

**ADOPTED ORDINANCE O-26-04  
TOWNSHIP OF MONTCLAIR**

**AN ORDINANCE TO AMEND CHAPTER 65. AFFORDABLE HOUSING OF THE CODE  
OF THE TOWNSHIP OF MONTCLAIR, NEW JERSEY**

February 10, 2026 (date of introduction)  
February 24, 2026 (date of public hearing)  
March 12, 2026 (date of second public hearing)

**WHEREAS**, pursuant to N.J.S.A. 52:27D-313(a), the Township Council of the Township of Montclair petitioned the Affordable Housing Dispute Resolution Program (“Program”) to review and approve its Fourth Round Housing Element and Fair Share Plan by and through a Complaint for Declaratory Judgment, Docket No. ESX-L-000297-25; and

**WHEREAS**, the Township of Montclair Planning Board has adopted a HEFSP pursuant to the Municipal Land Use Law at N.J.S.A. 40:55D-1, et seq. and the Fair Share Plan describes the ways the municipality shall address its fair share of very low-, low- and moderate-income housing as approved by the Superior Court and documented in the Housing Element; and

**WHEREAS**, the Township of Montclair’s Fourth Round Housing Element and Fair Share Plan promotes an affordable housing program pursuant to P.L. 2024, c.2, which amended the Fair Housing Act (N.J.S.A. 52:27D-301, *et. seq.*); and

**WHEREAS**, Chapter 65 Affordable Housing of the Montclair Code must be amended to implements and incorporates the relevant provisions of the HEFSP and addresses the requirements of P.L 2024, Chapter 2, the FHA, N.J.A.C. 5:99, NJ Supreme Court upheld COAH regulations at N.J.A.C. 5:93 and 5:97, and UHAC at N.J.A.C. 5:80-26.1, as may be amended and supplemented;

**NOW, THEREFORE BE IT ORDAINED** by the Mayor and Council of the Township of Montclair, in the County of Essex, State of New Jersey that it hereby amends Chapter 65 of the Montclair Code as follows:

**Chapter 65. Affordable Housing.**

**§ 65-1. Purpose; applicability; reports.**

- A. This chapter is intended to assure that low-income and moderate-income units are created with controls on affordability over time and that low- and moderate-income households shall occupy these units. This chapter shall apply except where inconsistent with applicable law.
- B. The Montclair Planning Board has adopted a Housing Element and Fair Share Plan pursuant to the Municipal Land Use Law at N.J.S.A. 40:55D-1 et seq. The Fair Share Plan has been endorsed by the governing body. The Fair Share Plan describes the ways Montclair shall address its fair share for low- and moderate-income housing documented in the Housing Element.
- C. This chapter implements and incorporates the Fair Share Plan and addresses the requirements of N.J.A.C. 5:97, as may be amended and supplemented.

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**§ 65-2. Definitions.**

The following terms, when used in this chapter, shall have the meanings given in this section:

**ACCESSORY DWELLING UNIT** – A residential dwelling unit that provides complete independent living facilities with a private entrance for one or more persons, consisting of provisions for living, sleeping, eating, sanitation and cooking, including a stove and refrigerator, and is located within a proposed or existing primary dwelling, within an existing or proposed structure that is an accessory to a dwelling on the same lot, constructed in whole or part as an extension to a proposed or existing primary dwelling, or constructed as a separate detached structure on the same lot as the existing or proposed primary dwelling.

**ACT** — The Fair Housing Act N.J.S.A. 52:27D-301 et seq.

**ADAPTABLE** — Constructed in compliance with the technical design standards of the Barrier Free Subcode adopted by the Commissioner of Community Affairs pursuant to the “State Uniform Construction Code Act,” P.L. 1975, c.17 (C.52:27D-119 et seq.) and in accordance with the provisions of section 5 of P.L. 2005, c. 350 **C. 52:27D-123b(5)**.

**ADMINISTRATIVE AGENT** — The individual or entity responsible for administering the affordability controls with respect to restricted units as designated pursuant to **N.J.S.A. 52:27D-321**, N.J.A.C 5:80-26.15 and 5:99-7.

**AFFIRMATIVE MARKETING** — 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 ASSISTANCE** - The use of funds to render housing units more affordable to low- and moderate-income households and includes, but is not limited to, down payment assistance, security deposit assistance, low interest loans, rental assistance, assistance with homeowner’s association or condominium fees and special assessments, common maintenance expenses, and assistance with emergency repairs and rehabilitation to bring deed-restricted units up to code, pursuant to N.J.A.C. 5:99-2.5.

**AFFORDABILITY AVERAGE** — An average of the percentage of regional median income at which restricted units in an affordable development are affordable to low- and moderate-income households.

**AFFORDABLE** — In the case of an ownership unit, that the sales price for the unit conforms to the standards set forth at N.J.A.C. 5:80-26.7 and, in the case of a rental unit, that the rent for the unit conforms to the standards set forth at N.J.A.C. 5:80-26.13.

**AFFORDABLE DEVELOPMENT** — A housing development, all or a portion of which consists of restricted units.

**AFFORDABLE HOUSING DELIVERY MECHANISMS** - Any of the methods of creating or preserving actual housing units available to low- and moderate-income households or creating a realistic opportunity for the construction of such units, as permitted by the Act.

**AFFORDABLE HOUSING DEVELOPMENT** — 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)** — Any mechanism in a municipal Fair Share Plan prepared or implemented to address a municipality's fair share obligation.

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**AFFORDABLE HOUSING DISPUTE RESOLUTION PROGRAM** – Also referred to as “The Program” refers to the dispute resolution program established pursuant to N.J.S.A. 52:27D-313.2.

**AFFORDABLE HOUSING MONITORING SYSTEM (AHMS)** - The NJ Department of Community Affairs’s cloud-based software application, which shall be the central repository for municipalities to use for reporting detailed information regarding affordable housing developments, affordable housing unit completions, and the collection and expenditures of funds deposited into the municipal affordable housing trust fund

**AFFORDABLE UNIT** — A housing unit proposed or created pursuant to the Act, including units created using municipal affordable housing trust funds.

**AGE-RESTRICTED UNIT** — A housing unit designed to meet the needs of, and intended exclusively for, the residents of an age-restricted segment of the population where the adult member of the family who is the head of the household for the purposes of determining income eligibility and rent is a minimum age of either 62 years, or 55 years and meets the provisions of 42 U.S.C. §§ 3601 through 3619, except that due to death, a surviving spouse of less than 55 years of age is permitted to continue to reside in the unit.

**AGENCY** — The New Jersey Housing and Mortgage Finance Agency established by P.L. 1983, c. 530 (N.J.S.A. 55:14K-1 et seq.).

**ASSISTED LIVING RESIDENCE** — A facility licensed by the New Jersey Department of Health 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.

**BARRIER-FREE ESCROW** - The holding of funds collected to adapt affordable unit entrances to be accessible in accordance with N.J.S.A. 52:27D-311a et seq. Such funds shall be held in a municipal affordable housing trust fund pursuant to N.J.A.C. 5:99-2.6.

**CERTIFIED HOUSEHOLD** — A household that has been certified by an administrative agent as a low- income household or moderate-income household.

**CHOICE** - The no-longer-active Choices in Homeownership Incentives for Everyone Program, as it was authorized by the Agency.

**CONSTRUCTION** - New construction and additions, but does not include alterations, reconstruction, renovations, conversion, relocation, or repairs, as those terms are defined in the State Uniform Construction Code promulgated pursuant to the State Uniform Construction Code Act, P.L. 1975, c. 217 (N.J.S.A. 52:27D-119 et seq.).

**CONTINUUM OF CARE OR COC** – One of the 16 local planning bodies in New Jersey that coordinate service providers and others interested parties to prevent and end homelessness, as authorized by subtitle C of Title IV of the McKinney-Vento Homeless Assistance Act of 1987, 42 U.S.C. §§ 11431 through 11435.

**DCA** — The State of New Jersey Department of Community Affairs.

**DEFICIENT HOUSING UNIT** — A housing unit that is (1) over fifty years old and overcrowded; (2) lacks complete plumbing; or (3) lacks complete kitchen facilities.

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**DEVELOPER** — 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** — 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.

**EMERGENT OPPORTUNITY** - A circumstance that has arisen whereby affordable housing will be able to be produced through a delivery mechanism not originally contemplated by or included in a fair share plan that has been the subject of a compliance certification.

**EXTENSION OF EXPIRING CONTROLS** - Extending the deed restriction period on units where the controls will expire in the current round of a housing obligation, so that the total years of a deed restriction is at least 60 years.

**FAIR SHARE PLAN** - The plan or proposal, adopted with accompanying ordinances and resolutions, pursuant to subsection f. of section 3 at P.L. 2024, c. 2 (N.J.S.A. 52:27D-304.1) by which Montclair Township proposes to satisfy its obligation to create a realistic opportunity to meet its fair share of low- and moderate-income housing needs of its region and which details the affirmative measures the Township proposes to undertake to achieve its fair share of low- and moderate-income housing, as provided in the Montclair Housing Element, and addresses the development regulations necessary to implement the Housing Element, including, but not limited to, inclusionary requirements and development fees, and the elimination of unnecessary housing cost- generating features from the municipal land use ordinances and regulations.

**HOUSEHOLD INCOME** – A household’s gross annual income calculated in a manner consistent with the determination of annual income pursuant to Section 8 of the United States Housing Act of 1937 (Section 8), not in accordance with the determination of gross income for Federal income tax liability.

**HOUSING ELEMENT** - The portion of a Montclair’s Master Plan adopted in accordance with the Municipal Land Use Law (MLUL) at N.J.S.A. 40:55D-28.b(3) and the Act consisting of reports, statements, proposals, maps, diagrams, and text designed to meet the Township’s fair share of its region’s present and prospective housing needs, particularly with regard to low- and moderate-income housing, which shall include the municipal present and prospective obligation for affordable housing, determined pursuant to subsection f. at N.J.S.A. 52:27D-304.1.

**HOUSING PROJECT** - A project, or distinct portion of a project, which is designed and intended to provide decent, safe, and sanitary dwellings, apartments, or other living accommodations for persons of low- and moderate-income; such work or undertaking may include buildings, land, equipment, facilities, and other real or personal property for necessary, convenient, or desirable appurtenances, streets, sewers, water service, parks, site preparation, gardening, administrative, community, health, recreational, educational, welfare, or other purposes. The term “housing project” may also be applied to the planning of the buildings and improvements, the acquisition of property, the demolition of existing structures, the construction, reconstruction, alteration, and repair of the improvements, and all other work in connection therewith.

**LIHTC**- The Low-Income Housing Tax Credit (LIHTC) program established by the federal

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government through the Tax Reform Act of 1986 to create affordable housing.

**LOW-INCOME HOUSEHOLD** — A household with a total gross annual household income equal to 50% or less of the regional median household income.

**LOW-INCOME HOUSING** — Housing affordable according to the Federal Department of Housing and Urban Development or other recognized standards for home ownership and rental costs and occupied or reserved for occupancy by households with a gross household income equal to 50 percent or less of the median gross household income for households of the same size within the housing region in which the housing is located.

**MAJOR SYSTEM** — 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** — Housing not restricted to low- and moderate-income households that may sell or rent at any price.

**MEDIAN INCOME** — The median income by household size for the applicable county, as determined by applicable state and/or federal agencies.

**MODERATE-INCOME HOUSEHOLD** — A household with a total gross annual household income in excess of 50% but less than 80% of the regional median household income.

**MODERATE-INCOME HOUSING** — Housing affordable according to the Federal Department of Housing and Urban Development or other recognized standards for home ownership and rental costs and occupied or reserved for occupancy by households with a gross household income equal to more than 50 percent but less than 80 percent of the median gross household income for households of the same size within the housing region in which the housing is located.

**MONI** - The no-longer-active Market Oriented Neighborhood Investment Program, as it was authorized by the Agency.

**MUNICIPAL HOUSING LIAISON (MHL)** - An appointed municipal employee who is responsible for oversight and/or administration of the affordable housing units created within the municipality and oversight of the authorization of individuals being provided access to the AHMS.

**MUNICIPALITY** – The Township of Montclair.

**NEW JERSEY HOUSING RESOURCE CENTER** – The online affordable housing listing portal, or its successor, overseen by the Agency pursuant to N.J.S.A. 52:27D-321.3 et seq.

**NONEXEMPT SALE** — Any sale or transfer of ownership other than the transfer of ownership between husband and wife; the transfer of ownership between former spouses ordered as a result of a judicial decree of divorce or judicial separation, but not including sales to third parties; the transfer of ownership between family members as a result of inheritance; the transfer of ownership through an executor's deed to a Class A beneficiary; and the transfer of ownership by court order.

**NONPROFIT** – An organization granted nonprofit status in accordance with section 501(c)(3) of the Internal Revenue Code.

**RANDOM SELECTION PROCESS** — A lottery process by which currently income-eligible applicant households are selected, at random, for placement in affordable housing units such that no preference is given to one applicant over another except in the case of a veteran's preference where

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such an agreement exists; for purposes of matching household income and size with an appropriately priced and sized affordable unit ; or another purpose allowed pursuant to N.J.A.C. 5:80-26.7(k)3.

**RECONSTRUCTION** - Any project where the extent and nature of the work is such that the work area cannot be occupied while the work is in progress and where a new certificate of occupancy is required before the work area can be reoccupied, pursuant to the Rehabilitation Subcode of the Uniform Construction Code, N.J.A.C. 5:23-6. Reconstruction shall not include projects comprised only of floor finish replacement, painting or wallpapering, or the replacement of equipment or furnishings. Asbestos hazard abatement and lead hazard abatement projects shall not be classified as reconstruction solely because occupancy of the work area is not permitted.

