affordable housing trust fund sufficient to install accessible entrances in 10% of the affordable units that have been constructed with adaptable entrances.
 - (b) The funds deposited under paragraph (3a) herein, shall be used by the Borough for the sole purpose of making the adaptable entrance of any affordable unit accessible when requested to do so by a person with a disability who occupies or intends to occupy the unit and requires an accessible entrance.
- (4) The developer of the restricted units shall submit a design plan and cost estimate for the conversion from adaptable to accessible entrances to the Construction Official of the Borough of Madison.
- (5) Once the Construction Official has determined that the design plan to convert the unit entrances from adaptable to accessible meet the requirements of the Barrier Free Subcode, N.J.A.C. 5:23-7, and that the cost estimate of such conversion is reasonable, payment shall be made to the Borough of Madison's Affordable Housing Trust Fund in care of the Municipal Chief Financial Officer who shall ensure that the funds are deposited into the Affordable Housing Trust Fund and appropriately earmarked.
- (6) Full compliance with the foregoing provisions shall not be required where an entity can demonstrate that it is site impracticable to meet the requirements. Determinations of site impracticability shall be in compliance with the Barrier Free Subcode, N.J.A.C. 5:23-7.

N. Maximum Rents and Sales Prices.

- (1) In establishing rents and sales prices of affordable housing units, the administrative agent shall follow the procedures set forth in UHAC and by the Superior Court, utilizing the regional income limits established.

- (2) The maximum rent for restricted rental units within each affordable development shall be affordable to households earning no more than 60% of median income, and the average rent for restricted low- and moderate-income units shall be affordable to households earning no more than 52% of median income.
 - (3) The developers and/or municipal sponsors of restricted rental units shall establish at least one rent for each bedroom type for both low-income and moderate-income units.
 - (a) At least 13% of all low- and moderate-income rental units shall be affordable to households earning no more than 30% of median income.
 - (4) The maximum sales price of restricted ownership units within each affordable development shall be affordable to households earning no more than 70% of median income, and each affordable development must achieve an affordability average of 55% for restricted ownership units; in achieving this affordability average, moderate-income ownership units must be available for at least three different prices for each bedroom type, and low-income ownership units must be available for at least two different prices for each bedroom type.
- O. In determining the initial sales prices and rents for compliance with the affordability average requirements for restricted units other than assisted living facilities, the following standards shall be met:
- (1) A studio or efficiency unit shall be affordable to a one-person household;
 - (2) A one-bedroom unit shall be affordable to a one and one-half person household;
 - (3) A two-bedroom unit shall be affordable to a three-person household;
 - (4) A three-bedroom unit shall be affordable to a four and one-half person household; and
 - (5) A four-bedroom unit shall be affordable to a six-person household.
 - (6) In determining the initial rents for compliance with the affordability average requirements for restricted units in assisted living facilities, the following standards shall be met:
 - (a) A studio or efficiency unit shall be affordable to a one-person household;
 - (b) A one-bedroom unit shall be affordable to a one and one-half person household; and

- (c) A two-bedroom unit shall be affordable to a two-person household or to two one-person households.
- (7) The initial purchase price for all restricted ownership units shall be calculated so that the monthly carrying cost of the unit, including principal and interest (based on a mortgage loan equal to 95% of the purchase price and the Federal Reserve H.15 rate of interest), taxes, homeowner and private mortgage insurance and condominium or homeowner association fees do not exceed 28% of the eligible monthly income of the appropriate size household as determined under N.J.A.C. 5:80-26.4, as may be amended and supplemented; provided, however, that the price shall be subject to the affordability average requirement of N.J.A.C. 5:80-26.3, as may be amended and supplemented.
- (8) The initial rent for a restricted rental unit shall be calculated so as not to exceed 30% of the eligible monthly income of the appropriate household size as determined under N.J.A.C. 5:80-26.4, as may be amended and supplemented; provided, however, that the rent shall be subject to the affordability average requirement of N.J.A.C. 5:80-26.3, as may be amended and supplemented.
- (9) The price of owner-occupied low- and moderate-income units may increase annually based on the percentage increase in the regional median income limit for each housing region. In no event shall the maximum resale price established by the administrative agent be lower than the last recorded purchase price.
- (10) Income limits for all units for which income limits are not already established through a federal program exempted from the Uniform Housing Affordability Controls pursuant to N.J.A.C. 5:80-26.1 shall be updated by the Borough annually within 30 days of the publication of determinations of median income by HUD as follows:
 - (a) Regional income limits shall be established for the Region 2 based on the median income by household size, which shall be established by a regional weighted average of the uncapped Section 8 income limits published by HUD. To compute this regional income limit, the HUD determination of median county income for a family of four is multiplied by the estimated households within the county according to the most recent decennial Census. The resulting product for each county within the housing region is summed. The sum is divided by the estimated total households from the most recent decennial Census in Region 2. This quotient represents the regional weighted average of median income for a household of four. The income limit for a moderate-income unit for a household of four shall be 80 percent of the regional weighted average median income for a family of four. The income limit for a low-income unit for a household of four shall be 50 percent of the HUD determination of the regional weighted average median income for a family of four. The income

