

55-352. REGULATIONS FOR INCLUSIONARY DEVELOPMENTS.

A. Affordable Housing Administration.

- (1) The Township Committee shall designate an entity for the administration of the Township's Affordable Housing Program. The entity may be one or more persons employed by the Township, a qualified**

LU-2205

individual or company providing such services for a fee, the Affordable Housing Management Service (AHMS) of the New Jersey Department of Community Affairs, or other appropriate service provider.

- (2) The developer of the inclusionary housing development shall be responsible for the initial selling and rental price calculations, affirmative marketing requirements, and qualification of buyers or renters upon approval by the affordable housing program administrator pursuant to N.J.A.C. 5:93-9 et seq.

B. Household Income Limitations.

- (1) The income of low and moderate-income households occupying affordable housing shall not exceed the income limits as of January 1 of the current year (year of occupancy). Income qualification and verification shall be determined as required in N.J.A.C. 5:93-9.1(b). Inclusionary developments shall be divided equally between households with low incomes and households with moderate incomes.
 - (a) Median income determination. Median income by household size shall be established by a regional weighted average of the uncapped Section 8 income limits published by the U.S. Department of Housing and Urban Development pursuant to N.J.A.C. 5:93-7.4(b).
 - (b) Affordable housing purchase or rent. Low income affordable housing units shall be reserved for households with a gross household income less than or equal to fifty percent (50%) of the median income. Moderate income units shall be reserved for households with a gross household income less than eighty percent (80%) of the median income.

C. Unit Limitations.

- (1) Type of unit to be provided. In any inclusionary development, at least ten percent (10%) and no more than twenty percent (20%) of the required affordable units shall be efficiencies or one (1) bedroom dwellings, at least thirty percent (30%) of the required affordable units shall be two (2) bedroom dwellings and at least twenty percent (20%) of the required affordable housing units shall be three (3) bedroom dwellings, unless the development shall be for senior citizens only, in which case no three (3) bedroom units shall be required. The type of unit for the balance of the required affordable units shall be determined by the developer, and shall comply with the requirements of N.J.A.C. 5:93-7.3(b).
- (2) Size of units. The size of affordable housing units shall be a minimum of the following gross square footage:

<i>Type of Unit</i>	<i>Minimum Size (square feet)</i>
Efficiency	500
One bedroom	600
Two bedroom	750
Three bedroom	900

- (3) Certificates of occupancy. The following additional requirements for the issuance of certificates of occupancy shall apply to inclusionary developments:
 - (a) The initial issuance of certificates of occupancy for market units shall be linked to the issuance of certificates of occupancy for affordable units. Prior to the issuance of the certificates of occupancy for market units, certificates of occupancy for affordable units

shall be required in the following minimum ratios:

<i>Percentage of Affordable Housing Units Completed</i>	<i>Percentage of Market Housing Units Completed</i>
0%	25%
10%	25% + 1
50%	50%
75%	75%
100%	90%

- (b) Each unit of affordable housing shall require a certificate of occupancy, which shall become void upon a change of owner or tenant.
- (c) No certificate of occupancy shall be issued for low and moderate units unless the provisions of N.J.A.C. 5:93-9.3 are met.
- (4) Unit type and affordability. The following criteria, in conjunction with realistic market information, shall be used in determining maximum rents and sale prices.
- (a) Efficiency units shall be affordable to one (1) person households.
- (b) One (1) bedroom units shall be affordable to one and five-tenths (1.5) person households.
- (c) Two (2) bedroom units shall be affordable to three (3) person households.
- (d) Three (3) bedroom units shall be affordable to four and five-tenths (4.5) person households.
- (5) Distribution of low and moderate income units. The following criteria shall be used in determining the distribution of low and moderate income units within inclusionary developments:

- (a) With the exception of inclusionary developments constructed pursuant to low income tax credit regulations, at least half (1/2) of all units within each inclusionary development shall be affordable to low income households.
 - (b) With the exception of inclusionary developments constructed pursuant to low income tax credit regulations, at least half (1/2) of all rental units shall be affordable to low income households.
 - (c) With the exception of inclusionary developments constructed pursuant to low income tax credit regulations, at least one-third (1/3) of all units in each bedroom distribution shall be affordable to low income households.
- (6) Heating source. Affordable housing units shall utilize the same type of heating source as market units.
- (7) Design and unit integration. The facade of an affordable housing units shall be indistinguishable from market units in terms of the use of exterior materials, windows, doors, reveal, roof pitch, color, or other material. Affordable housing units shall be dispersed throughout an inclusionary development to the greatest extent possible.
- (8) [Added 5-16-05 by Ord. No. 2005-29] Duplex units. The affordable housing units may be provided in duplex two-family structures provided that they satisfy the following requirements:
- (a) The size of each affordable housing unit shall meet the minimum gross square footage specified above.
 - (b) Each of the units shall be in fee simple ownership.