**REHABILITATION** — The repair, renovation, alteration or reconstruction of any building or structure, pursuant to the Rehabilitation Subcode, N.J.A.C. 5:23-6.

**RENT** — 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** — 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.

**TOWNSHIP** – The Township of Montclair.

**TRANSITIONAL HOUSING** – Temporary housing that: includes, but is not limited to, single-room occupancy or shared living and supportive housing arrangements; provides access to on-site or off-site supportive services for very low-income households who have recently been homeless or lack stable housing; is licensed by the Department of Community Affairs; and allows households to remain for a minimum of six months.

**UHAC** — The Uniform Housing Affordability Controls set forth in N.J.A.C. 5:80-26.1 et seq.

**UHORP** - The Agency's Urban Homeownership Recovery Program, as it was authorized by the Agency Board.

**VERY-LOW-INCOME HOUSEHOLD** — A household with a total gross annual household income equal to 30% or less of the regional median household income.

**VERY-LOW-INCOME UNIT** — A restricted unit that is affordable to a very-low-income household.

**VETERAN' PREFERENCE** – The agreement between a municipality and a developer or residential development owner that allows for low- to moderate-income veterans to be given preference for up to 50 percent of rental units in relevant projects, as provided for at N.J.S.A. 52:27D-311.j.

**WEATHERIZATION** — 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 replacement doors, and is considered a major system for rehabilitation.

**§ 65-3. Programs.**

The Township of Montclair has determined that it will use the following mechanisms to satisfy its

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affordable housing obligations and to provide realistic housing opportunities for Township and Board of Education employees and for Township residents seeking to reside or continue to reside in Montclair:

A. A rehabilitation program.

- (1) Montclair's rehabilitation program shall be designed to renovate deficient housing units occupied by low- and moderate-income households such that, after rehabilitation, these units will comply with the New Jersey State Housing Code pursuant to N.J.A.C. 5:28.
- (2) Both owner-occupied and renter-occupied units shall be eligible for rehabilitation funds.
- (3) All rehabilitated units shall remain affordable to low- and moderate-income households for a period of 10 years (the control period). For owner-occupied units, the control period will be enforced with a lien, and for renter-occupied units, the control period will be enforced with a deed restriction.
- (4) The Township of Montclair shall dedicate a minimum of \$10,000 and a maximum of \$35,000 for each single-family owner-occupied unit and \$25,000 for each multi-family unit to be rehabilitated through this program, reflecting the minimum hard and soft cost of rehabilitation for each unit. [Amended 6-12-2018 by Ord. No. O-18-031]
- (5) The Township of Montclair shall adopt a resolution committing to fund any shortfall in the rehabilitation programs for the Township of Montclair.
- (6) The Township of Montclair shall designate one or more administrative agents to administer the rehabilitation program in accordance with N.J.A.C. 5:96 and N.J.A.C. 5:97. The administrative agent(s) shall provide a rehabilitation manual for the owner-occupancy rehabilitation program and a rehabilitation manual for the rental-occupancy rehabilitation program to be adopted by resolution of the governing body. Both rehabilitation manuals shall be available for public inspection in the office of the Municipal Clerk and in the office(s) of the administrative agent(s).
- (7) Units in a rehabilitation program shall be exempt from N.J.A.C. 5:97-9 and Uniform Housing Affordability Controls (UHAC), but shall be administered in accordance with the following:
  - (a) If a unit is vacant, upon initial rental subsequent to rehabilitation, or if a renter-occupied unit is rerented prior to the end of controls on affordability, the deed restriction shall require the unit to be rented to a low- or moderate-income household at an affordable rent and affirmatively marketed pursuant to N.J.A.C. 5:97-9 and UHAC.
  - (b) If a unit is renter-occupied, upon completion of the rehabilitation, the maximum rate of rent shall be the lesser of the current rent or the maximum permitted rent pursuant to N.J.A.C. 5:97-9 and UHAC.
  - (c) Rents in rehabilitated units may increase annually based on the standards in N.J.A.C. 5:97-9.
  - (d) Applicant and/or tenant households shall be certified as income-eligible in accordance

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with N.J.A.C. 5:97-9 and UHAC, except that households in owner-occupied units shall be exempt from the regional asset limit.

B. Essex County Rehabilitation Program (Housing Improvement Program known as "HIP"). The County's HIP has been operational for many years. It is funded through the federal Community Development Block Grant Program. It provides deferred loans to income-qualifying homeowners who occupy a one- to three-family home. A lien will be recorded against the property. Homeowners who occupy a one- to three-family home must meet income guidelines. Examples of eligible improvements include heating systems, roofing, plumbing, electrical and code violation abatement. Information on the HIP may be obtained by contacting the County's Division of Housing and Community Development, 20 Crestmont Road, Verona, NJ 07044; 973-655-0200.

C. A market-to-affordable program.

(1) A market-to-affordable program is established to permit the purchase or subsidization of units through a written agreement with the property owner and sold or rented to low- and moderate- income households. Subject to the provisions of Subsection C(2)(c) below, the market-to- affordable programs may produce both low- and moderate-income units.

(2) The following provisions shall apply to market-to-affordable programs:

(a) At the time they are offered for sale or rental, eligible units may be new, preowned or vacant.

(b) The units shall be certified to be in sound condition as a result of an inspection performed by a licensed building inspector.

(c) The municipality will provide a minimum of \$50,000 per unit to subsidize each moderate- income unit and/or \$75,000 per unit to subsidize each low-income unit, with additional subsidy depending on the market prices or rents in a municipality.

(d) .

(3) The units shall comply with N.J.A.C. 5:97-9 and UHAC with the following exceptions:

(a) Bedroom distribution [N.J.A.C. 5:80-26.3(b) and (c)];

(b) Low-/moderate-income split [N.J.A.C. 5:80-26.3(a)]; and

(c) Affordability average [N.J.A.C. 5:80-26.3(d) and (e)]; however:

[1] The maximum rent for a moderate-income unit shall be affordable to households earning no more than 60% of median income, and the maximum rent for a low-income unit shall be affordable to households earning no more than 44% of median income; and

[2] The maximum sales price for a moderate-income unit shall be affordable to households earning no more than 70% of median income, and the maximum sales price for a low-income unit shall be affordable to households earning no more than 40% of median income.

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- D. Down payment assistance program. The following procedure is to be employed in connection with requests for down payment assistance to qualified affordable housing buyers who lack sufficient funds for the necessary down payment to purchase an affordable housing unit. The down payment assistance shall be in the form of a grant. [Amended 8-7-2018 by Ord. No. O-18-037]
- (1) Applications for down payment assistance shall be made by a qualified affordable housing buyer to the Department of Planning and Community Development on the application form provided by said office. Said application shall be approved by resolution by the Township Council upon referral from the Department of Planning and Community Development, provided that the application satisfies the requirements set forth herein, and subject to the availability of funds in the Affordable Housing Trust Fund.
  - (2) The maximum amount of the down payment assistance grant to an applicant shall be \$2,500.
  - (3) The down payment assistance program will be funded through the Affordable Housing Trust Fund. All grants will be released at closing.
  - (4) The terms of the grant shall require that the full amount of the grant be repaid to the Township in the event that the property is sold within 10 years of the closing. In the event that the sale price is less than the grantee's purchase price, the amount of the repayment shall be reduced by the difference between the purchase and sale prices.
- E. Voluntary extension of affordability controls program.
- (1) Montclair's voluntary extension of affordability controls is designed to maintain the Township's supply of housing affordable to low- and moderate-income households by extending the term of the affordability controls on existing affordable units.
  - (2) Eligible participants must be owners of a dwelling unit in Montclair Township that has a low- and moderate-income deed restriction that has expired or is scheduled to expire within two years of the application for an extension of the affordability control.
  - (3) Applications by eligible participants shall be made to the Department of Planning and Community Development on the application form provided by said office. Said application shall be approved by resolution by the Township Council upon referral from the Department of Planning and Community Development, provided that the application satisfies the requirements set forth herein, and subject to the availability of funds in the Affordable Housing Trust Fund.
  - (4) Occupants of the deed-restricted unit must meet the current income requirements for a low- and moderate-income household.
  - (5) The Township of Montclair will provide funds as indicated in § 65-11H for owner-occupied units and §65-15H for renter occupied units.
  - (6) The term for the extended deed restrictions must meet the requirements of §65-11A for owner-occupied units and §65-15A for renter-occupied units.

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- F. Resident retention and Township/Board of Education employee housing initiative program.
  - (1) The Township of Montclair will encourage and support the creation of housing opportunities affordable to Township residents desiring to continue living in Montclair and for Township and Board of Education employees seeking to live in Montclair.
  - (2) The Township may develop project-based programs and criteria to accomplish these ends.
- G. Rental Assistance Program. [Added 10-27-2020 by Ord. No. O-20-21]
  - (1) The Montclair Township Rental Assistance Program is designed to help very-low- and low- income households to find a home in Montclair. This program will provide a grant to renters of deed-restricted affordable properties within Montclair Township to be used to pay for up to the first three months' rent or \$2,500, whichever is greater. The goal of the program is to provide financial assistance to very-low- and low-income tenants of affordable housing to alleviate financial hardship associated with moving to a new rental unit. Funds are made available through the Affordable Housing Trust Fund of Montclair Township. [Amended 5-4-2021 by Ord. No. O-21-08]
  - (2) Applicants for this grant program must be income-qualified as a very-low-income or low-income household by the Administrative Agent for Montclair Township and must have a lease to rent a deed-restricted apartment in Montclair. [Amended 5-4-2021 by Ord. No. O-21-08]
  - (3) Properties must be a rental property within Montclair Township with deed restrictions limiting ownership to eligible low- and moderate-income families. The rent of the apartment will be limited by the deed restriction to be affordable to a very-low-income household.
  - (4) Upon certification of the qualifications of the unit and prospective tenant household by the Administrative Agent, the Municipal Housing Liaison will request authorization to disburse the funds.

**§ 65-4. Municipal Housing Liaison**

A. Municipal Housing Liaison. The position of Municipal Housing Liaison (MHL) for Montclair is established by this chapter. The Township Council shall make the actual appointment of the MHL by resolution. The MHL must be either a full-time or part-time employee of Montclair.

- (1) The MHL shall be responsible for oversight and coordination of all the activities of the Township as it relates to the creation, preservation, and administration of affordable housing programs, affordable units, and reporting. Pursuant to N.J.A.C. 5:99-6.2, such oversight activities include ensuring that administrative agents execute the practices, procedures and standards set forth in this chapter.
- B. As part of a municipality's ongoing compliance with the Act, the municipality, through the Municipal Housing Liaison, shall:

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- (1) Provide to the administrative agent the name, title, email address, and telephone number of the Municipal Housing Liaison who will be responsible for oversight of the administrative agent on all matters related to this subchapter;
- (2) If necessary, retain or otherwise designate legal counsel for the purposes of representing any municipal entity acting as administrative agent and of enforcing the controls set forth in this subchapter;
- (3) Ensure that applicable local ordinances are not in conflict with, and enable efficient implementation, of this subchapter.
- (4) Ensure that all restricted units are identified as affordable within the tax assessor's office and any municipal utility authority (MUA). The Township and MUA shall promptly notify the administrative agent of a change in billing address, payment delinquency of two consecutive billing cycles, transfer of title, or institution of a foreclosure action, foreclosure judgment, or deed in lieu of foreclosure as to all affordable units;
- (5) Work with the administrative agent to ensure that affordable housing opportunities are posted to the New Jersey Housing Resource Center pursuant to N.J.S.A. 52:27D-321.3 through 321.6, including, if necessary, levying fines through the process outlined at N.J.A.C. 5:99-5.6(c)4;
- (6) Maintain a list of all affordable units within its jurisdiction, including the date of deed restriction expiration, income limits, and the administrative agent for each unit;
- (7) Report the information at B(6) above to the Division each year; and
- (8) Publish on the Township's website the affordable housing operating manual(s) required pursuant to N.J.A.C. 5:99-7.2, the affirmative marketing plan required pursuant to N.J.A.C. 5:80-26.16, and contact information for the administrative agent for each project within the Township's jurisdiction with an affordable housing component for which affirmative marketing is required.

**§65-4.1 Administrative Agent**

- A. The Township of Montclair shall designate or approve, for each project or program within its Fair Share Plan, an administrative agent to administer the affordable housing program and/or affordable units in accordance with the requirements of the Act, the Dispute Resolution Program, and N.J.A.C. 5:99-7.
  
- B. The administrative agent shall administer and enforce the affordability controls set forth in this subchapter, which actions are reviewable by the Municipal Housing Liaison pursuant to N.J.S.A. 52:27D-321. The primary responsibility of the administrative agent is to ensure that the restricted units under administration are sold or rented, as applicable, only to very-low-, low-, and moderate-income households. The administrative agent shall also fulfill the requirements and responsibilities identified at N.J.A.C. 5:99-7.
  - (1) Pursuant to N.J.A.C. 5:99-7.2, the administrative agent shall have the authority to discharge and release any or all instruments, as set forth at N.J.A.C. 5:80-26 appendices, filed of

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record to establish affordability controls.