limit for a very low income unit for a household of four shall be 30 percent of the regional weighted average median income for a family of four. These income limits shall be adjusted by household size based on multipliers used by HUD to adjust median income by household size. In no event shall the income limits be less than those for the previous year.

- (b) The income limits calculated each year shall be the result of applying the percentages set forth in paragraph (a) above to HUD's determination of median income for the relevant fiscal year, and shall be utilized until the Borough updates the income limits after HUD has published revised determinations of median income for the next fiscal year.
 - (c) The Regional Asset Limit used in determining an applicant's eligibility for affordable housing pursuant to N.J.A.C. 5:80-26.16(b)3 shall be calculated by the Borough annually by taking the percentage increase of the income limits calculated pursuant to paragraph (a) above over the previous year's income limits, and applying the same percentage increase to the Regional Asset Limit from the prior year. In no event shall the Regional Asset Limit be less than that for the previous year.
- (11) Tenant-paid utilities that are included in the utility allowance shall be so stated in the lease and shall be consistent with the utility allowance approved by DCA for its Section 8 program.

P. Condominium and Homeowners Association Fees.

- (1) For any affordable housing unit that is part of a condominium association and/or homeowner's association, the Master Deed shall reflect that the association fee assessed for each affordable housing unit shall be established at 100% of the market rate fee.

Q. Affirmative Marketing.

- (1) The Borough shall adopt by resolution an Affirmative Marketing Plan, subject to approval of the Superior Court, compliant with N.J.A.C. 5:80-26.15, as may be amended and supplemented.
- (2) The affirmative marketing plan is a regional marketing strategy designed to attract buyers and/or renters of all majority and minority groups, regardless of race, creed, color, national origin, ancestry, marital or familial status, gender, affectional or sexual orientation, disability, age or number of children to housing units which are being marketed by a developer, sponsor or owner of affordable housing. The affirmative marketing plan is also intended to target those potentially eligible persons who are least likely to apply for affordable units in that region. It is a continuing program that directs all marketing

activities toward COAH Housing Region 2 and covers the period of deed restriction.

- (3) The affirmative marketing plan shall provide a regional preference for all households that live and/or work in COAH Housing Region 2, comprised of Warren, Essex, Union, and Morris Counties.
- (4) The Administrative Agent designated by the Borough shall assure the affirmative marketing of all affordable units is consistent with the Affirmative Marketing Plan for the Borough.
- (5) In implementing the affirmative marketing plan, the Administrative Agent shall provide a list of counseling services to low- and moderate-income applicants on subjects such as budgeting, credit issues, mortgage qualification, rental lease requirements, and landlord/tenant law.
- (6) The affirmative marketing process for available affordable units shall begin at least four months prior to the expected date of occupancy.
- (7) The costs of advertising and affirmative marketing of the affordable units shall be the responsibility of the developer, sponsor or owner, unless otherwise determined or agreed to by the Borough.
- (8) In addition to other affirmative marketing strategies, the Administrative Agent shall provide specific notice of the availability of affordable housing units in Madison, and copies of the applications forms, to the following entities: Fair Share Housing Center; the New Jersey State Conference of the NAACP; the Latino Action Network; the Morris County, Newark, and East Orange chapters of the NAACP; Housing Partnership for Morris County; Community Access Unlimited Inc.; NORWESCAP; Homeless Solutions of Morristown; and the Supportive Housing Association.

