

ORDINANCE # 2009-24

AN ORDINANCE AMENDING ARTICLE I, GENERAL PROVISIONS AND ARTICLE IA, AFFORDABLE HOUSING LIAISON OF CHAPTER 5 ENTITLED "AFFORDABLE HOUSING" OF THE CODE OF THE TOWNSHIP OF MARLBORO AND REPLACING SAME WITH A NEW ARTICLE I, GENERAL PROVISIONS, AND A NEW ARTICLE IA, MUNICIPAL HOUSING LIAISON OF CHAPTER 5 ENTITLED "AFFORDABLE HOUSING"

WHEREAS, The Affordable Housing Agency of the Township of Marlboro has recommended that Article I and Article IA of the Chapter 5, be amended and supplement to comply with the provision of P.L. 2008, C. 46 to make reference to provisions relating to very low-income housing; and

WHEREAS, the Affordable Housing Agency has also recommended certain amendments to strengthen the enforcement powers of the Municipal Housing Liaison and to require that condominium associations and/or homeowners' associations provide the Affordable Housing Agency with notice of delinquencies involving affordable housing units in the Township of Marlboro.

NOW THEREFORE BE AND IT IS HEREBY ORDAINED, by the Township Council of the Township of Marlboro, County of Monmouth, and State of New Jersey, that Article I, General Provisions, and Article IA, Affordable Housing Liaison of Chapter 5 entitled "Affordable Housing," are hereby deleted in their entirety and replaced by a new Article I, General Provisions, and a new Article IA, Municipal Housing Liaison in Chapter 5 entitled "Affordable Housing" hereby created and established as follows:

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Chapter 5, AFFORDABLE HOUSING

ARTICLE I, General Provisions

5-1. Title.

This chapter shall be known and may be cited as the Affordable Housing Ordinance of the Township of Marlboro.

5-2. Purpose.

This chapter is intended to implement Marlboro Township's fair share obligation to provide for very low-, low- and moderate income housing pursuant to the New Jersey Fair Housing Act (N.J.S.A. 52:27D-301 et seq.) (hereinafter the "Act"), the Uniform Housing Affordability Controls Act (N.J.A.C. 5:80-26.1 et seq.) (hereinafter the "UHAC"), and the substantive and procedural regulations which are implemented from time to time by the Council on Affordable Housing (hereinafter "COAH") (N.J.A.C. 5:96 et seq. and 5:97 et seq.). All words, phrases, and terms used within this chapter shall have the same meaning and usage as set forth in the Act, COAH's regulations, and the UHAC. This chapter provides rules for the establishment and administration of affordability controls on each restricted dwelling unit for which Marlboro Township receives COAH credit. This chapter is also designed to assure that all very low-, low- and moderate income units credited by COAH are in fact occupied by very low-, low- and moderate income households for an appropriate period of time. Unless provided for elsewhere within this chapter, the provisions set forth herein shall apply to all restricted units within Marlboro Township regardless of the date on which they were created.

5-3 Affordable Housing Agency established.

A. Creation. There is hereby created an Affordable Housing Agency (the "Agency") of the Township of Marlboro.

B. Composition.

(1) The Agency shall consist of five members, and two alternate members, all of whom shall be appointed by the Mayor. No more than two of the membership of the Agency shall be Township officials. All remaining members must be Township residents. However, one appointment shall be reserved for a tenant or owner/occupant of a very low-, low- or moderate-income unit who is not a Township official.

(2) Alternate members shall have all of the powers of regular members when sitting in place of a regular member. Until such time as a very low-, low- or moderate-income owner/occupant or tenant appointment can be made, an alternate member shall function as a regular member.

(3) The Mayor shall designate one regular member to serve as Chairperson and one member to serve as Vice-Chairperson.

(4) Attendance by three regular members or alternate members shall constitute a quorum. Passage of any motion requires an affirmative vote by a majority of the members present.

