



Borough of Chatham

BOROUGH HALL

54 FAIRMOUNT AVENUE • CHATHAM • NEW JERSEY 07928

ORDINANCE #16-12

AN ORDINANCE OF THE MAYOR AND BOROUGH COUNCIL OF THE BOROUGH OF CHATHAM, COUNTY OF MORRIS, STATE OF NEW JERSEY AMENDING CHAPTER 69 OF THE BOROUGH CODE TO ADDRESS THE REQUIREMENTS OF THE FAIR HOUSING ACT AND THE UNIFORM HOUSING AFFORDABILITY CONTROLS (UHAC) REGARDING COMPLIANCE WITH THE BOROUGH'S AFFORDABLE HOUSING OBLIGATIONS

WHEREAS, in accordance with the Supreme Court's decision in In the Matter of the Adoption of N.J.A.C. 5:96 and 5:97, 221 N.J. 1 (2015) ("Mount Laurel IV"), the Borough of Chatham filed a Declaratory Judgment action in Morris County Superior Court seeking a Final Judgment of Compliance and Repose approving the Borough's Housing Element and Fair Share Plan (the "Plan"), In the Matter of the Borough of Chatham Affordable Housing Compliance, Docket No. MRS-L-1906-15; and

WHEREAS, on September 7, 2016, Judge Hansbury conducted a Fairness and Compliance Hearing wherein the Court approved the Borough's Plan and granted the Borough a Final Judgment of Compliance and Repose; and

WHEREAS, the Borough wishes to amend Chapter 69 of the Borough Code, entitled "Affordable Housing", to include provisions addressing Chatham's constitutional obligation to provide for its fair share of low- and moderate-income housing, as directed by the Court and consistent with N.J.A.C. 5:93-1, et seq., as amended and supplemented, N.J.A.C. 5:80-26.1, et seq., as amended and supplemented, and the New Jersey Fair Housing Act of 1985; and

WHEREAS, this Ordinance is intended to provide assurances that low- and moderate-income units ("affordable units") are created with controls on affordability over time and that low- and moderate-income households shall occupy those units; and

WHEREAS, the Chatham Borough Planning Board has adopted the Plan pursuant to the Municipal Land Use Law at N.J.S.A. 40:55D-1, et seq., which has been endorsed by the Mayor and Borough Council; and

WHEREAS, this Ordinance implements and incorporates the Borough's Plan.

BE IT ORDAINED, by the Mayor and Council of the Borough of Chatham, County of Morris, and State of New Jersey as follows:

Section 1. Chapter 69 entitled "Affordable Housing" be and hereby is repealed in its entirety and replaced new as follows:

§ 69-1 Purpose.

- A. This Chapter is intended to assure that low- and moderate-income units in the Borough of Chatham are created with controls on affordability over time and that low- and moderate-income households shall occupy these units.

- B. The Borough of Chatham Planning Board has adopted a Housing Element and Fair Share Plan (the "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 Mayor and Borough Council. The Fair Share Plan describes the ways the Borough shall address its fair share for low- and moderate-income housing as determined by the Council on Affordable Housing (COAH) and 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.
- D. The Borough of Chatham shall file monitoring reports with COAH in accordance with N.J.A.C. 5:96, tracking the status of the implementation of the Housing Element and Fair Share Plan. Any plan evaluation report of the Housing Element and Fair Share Plan and monitoring prepared by COAH in accordance with N.J.A.C. 5:96 shall be available to the public at the Borough of Chatham Municipal Building, Municipal Clerk's Office, 54 Fairmount Avenue, Chatham, New Jersey, or from COAH at 101 South Broad Street, Trenton, New Jersey, and on COAH's website, www.nj.gov/dca/affiliates/coah.

§ 69-2 Definitions.

As used in this Chapter, the following terms shall have the meanings indicated:

ACT

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

ADAPTABLE

A unit constructed in compliance with the technical design standards of the Barrier Free Sub-Code, N.J.A.C. 5:23-7.

ADMINISTRATIVE AGENT

The person or entity designated by the Borough to administer affordable units in accordance with this Chapter, N.J.A.C. 5:93, and UHAC (N.J.A.C. 5:80-26).

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 AVERAGE

The average percentage of median income at which new restricted units in an affordable housing development are affordable to low- and moderate-income households.

AFFORDABLE

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

AFFORDABLE HOUSING DEVELOPMENT

A development included in or approved pursuant to the Housing Element and Fair Share Plan or otherwise intended to address the Borough's fair share obligation, and includes, but is not limited to, an inclusionary development, a municipal construction project or a 100 percent (100%) affordable housing development.

AFFORDABLE HOUSING PROGRAM(S)

Any mechanism in a municipal Fair Share Plan prepared or implemented to address a municipality's fair share obligation.

AFFORDABLE UNIT

A housing unit proposed or created pursuant to the Act and approved for crediting by the Court and/or funded through an affordable housing trust fund.

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.).

AGE-RESTRICTED UNIT

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

ALTERNATIVE LIVING ARRANGEMENT

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

ASSISTED LIVING RESIDENCE

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

CERTIFIED HOUSEHOLD

A household that has been certified by an Administrative Agent as a low-income household or moderate-income household.

COAH

The Council on Affordable Housing, as established by the New Jersey Fair Housing Act (N.J.S.A. 52:27D-301, et seq.).

DCA

The State of New Jersey Department of Community Affairs.