- (c) Each unit shall be situated on its own lot which meets the minimum lot requirements for the zone in which the unit is located.
- (d) Each unit shall comply with the front yard and side yard setback requirements for the zone in which the unit is located. However, a minimum side yard setback of zero (0) feet is permitted along the common lot line separating the two (2) halves of the two-family unit.
- (e) There shall be no more than one (1) efficiency or one (1) bedroom unit per building.

D. Initial Selling and Renting Determinations.

- (1) For sale household limit. The affordable sales price shall be limited such that after a down payment of five percent (5%) the sum of the monthly payment for principal; mortgage interest; mortgage insurance; real estate taxes (property taxes shall be based on the restricted value of low and moderate income units); fire, theft, and liability insurance; and homeowner, condominium, or cooperative association dues or fees, if applicable, shall not exceed twenty-eight percent (28%) of the gross monthly income for low and moderate income families as set forth in N.J.A.C. 5:93-7.4(e).
- (2) Rental household limit. The monthly gross rental cost, including an allowance for utilities, of an affordable housing unit shall be limited such that the monthly payment shall not exceed thirty percent (30%) of the gross monthly income for low or moderate income households based on household size as set forth in N.J.A.C. 5:93-7.4(a). The utility allowances shall be consistent with the utility allowance approved by the- U.S. Department of Housing and Urban Development for use in New Jersey.

- (3) **Average selling or renting price.** The maximum average rent and price of low and moderate income units within each inclusionary development shall be affordable to households earning fifty-seven and five-tenths percent (57.5%) of median income.
- (4) **Additional for sale housing requirements.**

 - (a) **Pricing stratification.** At least two (2) different purchase prices for affordable units shall be established for low income buyers and at least three (3) different purchase prices for moderate income buyers in meeting the average selling price required.
 - (b) **Initial selling procedures** shall be as required under N.J.A.C. 5:93-9.16.
 - (c) **Master deeds of inclusionary developments** shall regulate homeowner, condominium, or cooperative fees, and special assessments paid by low and moderate income buyers to at least one-third (1/3) of the amount paid by market unit purchasers. The actual percentage set in the master deed shall be deter-

mined by the Township Committee after recommendation by the affordable housing program administrator.

(5) Additional rental housing requirements.

- (a) Pricing stratification.** One (1) rent shall be established for each bedroom type affordable to a low income household; and another rent shall be established for each bedroom type affordable to a moderate income household.
- (b) Initial renting procedures** shall be as required under N.J.A.C. 5:93-9.16.

E. Controls on Affordability.

(1) Deed restrictions.

- (a)** Any newly constructed affordable housing unit shall be deed restricted, and the deed shall also run through the municipality, such that any designated low income household unit or moderate income household unit shall remain affordable to the occupants within the income limits established by this Article for a period not less than thirty (30) years for units offered for sale and thirty (30) years offered for rent. Such deed restriction shall limit the units offered for sale and units offered for rental but shall not be construed as limiting ownership of any affordable housing unit by a municipality designated non-profit housing agency. The deed restriction shall take the form adopted by COAH and from which it may be amended from time to time.
- (b)** Deed restrictions of affordable housing units shall include options for purchase for the first non-exempt sale after controls on affordability have been placed pursuant to N.J.A.C. 5:93-9.5 through -9.8. Municipal procedures

for the rejection of such payment options shall be required in N.J.A.C. 5:93-9.9.

(2) Procedures for sale and resale of affordable units. The following procedures shall be used for the sale and resale of any affordable unit:

(a) Procedures for initial sales, resale prior to the expiration of controls, and rentals.

[1] Low and moderate income sales units shall not be offered to non-income eligible households at initial sale without COAH approval. Parties that petition the COAH for such approval shall document efforts to sell housing units to income eligible households and shall adhere to the procedures outlined in N.J.A.C. 5:91-12.

[2] Persons wishing to sell affordable units shall notify the authority responsible for assuring affordability of the intent to sell. If no eligible buyer enters a contract of sale for the unit within one hundred eighty (180) days of the notification, the authority shall have the option to purchase the unit for a negotiated price that shall not exceed the maximum price permitted based on the regional increase in the median income as defined by HUD or other recognized standard adopted by the Council. If the authority does not purchase the unit, the seller may apply for permission to offer the unit to a non-income eligible household at the maximum price permitted. The seller shall document efforts to sell the unit to an income eligible household as part of this appli

cation. In reviewing the request, the authority shall consider the specific reasons for any delay in selling the housing unit and the hardship to the seller in continuing to offer the affordable unit to an income eligible applicant. The inability to sell a unit for the maximum permitted resale price shall not, in itself, be considered an appropriate reason for allowing a housing unit to be sold to a non-income eligible household. If the request is granted, the seller may offer a low income housing unit to a moderate income household and a moderate income housing unit to a household earning in excess of eighty percent (80%) of median. In no case shall the seller be permitted to receive more than the maximum price permitted. In no case shall a sale pursuant to this section eliminate the resale controls on the unit or permit any subsequent seller to convey the unit except in full compliance with the terms of this subchapter.