R. Occupancy Standards.

- (1) In referring certified households to specific restricted units, to the extent feasible, and without causing an undue delay in occupying the unit, the Administrative Agent shall strive to:
 - (a) Provide an occupant for each bedroom;
 - (b) Provide separate bedrooms for parents and children;
 - (c) Provide children of different sexes with separate bedrooms; and
 - (d) Prevent more than two persons from occupying a single bedroom.
 - (e) Additional provisions related to occupancy standards (if any) shall be provided in the municipal Operating Manual.

- S. Selection of Occupants of Affordable Housing Units.
- (1) The administrative agent shall use a random selection process to select occupants of low- and moderate- income housing.
 - (2) A waiting list of all eligible candidates will be maintained in accordance with the provisions of N.J.A.C. 5:80-26 et seq.
- T. Control Periods for Restricted Ownership Units and Enforcement Mechanisms.
- (1) Control periods for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.5, and each restricted ownership unit shall remain subject to the controls on affordability for a period of at least 30 years, until the Borough takes action to release the controls on affordability.
 - (2) Rehabilitated owner-occupied housing units that are improved to code standards shall be subject to affordability controls for a period of 10 years.
 - (3) The affordability control period for a restricted ownership unit shall commence on the date the initial certified household takes title to the unit.
 - (4) The affordability controls set forth in this Ordinance shall remain in effect despite the entry and enforcement of any judgment of foreclosure with respect to restricted ownership units.
 - (5) A restricted ownership unit shall be required to obtain a Continuing Certificate of Occupancy or a certified statement from the Construction Official stating that the unit meets all code standards upon the first transfer of title that follows the expiration of the applicable minimum control period provided under N.J.A.C. 5:80-26.5(a), as may be amended and supplemented.
- U. Price Restrictions for Restricted Ownership Units, Homeowner Association Fees and Resale Prices.
- (1) Price restrictions for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.1, as may be amended and supplemented, including:
 - (2) The initial purchase price for a restricted ownership unit shall be approved by the Administrative Agent.
 - (3) The Administrative Agent shall approve all resale prices, in writing and in advance of the resale, to assure compliance with the foregoing standards.
 - (4) The method used to determine the condominium association fee amounts and special assessments shall be indistinguishable between the low- and moderate-income unit owners and the market unit owners.
 - (5) The owners of restricted ownership units may apply to the Administrative Agent to increase the maximum sales price for the unit on the basis of capital

improvements. Eligible capital improvements shall be those that render the unit suitable for a larger household or the addition of a bathroom.

V. § 27-15. Buyer Income Eligibility.

- (1) Buyer income eligibility for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.1, as may be amended and supplemented, such that low-income ownership units shall be reserved for households with a gross household income less than or equal to 50% of median income and moderate-income ownership units shall be reserved for households with a gross household income less than 80% of median income.
- (2) The Administrative Agent shall certify a household as eligible for a restricted ownership unit when the household is a low-income household or a moderate-income household, as applicable to the unit, and the estimated monthly housing cost for the particular unit (including principal, interest, taxes, homeowner and private mortgage insurance and condominium or homeowner association fees, as applicable) does not exceed 33% of the household's certified monthly income.

W. Limitations on indebtedness secured by ownership unit; subordination.

- (1) Prior to incurring any indebtedness to be secured by a restricted ownership unit, the administrative agent shall determine in writing that the proposed indebtedness complies with the provisions of this section.
- (2) With the exception of original purchase money mortgages, during a control period neither an owner nor a lender shall at any time cause or permit the total indebtedness secured by a restricted ownership unit to exceed 95% of the maximum allowable resale price of that unit, as such price is determined by the administrative agent in accordance with N.J.A.C.5:80-26.6(b).

X. Control Periods for Restricted Rental Units.

- (1) Control periods for restricted rental units shall be in accordance with N.J.A.C. 5:80-26.11, and each restricted rental unit shall remain subject to the controls on affordability for a period of at least 30 years, until the Borough takes action to release the controls on affordability.
- (2) Restricted rental units created as part of developments receiving nine percent (9%) Low Income Housing Tax Credits must comply with a control period of not less than a 30-year compliance period plus a 15-year extended use period.
- (3) Rehabilitated renter-occupied housing units that are improved to code standards shall be subject to affordability controls for a period of 10 years.
- (4) Deeds of all real property that include restricted rental units shall contain deed restriction language. The deed restriction shall have priority over all mortgages on the property, and the deed restriction shall be filed by the

developer or seller with the records office of the County of Morris. A copy of the filed document shall be provided to the Administrative Agent within 30 days of the receipt of a Certificate of Occupancy.