DEFICIENT HOUSING UNIT

A housing unit with health and safety code violations that requires the repair or replacement of a major system. A major system includes weatherization, roofing, plumbing (including wells), heating, electricity, sanitary plumbing (including septic systems), lead paint abatement and/or load bearing structural systems.

DEVELOPER

Any person, partnership, association, company or corporation that is the legal or beneficial owner or owners of a lot or any land included in a proposed development including the holder of an option to contract to 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.

INCLUSIONARY DEVELOPMENT

A development containing both affordable units and market rate units. This term includes, but is not limited to: new construction, the conversion of a non-residential structure to residential use and the creation of new affordable units through the gut rehabilitation or reconstruction of a vacant residential structure.

LOW-INCOME HOUSEHOLD

A household with a total gross annual household income equal to 50 percent (50%) or less of the median household income.

LOW INCOME UNIT

A restricted unit that is affordable to a low-income household.

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 and 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 housing region, as adopted annually by COAH or a successor entity approved by the Court.

MODERATE-INCOME HOUSEHOLD

A household with a total gross annual household income in excess of 50 percent (50%) but less than 80 percent (80%) of the median household income.

MODERATE-INCOME UNIT

A restricted unit that is affordable to a moderate-income household.

NON-EXEMPT SALE

Any sale or transfer of ownership other than the transfer of ownership between spouses; 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.

RANDOM SELECTION PROCESS

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

REGIONAL ASSET LIMIT

The maximum housing value in each housing region affordable to a four-person household with an income at 80 percent (80%) of the regional median as defined by duly adopted Regional Income Limits published annually by COAH or a successor entity.

REHABILITATION

The repair, renovation, alteration or reconstruction of any building or structure, pursuant to the Rehabilitation Sub-Code, 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 an ownership unit, that is subject to the affordability controls of N.J.A.C. 5:80-26.1, as amended and supplemented, but does not include a market-rate unit financed under UHORP or MONI.

UHAC

The Uniform Housing Affordability Controls set forth in N.J.A.C. 5:80-26, et seq.

VERY LOW-INCOME HOUSEHOLD

A household with a total gross annual household income equal to 30 percent (30%) or less of the median household income for the applicable housing region.

VERY LOW-INCOME UNIT

A restricted unit that is affordable to a very low-income household.

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 is considered a major system for purposes of a rehabilitation program.

§ 69-3 Applicability.

- A. The provisions of this Chapter shall apply to all affordable housing developments and affordable housing units that currently exist and that are proposed to be created within the Borough of Chatham pursuant to the Borough's most recently adopted Housing Element and Fair Share Plan.
- B. In addition, any property in the Borough that is currently zoned for nonresidential uses and that is subsequently rezoned for residential purposes or receives a zoning change or a use variance to permit residential development, or receives a zoning change or a density variance to permit higher density residential development, and provided such residential development provides a sufficient compensatory benefit in terms of the density of development permitted, shall provide an affordable housing set-aside of 15% if the affordable units will be for rent and 20% if the affordable units will be for sale. The determination of a "sufficient compensatory benefit" shall be made by the reviewing authority based upon prevailing legislation and/or case law.
- C. The following sections shall apply to all developments that contain low-and moderate-income housing units, including any currently unanticipated future developments that will provide low-and moderate-income housing units.

§ 69-4 General Standards Applicable to Residential Development.

Each residential development subject to this Chapter shall comply with the following:

- A. Residential development with five or more units shall set aside a minimum of twenty percent (20%) of the total number of units as affordable housing for owner-occupied development and fifteen percent (15%) for rental development.
- B. Residential development with fewer than five units shall make a payment in lieu of on-site construction of affordable units of the greater of the residential development fee set forth at Section 119-4 or a pro rata fair share contribution to the Borough's Affordable Housing Trust Fund based on the fractional affordable housing requirement for said development calculated in accordance with Subsection D of this Section.
- C. When any calculation of the percentage of affordable units required to be provided results in a fractional unit of 1/2 or more, the fraction shall be rounded up to the next whole unit. When a calculation results in a fraction of less than 1/2, the fraction shall be rounded down to the previous whole unit.
- D. Any fractional affordable housing requirement shall be addressed by a payment in lieu of on-site construction of affordable housing, which shall be placed in the Affordable Housing Trust Fund established pursuant to Chapter 119. The amount of the payment shall be consistent with COAH regulations and shall be negotiated with the Borough based on consideration of the anticipated cost of providing affordable housing units. For purposes of this Chapter, the payment in lieu of affordable housing shall initially be established as \$180,000 multiplied by

the fractional affordable housing requirement as calculated to two decimal points. The payment in lieu of affordable housing is presumptively the cost to construct an affordable unit in the Borough. The Planning Board or Zoning Board, as appropriate, may adjust from time to time the presumptive amount based upon the appropriate evidence.

§ 69-5 Alternative Living Arrangements.

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

§ 69-6 Phasing Schedule for Inclusionary Zoning.

- A. In inclusionary developments the following schedule shall be followed:

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

§ 69-7 New Construction.