- (2) In order to ensure the orderly transfer of control responsibility from a municipality to an administrative agent, from one administrative agent to another administrative agent, or other transfer, the procedures for changing administrative agents as outlined at N.J.A.C. 5:99-7.4 must be followed.
- C. The administrative agent's enforcement responsibility for implementing such practices and procedures may not be delegated or otherwise transferred to any other party, except to a successor administrative agent. Anything in this subchapter to the contrary notwithstanding, the Agency and DCA each may, in its discretion, contract with for-profit and nonprofit organizations to carry out delegated administrative agent functions, provided, however, that in any such case the Agency or DCA shall maintain primary responsibility for the delegated functions.
- D. In addition to those listed at N.J.A.C. 5:99-7.2, administrative agent practices and procedures include, but are not limited to, the following:
- (1) Securing from all developers and sponsors of restricted units, at the earliest point of contact in the processing of the project or development, written acknowledgement of the requirement that no restricted unit be offered, or in any other way committed, to any person other than a household duly certified to the unit by the administrative agent;
  - (2) Requiring that all certified applicants for restricted units execute a certificate substantially in the form, as applicable, of either the ownership or rental certificate set forth at N.J.A.C. 5:80-26 Appendix D-3, J, or K;
  - (3) Working with the MHL to ensure that affordable housing opportunities are posted to the New Jersey Housing Resource Center pursuant to N.J.S.A. 52:27D-321.3 through 321.6, including, if necessary, levying fines for noncompliance and requiring new lotteries;
  - (4) Sending annual mailings to all owners of affordable dwelling units, reminding them of the following requirements:
    - (a) If the unit is owner-occupied, that the unit may be resold only to a household that has been approved in advance and in writing by the administrative agent;
    - (b) That no sale of the unit will be lawful, unless approved in advance and in writing by the administrative agent, and that no sale may be for a consideration greater than the maximum permitted resale price, as determined by the administrative agent;
    - (c) That no refinancing, equity loan, secured letter of credit, or any other mortgage obligation or debt secured by the unit may be incurred except as approved in advance, in writing, by the administrative agent, and that at no time will the administrative agent approve any debt that would make the total of all such debt exceed 95 percent of the then-applicable maximum permitted resale price;
    - (d) That the owner of the unit shall at all times maintain the unit as their principal place of residence, which is defined as residing in the unit at least 260 days out of each calendar year;

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- (e) That, except as set forth at D(4)(h) below, at no time may the owner of the unit lease or rent the unit to any person or persons, except on a short-term hardship basis, as approved in advance, in writing, by the administrative agent;
  - (f) That the maximum permitted rent chargeable to affordable tenants must be mailed to tenants in accordance with E(1) below;
  - (g) Copies of all leases or lease renewal agreements for affordable rental units must be submitted annually to the administrative agent;
  - (h) If the affordable unit is a two-family home, that the owner may lease the rental unit only to certified households approved, in writing, by the administrative agent, may charge rent no greater than the maximum permitted rent as determined by the administrative agent, and shall submit for written approval of the administrative agent copies of all proposed leases prior to having them signed by any prospective tenant; and
  - (i) That no improvements may be made to any unit that would affect its bedroom configuration, except as provided at N.J.A.C. 5:80-26.10(a) and in any event, that no improvement made to the unit will be taken into consideration to increase the maximum permitted resale price, except for improvements approved in advance, in writing, by the administrative agent;
- (5) Securing from **the Township** lists of all affordable housing units for which tax bills are mailed to absentee owners, and notifying all such owners that they must either move back into or sell their unit;
- (6) Establishing a program for diverting unlawful rent payments to the Township's affordable housing trust fund or other appropriate municipal fund approved by the Department. For purposes of this subsection, unlawful rent payments means:
- (a) All rent monies paid by a person who has not been duly certified in accordance with the provisions at N.J.A.C. 5:80-26.17;
  - (b) All rent paid by a person or persons renting an ownership unit from an owner who has moved out of their unit illegally;
  - (c) Rent paid by a lawful tenant in excess of amounts permitted by law; and
  - (d) Rent paid to an affordable unit owner who is claiming a hardship, when the owner has not received prior authorization from the administrative agent as provided for at N.J.A.C. 5:80-26.8(a); and
- (7) Establishing a rent-to-equity program, to be implemented in situations where an affordable unit owner has unlawfully rented their unit, and where the tenant has entered into a tenancy without knowledge of its unlawful nature. Under such a rent-to-equity program, the tenant, including the immediate family of the tenant, shall be given an opportunity to purchase the unit from the affordable unit owner, and the affordable unit owner shall be compelled to sell the unit to the tenant, with the total of all rent paid to the owner being credited to the

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tenant as down payment money paid to the affordable unit owner. Anything in this subchapter to the contrary, notwithstanding, any person offered a unit under such a rent-to-equity program must first be certified as eligible pursuant to N.J.A.C. 5:80-26.17.

**§ 65-4.2 Other Administrative Functions**

A. The owner of a development containing affordable rental units subject to this subchapter or the assigned management company thereof shall:

- (1) Send to all current tenants in all restricted rental units an annual mailing containing a notice as to the maximum permitted rent and a reminder of the requirement that the unit must remain their principal place of residence, which is defined as residing in the unit at least 260 days out of each calendar year, together with the telephone number, mailing address, and email address of the administrative agent to whom complaints of excess rent can be issued; and
- (2) Promptly provide to the administrative agent, upon the latter of either final municipal land use approval or issuance of a grant contract by a governmental authority, as well as upon receipt of the certificate of occupancy:
  - (a) The total number of units in the project and the number of affordable units, broken down by bedroom count, identifying which are very-low-income, low-income, and moderate-income units, and including street addresses of affordable units;
  - (b) Floor plans of all affordable units, including complete and accurate identification of all rooms and the dimensions thereof;
  - (c) A project map identifying the location of affordable units and market-rate units;
  - (d) A list of project principals or partners, together with a list of all other affordable projects in which they have been involved over the previous five years;
  - (e) A projected construction schedule;
  - (f) Proposed pricing for all units, including any purchaser options and add-on items;
  - (g) A list of all public funding sources and copies of grant or loan agreements for those sources;
  - (h) Condominium or homeowner association fees and any other applicable fees;
  - (i) Estimated real property taxes for for-sale units;
  - (j) Sewer, water, trash disposal, and any other utility assessments;
  - (k) Flood insurance requirement, if applicable;
  - (l) A description of all HVAC systems;
  - (m) The location of any common areas and elevators;
  - (n) A proposed form of lease for any rental units;

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- (o) The name of the person who will be responsible for official contact with the administrative agent for the duration of the project, which must be updated if the contact changes; and
  - (p) The State-approved planned real estate development public offering statement and/or master deed, where applicable, as well as the full build-out budget.
- B. It is the responsibility of the Municipal Housing Liaison and the administrative agent(s) to ensure that affordable housing units are administered properly. All affordable units must be occupied within a reasonable amount of time and be re-leased within a reasonable amount of time upon the vacating of the unit by a tenant. If an administrative agent or Municipal Housing Liaison becomes aware of or suspects that a developer, landlord, or property manager has not complied with these regulations, it shall report this activity to the Division. The Division must notify the developer, landlord, or property manager, in writing, of any violation of these regulations and provide a 30-day cure period. If, after the 30-day cure period, the developer, landlord, or property manager remains in violation of any terms of this subchapter, including by keeping a unit vacant, the developer, landlord, or property manager may be fined up to the amount required to construct a comparable affordable unit of the same size and the deed-restricted control period will be extended for the length of the time the unit was out of compliance, in addition to the remedies provided for in this section. For the purposes of this subsection, a reasonable amount of time shall presumptively be 60 days, unless a longer period of time is required due to demonstrable market conditions and/or failure of the Municipal Housing Liaison or the administrative agent to refer a certified tenant.
- C. Banks and other lending institutions are prohibited from issuing any loan secured by owner-occupied real property subject to the affordability controls set forth in this subchapter if such loan would be in excess of amounts permitted by the restriction documents recorded in the deed or mortgage book in the county in which the property is located. Any loan issued in violation of this subsection is void as against public policy.
- D. The Agency and the Department hereby reserve, for themselves and for each administrative agent appointed pursuant to this subchapter, all of the rights and remedies available at law and in equity for the enforcement of this subchapter, including, but not limited to, fines, evictions, and foreclosures as approved by a county-level housing judge.
- E. Appeals from all decisions of an administrative agent appointed pursuant to this subchapter must be filed, in writing, with the Municipal Housing Liaison for the jurisdiction. A decision by the Municipal Housing Liaison may be appealed to the Division. A written decision of the Division Director upholding, modifying, or reversing an administrative agent's decision is a final administrative action.

**§65-5 Regional income limits.**

- A. Administrative agents shall use the regional income limits for the purpose of pricing affordable units and determining income eligibility of households.
- B. Regional income limits are based on regional median income, which is established by a

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regional weighted average of the "median family incomes" published by HUD. The procedure for computing the regional median income is:

- (1) For each county in the housing region, multiply HUD's determination of the county's "median family income" for a family of four by the Decennial Census's estimated number of households within the county;
  - (2) Add the resulting products for each county within the housing region, then divide the sum by the summed total estimated number of households in the housing region. Round the resulting quotient up to the nearest multiple of 100 to obtain the regional median income for a household of four; and
  - (3) To compute the regional median income for other household sizes, multiply the regional weighted average by the percentage adjustment factors used by HUD in the Section 8 program, then round each percentage-adjusted regional weighted average up to the nearest multiple of 100.
- C. To calculate the regional income limits, multiply the relevant percentage by the regional median income for the relevant household size. For example, the regional income limit for a four-person low-income household is equal to 50 percent of the regional median income for a four-person household, while the regional income limit for a one-person very-low-income household is equal to 30 percent of the regional median income for a one-person household.
- D. Updated regional income limits are effective as of the effective date of the regional Section 8 income limits for the year, as published by HUD, or 45 days after HUD publishes the regional Section 8 income limits for the year, whichever comes later. The new income limits may not be less than those of the previous year.

**§65-6 Affordability average; bedroom distribution**

- A. The provisions of this section do not apply to units created in **Rounds 1, 2 and 3** which are subject to the applicable grant of substantive certification, judgment of compliance, grant agreement, or other contract, or, if the units created in **Rounds 1, 2 and 3** are not subject to any grant of substantive certification, judgment of compliance, grant agreement, or other contract, are subject to the provisions at N.J.A.C. 5:80-26.3 that were in effect prior to December 20, 2024 (the effective date of the specially adopted amendments, as promulgated pursuant to P.L. 2024, c. 2 (N.J.S.A. 52:27D-304.1)).
- B. For the purposes of determining affordability averages and bedroom distributions:
- (1) Affordability averages and bedroom distributions for small developments, defined as any affordable development with four or fewer restricted units, may be calculated based on the aggregate of all the restricted units within small developments within the municipality. This aggregation affects only the calculations of affordability and bedroom counts for small developments and is not to be construed to require that the restricted units be developed or administered as one affordable development;
  - (2) Bedrooms may be counted as individual units if they are within restricted units that are group homes, other arrangements in which households live in distinct bedrooms and may

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share kitchen and plumbing facilities, central heat, and common areas, or provider-managed housing; and

~~(3) Unless stated otherwise, non-integer values calculated pursuant to this section are to be rounded up to the nearest whole number. However, non-integer values calculated pursuant to E(3), (4) or (5), or G(2), (3), or (5) below may be rounded down or up to the nearest whole number in either direction. For example, 33.1901 will typically be rounded up to 34, but may be rounded down to 33 or up to 34 if calculated pursuant to E(3), (4) or (5), or G(2), (3), or (5) below.~~

C. Developments approved as part of a compliance certification or that otherwise contain restricted units subject to the UHAC regulations shall satisfy the following rental affordability requirements, which municipalities shall also establish by ordinance that:

(1) The average rent for all restricted units within each affordable development is affordable to households earning no more than 52 percent of median income;

(2) The maximum rent for all restricted units within each affordable development is affordable to households earning no more than 60 percent of regional median income; however, the Township may permit a maximum rent affordable to households earning no more than 70 percent of regional median income for moderate-income units within affordable developments where very-low-income units compose at least 13 percent of the restricted units. In such developments, the number of units with rent affordable to households earning 70 percent of regional median income may not exceed the number of very-low-income units in excess of 13 percent of the restricted units ; and

(3) The developers and/or municipal sponsors of restricted rental units shall establish at least one rent for each bedroom count for very-low-income, low-income, and moderate-income units, provided that at least 13 percent of all restricted units within each municipality are affordable to and reserved for very-low-income households, with at least half of such units made available for very-low-income families with children. Nothing in this subsection precludes the Township from requiring affordable developments to have at least 13 percent of restricted units be affordable to and reserved for very-low-income households.

D. The maximum sale price of restricted ownership units within each affordable development must be affordable to households earning no more than 70 percent of regional median income. Each affordable development must achieve an affordability average of no more than 55 percent for restricted ownership units. In achieving this affordability average, units must be available for at least three different moderate-income prices within each bedroom count with moderate-income ownership units, and for at least two different low-income prices within each bedroom count with low-income ownership units.