- (5) A restricted rental unit shall remain subject to the affordability controls of this Ordinance, despite the occurrence of any of the following events:
 - (a) Sublease or assignment of the lease of the unit;
 - (b) Sale or other voluntary transfer of the ownership of the unit; or
 - (c) The entry and enforcement of any judgment of foreclosure.

Y. Price Restrictions for Rental Units; Leases.

- (1) A written lease shall be required for all restricted rental units, except for units in an assisted living residence, and tenants shall be responsible for security deposits and the full amount of the rent as stated on the lease. A copy of the current lease for each restricted rental unit shall be provided to the Administrative Agent.
- (2) No additional fees or charges shall be added to the approved rent (except, in the case of units in an assisted living residence, to cover the customary charges for food and services) without the express written approval of the Administrative Agent.
- (3) Application fees (including the charge for any credit check) shall not exceed 5% of the monthly rent of the applicable restricted unit and shall be payable to the Administrative Agent to be applied to the costs of administering the controls applicable to the unit as set forth in this Ordinance.

Z. Tenant Income Eligibility.

- (1) Tenant income eligibility shall be in accordance with N.J.A.C. 5:80-26.13, as may be amended and supplemented, and shall be determined as follows:
 - (a) Very low-income rental units shall be reserved for households with a gross household income less than or equal to 30% of median income.
 - (b) Low-income rental units shall be reserved for households with a gross household income less than or equal to 50% of median income.
 - (c) Moderate-income rental units shall be reserved for households with a gross household income less than 80% of median income.
- (2) The Administrative Agent shall certify a household as eligible for a restricted rental unit when the household is a very low-income, low-income household or a moderate-income household, as applicable to the unit, and the rent

proposed for the unit does not exceed 35% (40% for age-restricted units) of the household's eligible monthly income as determined pursuant to N.J.A.C. 5:80-26.16, as may be amended and supplemented; provided, however, that this limit may be exceeded if one or more of the following circumstances exists:

- (a) The household currently pays more than 35% (40% for households eligible for age-restricted units) of its gross household income for rent, and the proposed rent will reduce its housing costs;
 - (b) The household has consistently paid more than 35% (40% for households eligible for age-restricted units) of eligible monthly income for rent in the past and has proven its ability to pay;
 - (c) The household is currently in substandard or overcrowded living conditions;
 - (d) The household documents the existence of assets with which the household proposes to supplement the rent payments; or
 - (e) The household documents proposed third-party assistance from an outside source such as a family member in a form acceptable to the Administrative Agent and the owner of the unit.
- (3) The applicant shall file documentation sufficient to establish the existence of the circumstances in a through e above with the Administrative Agent, who shall counsel the household on budgeting.

AA. Alternative Living Arrangements.

- (1) The administration of an alternative living arrangement shall be in compliance with N.J.A.C. 5:93-5.8 and UHAC, with the following exceptions:
 - (a) Affirmative marketing (N.J.A.C. 5:80-26.15), provided, however, that the units or bedrooms may be affirmatively marketed by the provider in accordance with an alternative plan approved by the Court;
 - (b) Affordability average and bedroom distribution (N.J.A.C. 5:80-26.3).
 - (c) With the exception of units established with capital funding through a 20-year operating contract with the Department of Human Services, Division of Developmental Disabilities, alternative living arrangements shall have at least 30 year controls on affordability in accordance with UHAC, unless an alternative commitment is approved by the Court.
- (2) The service provider for the alternative living arrangement shall act as the Administrative Agent for the purposes of administering the affirmative marketing and affordability requirements for the alternative living arrangement.

BB. Expiration of controls.

(1) General provisions.