- A. Low/Moderate Split and Bedroom Distribution of Affordable Housing Units:
- (1) The fair share obligation shall be divided equally between low- and moderate-income units, except that where there is an odd number of affordable housing units, the extra unit shall be a low income unit. At least 13 percent (13%) of all restricted rental units shall be very low- income units. The very low-income units shall be counted as part of the required number of low income units within the development.
 - (2) In each affordable development, at least 50 percent (50%) of the restricted units within each bedroom distribution shall be low-income units.
 - (3) Affordable developments that are not age-restricted shall be structured in conjunction with realistic market demands such that:

- (a) The combined number of efficiency and one-bedroom units shall be no greater than 20 percent (20%) of the total low- and moderate-income units;
 - (b) At least 30 percent (30%) of all low- and moderate-income units shall be two bedroom units;
 - (c) At least 20 percent (20%) of all low- and moderate-income units shall be three bedroom units; and
 - (d) The remaining units may be allocated among two and three bedroom units at the discretion of the developer.
- (4) Affordable developments that are age-restricted shall be structured such that the number of bedrooms shall equal the number of age-restricted low- and moderate-income units within the inclusionary development. This standard may be met by having all one-bedroom units or by having a two-bedroom unit for each efficiency unit.

B. Accessibility Requirements:

- (1) The first floor of all restricted townhouse dwelling units and all restricted units in all other multistory buildings shall be subject to the technical design standards of the Barrier Free Sub-Code, N.J.A.C. 5:23-7 and the following:
- (2) All restricted townhouse dwelling units and all restricted units in other multistory buildings in which a restricted dwelling unit is attached to at least one other dwelling unit shall have the following features:
 - (a) An adaptable toilet and bathing facility on the first floor; and
 - (b) An adaptable kitchen on the first floor; and
 - (c) An interior accessible route of travel on the first floor; and
 - (d) An adaptable room that can be used as a bedroom, with a door or the casing for the installation of a door, on the first floor; and
 - (e) If not all of the foregoing requirements in b.1) through b.4) can be satisfied, then an interior accessible route of travel must be provided between stories within an individual unit, but if all of the terms of paragraphs b.1) through b.4) above have been satisfied, then an interior accessible route of travel shall not be required between stories within an individual unit; and
 - (f) An accessible entranceway as set forth at P.L. 2005, c. 350 (N.J.S.A. 52:27D-311a, et seq.) and the Barrier Free Sub-Code, N.J.A.C. 5:23-7, or evidence that the Borough has collected funds from the developer sufficient to make 10 percent (10%) of the adaptable entrances in the development accessible:
 - [1] Where a unit has been constructed with an adaptable entrance, upon the request of a disabled person who is purchasing or will reside in the dwelling unit, an accessible entrance shall be installed.

- [2] To this end, the builder of restricted units shall deposit funds within the Borough's Affordable Housing Trust Fund sufficient to install accessible entrances in 10 percent (10%) of the affordable units that have been constructed with adaptable entrances.
- [3] The funds deposited above shall be used by the Borough for the sole purpose of making the adaptable entrance of an affordable unit accessible when requested to do so by a person with a disability who occupies or intends to occupy the unit and requires an accessible entrance.
- [4] The developer of the restricted units shall submit a design plan and cost estimate to the Construction Official of the Borough for the conversion of adaptable to accessible entrances.
- [5] Once the Construction Official has determined that the design plan to convert the unit entrances from adaptable to accessible meet the requirements of the Barrier Free Sub-Code, N.J.A.C. 5:23-7, and that the cost estimate of such conversion is reasonable, payment shall be made to the Borough's Affordable Housing Trust Fund in care of the Borough Treasurer who shall ensure that the funds are deposited into the Affordable Housing Trust Fund and appropriately earmarked.

(g) Full compliance with the foregoing provisions shall not be required where an entity can demonstrate that it is "site impracticable" to meet the requirements. Determinations of site impracticability shall be in compliance with the Barrier Free Sub-Code, N.J.A.C. 5:23-7.

C. Design:

- (1) In inclusionary developments, to the extent possible, low- and moderate-income units shall be integrated with the market units.
- (2) In inclusionary developments, low- and moderate-income units shall have access to all of the same common elements and facilities as the market units.

D. Maximum Rents and Sales Prices:

- (1) In establishing rents and sales prices of affordable housing units, the Administrative Agent shall follow the procedures set forth in UHAC, utilizing the regional income limits established by COAH or a successor entity.
- (2) The maximum rent for restricted rental units within each affordable development shall be affordable to households earning no more than 60 percent (60%) of median income, and the average rent for restricted rental units shall be affordable to households earning no more than 52 percent (52%) of median income.
- (3) The developers and/or municipal sponsors of restricted rental units shall establish at least one rent for each bedroom type for both low-income and moderate-income units, provided that at least 10 percent (10%) of all low- and moderate-income rental units shall be affordable to very low-income households.