E. Unless otherwise approved pursuant to L below, in each affordable development, restricted units that are not age-restricted or supportive housing must be structured in conjunction with realistic market demands such that:

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- (1) At a minimum, the number of bedrooms within the restricted units equals twice the number of restricted units;
  - (2) Two-bedroom and/or three-bedroom units compose at least 50 percent of all restricted units;
  - (3) No more than 20 percent of all restricted units, rounded up or down to the nearest whole number in either direction, are efficiency or one-bedroom units;
  - (4) At least 30 percent of all restricted units, rounded up or down to the nearest whole number in either direction, are two-bedroom units;
  - (5) At least 20 percent of all restricted units, rounded up or down to the nearest whole number in either direction, are three-bedroom units; and
  - (6) The remainder of the restricted units, if any, are allocated at the discretion of the developer in accordance with the municipality's housing element and fair share plan.
- F. Unless otherwise approved pursuant to L below, in each affordable development, restricted units that are age-restricted or supportive housing, except those supportive housing units whose sponsoring program determines the unit arrangement, must be structured, such that, at a minimum, the number of bedrooms within the restricted units equals the number of restricted units. For example, the standard may be met by creating a two-bedroom unit for each efficiency unit. In affordable developments with 20 or more restricted units that are age-restricted or supportive housing, two-bedroom units must compose at least five percent of those restricted units.
- G. Unless otherwise approved pursuant to L below, in each affordable development, the following income distribution requirements must be independently satisfied by the restricted units that are age-restricted, the restricted units that are supportive housing, and the restricted units that are neither age-restricted nor supportive housing, as well as by all of the restricted units in the development, considered in the aggregate:
- (1) At least 50 percent of all restricted units are low-income or very-low-income units;
  - (2) At least 50 percent of all restricted efficiency or one-bedroom units, rounded up or down to the nearest whole number in either direction, are low-income units or very-low-income units;
  - (3) At least 50 percent of all restricted two-bedroom units, rounded up or down to the nearest whole number in either direction, are low-income units or very-low-income units;
  - (4) At least 50 percent of all restricted three-bedroom units are low-income units or very-low-income units;
  - (5) At least 50 percent of all restricted units with four or more bedrooms, rounded up or down to the nearest whole number in either direction, are low-income units or very-low-income units; and
  - (6) Any very-low-income units are distributed between each bedroom count as proportionally as possible, to the nearest whole unit, to the total number of restricted units within each

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bedroom count. For example, if half of the restricted units are two-bedroom units, then half of the very-low-income units should be two-bedroom units.

- H. For the purposes of determining bonus credits pursuant to N.J.S.A. 52:27D-311.k(5), the minimum number of three-bedroom units required pursuant to this subchapter is determined by taking 20 percent of the total number of family housing units in the municipal fair share plan and housing element, not by summing up the three-bedroom-unit requirements calculated for each affordable development.
- I. In determining the initial rents and initial sale prices for compliance with the affordability average requirements for restricted units other than age-restricted units and assisted living facilities, the following standards apply:
- (1) An efficiency unit is affordable to a one-person household;
  - (2) A one-bedroom unit is affordable to a one-and-one-half-person household;
  - (3) A two-bedroom unit is affordable to a three-person household;
  - (4) A three-bedroom unit is affordable to a four-and-one-half-person household; and
  - (5) A four-bedroom unit is affordable to a six-person household.
- J. For age-restricted units and assisted living facilities, the following standards apply:
- (1) An efficiency unit is affordable to a one-person household;
  - (2) A one-bedroom unit is affordable to a one-and-one-half-person household;
  - (3) A two-bedroom unit is affordable to a two-person household or to two one-person households; and
  - (4) A three-bedroom unit is affordable to a two-and-one-half-person household.
- K. The provisions of this section, except for J above, do not apply to affordable developments financed pursuant to UHORP, MONI, or CHOICE or to assisted living residences, each of which must comply with applicable Agency rules.
- E. The requirements at E, F, and G above must be satisfied by all restricted units in the Township, considered in the aggregate. The individual requirements at E, F and G above may be waived or altered for a specific affordable development with written approval from the Division if such waiver or alteration would not result in a material deviation from the municipal housing element and fair share plan. Waivers approved by the Division must be published on a public webpage within 30 days of approval. Any waiver or alteration that would result in a material deviation from the municipal housing element and fair share plan must receive written approval from a county-level housing judge.

**§65-7 Occupancy standards**

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A. Prior round units whose siting and creation are consistent with a prior round development or zoning designation that received COAH or court approval on or before June 30, 2025, or the date that the Township adopts the implementing ordinances and resolutions for the fourth round of affordable housing obligations, whichever occurs sooner, are not subject to the requirements detailed in this subsection. Rather, those prior round units remain subject to the applicable grant of substantive certification, judgment of compliance, grant agreement, or other contract, or, if the prior round units are not subject to any grant of substantive certification, judgment of compliance, grant agreement, or other contract, remain subject to N.J.A.C. 5:80-26.3(f) as it was in effect prior to December 20, 2024. Developments approved as part of a compliance certification or that otherwise contain restricted units subject to the UHAC regulations shall satisfy the following occupancy standards:

(1) For any 100-percent affordable development comprising one or more restricted units:

- (a) Restricted units must meet the minimum square footage required for the number of inhabitants for which the unit is marketed and the minimum square footage required for each bedroom, as set forth in the Neighborhood Preservation Balanced Housing rules at N.J.A.C. 5:43-2.4;
- (b) Each bedroom in each restricted unit must have at least one window; and
- (c) Restricted units must include adequate air conditioning and heating;

(2) For developments comprising market-rate rental units and restricted rental units:

- (a) Restricted units must use the same building materials and architectural design elements (for example, plumbing, insulation, or siding) as market-rate units of the same unit type (for example, flat or townhome) within the same development, except that restricted units and market-rate units may use different interior finishes;
- (b) Restricted units and market-rate units within the same affordable development must be sited such that restricted units are not concentrated in less desirable locations;
- (c) Restricted units may not be physically clustered so as to segregate restricted and market-rate units within the same development or within the same building, but must be interspersed throughout the development, except that age-restricted and supportive housing units may be physically clustered if the clustering facilitates the provision of on-site medical services or on-site social services;
- (d) Residents of restricted units must be offered the same access to communal amenities as residents of market-rate units within the same affordable development. Examples of communal amenities include, but are not limited to, community pools, fitness and recreation centers, playgrounds, common rooms and outdoor spaces, and building entrances and exits;
- (e) Restricted units must include adequate air conditioning and heating and, if market-rate units provide cooling and heating, restricted units must use the same type of cooling and heating sources as market-rate units of the same unit type;
- (f) Each bedroom in each restricted unit must have at least one window;

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- (g) Restricted units must be of the same unit type as market-rate units within the same building; and
  - (h) Restricted units and bedrooms must be no less than 90 percent of the minimum size prescribed by the Neighborhood Preservation Balanced Housing rules at N.J.A.C. 5:43-2.4;
- (3) For developments containing for-sale units, including those with a mix of rental and for-sale units, A(2) above shall govern the rental units, while for-sale units shall adhere to the following:
- (a) Restricted units must use the same building standards as market-rate units of the same unit type (for example, flat, townhome, or single-family home), except that restricted units and market-rate units may use different interior finishes;
  - (b) Restricted units may be clustered, provided that the buildings or housing product types containing the restricted units are integrated throughout the development and are not concentrated in an undesirable location or in undesirable locations;
  - (c) Restricted units may be of different housing product types than market-rate units, provided that developments containing market-rate duplexes, townhomes, and/or single-family homes offer restricted housing options that also include duplexes, townhomes, and/or single-family homes;
  - (d) Restricted units must meet the minimum square footage required for the number of inhabitants for which the unit is marketed and the minimum square footage required for each bedroom, as set forth in the Neighborhood Preservation Balanced Housing rules at N.J.A.C. 5:43-2.4;
  - (e) Penthouse and end units may be reserved for market-rate sale, provided that the overall number, value, and distribution of affordable units across the development is not negatively impacted by such reservation(s);
  - (f) Residents of restricted units must be offered the same access to communal amenities as residents of market-rate units within the same affordable development. Examples of communal amenities include, but are not limited to, community pools, fitness and recreation centers, playgrounds, common rooms and outdoor spaces, and building entrances and exits;
  - (g) Each bedroom in each restricted unit must have at least one window; and
  - (h) Restricted units must include adequate air conditioning and heating;
- (4) If the affordable development is constructed in phases, than:
- (a) No more than 25 percent of the market-rate units plus one, may be completed prior to the completion of 10 percent of the restricted units;
  - (b) No more than 50 percent of the market-rate units may be completed prior to the completion of 50 percent of the restricted units;

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- (c) No more than 75 percent of the market-rate units may be completed prior to the completion of 75 percent of the restricted units; and
  - (d) No more than 90 percent of the market-rate units may be completed prior to the completion of all of the restricted units.
- (5) The individual requirements at A(1), (2), (3), and (4) above, except for A(4)(d) above, may be waived or altered with written approval from the Division if such waiver or alteration would not result in a material deviation from the municipal housing element and fair share plan. Waivers approved by the Division must be published on a public webpage within 30 days of approval. Any waiver or alteration that would result in a material deviation from the municipal housing element or fair share plan must receive written approval from a county-level housing judge.

**§ 65-8. (Reserved)**

**§ 65-9. Affirmative marketing requirements.**

- A. Montclair shall adopt by resolution an Affirmative Marketing Process, compliant with N.J.A.C. 5:80-26.15, as may be amended and supplemented.

The Affirmative Marketing Process is a 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, affection 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 Process is also intended to target those potentially eligible persons who are least likely to apply for affordable units in that region. Supportive housing units, including group homes, must comply with the affirmative marketing requirements of their respective sponsoring programs, where applicable. The Affirmative Marketing Plan shall include a local preference for all households that live in the Township of Montclair or are full-time employees of either the Township of Montclair or the Township of Montclair Board of Education.

- B. The administrative agent is responsible for the affirmative marketing of affordable units, including accepting applications and maintaining a list of applicants for each affordable development. The administrative agent shall document and report the affirmative marketing plan for the municipality and the affirmative marketing activities undertaken for each of the units within their purview to the Municipal Housing Liaison, who shall ensure that developers and administrative agents are marketing units in accordance with the provisions in this section.
- C. In accordance with N.J.A.C. 5:99-7, the Township may designate an experienced municipal staff person approved by the Division to be the administrative agent responsible for implementing the affirmative marketing plan. If the municipality does not designate a

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municipal staff person, it shall contract with other experienced administrative agent(s) approved by the Division to administer the affirmative marketing plan(s). The Township is ultimately responsible for the proper administration of the affirmative marketing program, including initial sales, rentals, resales, and re-rentals. The Township shall also ensure that all affordable unit, applicant, sales records, and other relevant files are returned to the municipality for reporting purposes and to aid with future resales.

- D. The affirmative marketing plan and all advertisements for the affordable units, must contain the following information:
- (1) The name and location of the housing project;
  - (2) An address sufficient to find directions to the housing units;
  - (3) A range of prices or rent for the affordable housing units;
  - (4) The sizes, as measured in number of bedrooms and square footage, of the affordable housing units;
  - (5) The types (that is, family, age-restricted, or supportive) and number of affordable units available;
  - (6) The number of units available to very-low-, low-, and moderate-income households within the pertinent eligible income ranges;
  - (7) The accessibility features, if any, of the affordable housing units;
  - (8) The maximum income permitted to qualify for the affordable housing units;
  - (9) The population(s), if any, given preference in the selection process pursuant to N.J.A.C. 5:80-26.17(k)2;
  - (10) Where applications (paper and online) for the affordable housing units may be found;
  - (11) The expected lease-up/closing date(s) for the affordable housing units;
  - (12) A description of the random selection process that will be used to select occupants of affordable housing units and the expected date of the random selection;
  - (13) The business hours when interested households may obtain paper applications for the affordable housing units;
  - (14) Contact information, including an email address and phone number that are regularly monitored by the administrative agent;
  - (15) The name of the sales agent and/or rental manager; and
  - (16) Application fees, if any.
- E. The affirmative marketing plan must identify specific strategies and mediums that will be used to advertise available housing units in the region in accordance with the goals and purposes

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stated at A above. The plan must include the following:

- (1) The names of specific radio stations, and television stations, and potential paid targeted digital advertising opportunities to be used throughout the housing region;
- (2) The names of specific newspapers and other publications circulated within the housing region, such as neighborhood-oriented weekly newspapers, religious publications, and organizational newsletters;
- (3) The physical characteristics of affordable units, including the unit type (that is, family, age-restricted, or supportive), bedroom counts, total square footage, and accessibility features.
- (4) The names of specific community and regional organizations that will aid in soliciting low- and moderate-income applicants. Such organizations may include nonprofit, religious, governmental, fraternal, civic, and other organizations;
- (5) The names of specific internet websites that operate as housing search websites and municipal and county websites where the affordable homes will be advertised;
- (6) The names of specific social media websites and platforms where advertisements will be posted or linked;
- (7) The locations of public transit stops in the housing region where flyers or other advertisements will be posted; and
- (8) Other advertising and outreach efforts to groups that are least likely to be reached. If the applicant demonstrates that other advertising and outreach efforts are substantially more effective in reaching the target population than any of the means enumerated at E(1) through (7) above, the Division may approve a plan that substitutes an equal number of those means.