- [3] Owners of low and moderate income rental units shall not offer rental units to non-income eligible households without prior approval of the Council. Parties that petition for such approval shall document all efforts to rent to income eligible households and demonstrate to the satisfaction of the Council that alternatives, such as reduction in rent, is not feasible. Parties that petition the Council shall adhere to the procedures outlined in N.J.A.C. 5:91-12.

(b) Procedures for sale after expiration of controls on affordability.

- [1] The deed restriction governing the deeds of low and moderate income units shall include an option permitting purchase of the affordable housing unit at the maximum allowable restricted sales price at the time of the first non-exempt sale after controls on affordability have been in effect on the unit for the period, specified in N.J.A.C. 5:93-9.2. The option to buy shall be available to the municipality, the Department of Community Affairs, the agency, or a qualified non-profit as defined in this chapter. These options shall be pursuant to N.J.A.C. 5:93-9.5 through 9.7.**
- [2] All deed restrictions governing low and moderate income units shall require the owner to notify the authority and the Council by certified mail of any intent to sell the unit ninety (90) days prior to entering into an agreement for the first non-exempt sale after controls have been in effect on the housing unit for the period specified in N.J.A.C. 5:93-9.2.**
- [3] Upon receipt of such notice, the option to buy the unit at the maximum allowable restricted sales price or any mutually agreeable sales price that does not exceed the maximum allowable restricted sales price shall be available for ninety (90) days. The authority shall notify the municipality, the Department of Community Affairs, the agency, and the Council that the unit is for sale. If**

the municipality exercises this option, it may enter into a contract of sale. If the municipality fails to exercise this option within ninety (90) days, the first of the other entities giving notice to the seller of its intent to purchase during the ninety (90) day period, shall be entitled to purchase the unit. If the option to purchase the unit at the maximum allowable restricted sales price is not exercised by a written offer to purchase, the housing unit within ninety (90) days of receipt of the intent to sell, the owner may proceed to sell the housing unit (pursuant to N.J.A.C. 5:93-9.8). If the owner does not sell the unit within one (1) 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 ninety (90) days prior to the future proposed date of sale.

- [4] 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.
- [5] An eligible seller of low or moderate income unit which has been controlled for the period established in N.J.A.C. 5:93-9.2, who has provided notice of an intent to sell, may proceed with the sale if no eligible entity as outlined in (a) through (d) above exercises its option to purchase within ninety (90) days. The sales shall be in accordance with the requirements of N.J.A.C. 5:93-9.8.

(3) Affordable housing price increase.

- (a) The price of an owner-occupied housing unit and the rents of affordable housing units may increase annually on January 1 of the current year based upon the percentage increase in the regional median income limit for each Housing Region as determined by the Council on Affordable Housing. In no event shall the maximum resale price established by the affordable housing program administrator be lower than the last recorded purchase price.**
- (b) With the exception of rental units constructed pursuant to low income tax credit regulations, the rent of a low or moderate income housing unit may be increased annually based on the percentage increase in the Housing Consumer Price Index for the United States. This increase shall not exceed nine percent (9%) in any one (1) year. Rents for units constructed pursuant to low income tax credit regulations shall be indexed pursuant to the regulations governing low income tax credits.**

- (4) Eligible capital improvements. Owners of single family, owner-occupied housing may apply to the agency for permission to increase the maximum selling price of the unit for an eligible capital improvement. Only capital improvements which will render the housing unit suitable for a larger household shall be eligible. In no event shall the maximum selling price exceed the income limits of the larger household. Property owners shall apply to the affordable housing program administrator if such an increase in the maximum sales price is sought.**

- (5) **Effect of foreclosure on resale.** A judgment of foreclosure or a deed in lieu of foreclosure by a financial institution regulated by State and/or Federal law or to a lender on the secondary mortgage market shall remove the restrictions required for this Article. The affordable housing program administrator shall be notified of any foreclosure proceedings and the Township may, upon such notification, purchase the affordable housing or pass the option to the Department of Community Affairs, the New Jersey Housing Mortgage Finance Agency, or a designated non-profit entity to purchase the unit at the maximum selling price and maintain it as an affordable unit.
- F. *Affirmative Marketing.* The developer of an inclusionary development shall submit, for approval by the affordable housing program administrator, a program for the affirmative marketing, screening, and selection of occupants of the low and moderate income units. This plan shall conform to the requirements of N.J.A.C. 5:93-11.