- (4) The maximum sales price of restricted ownership units within each affordable development shall be affordable to households earning no more than 70 percent (70%) of median income, and each affordable development must achieve an affordability average of 55 percent (55%) for restricted ownership units; in achieving this affordability average, moderate-income ownership units must be available for at least three different sales prices for each bedroom type, and low-income ownership units must be available for at least two different sales prices for each bedroom type.
- (5) In determining the initial sales prices and rent levels for compliance with the affordability average requirements for restricted units other than assisted living facilities and age-restricted developments, the following standards shall be used:
 - (a) A studio shall be affordable to a one-person household;
 - (b) A one-bedroom unit shall be affordable to a one and one-half person household;
 - (c) A two-bedroom unit shall be affordable to a three-person household;
 - (d) A three-bedroom unit shall be affordable to a four and one-half person household;
and
 - (e) A four-bedroom unit shall be affordable to a six-person household.
- (6) In determining the initial sales prices and rents for compliance with the affordability average requirements for restricted units in assisted living facilities and age-restricted developments, the following standards shall be used:
 - (a) A studio shall be affordable to a one-person household;
 - (b) A one-bedroom unit shall be affordable to a one and one-half person household; and
 - (c) A two-bedroom unit shall be affordable to a two-person household or to two one-person households.
- (7) The initial purchase price for all restricted ownership units shall be calculated so that the monthly carrying cost of the unit, including principal and interest (based on a mortgage loan equal to 95 percent (95%) of the purchase price and the Federal Reserve H.15 rate of interest), taxes, homeowner and private mortgage insurance and condominium or homeowner association fees do not exceed 28 percent (28%) of the eligible monthly income of the appropriate size household as determined under N.J.A.C. 5:80-26.4, as may be amended and supplemented; provided, however, that the price shall be subject to the affordability average requirement of N.J.A.C. 5:80-26.3, as may be amended and supplemented.
- (8) The initial rent for a restricted rental unit shall be calculated so as not to exceed 30 percent (30%) of the eligible monthly income of the appropriate size household, including an allowance for tenant paid utilities, as determined under N.J.A.C. 5:80-26.4, as may be amended and supplemented; provided, however, that the rent shall be subject to the affordability average requirement of N.J.A.C. 5:80-26.3, as may be amended and supplemented.

- (9) The price of owner-occupied low- and moderate-income units may increase annually based on the percentage increase in the regional median income limit for each housing region. In no event shall the maximum resale price established by the Administrative Agent be lower than the last recorded purchase price.
- (10) The rent of low- and moderate-income units may be increased annually based on the permitted percentage increase in the Housing Consumer Price Index for the United States. This increase shall not exceed nine percent (9%) in any one year. Rents for units constructed pursuant to low- income housing tax credit regulations shall be indexed pursuant to the regulations governing low- income housing tax credits.

§ 69-8 Utilities.

- A. Affordable units shall utilize the same type of heating source as market units within an inclusionary development.
- B. Tenant-paid utilities included in the utility allowance shall be set forth in the lease and shall be consistent with the utility allowance approved by DCA for its Section 8 program.

§ 69-9 Occupancy Standards.

In referring certified households to specific restricted units, the Administrative Agent shall, to the extent feasible and without causing an undue delay in the occupancy of a unit, strive to:

- A. Provide an occupant for each bedroom;
- B. Provide children of different sexes with separate bedrooms;
- C. Provide separate bedrooms for parents and children; and
- D. Prevent more than two persons from occupying a single bedroom.

§ 69-10 Control Periods for Restricted Ownership Units and Enforcement Mechanisms.

- A. Control periods for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.5, as may be amended and supplemented, and each restricted ownership unit shall remain subject to the requirements of this Chapter for a period of at least thirty (30) years, until the Borough takes action to release the unit from such requirements; prior to such action, a restricted ownership unit must remain subject to the requirements of N.J.A.C. 5:80-26.1, as may be amended and supplemented.
- B. The affordability control period for a restricted ownership unit shall commence on the date the initial certified household takes title to the unit.
- C. Prior to the issuance of the initial certificate of occupancy for a restricted ownership unit and upon each successive sale during the period of restricted ownership, the Administrative Agent shall determine the restricted price for the unit and shall also determine the non-restricted, fair market value of the unit based on either an appraisal or the unit's equalized assessed value without the restrictions in place.

- D. At the time of the initial sale of the unit, the initial purchaser shall execute and deliver to the Administrative Agent a recapture note obligating the purchaser (as well as the purchaser's heirs, successors and assigns) to repay, upon the first non-exempt sale after the unit's release from the restrictions set forth in this Chapter, an amount equal to the difference between the unit's non-restricted fair market value and its restricted price, and the recapture note shall be secured by a recapture lien evidenced by a duly recorded mortgage on the unit.
- E. The affordability controls set forth in this Chapter shall remain in effect despite the entry and enforcement of any judgment of foreclosure with respect to restricted ownership units.
- F. A restricted ownership unit shall be required to obtain a Continuing Certificate of Occupancy or a certified statement from the Construction Official stating that the unit meets all Code standards upon the first transfer of title following the removal of the restrictions provided under N.J.A.C. 5:80-26.5(a), as may be amended and supplemented.

§ 69-11 Price Restrictions for Restricted Ownership Units, Homeowner Association Fees and Resale Prices

Price restrictions for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.1, as may be amended and supplemented, including:

- A. The initial purchase price for a restricted ownership unit shall be approved by the Administrative Agent.
- B. The Administrative Agent shall approve all resale prices, in writing and in advance of the resale, to assure compliance with the foregoing standards.
- C. The master deeds of inclusionary developments shall provide no distinction between the condominium or homeowner association fees and special assessments paid by low- and moderate-income purchasers and those paid by market purchasers.
- D. The owners of restricted ownership units may apply to the Administrative Agent to increase the maximum sales price for the unit on the basis of anticipated capital improvements. Eligible capital improvements shall be those that render the unit suitable for a larger household or the addition of a bathroom. See Section 13.

§ 69-12 Buyer Income Eligibility.

- A. Buyer income eligibility for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.1, as may be amended and supplemented, such that low-income ownership units shall be reserved for households with a gross household income less than or equal to 50 percent (50%) of median income and moderate-income ownership units shall be reserved for households with a gross household income less than 80 percent (80%) of median income.
- B. Notwithstanding the foregoing, however, the Administrative Agent may, upon approval by the Borough Council, and subject to the Court's approval, permit moderate-income purchasers to buy low-income units in housing markets if the Administrative Agent determines that there is an insufficient number of eligible low-income purchasers to permit prompt occupancy of the units. All such low-income units to be sold to moderate-income households shall retain the required pricing and pricing restrictions for low-income units.