F. In implementing the marketing program, the administrative agent shall:

- (1) Post a listing of the available affordable housing units to the New Jersey Housing Resource Center at least 60 days before the random selection process or within one day following the date the owner, developer, property manager, or other administrative entity provides information regarding the application process to prospective applicants or solicits any applications from potential applicants through any other means pursuant to N.J.S.A. 52:27D-321.6. It is the responsibility of the Municipal Housing Liaison, in coordination with the administrative agent(s), to ensure compliance with all provisions of N.J.S.A. 52:27D-321.3 through 321.6;
- (2) Within one business day of listing the affordable housing units on the New Jersey Housing Resource Center, notify the local Continuum of Care of any supportive housing rental units that are reserved for individuals and families that are homeless and of any permanent supportive housing rental units;
- (3) Publish at least one advertisement in a regional print or digital newspaper;
- (4) Advertise the units on at least one housing search website, in addition to the Housing Resource Center;

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- (5) Undertake at least two additional regional marketing strategies using the sources listed at E(1) through (8) above, with at least one non-digital strategy if the newspaper advertisement was in print, or with at least two non-digital strategies if the newspaper advertisement was digital; and
- (6) Designate an experienced staff person to provide counseling services to low- and moderate-income applicants on subjects such as budgeting, credit issues, mortgage qualification, rental lease requirements, and landlord/tenant law. Alternatively, the administrative agent or municipality may contract with a HUD-certified housing counselor or an otherwise experienced entity approved by the Division to provide such counseling services.
- G. The affirmative marketing process must begin at least four months prior to expected occupancy and may begin before construction commences. All affirmative marketing advertising and outreach activities employed pursuant to F above must be employed at the start of the marketing program. For for-sale units, affirmative marketing advertising and outreach activities must continue until all of the marketed units have been sold, except that paid advertising may cease when the number of applications received is at least three times the number of units to be sold. For rental units, affirmative marketing advertising and outreach activities must continue, as long as applications are being accepted, except that paid advertising may cease when the number of applications received is at least three times the number of units to be filled. Applications must be accepted for no less than 45 days following the initial advertisement on the New Jersey Housing Resource Center, except for the resale of for-sale units, in which case, applications must be accepted for no less than 30 days.
- H. No random selection may be conducted prior to 60 days following the initial advertisement on the New Jersey Housing Resource Center.
- I. Applications for affordable housing or notices thereof, if offered online, must be available in multiple locations, including, if they exist, the county administration building and the county library for each county within the housing region; the Montclair Township administration building and the Montclair Township library; and the developer's sales office. The Township shall post the application links and/or notices of affordable housing either directly on the home page of the Township's official website or on a landing page directly, clearly, and conspicuously linked to from the home page of the Township's official website. The developer shall mail applications to prospective applicants upon request and shall make applications available through a secure online website address.
- J. Affordable housing developers shall incur the cost of affirmative marketing and advertising for affordable units. All affordable housing developers will be required to contract with the Township's designated administrative agent(s) to pay for the costs of affirmative marketing and advertising. The amount of these costs will be included in the contract with each administrative agent. In addition, every Planning Board and Zoning Board of Adjustment resolution approving affordable housing will include a condition that the affordable housing developer must pay the cost of the affirmative marketing and advertising..
- K. In carrying out the affirmative marketing process, the administrative agent shall comply with all provisions of the Fair Chance in Housing Act, N.J.S.A. 46:8-52 through 64.

**§65-9.1 Household certification and referral**

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- A. The administrative agent shall secure all information from applicant households necessary and appropriate to determine that restricted units are occupied by properly sized households of low- or moderate-income. No household may be referred to a restricted unit or receive a commitment with respect to a restricted unit unless that household has received a signed and dated certification, as set forth in this section, and has executed a certificate in the form set forth at N.J.A.C. 5:80-26 Appendices D-3, J, or K, as applicable.
- B. The administrative agent shall prepare a standard form of certification and shall sign and date one such certification for each household when certified. An initial certification is valid for no more than 180 days unless a valid contract for sale or lease is executed within that time period, or in the case of a restricted ownership unit under construction, if the household has been referred to and has accepted the unit. If a valid contract for sale or lease is executed, the certification is valid until such time as the contract for sale or lease is ruled invalid and no occupancy has occurred. If the household has been referred to and accepted the restricted ownership unit under construction, the certification is valid until such time as the unit is ready for occupancy and a valid contract for sale of the unit is executed, or until such time as the household withdraws its acceptance of the restricted unit and no occupancy has occurred. Certifications may be renewed, in writing, at the request of a certified household for an additional period of 180 days at the discretion of the administrative agent. The administrative agent must provide applicant households a minimum of 10 business days from the date of initial request for information to produce documentation necessary for certification. The administrative agent shall transmit notice to each applicant household as to whether certification has been granted or denied, including the reason(s) for denying certification, if any, no later than five business days after determining the household's eligibility.
- (1) When reviewing an applicant household's income to determine eligibility, the administrative agent shall compare the applicant household's annual income to the regional low- and moderate-income limits calculated pursuant to N.J.A.C. 5:80-26.3. For the purposes of this subchapter, the administrative agent shall determine household income in accordance with the procedure for calculating annual income at the time of initial occupancy and assistance, stipulated at 24 CFR 5.609, as it was in effect on December 20, 2024, and described in Chapter 5 of HUD Handbook 4350.3: Occupancy Requirements of Subsidized Multifamily Housing Programs, which is available at [https://www.hud.gov/program\\_offices/administration/hudclips/handbooks/hsg/4350.3](https://www.hud.gov/program_offices/administration/hudclips/handbooks/hsg/4350.3).
  - (2) Household income is calculated by projecting current gross income over a 12-month period.
  - (3) The administrative agent shall deny the certificate of eligibility if the applicant household meets income eligibility requirements but possesses net household assets valued at an amount greater than the net asset limit, defined as the estimated median home equity held by New Jersey homeowners as determined annually by the United States Census Bureau's Survey of Income and Program Participation and published by the Census Bureau in "State-Level Wealth, Asset Ownership & Debt of Households Tables" in the "Wealth and Asset Ownership Data Tables" series, available at <https://www.census.gov/topics/income-poverty/wealth/data/tables.html>. Administrative agents shall determine household net assets in accordance with the procedure for calculating "net family assets" stipulated at 24 CFR 5.603(b), as it may be updated from time to time. The estimated net value of an

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applicant's primary residence shall be excluded from the calculation of net total assets if any of the following apply:

- (a) The applicant's existing monthly housing costs (including principal, interest, taxes, homeowner and private mortgage insurance, and condominium or homeowner association fees, as applicable) exceed 38 percent of the household's eligible monthly income;
  - (b) The applicant is receiving assistance for the residence pursuant to 24 CFR 982.620 or pursuant to the Homeownership Option at 24 CFR 982;
  - (c) The applicant jointly owns the residence with an owner-occupant who is not part of the applicant household and with whom the applicant does not reside;
  - (d) The residence is a restricted ownership unit subject to the requirements of this subchapter or a unit that, prior to December 20, 2004, received substantive certification from COAH, was part of a judgment of compliance from a court of competent jurisdiction, or became subject to a grant agreement or other contract with either the State or a political subdivision thereof, including any 95/5-restricted unit;
  - (e) Any member of the applicant household is a victim of domestic violence, as defined by the Prevention of Domestic Violence Act of 1991, P.L.1991, c. 261 (N.J.S.A. 2C:25-17 et seq.); or
  - (f) The applicant demonstrates that the residence is not suitable for occupancy, according to any of the criteria listed at 24 CFR 5.618(a)(2)(i) through (v).
- C. The administrative agent shall require each member of an applicant household who is 18 years of age or older, except full-time students under the age of 26 and those under the age of 26 participating in a registered apprenticeship program, to provide documentation to verify the member's income, including income received by adults on behalf of minor children for their benefit. Household members 18 years of age or older who do not receive income or who qualify for the full-time student or apprenticeship exemption must produce documentation as to their current status.
- D. Income verification documentation may include, but is not limited to, the acceptable forms of verification identified at Appendix 3 of HUD Handbook 4350.3 REV-1, available online at <https://www.hud.gov/sites/documents/43503a3hsg.pdf>, for each and every member of a household who is 18 years of age or older, except full-time students under the age of 26 and those under the age of 26 in a registered apprenticeship program.
- E. At the discretion of the administrative agent, households may also be required to produce documentation of household composition for determining the correct unit size and applicable median income guide.
- F. The administrative agent may deem ineligible an applicant who is unable to demonstrate sufficient present assets for down payment or security deposit purposes, subject to development phasing that may provide an opportunity for future savings.
- G. The administrative agent may deem ineligible an applicant who is unable to verify funds

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claimed as assets, household composition, or other facts represented in the application. However, for purposes of the exception to the homeownership restriction at B(3)(e) above, the administrative agent must accept self-certification from any member of an applicant household claiming to be a victim of domestic violence.

- H. The administrative agent shall deny a certificate of eligibility to an applicant who makes any willful or material misstatement of fact in seeking eligibility.
- I. The administrative agent shall screen households that apply for low- and moderate-income housing for preliminary income eligibility by comparing their total gross annual income to the regional low- and moderate-income limits calculated for that year. In lieu of calculating household income, the administrative agent, at their discretion, may accept a household income determination made within the previous 12 months to assess eligibility for the Temporary Assistance for Needy Families (TANF) block grant, Medicaid, the Supplemental Nutrition Assistance Program (SNAP) benefit, the Earned Income Tax Credit (EITC), the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), Supplemental Security Income, public housing, Section 8, or low-income housing tax credits (LIHTC). Additionally, the administrative agent shall accept household income determination made within the previous 180 days by another administrative agent who has successfully completed the Division's Education Program for administrative agents described at N.J.A.C. 5:99-9, as promulgated pursuant to N.J.S.A. 52:27D-321.i(1). The administrative agent must accept a household income determination made within the previous 180 days by the Department or the Agency, unless they conclude that the previous determination is rendered inapplicable by a compelling circumstance, such as a change in household composition.
- J. The administrative agent must accept self-certification from any member of an applicant household claiming to be a victim of domestic violence for purposes of the exception to the homeownership restriction at B(3)(e) above.
- (1) Any applicant information submitted to an administrative agent, including the fact that an individual is a victim of domestic violence, must be maintained in strict confidence by the administrative agent; and
  - (2) The administrative agent may not enter confidential information about a victim of domestic violence or their experience of domestic violence into any shared database or disclose any such information to any other entity or individual, except to the extent that the disclosure is requested or consented to, in writing, by the victimized individual in a time-limited release, required for use in an eviction proceeding, or otherwise required by applicable law.
- K. The administrative agent shall employ a random selection process when referring households to affordable units. Supportive housing units, including group homes, must comply with the selection processes of their respective sponsoring programs, where applicable. The administrative agent may elect to conduct the random selection prior to or after households are certified for eligibility. If conducting the random selection following household certification, the administrative agent shall notify all applicants of their eligibility or ineligibility in advance of the random selection.
- (1) Any or all of the following factors may be used to filter and/or rank the applicant pool in conducting the random selection. Such factors must be determined in advance of the

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random selection, and the affirmative marketing must disclose such factors and how they will be used. The administrative agent shall avoid excluding any applicant from the random selection on the basis of minor defects, ambiguities, and/or omissions in the application, including information indicating a household income that exceeds, but is plausibly close to the eligible limit for the unit(s) in question:

- (a) Whether the household is seeking a for-sale unit, rental unit, or either;
  - (b) The minimum number of bedrooms the household qualifies for;
  - (c) Whether the household is seeking a very-low-income, low-income, or moderate-income unit;
  - (d) The unit type applicable to the household (that is, family, age-restricted, or supportive);
  - (e) Whether the household is seeking an accessible unit;
  - (f) For supportive housing applicants only, whether any member of the household belongs to the eligible population;
  - (g) The occupancy standards at N.J.A.C. 5:80-26.5(b); and
  - (h) Any of the occupancy preferences allowed pursuant to (k)2 below.
- (2) The following occupancy preferences shall be applied prior to the usage of the occupancy preference(s) by ordinance in any random selection process.
- (a) A preference for very-low-, low-, and moderate-income households that reside or work in the Montclair Township;
  - (b) Subordinate to the local preference, a preference for very-low-, low-, and moderate-income households that reside or work in the housing region; and
  - (c) With respect to existing restricted units undergoing approved rehabilitation for the purpose of preservation or to restricted units newly created to replace existing restricted units undergoing demolition, a preference for the very-low-, low-, and moderate-income households that are displaced by the rehabilitation or demolition and replacement .
- L. Developers and property management entities shall not discriminate against any person as prohibited by Federal Fair Housing laws or by the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 through 50. Developers and property managers may not require or solicit a parent, guardian, or any other third-party person or entity to act as a guarantor for a unit that has been offered to an eligible household. Administrative agents and Municipal Housing Liaisons shall report property managers to the Division, which shall refer such matters to the Office of the Attorney General if they receive any complaints that developers or property managers are discriminating against applicants or residents.
- M. In certifying and referring households, the administrative agent shall comply with all provisions of the Fair Chance in Housing Act, N.J.S.A. 46:8-52 through 64. If an administrative agent randomly selects, certifies, and refers a family member or friend to an

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available unit, the administrative agent must disclose this relationship to the MHL.

- N. Upon being referred to an available unit, an applicant must be provided with a minimum of five business days to accept or reject the administrative agent's offer.

**§ 65-10. Occupancy standards.**

- A. 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:

- (1) Provide each bedroom is occupied by at least one person, except for age-restricted units;
- (2) Provide a bedroom for every two adult occupants;
- (3) With regard to occupants under the age of 18, accommodate the household's requested arrangement, except that such arrangement may not result in more than two occupants under the age of 18 occupying any bedroom; and

Avoid placing a one-person household into a unit with more than one bedroom.. Additional provisions related to occupancy standards (if any) shall be provided in the municipal operating manual.