- (a) The restrictive covenant governing the deeds of the low- and moderate-income units may include an option permitting purchase of the affordable unit at the maximum allowable restricted sales price at the time of the first nonexempt sale after controls on affordability have been in effect on the unit for the period specified in this section. Where applicable, the option to buy shall be available to the Borough of Madison.
- (b) All restrictive covenants governing low- and moderate-income units shall require the owner to notify the Borough by certified mail of any intent to sell the unit 90 days prior to entering into an agreement for the first nonexempt sale after controls have been in effect on the housing units for the period specified in this section.
- (c) Upon receipt of such notice, the option to buy the unit at the maximum allowable restricted sales price shall be available for 90 days. If the Borough of Madison exercises this option, it may enter into a contract of sale. If the option to purchase the unit at the maximum allowable restricted sale price is not exercised by a written intent to sell, the owner may proceed to sell the housing unit. If the owner does not sell the unit within one year of the date of the delivery of notice of intent to sell, the option to buy the unit shall be restored and the owner shall be required to submit a new notice of intent to sell 90 days prior to any future proposed date of sale.
- (d) Any option to buy a housing unit at the maximum allowable restricted sales price shall be exercised by certified mail and shall be deemed exercised upon mailing.

CC. Enforcement of Affordable Housing Regulations.

- (1) Upon the occurrence of a breach of any of the regulations governing the affordable unit by an Owner, Developer or Tenant, the Borough shall have all remedies provided at law or equity, including but not limited to foreclosure, tenant eviction, municipal fines, a requirement for household recertification, acceleration of all sums due under a mortgage, recoupment of any funds from a sale in the violation of the regulations, injunctive relief to prevent further violation of the regulations, entry on the premises, and specific performance.
- (2) After providing written notice of a violation to an Owner, Developer or Tenant of a low- or moderate-income unit and advising the Owner, Developer or Tenant of the penalties for such violations, the Borough may take the following action against the Owner, Developer or Tenant for any violation that remains uncured for a period of 60 days after service of the written notice:

- (a) The Borough may file a court action pursuant to N.J.S.A. 2A:58-11 alleging a violation, or violations, of the regulations governing the affordable housing unit. If the Owner, Developer or Tenant is found by the court to have violated any provision of the regulations governing affordable housing units the Owner, Developer or Tenant shall be subject to one or more of the following penalties, at the discretion of the court:
- [1] A fine of not more than \$500.00 or imprisonment for a period not to exceed 90 days, or both. Each and every day that the violation continues or exists shall be considered a separate and specific violation of these provisions and not as a continuing offense;
 - [2] In the case of an Owner who has rented his or her low- or moderate-income unit in violation of the regulations governing affordable housing units, payment into the Borough of Madison Affordable Housing Trust Fund of the gross amount of rent illegally collected;
 - [3] In the case of an Owner who has rented his or her low- or moderate-income unit in violation of the regulations governing affordable housing units, payment of an innocent tenant's reasonable relocation costs, as determined by the court.
- (b) The Borough may file a court action in the Superior Court seeking a judgment, which would result in the termination of the Owner's equity or other interest in the unit, in the nature of a mortgage foreclosure. Any judgment shall be enforceable as if the same were a judgment of default of the First Purchase Money Mortgage and shall constitute a lien against the low- and moderate-income unit.
- (3) Such judgment shall be enforceable, at the option of the Borough, by means of an execution sale by the Sheriff, at which time the low- and moderate-income unit of the violating Owner shall be sold at a sale price which is not less than the amount necessary to fully satisfy and pay off any First Purchase Money Mortgage and prior liens and the costs of the enforcement proceedings incurred by the Borough, including attorney's fees. The violating Owner shall have the right to possession terminated as well as the title conveyed pursuant to the Sheriff's sale.
- (4) The proceeds of the Sheriff's sale shall first be applied to satisfy the First Purchase Money Mortgage lien and any prior liens upon the low- and moderate-income unit. The excess, if any, shall be applied to reimburse the Borough for any and all costs and expenses incurred in connection with either the court action resulting in the judgment of violation or the Sheriff's sale. In the event that the proceeds from the Sheriff's sale are insufficient to reimburse the Borough in full as aforesaid, the violating Owner shall be personally responsible for and to the extent of such deficiency, in addition to

any and all costs incurred by the Borough in connection with collecting such deficiency. In the event that a surplus remains after satisfying all of the above, such surplus, if any, shall be placed in escrow by the Borough for the Owner and shall be held in such escrow for a maximum period of two years or until such earlier time as the Owner shall make a claim with the Borough for such. Failure of the Owner to claim such balance within the two-year period shall automatically result in a forfeiture of such balance to the Borough. Any interest accrued or earned on such balance while being held in escrow shall belong to and shall be paid to the Borough, whether such balance shall be paid to the Owner or forfeited to the Borough.