- C. A certified household that purchases a restricted ownership unit must occupy it as the certified household's principal residence and shall not lease the unit; provided, however, that the Administrative Agent may permit the owner of a restricted ownership unit, upon application and a showing of hardship, to lease the restricted unit to another certified household for a period not to exceed one year.
- D. The Administrative Agent shall certify a household as eligible for a restricted ownership unit when the household is a low-income household or a moderate-income household, as applicable to the unit, and the estimated monthly housing cost for the particular unit (including principal, interest, taxes, homeowner and private mortgage insurance and condominium or homeowner association fees, as applicable) does not exceed 33 percent (33%) of the household's eligible monthly income.

§ 69-13 Limitations on Indebtedness Secured by Ownership Unit; Subordination.

- A. Prior to incurring any indebtedness to be secured by a restricted ownership unit, the owner shall apply to the Administrative Agent for a determination in writing that the proposed indebtedness complies with the provisions of this Section, and the Administrative Agent shall issue such determination prior to the owner incurring such indebtedness.
- B. With the exception of First Purchase Money Mortgages, neither an owner nor a lender shall at any time cause or permit the total indebtedness secured by a restricted ownership unit to exceed 95 percent (95%) of the maximum allowable resale price of the unit, as such price is determined by the Administrative Agent in accordance with N.J.A.C.5:80-26.6(b).

§ 69-14 Capital Improvements To Ownership Units.

- A. The owners of restricted ownership units may apply to the Administrative Agent to increase the maximum sales price for the unit on the basis of capital improvements made since the purchase of the unit. Eligible capital improvements shall be those that render the unit suitable for a larger household or that add an additional bathroom. In no event shall the maximum sales price of an improved housing unit 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, wall-to-wall carpeting) shall be 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 the signing of 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, which shall be 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 shall 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 the time of or as a condition of resale.

§ 69-15 Control Periods for Restricted Rental Units.

- A. Control periods for restricted rental units shall be in accordance with N.J.A.C. 5:80-26.11, as may be amended and supplemented, and each restricted rental unit shall remain subject to the requirements of this Chapter for a period of at least 30 years, until the Borough takes action to release the unit from such requirements. Prior to such action, a restricted rental unit must remain subject to the requirements of N.J.A.C. 5:80-26.1, as may be amended and supplemented.
- B. Deeds of all real property that include restricted rental units shall contain deed restriction language. The deed restriction shall have priority over all mortgages on the property, and the deed restriction shall be filed by the developer or seller with the records office of the County of Morris. A copy of the filed document shall be provided to the Administrative Agent within 30 days of the receipt of a Certificate of Occupancy.
- C. A restricted rental unit shall remain subject to the affordability controls of this Chapter despite the occurrence of any of the following events:
 - (1) Sublease or assignment of the lease of the unit;
 - (2) Sale or other voluntary transfer of the ownership of the unit; or
 - (3) The entry and enforcement of any judgment of foreclosure on the property containing the unit.

§ 69-16 Rent Restrictions for Rental Units; Leases.

- A. A written lease shall be required for all restricted rental units and tenants shall be responsible for security deposits and the full amount of the rent as stated on the lease. A copy of the current lease for each restricted rental unit shall be provided to the Administrative Agent.
- B. No additional fees or charges shall be added to the approved rent (except, in the case of units in an assisted living residence, to cover the customary charges for food and services) without the express written approval of the Administrative Agent.
- C. Application fees (including the charge for any credit check) shall not exceed five percent (5%) of the monthly rent of the applicable restricted unit and shall be payable to the Administrative Agent to be applied to the costs of administering the controls applicable to the unit as set forth in this Chapter.
- D. No rent control ordinance or other pricing restriction shall be applicable to either the market units or the affordable units in any development in which at least 15% of the total number of dwelling units are restricted rental units in compliance with this Chapter.

§ 69-17 Tenant Income Eligibility.

- A. Tenant income eligibility shall be in accordance with N.J.A.C. 5:80-26.13, as may be amended and supplemented, and shall be determined as follows:
 - (1) Very low-income rental units shall be reserved for households with a gross household income less than or equal to 30 percent (30%) of median income.

- (2) Low-income rental units shall be reserved for households with a gross household income less than or equal to 50 percent (50%) of median income.
- (3) Moderate-income rental units shall be reserved for households with a gross household income less than 80 percent (80%) of 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 household, low-income household or a moderate-income household, as applicable to the unit, and the rent proposed for the unit does not exceed 35 percent (35%) (40 percent (40%) for age-restricted units) of the household's eligible monthly income as determined pursuant to N.J.A.C. 5:80-26.16, as may be amended and supplemented; provided, however, that this limit may be exceeded if one or more of the following circumstances exists:

- (1) The household currently pays more than 35 percent (35%) (40 percent (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 percent (35%) (40 percent (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 reliable anticipated 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 1.a. through 2.e. above with the Administrative Agent, who shall counsel the household on budgeting.

§ 69-18 Municipal Housing Liaison.