**§ 65-11. Control periods for restricted-ownership units and enforcement mechanisms.**

- A. Each restricted ownership unit is subject to the affordability controls of this subchapter for a deed-restricted control period. The minimum duration of the control period is:

- (1) Thirty years for any ownership unit created on or after December 20, 2024;
- (2) Thirty years for any ownership unit receiving an extension of affordability controls on or after December 20, 2024, unless the original term of affordability exceeds 30 years, in which case, the minimum control period for the extension is the number of years, not less than 20 years, that in combination with the original term results in 60 years of affordability;
- (3) Governed by the grant of substantive certification, judgment of compliance, grant agreement, or other contract for any prior round ownership unit, including all units governed by 95/5 restrictions, sold before December 20, 2024; and
- (4) Governed by the form of UHAC in effect as of December 20, 2004, for any unit sold between December 20, 2004 and December 20, 2024, that is not the subject of a grant of substantive certification, judgment of compliance, grant agreement, or other contract.

- B. The control period for a restricted ownership unit commences on the date that the initial certified household takes title to the unit or, if existing affordability controls are being extended, on the effective date of the extension. The date of commencement must be identified in the deed restriction.

- C. The control period for a restricted ownership unit continues until the end date identified in the deed restriction, or until the minimum duration has elapsed if a specific end date cannot be determined according to the terms of the deed restriction. After the end of the control period, the restricted ownership unit remains subject to the affordability controls set forth in this subchapter until the owner gives notice of their intent to make an exit sale, at which point:

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- (1) If the municipality exercises the right to extend the affordability controls on the unit pursuant to (h) below, no exit sale occurs and a new control period commences; or
- (2) If the municipality does not exercise the right to extend the affordability controls on the unit pursuant to (h) below, the affordability controls terminate following the exit sale.

D. For each restricted ownership unit, at initial sale, the administrative agent shall determine a preliminary recapture amount equal to the price differential between the restricted price of the unit, based on the requirements at N.J.A.C. 5:80-26.7, and the non-restricted, fair market value of the unit, based on either an appraisal or the unit's equalized assessed value. Following this determination, the initial purchaser and each successive purchaser during the control period shall execute and deliver to the administrative agent a recapture note, secured by a recapture lien evidenced by a duly recorded mortgage on the unit, obligating the purchaser and the purchaser's heirs, successors, and assigns to repay a recapture amount at the time of the exit sale.

(1) The recapture note and recapture lien must:

- (a) Be in favor of the Agency, if the unit was financed through UHORP, MONI, or CHOICE, in favor of the State if State funds other than UHORP, MONI, or CHOICE contributed to the financing of the unit, in favor of the nonprofit if the unit was developed by a qualified nonprofit entity without Agency or State funding, and, in all other cases, in favor of Montclair Township;
- (b) Be in the applicable forms prescribed at N.J.A.C. 5:80-26 Appendices D-2, L, M, N, O, and Q, incorporated herein by reference;
- (c) In addition to the preliminary recapture amount calculated at initial sale, include the restricted price and the non-restricted, fair market value of the unit at the time of initial sale; and
- (d) Provide that the actual recapture amount will be determined upon exit sale and will be equal to the price differential minus the equity share amount, or another amount determined by an ordinance of the municipal governing body, which must be less than the price differential minus the equity share amount.

(2) The recapture lien must provide that:

- (a) The recapture amount| be reduced by the cumulative dollar value of capital improvements made after the last non-exempt sale during the control period for improvements and/or upgrades to the unit, as may be approved by the administrative agent, excluding capital improvements paid for by the entity favored on the recapture note and recapture lien;
- (b) The lien will remain a lien on the property until it is satisfied and the administrative agent files a discharge; and
- (c) If **the Township** exercises the option to purchase the restricted ownership unit pursuant to H(6)(b) below, **the Township** is not required to satisfy the recapture lien.

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- E. For each restricted ownership unit not governed by a 95/5 restriction, all conveyances must be made by deeds and restrictive covenants in the forms prescribed at N.J.A.C. 5:80-26 Appendices A, C, D-1, D-2, D-4, L, M, N, O, and Q, incorporated herein by reference, as applicable. For each restricted ownership unit governed by a 95/5 restriction, all conveyances during the 95/5 control period must be made by deeds and restrictive covenants in the forms prescribed at N.J.A.C. 5:80-26 Appendices B, C, G, and H, incorporated herein by reference. Prior to the issuance of any building permit for the new construction of restricted ownership units, the developer/owner and the municipality shall record a preliminary instrument in the form set forth at N.J.A.C. 5:80-26 Appendix P-1, incorporated herein by reference, that specifies, at a minimum, the total number of ownership units to be constructed, the number of restricted ownership units to be constructed, the anticipated numbers of restricted ownership units that will be very-low-income, low-income, and moderate-income, the address(es) and parcel(s) of the property, and the anticipated timeline for completion, including projected phasing. The preliminary instrument must provide that it will be replaced by the recording of the full deed restriction prior to the issuance of the certificate of occupancy, at which point the preliminary instrument will be extinguished.
- F. In furtherance of the State's vested interest in maintaining affordable housing, all conveyances of restricted ownership units are deemed to have been made by deeds and restrictive covenants as prescribed at E above, regardless of whether such required instruments have actually been prepared or executed. DCA, the Agency, and **the Township** may enforce the restrictions that would have been included in such instrument(s), as if such instrument(s) had, in fact, been prepared and duly executed. A sale or transfer of ownership made, other than in conformity with the requirements of this subchapter is not an authorized non-exempt sale; thus, all requirements, restrictions, and liens associated with the unit being sold or transferred remain in effect until full satisfaction thereof and compliance with this subchapter.
- G. **The Township** may, in its sole discretion, elect to release a restricted ownership unit from the affordability controls of this subchapter prior to any intended exit sale if:
- (1) The minimum duration described at A above has fully elapsed by the effective date of release;
  - (2) The municipal election to release the restricted unit from the affordability controls of this subchapter is made pursuant to a municipal ordinance authorizing such elections;
  - (3) The recapture lien required pursuant to D above remains in full force and effect; and
  - (4) If the recapture lien is in favor of the municipality, the municipal housing element and fair share plan require that all proceeds from satisfaction of recapture liens on restricted ownership units be deposited into the municipal housing trust fund to be used to create new restricted units to replace units released from affordability controls within the municipality.
- H. Unless precluded by law, the municipality shall, in its sole discretion, elect to extend the affordability controls of this subchapter on a restricted ownership unit; provided that:
- (1) The unit's deed-restricted control period ends:
    - (a) In the current round of housing obligations; or

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- (b) In the next round of housing obligations, if the municipal election to extend affordability controls is made no earlier than one year before the end of the current round of housing obligations;
- (2) The recapture lien remains in full force and effect;
- (3) A new deed restriction is issued that commences a new control period of at least the minimum duration specified at A(2) above;
- (4) If the Township has not received notice of any intent by the owner to make an exit sale, the municipality notifies the owner, by certified mail and, if known, by email, of its election to extend affordability controls no earlier than one year and no later than 180 days before the execution of a new deed restriction extending affordability controls, during which time the owner shall have the opportunity to seek and provide notice of intent for an exit sale and/or obtain an appraisal of the value of their unit as if it were not subject to UHAC;
- (5) If the Township has received notice of the owner's intent to make an exit sale, the Township notifies the owner, by certified mail and, if known, by email, of its election to extend affordability controls no later than 60 days after receiving notice of the owner's intent; and
- (6) The Township either:
  - (a) Pays to the owner of the restricted unit an amount no less than the equity share amount;
  - (b) Purchases the restricted unit at a price no less than the total of the maximum restricted sale price and the equity share amount, then conveys the unit to a very-low-, low-, or moderate-income purchaser at a price not to exceed the maximum restricted sale price; or
  - (c) If the restricted unit is governed by a deed restriction executed prior to November 6, 2025, extends affordability controls pursuant to the terms of the governing deed restriction, provided that a new deed restriction is executed according to the requirements of this subchapter .
- I. The owner of a restricted ownership unit must notify the administrative agent and Municipal Housing Liaison, by mail, of any intent to sell the unit at least 60 days prior to entering into an agreement for an exit sale. Upon receipt of the owner's notice, the municipality has 60 days to elect to extend controls on the unit pursuant to H above. If the owner does not sell the unit within one year of the date of the delivery of the notice of intent to sell, the owner must submit a new notice of intent to sell at least 60 days before any future proposed date of sale.
- J. During the 60-day period following notice of an owner's intent to make an exit sale, any non-municipal entity favored on the recapture note and recapture mortgage lien pursuant to D(1)(a) above may give notice of intent to purchase the restricted ownership unit. If the Township does not extend affordability controls on the unit, the non-municipal entity may purchase the unit and convey it to an eligible purchaser pursuant to H(6)(b) above; provided that a new deed restriction is issued that commences a new control period of at least the minimum duration

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specified at A(2) above.

- K. Any price differential, equity share amount, or recapture amount must be based on a price that bears a reasonable relationship to the housing unit's fair market value.
- (1) For all exit sales, the administrative agent shall examine the contract of sale to determine if the proposed sale price bears a reasonable relationship to the housing unit's fair market value. In making this determination, the administrative agent may rely on comparable sales data or an appraisal. The administrative agent may not approve any exit sale if the administrative agent determines that the sale price does not bear a reasonable relationship to fair market value. The administrative agent must make such a determination within 20 days of receipt of the contract of sale and then calculate the price differential and recapture amount;
  - (2) For all municipal extensions of affordability controls pursuant to H(6)(a) and (b), the price differential used to determine the equity share amount must be based on either an appraisal or the unit's equalized assessed value. The administrative agent shall determine if the price differential is based on a price that bears a reasonable relationship to the housing unit's fair market value. The municipality may not make or approve any payment of an equity share amount that is not reasonably related to the housing unit's fair market value; and
  - (3) The administrative agent shall adopt an appeal procedure by which an owner may submit written documentation requesting the administrative agent to recalculate the price differential, equity share amount, and/or recapture amount if the owner believes an error has been made, or to reconsider a determination that a price does or does not bear a reasonable relationship to fair market value. A determination made as a result of such an appeal is a final determination of the administrative agent appealable pursuant to N.J.A.C. 5:80-26.20.
- L. The entry and enforcement of any judgment of foreclosure on a restricted ownership unit shall not extinguish the affordability controls set forth in this subchapter.
- M. All extensions of affordability controls on restricted ownership units must be made according to the requirements of this section to receive credit pursuant to the Act. This requirement applies to extensions of affordability controls on any restricted ownership units currently governed by control periods that commenced prior to November 6, 2025, including all units governed by 95/5 restrictions.
- N. Upon termination of affordability controls on a restricted ownership unit, the administrative agent shall, within 60 days of termination, execute a release, substantially in the form set forth at N.J.A.C. 5:80-26 Appendix F-1, incorporated herein by reference, of all restriction instruments with respect to the unit. The owner of the restricted unit shall record the release instruments and promptly return the recorded originals to the administrative agent. The owner of a unit released from the affordability controls of this subchapter may sell the unit to any purchaser at the fair market price.

**§ 65-12. Price restrictions for restricted-ownership units, homeowners' association fees and resale prices.**

- A. The administrative agent shall set the initial sale price for a restricted ownership unit. If

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the unit is receiving assistance pursuant to the AHTF, the price must be consistent with the AHTF grant agreement.

- B. The initial purchase price for all restricted ownership units is calculated so that the monthly carrying costs of the unit, including principal and interest (based on a mortgage loan equal to 95 percent of the purchase price and the Freddie Mac 30-Year Fixed Rate-Mortgage rate of interest), taxes, homeowner and private mortgage insurance, and realistic condominium or homeowner association fees, do not exceed 30 percent of the eligible monthly income of an appropriate household size as determined pursuant to N.J.A.C. 5:80-26.4; provided, however, that the price is subject to the affordability average requirement at N.J.A.C. 5:80-26.4. The maximum resale price for a restricted ownership unit, if the resale occurs prior to the one-year anniversary of the date on which title to the unit was first transferred to a certified household, is the initial purchase price. If the resale occurs on or after such anniversary date, the maximum resale price is the most recent non-exempt purchase price increased to reflect the cumulative annual percentage increases to the regional median income, effective as of the same date as the regional median income calculated pursuant to N.J.A.C. 5:80-26.3.
- C. The maximum resale price may be further increased by an amount up to the cumulative dollar value of approved capital improvements made after the last non-exempt sale for improvements and/or upgrades to the unit, excluding capital improvements paid for by the entity favored on the recapture note and recapture lien described at N.J.A.C. 5:80-26.6(d); however, the increase for capital improvements may not result in the final maximum resale price exceeding whatever initial purchase price the unit would have if it were being offered for purchase for the first time, calculated pursuant to B above. No increase for capital improvements is permitted if the maximum resale price prior to adjusting for capital improvements already exceeds whatever initial purchase price the unit would have if it were being offered for purchase for the first time, calculated pursuant to B above. All adjustments for capital improvements are subject to 10-year, straight-line depreciation.
- D. The administrative agent shall approve all resale prices, in writing, and in advance of the resale, to ensure compliance with the foregoing standards. The administrative agent may approve an actual resale price that is lower than the maximum resale price for reasons including, but not limited to, home disrepair and market decline, and shall not calculate a resale price lower than the last recorded purchase price unless they determine that the decreased price is a result of such reasons.
- E. The master deeds and declarations of covenants and restrictions for affordable developments may not distinguish between restricted units and market-rate units in the calculation of any condominium or homeowner association fees and special assessments to be paid by low- and moderate-income purchasers and those to be paid by market-rate purchasers. Notwithstanding the foregoing sentence, condominium units subject to a municipal ordinance adopted before December 20, 2004, which ordinance provides for condominium or homeowner association fees and/or assessments different from those provided for in this subsection are governed by the ordinance.