- (5) Foreclosure by the Borough due to violation of the regulations governing affordable housing units shall not extinguish the restrictions of the regulations governing affordable housing units as the same apply to the low- and moderate-income unit. Title shall be conveyed to the purchaser at the Sheriff's sale, subject to the restrictions and provisions of the regulations governing the affordable housing unit. The Owner determined to be in violation of the provisions of this plan and from whom title and possession were taken by means of the Sheriff's sale shall not be entitled to any right of redemption.
 - (6) If there are no bidders at the Sheriff's sale, or if insufficient amounts are bid to satisfy the First Purchase Money Mortgage and any prior liens, the Borough may acquire title to the low- and moderate-income unit by satisfying the First Purchase Money Mortgage and any prior liens and crediting the violating owner with an amount equal to the difference between the First Purchase Money Mortgage and any prior liens and costs of the enforcement proceedings, including legal fees and the maximum resale price for which the low- and moderate-income unit could have been sold under the terms of the regulations governing affordable housing units. This excess shall be treated in the same manner as the excess which would have been realized from an actual sale as previously described.
 - (7) Failure of the low- and moderate-income unit to be either sold at the Sheriff's sale or acquired by the Borough shall obligate the Owner to accept an offer to purchase from any qualified purchaser which may be referred to the Owner by the Borough, with such offer to purchase being equal to the maximum resale price of the low- and moderate-income unit as permitted by the regulations governing affordable housing units.
 - (8) The Owner shall remain fully obligated, responsible and liable for complying with the terms and restrictions of governing affordable housing units until such time as title is conveyed from the Owner.
- B. Appeals from all decisions of an Administrative Agent designated pursuant to this Ordinance shall be filed in writing with the Borough.

§ 195-48 Affordable housing inclusionary development requirements.

- A. Purpose. The purpose of this § 195-48 is to require new developments to include a minimum inclusionary set aside for affordable housing.
- B. Applicability. The provisions of this § 195-48 shall apply to all new two-family, attached housing, multi-family residential and/or mixed-use development and redevelopment activity in the Borough of Madison with gross densities of six (6) units per acre and higher that result in five (5) or more net new residential units regardless of whether the development requires approval by the Planning Board or Board of Adjustment. One-for-one replacement of residential units and residential renovation and additions shall be exempt.
- C. Residential development. All new applicable residential developments shall be subject to the following affordable housing requirements:
 - (1) At least 20% of all for-sale and for rent dwelling units shall be affordable. Any fractional affordable housing requirement of .50 units or higher shall be rounded up to the nearest whole number. Fractional units below .50 shall be addressed by either rounding up to the nearest whole unit or by a fractional payment in lieu. Construction of the affordable housing unit(s) shall be subject to the standards and requirements herein and the policies, procedures and administration provisions of § 195-47.
 - (2) In the case of residential development involving the creation of fewer than five dwelling units and/or single-family building lots, the developer shall be required to make a payment in lieu of providing affordable housing. The minimum payment amount shall be calculated based on \$250,000 multiplied by the fractional affordable housing requirement as calculated to two decimal points.
- D. Fractional unit payments.
 - (1) Fifty percent of the required payment shall be made at issuance of a building permit.
 - (2) The remaining balance of the required payment shall be paid at issuance of any certificate of occupancy.
 - (3) All payments in lieu shall be deposited in the Affordable Housing Trust Fund.

SECTION 2: This ordinance supersedes any inconsistent provisions of the Land Development Ordinance of the Borough of Madison, whether or not stated expressly herein. All other provisions of the Land Development Ordinance not inconsistent herewith shall remain in effect.

SECTION 3: This Ordinance shall take effect as provided by law.

ADOPTED AND APPROVED

ROBERT H. CONLEY, Mayor

Attest:

ELIZABETH OSBORNE, Borough Clerk