- A. There is hereby established the position of Municipal Housing Liaison for the Borough of Chatham. The Municipal Housing Liaison shall be appointed by resolution of the Mayor and Borough Council and may be a full or part-time municipal employee. The Municipal Housing Liaison shall be approved by COAH or the Court, as appropriate, and shall be duly qualified through a training program sponsored by Affordable Housing Professionals of New Jersey before assuming the duties of Municipal Housing Liaison.
- B. Compensation shall be fixed by the Mayor and Borough Council at the time of the appointment of the Municipal Housing Liaison.
- C. The Municipal Housing Liaison shall be responsible for oversight and administration of the affordable housing program for the Borough, including the following responsibilities which may not be contracted out to the Administrative Agent:

- (1) Serving as the Borough's primary point of contact for all inquiries from the State, affordable housing providers, Administrative Agents and interested households;
 - (2) Monitoring the status of all restricted units in the Borough's Fair Share Plan;
 - (3) Compiling, verifying and submitting annual monitoring reports as may be required by the Court;
 - (4) Coordinating meetings with affordable housing providers and Administrative Agents, as needed; and
 - (5) Attending continuing education opportunities on affordability controls, compliance monitoring and affirmative marketing at least annually and more often as needed.
- D. Subject to approval by COAH or the Court, as appropriate, , the Borough may contract with or authorize a consultant, authority, government entity or any agency charged by the Mayor and Borough Council to act as the Borough's Administrative Agent, which entity shall have the responsibility of administering the affordable housing program of the Borough of Chatham as set forth herein, except for those responsibilities which cannot be contracted out pursuant to subsection C above. If the Borough contracts with another entity to administer all or any part of the affordable housing program, including the affordability controls and Affirmative Marketing Plan, the Municipal Housing Liaison shall supervise the contracting Administrative Agent.
- E. An Operating Manual for each affordable housing program shall be prepared and provided by the Administrative Agent(s) to be adopted by resolution of the Mayor and Borough Council and subject to approval of COAH or the Court, as appropriate. The Operating Manual(s) shall be available for public inspection in the office of the Borough Clerk, in the office of the Municipal Housing Liaison, and in the office(s) of the Administrative Agent(s).

§ 69-19 Administrative Agent.

The Administrative Agent shall perform the duties and responsibilities of an Administrative Agent as set forth in UHAC, including those set forth in Sections 5:80-26.14, 16 and 18 thereof, which includes:

- A. Affirmative Marketing:
- (1) Conducting an outreach process to affirmatively market affordable housing units in accordance with the Affirmative Marketing Plan of the Borough and the provisions of N.J.A.C. 5:80-26.15; and
 - (2) Providing counseling or contracting 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.
- B. The fees of the Administrative Agent shall be paid by the developers/owners/sellers of the affordable units on a fee for service basis in accordance with the fee schedule referenced in Section 69-22 herein below.
- C. Household Certification:

- (1) Soliciting, scheduling, conducting and following up on interviews with interested households;
- (2) Conducting interviews and obtaining sufficient documentation of gross income and assets upon which to base a determination of income eligibility for a low- or moderate-income unit;
- (3) Providing written notification to each applicant as to the determination of eligibility or non-eligibility;
- (4) Requiring that all certified applicants for restricted units execute a certificate substantially in the form, as applicable, of either the ownership or rental certificates set forth in Appendices J and K of N.J.A.C. 5:80-26.1 et seq.;
- (5) Creating and maintaining a referral list of eligible applicant households living in the housing region and eligible applicant households with members working in the housing region where the units are located; and
- (6) Employing a random selection process as provided in the Affirmative Marketing Plan of the Borough when referring households for certification to affordable units.

D. Affordability Controls:

- (1) Furnishing to attorneys or closing agents forms of deed restrictions and mortgages for recording at the time of conveyance of title of each restricted unit;
- (2) Creating and maintaining a file on each restricted unit for its control period, including the recorded deed with restrictions, recorded mortgage and note, as appropriate;
- (3) Ensuring that the removal of the deed restrictions and cancellation of the mortgage note are effectuated and properly filed with the Morris County Register of Deeds or Morris County Clerk's office after the termination of the affordability controls for each restricted unit;
- (4) Communicating with lenders regarding foreclosures; and
- (5) Ensuring the issuance of Continuing Certificates of Occupancy or certifications pursuant to N.J.A.C. 5:80-26.10.

E. Resales and Rerentals:

- (1) Instituting and maintaining an effective means of communicating information between owners and the Administrative Agent regarding the availability of restricted units for resale or rental; and
- (2) Instituting and maintaining an effective means of communicating information to low- and moderate-income households regarding the availability of restricted units for resale or re-rental.

F. Processing Requests from Unit Owners:

- (1) Reviewing and approving requests for determination from owners of restricted units who wish to take out home equity loans or refinance during the term of their ownership that the amount of indebtedness to be incurred will not violate the terms of this Chapter;
- (2) Reviewing and approving requests to increase sales prices from owners of restricted units who wish to make capital improvements to the units that would affect the selling price, such authorizations to be limited to those improvements resulting in additional bedrooms or bathrooms and the depreciated cost of central air conditioning systems;
- (3) Notifying the municipality of an owner's intent to sell a restricted unit; and
- (4) Making determinations on requests by owners of restricted units for hardship waivers.