(5) The initial term of office of the Agency members shall be one, two or three years, to be designated by the Mayor in making the appointment. The terms of office shall thereafter be three years. The appointments shall be made in such a manner so that the terms of approximately one-third (1/3) of the members shall expire each year.

C. Vacancies; removal for cause. The Mayor may remove any member of the Agency for cause. Written charges served upon the member shall be followed by a hearing before the Marlboro Township Council thereon, at which time the member shall be entitled to be heard either in person or by counsel. A vacancy in the Agency occurring other than by expiration of the term shall be filled for the unexpired term in the same manner as an original appointment.

D. Powers and duties. The powers and duties of the Agency shall be as follows:

(1) The Agency shall take any such action as may be necessary and authorized under this chapter to implement the policies and goals of this chapter, along with any applicable provision(s) and/or requirements of the New Jersey Fair Housing Act (N.J.S.A. 52:27D-301 et seq.), any procedural or substantive rules promulgated by the New Jersey Council on Affordable Housing (N.J.A.C. 5:96 et seq. and 5:97 et seq.), or any provisions of the Uniform Housing Affordability Controls regulations (N.J.A.C. 5:80-26.1 et seq.), to ensure that housing units designated as very low-, low- or moderate-income units, once constructed, shall remain affordable to and be occupied by very low-, low- or moderate-income households.

(2) To report semiannually to the Mayor and Township Council on the status of very low, low- and moderate-income units, including but not limited to, such things as the Agency's enforcement actions in connection with any matters or units with the Agency's jurisdiction.

(3) To take enforcement action, as authorized by section 5-11 of this chapter, against any person or entity for violation of this chapter, the New Jersey Fair Housing Act (N.J.S.A. 52:27D-301 et seq.); the Uniform Affordability Controls Act (N.J.A.C. 5:80-26.1 et seq.); and/or the substantive and procedural rules promulgated from time to time by the Council on Affordable Housing (N.J.A.C. 5:96 and 5:97 et seq.)

(4) To ensure compliance and accountability of the administrative agent pursuant to N.J.A.C. 5:80-26.18(a).

(5) To periodically review this chapter to ensure that it is not in

conflict with the UHAC.

(6) To provide all reasonable and necessary assistance in support of the administrative agent's efforts to ensure effective compliance with the controls set forth in the UHAC.

(7) To ensure that by no later than June 30 of any given year that an annual mailing is made to all affordable units within the Township which shall request that the owner verify such things, which shall include, but not be limited to, income verification, as well as all the information required in the annual mailing set forth in the UHAC (N.J.A.C. 5:80-26.18(d)(4)) as well as appendices J and K therein.

(8) To implement and adjudicate the provisions of Chapter 91, entitled "Mobile Home Rent Control Law" of the Code of the Township of Marlboro.

(9) To implement and enforce the provisions of section 84-47.1 entitled "MHD-II Mobile Home Park District" of the Code of the Township of Marlboro.

E. Appropriation and accountability.

The Mayor may appoint special counsel, accountants, financial investigators and professional planners required so that the Agency can carry out its duties and responsibilities.

5-4 Administrative agent.

A. The affordability controls set forth in this subchapter shall be administered and enforced by an administrative agent selected by Marlboro Township. The primary responsibility of the administrative agent shall be to ensure that the restricted units under administration are sold or rented, as applicable, only to very low-, low-and moderate-income households.