**§ 65-13. Buyer income eligibility.**

- A. Very-low-income ownership units are reserved for households with a household income less

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than or equal to 30 percent of regional median income. Low-income ownership units are reserved for households with a household income less than or equal to 50 percent of regional median income. Moderate-income ownership units are reserved for households with a household income less than 80 percent of regional median income. For example, a household earning 48 percent of regional median income may qualify for any low-income or moderate-income unit; however, a household earning 53 percent of regional median income would qualify for a moderate-income unit, but would not qualify for a low-income unit. Notwithstanding the foregoing, the administrative agent may permit moderate-income purchasers to buy low-income units in housing markets where, as determined by the Division, units are reserved for low-income purchasers, but there is an insufficient number of low-income purchasers to permit prompt occupancy of the units. In such instances, the purchased unit must be maintained as a low-income unit and sold at a low-income price point such that on the next resale the unit will still be affordable to low-income households and able to be purchased by a low-income household. Similarly, the administrative agent may permit low-income purchasers to buy very-low-income units in housing markets where, as determined by the Division, units are reserved for very-low-income purchasers, but there is an insufficient number of very-low-income purchasers to permit prompt occupancy of the units. In such instances, the purchased unit must be maintained as a very-low-income unit and sold at a very-low-income price point such that on the next resale the unit will still be affordable to very-low-income households and able to be purchased by a very-low-income household. A very-low-income unit that is seeking bonus credit pursuant to N.J.S.A. 52:27D-311.k(9) must first be advertised exclusively as a very-low-income unit according to the affirmative marketing requirements at N.J.A.C. 5:80-26.16, then advertised as a very-low-income or low-income unit for at least 30 additional days prior to referring any low-income household to the unit. A certified household that purchases a restricted ownership unit must occupy it as the principal residence and not lease the unit; provided, however, the administrative agent may permit the owner of a restricted ownership unit, upon a showing of hardship, to lease the unit to a certified household for a period not to exceed one year.

- B. 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 unit (including principal, interest, taxes, homeowner and private mortgage insurance, and realistic condominium or homeowner association fees, as applicable) does not exceed 35 percent of the household's eligible monthly income. The administrative agent, however, may exercise its discretion to certify a low- or moderate-income household as eligible despite the fact that the unit's monthly housing cost would exceed the 35 percent level, if the household obtains a firm mortgage loan commitment at the higher level from a licensed financial institution, under terms consistent with the requirements of the New Jersey Home Ownership Security Act of 2002, N.J.S.A. 46:10B-22 through 35, including certification from a nonprofit counselor approved by HUD or the New Jersey Department of Banking and Insurance that the borrower has received counseling on the advisability of the loan transaction.

**§ 65-14. Limitations on indebtedness secured by ownership unit; subordination.**

- A. Prior to incurring any indebtedness to be secured by an ownership unit, the owner shall submit to the administrative agent a notice of intent to incur such indebtedness (for example, a home equity loan or solar loan), in such form and with such documentary support as determined by

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the administrative agent, and the owner may not incur any such indebtedness unless and until the administrative agent has determined and confirmed, in writing, that the proposed indebtedness complies with the provisions of this section.

- B. 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 an ownership unit to exceed 95 percent 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. 5:80-26.7(c).

**§ 65-14.1 Capital improvements to ownership units**

- A. The owner of an ownership unit may apply to the administrative agent to recalculate the maximum sale price for the unit to reflect eligible capital improvements made since they purchased the unit. Eligible capital improvements are limited to those that make the unit suitable for a larger household, that is adding bedrooms and/or bathrooms. However, the maximum sale price of an improved housing unit may not exceed the limits of affordability for the larger household.
- B. Upon the resale of a restricted ownership unit, all items of property that are permanently affixed to the unit or were included when the unit was initially restricted (for example, refrigerator, range, washer, dryer, dishwasher, or flooring) are included in the maximum allowable resale price. Other items may be sold to the purchaser at a reasonable price that has been approved by the administrative agent at the time of signing the agreement to purchase. The purchase of central air conditioning installed subsequent to the initial sale of the unit and not included in the base price may be made a condition of the unit resale provided the price, subject to 10-year, straight-line depreciation, has been approved by the administrative agent. Unless otherwise approved by the administrative agent, the purchase of any property other than central air conditioning may not be made a condition of the unit resale. The owner and the purchaser must personally certify at the time of closing that no unapproved transfer of funds for the purpose of selling and receiving property has taken place at resale.
- C. Capital improvements, excluding capital improvements paid for by the entity favored on the recapture note and recapture lien described at N.J.A.C. 5:80-26.6(d), approved, in writing, by the administrative agent for non-cosmetic replacement of existing items of property or non-cosmetic improvement to the property (for example, replacement of a leaky roof, installation of a solar energy system owned by the homeowner, installation of energy-efficient windows, or replacement of broken appliances with ENERGY STAR-labeled products) shall not cause the maximum sale price to be recalculated, but will be factored into calculating reductions to the recapture amount pursuant to N.J.A.C. 5:80-26.6(d)2i and into calculating adjustments to the maximum sale price pursuant to N.J.A.C. 5:80-26.7(c). Capital improvements are subject to 10-year, straight-line depreciation.

**§ 65-14.2 Maintenance of restricted ownership units**

Upon the first transfer of title that follows the expiration of the deed-restricted control period provided pursuant to N.J.A.C. 5:80-26.6, if requested by the administrative agent, the owner of a restricted ownership unit shall obtain a Continuing Certificate of Occupancy or a certified statement from the municipal building inspector stating that the unit meets all code standards.

**§ 65-15. Control periods for restricted rental units.**

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- A. Each restricted rental unit is subject to the affordability controls of this subchapter for a deed-restricted control period. The minimum duration of the control period is:
- (1) Forty years for any rental unit created on or after December 20, 2024;
  - (2) Thirty years for any rental unit in a 100 percent affordable property that, on or after December 20, 2024, elects to extinguish its existing deed restriction to enter into a new deed restriction and commence refinancing and/or rehabilitation for the purpose of preservation;
  - (3) Thirty years for any other rental unit that, on or after December 20, 2024, extends its affordability controls for a new term of affordability, unless the original term of affordability exceeds 30 years, in which case, the minimum control period for the extension is the number of years, not less than 20, that in combination with the original term results in 60 years of affordability;
  - (4) Governed by the grant of substantive certification, judgment of compliance, grant agreement, or other contract for any prior round rental unit that was issued its certificate of occupancy before December 20, 2024; and
  - (5) Governed by the form of UHAC in effect as of December 20, 2004, for any prior round rental unit that was issued its certificate of occupancy between December 20, 2004 and December 20, 2024, and that is not the subject of a grant of substantive certification, judgment of compliance, grant agreement, or other contract.
- B. The control period for the restricted rental unit(s) in a development commences on the first date that a unit is issued a certificate of occupancy following the execution of the deed restriction or, if affordability controls are being extended, on the effective date of the extension.
- C. The control period for the restricted rental unit(s) in a development continues until the end date identified in the deed restriction, or until the minimum duration has elapsed if a specific end date cannot be determined according to the terms of the deed restriction. After the end of the control period, each restricted rental unit in the development remains subject to the affordability controls of this subchapter until:
- (1) The occupant household vacates the unit, at which point affordability controls terminate;  
or
  - (2) The occupant household's household income is found to exceed 80 percent of the regional median income for the relevant household size, after which affordability controls terminate at the later of either the next scheduled lease renewal or in 60 days.
- D. The deeds of all real property that include restricted rental units created or extended pursuant to the existing rules must contain deed-restriction language that conforms with the requirements of this subchapter and is substantially in the form set forth at N.J.A.C. 5:80-26 Appendix E. The deed restriction:
- (1) Is to be read in accordance with the requirements of this subchapter, such that any term that directly conflicts with or circumvents the requirements of this subchapter, regardless

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of intention, is unenforceable, of no legal effect, and contrary to the public policy of the State;

- (2) Is governed by the requirements of this subchapter regardless of the language ultimately utilized in the recorded deed restriction document;
- (3) Is severable, such that invalidation of any provision due to inconsistency with these regulations will not terminate the deed restriction, but, rather, will result in the deed restriction being read to include the provision of these regulations with which the original language was inconsistent;
- (4) Has priority over all mortgages on the property; and
- (5) Must be filed with the records office of the county in which the unit is located by the developer or owner of the restricted rental units, who then must, no later than 30 days after the commencement of the control period, provide to the administrative agent:
  - (a) A copy of the filed deed restriction; and
  - (b) Certification by the preparer of the deed restriction that the deed restriction conforms with all requirements of this subchapter, and that the deed restriction language at N.J.A.C. 5:80-26 Appendix E, has been included therein.

E. Failure to record a deed restriction does not, under any circumstances, excuse a property from the requirements of this subchapter. If a development is sold by a developer prior to recording the deed restriction, the buyer is not excused from adhering to the requirements of this subchapter and any recourse shall be to recover from the seller rather than seeking to extinguish any affordability controls of the development. Prior to the issuance of any building permit for the construction/rehabilitation of restricted rental units, the developer/owner and the municipality shall record a preliminary instrument in the form set forth at N.J.A.C. 5:80-26 Appendix P-2, incorporated herein by reference that specifies, at a minimum, the total number of rental units to be constructed/rehabilitated, the number of restricted rental units to be constructed/rehabilitated, the anticipated numbers of restricted rental units that will be very-low-income, low-income, and moderate-income, the address(es) and parcel(s) of the property, and the anticipated timeline for completion, including projected phasing. The preliminary instrument must provide that it will be replaced by the recording of a full deed restriction prior to the issuance of the certificate of occupancy, at which point the preliminary instrument will be extinguished. The full deed restriction must be recorded prior to receiving a certificate of occupancy.

- F. A restricted rental unit remains subject to the affordability controls of this subchapter despite the occurrence of any of the following events:
- (1) A sublease or assignment of the lease of the unit;
  - (2) A sale or other voluntary transfer of ownership of the unit;
  - (3) The entry and enforcement of any judgment of foreclosure or grant of a deed in lieu of foreclosure; or

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- (4) The end of the control period, until the occupant household vacates the unit pursuant to C(1) above or is found to be income-ineligible pursuant to C(2) above.
- G. The Township may, in its sole discretion, elect to release any or all of the restricted rental units in a development from the affordability controls of this subchapter prior to the end of the deed-restricted control period if:
- (1) The minimum duration of the control period described at (a) above has fully elapsed by the effective date of release;
  - (2) The municipal election to release the restricted unit(s) from the affordability controls of this subchapter is made pursuant to a municipal ordinance authorizing such elections; and
  - (3) The release is not inconsistent with the municipal housing element and fair share plan.
- H. A municipality may, in its sole discretion, elect to extend the affordability controls of this subchapter on any or all of the restricted rental units in a development; provided that:
- (1) The deed-restricted control period ends:
    - (a) In the current round of housing obligations; or
    - (b) In the next round of housing obligations, if the municipal election to extend affordability controls is made no earlier than two years before the end of the current round of housing obligations;
  - (2) The municipal election to extend the affordability controls is made pursuant to a municipal ordinance authorizing such elections;
  - (3) A new deed restriction is issued, containing deed restriction language that conforms with the requirements of this subchapter and is substantially in the form set forth at N.J.A.C. 5:80-26 Appendix E that commences a new control period of at least the minimum duration specified at A(3) above;
  - (4) If the municipality has not received notice of the owner's intent for the affordability controls to be extinguished, the municipality notifies the owner of the development, by certified mail and by email, of its election to extend affordability controls no later than 180 days prior to the execution of a new deed restriction extending affordability controls, except that the notice period may be shortened with consent of the owner;
  - (5) If the municipality has received notice of the owner's intent for the affordability controls to be extinguished, the municipality notifies the owner, by certified mail and by email, of its election to extend affordability controls no later than 180 days after receiving notice of the owner's intent;
  - (6) If permitted by the relevant statute, the municipality grants or extends an agreement for payment in lieu of taxes pursuant to the New Jersey Long Term Tax Exemption Law, N.J.S.A. 40A:20-1 et seq., or pursuant to N.J.S.A. 55:14K-37.b; and
  - (7) If seeking bonus credit pursuant to N.J.S.A. 52:27D-311.k(7), to support the preservation of the restricted rental units, the municipality contributes:

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- (a) At least \$ 12,000 per restricted unit (which amount may be adjusted annually in accordance with the maximum annual rent increase determined pursuant to N.J.A.C. 5:80-26.13(b)) from the municipal affordable housing trust fund, if an agreement for payment in lieu of taxes has been granted or extended;
  - (b) At least \$ 17,500 per restricted unit (which amount may be adjusted annually in accordance with the maximum annual rent increase determined pursuant to N.J.A.C. 5:80-26.13(b)) from the municipal affordable housing trust fund, if no agreement for payment in lieu of taxes has been granted or extended; or
  - (c) Any other assistance not less than the equivalent of \$ 10,000 per restricted unit (which amount may be adjusted annually in accordance with the maximum annual rent increase determined pursuant to N.J.A.C. 5:80-26.13(b)), if the assistance was approved pursuant to N.J.S.A. 52:27D-329.2(4) as part of the municipality's compliance certification or by DCA, and if the assistance is consistent with the municipality's housing element and fair share plan.
- I. The owner of a restricted rental unit must notify the administrative agent and Municipal Housing Liaison, by certified mail and by email, as well as all current tenants, by plain language notice, of any intent for the affordability controls on the unit to be extinguished at the end of the control period no earlier than one year before the end of the control period. Upon receipt of the owner's notice, the municipality has 180 days to extend controls on the unit pursuant to (h) above. Affordability controls shall remain in effect during the 180-day notice period, or, if the owner never provides notice, indefinitely, unless the municipality affirmatively declines to extend affordability controls.
- J. The owner of a 100 percent affordable rental development may elect to extinguish the existing deed restriction and extend the affordability controls of this subchapter on all of the restricted rental units in the development, provided that:
- (1) A refinancing and/or rehabilitation of the property is commenced;
  - (2) A new deed restriction is issued, containing deed restriction language that conforms with the requirements of this subchapter and is substantially in the form set forth at N.J.A.C. 5:80-26 Appendix E that commences a new control period of at least the minimum duration specified at (a)2 above; and
  - (3) Either of the following is true:
    - (a) The current control period has been in effect for at least 30 years; or
    - (b) The property is participating in a State-administered preservation program that has allowed the refinancing and/or rehabilitation to commence prior to the 30th year of the deed restriction as necessary to preserve affordable housing.
- K.** All extensions of affordability controls on restricted rental units must be made according to the requirements of this section to receive credit pursuant to the Act, including any restricted units that is currently governed by control periods that commenced prior to **December 20, 2025**.
- L. For restricted rental units, upon municipal release from the affordability controls of this

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subchapter pursuant to (g) above, or at the end of the control period, if no extension of affordability controls has occurred:

- (1) The administrative agent, within 60 days, shall execute a release, in the form set forth at N.J.A.C. 5:80-26 Appendix F-2, incorporated herein by reference, of all restriction instruments with respect to the unit(s), but providing that each released unit remains subject to the affordability controls of this subchapter until the occurrence of (c)1 or 2 above;
- (2) The owner of the unit(s) shall record the release instruments and return the recorded originals promptly to the administrative agent; and
- (3) Following the termination of affordability controls on the unit(s), the owner of the unit(s) may lease each unit to any tenant at any rent.

**§ 65-16. Price restrictions for rental units; leases.**

- A. The administrative agent shall set the initial rent for a restricted rental unit. If the unit is receiving assistance pursuant to the AHTF, the initial rent must be consistent with the AHTF grant agreement. The initial rent must be calculated so as not to exceed 30 percent of the eligible monthly income of the appropriate household size as determined pursuant to N.J.A.C. 5:80-26.4; provided, however, that the rent is subject to the affordability average requirement at N.J.A.C. 5:80-26.4. For assisted living units, the combined cost of rent, food, and services may not exceed 80 percent of the eligible monthly income of the appropriate household size as determined pursuant to N.J.A.C. 5:80-26.4.
- B. At the anniversary date of the tenancy of the certified household occupying a restricted rental unit, following proper notice provided to the occupant household pursuant to N.J.S.A. 2A:18-61.1.f, the rent may be increased to an amount commensurate with the annual percentage increase in the Consumer Price Index for All Urban Consumers (CPI-U), specifically U.S. Bureau of Labor Statistics Series CUUR0100SAH, titled "Housing in Northeast urban, all urban consumers, not seasonally adjusted." The maximum allowable rent increase for the year will be effective as of the same date as the regional median income limits determined pursuant to N.J.A.C. 5:80-26.3. This rent increase may not exceed five percent in any one year and notice thereof must be filed with the administrative agent. If the landlord has charged a tenant less than the initial maximum allowable rent for a restricted unit, the landlord may, with the approval of the administrative agent, use the maximum allowable rent instead of the current rent in performing this multiplication to establish the rent for the next tenant under a new lease. LIHTC units are not governed by the provisions of this section, but rather by the provisions of the State's Qualified Allocation Plan, N.J.A.C. 5:80-33.1 through 33.40.
- C. Approved initial rents are fixed as of the start of the property's initial lease-up. Rent increases may not be implemented during lease-up. Each new, separately financed phase of a project may seek MHL approval to use the then-effective initial rents, provided that the lease-up of the phase will occur at least 12 months after the prior phase was placed in service. Rents may not be increased more than once a year or by more than one increment at one time. Rents may not be increased at the time of a new occupancy if the new occupancy occurs within one year of the last occupancy and prior to the next published increase amount.
  - (1) No additional fees, operating costs, or charges may be added to the approved rent (except

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in the case of units in assisted living residences, for the customary charges for food and services) without the express written approval of the administrative agent. Operating costs for the purposes of this section include certificate of occupancy fees, move-in fees, move-out fees, mandatory internet fees, mandatory cable fees, mandatory utility submetering fees, and for developments with more than one and a half off-street parking spaces per unit, parking fees for one parking space per household. Any fee structure that would remove or limit affordable renters' access to any amenities or services that are required or included for market-rate renters is prohibited. Application fees (including the charge for any credit check) may not exceed five percent of the monthly rent of the applicable restricted unit and are payable to the administrative agent to be applied to the costs of administering the controls in this subchapter as applicable to the unit. Fees for truly optional, unit-specific, non-communal items that are charged to market-rate tenants on an optional basis, such as pet fees for tenants with pets, storage spaces, bicycle-share programs, or one-time rentals of party or media rooms, may be charged to affordable tenants, if applicable. Pet fees may not exceed \$30.00 per month and associated one-time payments for optional fees pertaining to pets, such as a pet cleaning fee, are prohibited. Fees for other optional, unit-specific, non-communal items may not exceed the amounts charged to market-rate tenants.

(2) For any prior round rental unit leased before December 20, 2024, elements of the existing fee structure that are consistent with prior rules, but inconsistent with (c)1 above, may continue until December 20, 2025, or until the occupant household's current lease term expires or that occupant household vacates the unit, whichever occurs later.

D. A written lease is required for all restricted rental units, except for units in assisted living residences. Final lease agreements are the responsibility of the landlord and the prospective tenant. Tenants are responsible for security deposits and the full amount of the rent as stated in the lease. All lease provisions must comply with applicable law. The landlord shall provide the administrative agent with sufficient information for preparation of a unit inventory form for entry into the centralized affordable housing unit inventory system. The landlord shall submit a copy of each lease entered into with a certified household to the administrative agent within 10 business days after the execution of each lease.

E. The lease must specify which tenant-paid utilities are included in the utility allowance. At the time of lease-up, tenants must be provided a copy of the utilities chart that was used to determine the utility allowance. The allowance for utilities must be consistent with one of the following:

(1) The utility allowance approved by DCA for its Section 8 program;

(2) For units constructed with State funding, an alternate utility allowance approved by DCA or the Agency; or

(3) For units that receive ENERGYSTAR certification, a utility allowance calculated according to an energy consumption model provided by an energy consultant with an active registration with the New Jersey Board of Public Utilities, subject to approval by the administrative agent.

**§ 65-17. Tenant income eligibility.**

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- A. Low-income rental units are reserved for households with household incomes less than or equal to 50 percent of regional median income. Moderate-income rental units are reserved for households with household incomes less than or equal to 80 percent of regional median income. Very-low-income rental units are reserved for households with household incomes less than or equal to 30 percent of regional median income.
- B. 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. 5:80-26.17, as may be amended and supplemented; provided, however, that this limit may be exceeded if one or more of the following circumstances exists:
- (1) 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;
  - (2) 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;
  - (3) The household is currently in substandard or overcrowded living conditions;
  - (4) The household documents the existence of assets with which the household proposes to supplement the rent payments; or
  - (5) 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.
- C. The applicant shall file documentation sufficient to establish the existence of the circumstances in Subsection B(1) through (5) above with the administrative agent, who shall counsel the household on budgeting.

**§ 65-18. 95/5 restrictions**

- A. Each existing unit governed by a 95/5 restriction shall be governed according to its deed restriction for the duration of the control period identified in the deed restriction or the municipal resolution extending affordability controls, or, if no control period is identified, until the start of the Fifth Round on July 1, 2035. Following the expiration or release of the 95/5 deed restriction, any extension of affordability controls on the unit must be carried out in accordance with the procedures and instruments outlined at N.J.A.C. 5:80-26.6(h) to receive credit pursuant to the Act.
- B. The owner of a unit governed by a 95/5 restriction shall notify the administrative agent and Municipal Housing Liaison by certified mail and by email of any intent to sell the unit 90 days prior to entering into an agreement for the first authorized non-exempt sale after controls have been in effect on the housing unit for the period specified at N.J.A.C. 5:80-26.6.
- C. Upon receipt of a notice specified at (b) above, the option to buy the unit at the maximum

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allowable restricted sale price or any mutually agreed upon sale price that does not exceed the maximum allowable restricted sale price will be available for 90 days. The administrative agent shall notify the Municipal Housing Liaison and the Division that the unit is for sale. The municipality shall have the right of first refusal to purchase the unit. If the municipality exercises this option, it may enter into a contract of sale for the unit. If the municipality does not exercise this option within 90 days, the first of the other entities giving notice to the seller of its intent to purchase during the 90-day period may purchase the unit. If the option to purchase the unit at the maximum allowable restricted [page=2785] sale price is not exercised by one of the above entities by a written offer to purchase the housing unit within 90 days of receipt of notice of the intent to sell, the owner may proceed to sell the housing unit pursuant to N.J.A.C. 5:80-26.22. If the owner does not sell the unit within one year of the date of the delivery of the notice of intent to sell, the option to buy the unit will be restored and the owner will 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 sale price must be exercised by certified mail and, if known, by email and will be deemed to have been exercised three days following the earlier of the postmark of the certified mail or the transmission of the email.

**§ 65-18.1 Seller option on 95/5-restricted units**

- A. An eligible seller of a unit governed by a 95/5 restriction that has been controlled for the period established in the governing deed restriction who has provided the requisite notice of an intent to sell may proceed with the sale if no eligible entity exercises its option to purchase within 90 days. The seller may sell the unit to a certified household at an affordable price or to any purchaser at market price.
- B. Subject to this **chapter**, the seller may:
- (1) Sell to a certified household at a price not to exceed the maximum permitted sale price in accordance with N.J.A.C. 5:80-26.7; provided that the unit is regulated by the deed restriction and lien in accordance with N.J.A.C. 5:80-26.6. The administrative agent shall certify the income qualifications of the purchaser and shall ensure that the housing unit is regulated by the deed restriction and lien in accordance with N.J.A.C.5:80-26.6; or
  - (2) Exercise the repayment option and sell to any purchaser at market price, provided that 95 percent of the price differential, or another amount determined by an ordinance of the municipal governing body, not to exceed 95 percent of the price differential, is paid to the Municipal Affordable Housing Trust Fund, through the administrative agent, as an instrumentality of the municipality, at closing. Any alternative amount or formula for calculating the alternative amount determined by such ordinance must be uniformly available to all sellers exercising the repayment option within the municipality.
- C. The administrative agent shall examine any contract of sale containing a repayment option to determine if the proposed sale price bears a reasonable relationship to the housing unit's fair market value. In making this determination, the administrative agent may rely on comparable sales data or an appraisal. The administrative agent shall not approve any contract of sale where there is a determination that the sale price does not bear a reasonable relationship to fair market

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value. The administrative agent shall make such a determination within 20 days of receipt of the contract of sale and shall calculate the repayment option payment.

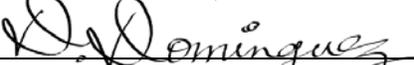
- D. The administrative agent shall adopt an appeal procedure by which a seller may submit written documentation requesting the administrative agent to recompute the repayment obligation if the seller believes an error has been made, or to reconsider a determination that a sale price does not bear a reasonable relationship to fair market value. A repayment obligation determination made as a result of an owner's appeal is a final determination of the administrative agent appealable pursuant to N.J.A.C. 5:80-26.20.
- E. The repayment will occur at the date of closing and transfer of title for the first non-exempt transaction after the expiration of controls on affordability.
- F. The administrative agent shall deposit all repayment proceeds into the Municipal Housing Trust Fund, which may be used as specified at N.J.S.A. 52:27D-329.2. Money deposited in housing trust funds may not be expended until the municipality submits and the Division or the county-level housing judge approves a spending plan. See N.J.A.C. 5:99-2 and N.J.S.A. 52:27D-329.2.

**§65-18.2 Severability**

If any sentence, paragraph, section, or other component of this **chapter**, or the application thereof to any person or circumstance is adjudged by a court of competent jurisdiction to be invalid, or if by legislative action any of the foregoing components loses its force and effect, such judgement or action will apply only to the specific component under consideration and will not affect, impair, or void the remaining provisions of this chapter.

<b>RECORD OF COUNCIL VOTE</b>						
<b>COUNCIL MEMBER</b>	<b>MOVANT</b>	<b>SECOND</b>	<b>YES</b>	<b>NO</b>	<b>ABSTAIN</b>	<b>ABSENT</b>
<b>Deputy Mayor Andersen</b>						✓
<b>Councilor Birmingham</b>						✓
<b>Councilor D'Amato</b>	✓		✓			
<b>Councilor Harrison</b>			✓			
<b>Councilor Toler</b>			✓			
<b>Councilor Williams</b>						✓
<b>Mayor Baskerville</b>		✓	✓			

**I HEREBY CERTIFY** the foregoing to be a true copy of Ordinance O-26-04 adopted as amended by the Mayor and Council of the Township of Montclair, in the County of Essex, at its meeting held on March 12, 2026.

  
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 Denise Dominguez, Deputy Township Clerk