G. Enforcement:

- (1) Securing annually from the municipality a list 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 to their unit or sell it;
- (2) 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 can be offered, or in any other way committed, to any person, other than a household duly certified to the unit by the Administrative Agent;
- (3) The posting annually in all rental properties, including two-family homes, of a notice as to the maximum permitted rent together with the telephone number of the Administrative Agent where complaints of excess rent or other charges can be made;
- (4) Sending annual mailings to all owners of affordable dwelling units, reminding them of the notices and requirements outlined in N.J.A.C. 5:80-26.18(d)4;
- (5) Establishing a program for diverting unlawful rent payments to the municipality's Affordable Housing Trust Fund; and
- (6) Creating and publishing a written operating manual for each affordable housing program administered by the Administrative Agent, to be approved by the Borough Council and the Court, setting forth procedures for administering the affordability controls.

H. Additional Responsibilities:

- (1) The Administrative Agent shall have the authority to take all actions necessary and appropriate to carry out its responsibilities hereunder.
- (2) The Administrative Agent shall prepare monitoring reports for submission to the Municipal Housing Liaison in time to meet any monitoring requirements and deadlines imposed by the Court.

- (3) The Administrative Agent shall attend continuing education sessions on affordability controls, compliance monitoring, and affirmative marketing at least annually and more often as needed.
- H. The Municipal Housing Liaison and the Administrative Agent shall have authority to take all actions necessary and appropriate to carry out their respective responsibilities hereunder, including joint consultation concerning any of the above responsibilities. If no Administrative Agent is designated by the Mayor and Borough Council, the Municipal Housing Liaison shall have the powers and duties set forth in this Section, subject to the approval of the Court as to the qualification of the Municipal Housing Liaison to undertake such powers and duties and subject to the Municipal Housing Liaison's attendance at continuing education sessions as set forth in Section 69-19G(3) above.

§ 69-20 Affirmative Marketing Requirements.

- A. The Borough shall adopt by resolution an Affirmative Marketing Plan, subject to approval of the Court, that is compliant with N.J.A.C. 5:80-26.15, as may be amended and supplemented.
- B. The Affirmative Marketing Plan is a regional marketing strategy designed to attract buyers and/or renters of all majority and minority groups, regardless of race, creed, color, national origin, ancestry, marital or familial status, gender, affectional or sexual orientation, disability, age or number of children to housing units which are being marketed by a developer, sponsor or owner of affordable housing. The Affirmative Marketing Plan is intended to target those potentially eligible persons who are least likely to apply for affordable units in that region. It is a continuing program that directs marketing activities toward Housing Region 2 and is required to be followed throughout the period of restriction.
- C. The Affirmative Marketing Plan shall provide a regional preference for all households that live and/or work in Housing Region 2, comprised of Morris, Essex, Union and Warren Counties.
- D. The municipality has the ultimate responsibility for adopting the Affirmative Marketing Plan and for the proper administration of the Affirmative Marketing Program, including initial sales and rentals and re-sales and re-rentals. The Administrative Agent designated by the Borough shall implement the Affirmative Marketing Plan to assure the affirmative marketing of all affordable units.
- E. In implementing the Affirmative Marketing Plan, the Administrative Agent shall provide a list of counseling services to low- and moderate-income applicants on subjects such as budgeting, credit issues, mortgage qualification, rental lease requirements, and landlord/tenant law.
- F. The Affirmative Marketing Plan shall describe the media to be used in advertising and publicizing the availability of housing. In implementing the Affirmative Marketing Plan, the Administrative Agent shall consider the use of language translations where appropriate.
- G. The affirmative marketing process for available affordable units shall begin at least four months (120 days) prior to the expected date of occupancy.
- H. Applications for affordable housing shall be available in several locations, including, at a minimum, the County Administration Building and/or the County Library for each county within the housing region; Borough Hall and the Library of the Chathams; and the developer's rental office. Applications shall be mailed to prospective applicants upon request.

- I. The costs of advertising and affirmative marketing of the affordable units shall be the responsibility of the developer, sponsor or owner.

§ 69-21 Enforcement of Affordable Housing Regulations.

- A. Upon the occurrence of a breach of any of the regulations governing the affordable unit by an Owner, Developer or Tenant, the municipality shall have all remedies provided at law or equity, including but not limited to foreclosure, tenant eviction, a requirement for household recertification, acceleration of all sums due under a mortgage, recuperation of any funds from a sale in violation of the regulations, injunctive relief to prevent further violation of the regulations, entry on the premises, and specific performance.
- B. After providing written notice of a violation to an Owner, Developer or Tenant of a low- or moderate-income unit and advising the Owner, Developer or Tenant of the penalties for such violations, the municipality may take the following action(s) against the Owner, Developer or Tenant for any violation that remains uncured for a period of 60 days after service of the written notice:
 - (1) The municipality may file a court action pursuant to N.J.S.A. 2A:58-11 alleging a violation or violations of the regulations governing the affordable housing unit. If the Owner, Developer or Tenant is adjudged by the Court to have violated any provision of the regulations governing affordable housing units the Owner, Developer or Tenant shall be subject to one or more of the following penalties, at the discretion of the Court:
 - (a) A fine of not more than \$500.00 per day or imprisonment for a period not to exceed 90 days, or both, provided that each and every day that the violation continues or exists shall be considered a separate and specific violation of these provisions and not a continuation of the initial offense;
 - (b) In the case of an Owner who has rented a low- or moderate-income unit in violation of the regulations governing affordable housing units, payment into the Borough Affordable Housing Trust Fund of the gross amount of rent illegally collected;
 - (c) In the case of an Owner who has rented a low- or moderate-income unit in violation of the regulations governing affordable housing units, payment of an innocent tenant's reasonable relocation costs, as determined by the Court.
 - (2) The municipality may file a court action in the Superior Court seeking a judgment that would result in the termination of the Owner's equity or other interest in the unit, in the nature of a mortgage foreclosure. Any such judgment shall be enforceable as if the same were a judgment of default of the First Purchase Money Mortgage and shall constitute a lien against the low- or moderate-income unit.
 - (a) The judgment shall be enforceable, at the option of the municipality, by means of an execution sale by the Sheriff, at which time the low- and moderate-income unit of the violating Owner shall be sold at a sale price which is not less than the amount necessary to fully satisfy and pay off any First Purchase Money Mortgage and prior liens and the costs of the enforcement proceedings incurred by the municipality, including attorney's fees. The violating Owner shall have his right to possession terminated as well as his title conveyed pursuant to the Sheriff's sale.

- (b) The proceeds of the Sheriff's sale shall first be applied to satisfy the First Purchase Money Mortgage lien and any prior liens upon the low- and moderate-income unit. The excess, if any, shall be applied to reimburse the municipality for any and all costs and expenses incurred in connection with either the court action resulting in the judgment of violation or the Sheriff's sale. In the event that the proceeds from the Sheriff's sale are insufficient to reimburse the municipality in full as aforesaid, the violating Owner shall be personally responsible for the full extent of such deficiency, in addition to any and all costs incurred by the municipality in connection with collecting such deficiency. In the event that a surplus remains after satisfying all of the above, such surplus, if any, shall be placed in escrow by the municipality for the Owner and shall be held in such escrow for a maximum period of two years or until such earlier time as the Owner shall make a claim with the municipality for such. Failure of the Owner to claim such balance within the two-year period shall automatically result in a forfeiture of such balance to the municipality. Any interest accrued or earned on such balance while being held in escrow shall belong to and shall be paid to the municipality, whether such balance shall be paid to the Owner or forfeited to the municipality.
- (c) Foreclosure by the municipality due to violation of the regulations governing affordable housing units shall not extinguish the restrictions of the regulations governing affordable housing units as the same apply to the low- and moderate-income unit. Title shall be conveyed to the purchaser at the Sheriff's sale, subject to the restrictions and provisions of the regulations governing the affordable housing unit. The Owner determined to be in violation of the provisions of this plan and from whom title and possession were taken by means of the Sheriff's sale shall not be entitled to any right of redemption.
- (d) If there are no bidders at the Sheriff's sale, or if insufficient amounts are bid to satisfy the First Purchase Money Mortgage and any prior liens, the municipality may acquire title to the low- and moderate-income unit by satisfying the First Purchase Money Mortgage and any prior liens and crediting the violating owner with an amount equal to the difference between the First Purchase Money Mortgage and any prior liens and costs of the enforcement proceedings, including legal fees and the maximum resale price for which the low- and moderate-income unit could have been sold under the terms of the regulations governing affordable housing units. This excess shall be treated in the same manner as the excess which would have been realized from an actual sale as previously described.
- (e) Failure of the low- and moderate-income unit to be either sold at the Sheriff's sale or acquired by the municipality shall obligate the Owner to accept an offer to purchase from any qualified purchaser which may be referred to the Owner by the municipality, with such offer to purchase being equal to the maximum resale price of the low- and moderate-income unit as permitted by the regulations governing affordable housing units.
- (f) The Owner shall remain fully obligated, responsible and liable for complying with the terms and restrictions of governing affordable housing units until such time as title is conveyed from the Owner.

§ 69-22 Fees.

- A. The Borough Administrator, in consultation with the Administrative Agent and Municipal Housing Liaison, as appropriate, shall establish the following fees, and such other reasonable

fees necessary to cover the administrative costs of the Borough's Affordable Housing program, by duly adopted resolution of the Borough Council.

- (1) Certification fee
- (2) Resubmission fee
- (3) Resale fee
- (4) Refinancing certification review
- (5) Tenant renewal lease fee

B. In addition to the above administrative fees, the applicant, seller and/or landlord, as appropriate, shall be responsible for the actual for any appraisal, credit check, title work and/or recording costs, if any.

§ 69-23 Appeals.

Appeals from all decisions of an Administrative Agent appointed pursuant to this Chapter shall be filed in writing with the Court.

Section 2. All other provisions of the Borough Code not amended or supplemented herein remain in full force and effect.

Section 3. If any section, paragraph, subsection, clause or provision of this Ordinance shall be adjudged by the courts to be invalid, such adjudication shall apply only to the section, paragraph, subsection, clause or provisions so adjudicated, and the remainder of the Ordinance shall be deemed valid and effective. Any ordinances or parts thereof in conflict with the provisions of this Ordinance are repealed to the extent of such conflict.

Section 4. This Ordinance shall take effect upon passage and publication in accordance with applicable law.

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Introduced: September 21, 2016
Public Hearing: October 24, 2016

BOROUGH OF CHATHAM

MAYOR BRUCE A. HARRIS

Date signed: October 24, 2016

Attest:

Robin R. Kline, MAS, RMC, CMR
BOROUGH CLERK

CERTIFICATION

I, Robin R. Kline, Municipal Clerk of the Borough of Chatham, County of Morris, State of New Jersey, do hereby certify this is a true and correct copy of the Ordinance adopted by the Borough Council at its meeting held on October 24, 2016.

Robin R. Kline, MAS, RMC, CMR