B. Among the responsibilities of the administrative agent are the following:

(1) Conducting an outreach process to insure affirmative marketing of affordable housing units in accordance with the provisions of N.J.A.C. 5:80-26.15;

(2) Soliciting, scheduling, conducting and following up on interviews with interested households;

(3) Conducting interviews and obtaining sufficient documentation of gross income and assets upon which to base a determination of income eligibility for a very low-, low-or moderate-income unit;

(4) Providing written notification to each applicant as to the determination of eligibility or non-eligibility;

(5) Creating and maintaining a referral list of eligible applicant

households living in the COAH region and eligible applicant households with members working in the COAH region where the units are located;

(6) Employing a random selection process when referring households for certification to affordable units;

(7) 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;

(8) Creating and maintaining a file on each restricted unit for its control period, including the recorded deed with restrictions and/or the recorded mortgage and note, as appropriate;

(9) 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;

(10) Instituting and maintaining an effective means of communicating information to very low-, low- and moderate-income households regarding the availability of restricted units for re-sale or re-rental;

(11) Reviewing and approving requests from owners of restricted units who wish to take out home equity loans or refinance during the term of their ownership;

(12) 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 cost of central air conditioning systems;

(13) Notifying the Municipal Housing Liaison of an owner's intent to sell a restricted unit;

(14) Such other responsibilities as may be delegated to it by the Township of Marlboro.

C. The administrative agent shall create and shall publish in plain English, and in such other languages as may be appropriate to serving its client base, a written operating manual, as approved by COAH, setting forth procedures for administering such affordability controls, including procedures for long-term control of restricted units; for enforcing the covenants set forth in Appendices A, B, C, D and E of the UHAC and the provisions of N.J.A.C. 5:80-26.18; and for releasing restricted units promptly at the conclusion of applicable control periods. The administrative agent shall have authority to take all actions necessary and appropriate to carrying out its responsibilities hereunder subject to the approval by the Agency and/or governing body for the Township of Marlboro, if required. The operating manual shall have a separate and distinct chapter or section setting forth the process for identifying applicant households seeking

certification to restricted units, for reviewing applicant household eligibility, and for certifying applicant households in accordance with the household certification and referral requirements set forth in N.J.A.C. 5:80-26.16.

(1) Such process shall require that an applicant household be notified in writing of the results of its application for certification within 20 days of the administrative agent's determination thereof.

(2) At the discretion of the administrative agent, such process may include either or both an outreach requirement and a face-to-face applicant interview process.

(3) The administrative agent shall establish and maintain a ready database of applicant households as a referral source for certifications to restricted units, and shall establish written procedures to ensure that selection among applicant households be via the database, and in accordance with a uniformly applied random selection process and all applicable State and Federal laws relating to the confidentiality of applicant records.

5-5. Affordability average; bedroom distribution.

A. In each affordable development, at least 50 percent of the restricted units within each bedroom distribution shall be low-income units and the remainder may be moderate-income units.

B. Affordable developments that are not age-restricted shall be structured in conjunction with realistic market demands such that:

(1) The combined number of efficiency and one-bedroom units is no greater than 20 percent of the total low-and moderate-income units;

(2) At least 30 percent of all low-and moderate-income units are two bedroom units;

(3) At least 20 percent of all low-and moderate-income units are three bedroom units; and

(4) The remainder, if any, may be allocated at the discretion of the developer.

C. Age-restricted low-and moderate-income units may utilize a modified bedroom distribution. At a minimum, the number of bedrooms shall equal the number of age-restricted low-and moderate-income units within the affordable development. The standard may be met by creating all one-bedroom units or by creating a two-bedroom unit for each efficiency unit.

D. The maximum rent for affordable units within each affordable development shall be affordable to households earning no more than 60 percent of median income. The average rent for low-and moderate-income affordable units shall be no more than 52 percent of median income. 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 of all low-and moderate-income units shall be affordable to households earning no more than 35 percent of median income.

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

F. Affordable units shall utilize the same type of heating source as market units within the affordable development.

G. The provisions of this section shall not apply to affordable developments financed under UHORP or MONI or to assisted living residences, which shall comply with applicable Agency regulations.

5-6. Expiration of restrictions.

A. Restrictions governing the low- and moderate-income units offered initially for sale shall expire as to a particular low- and moderate-income unit 30 years from the date the certified household takes title to the unit for the particular low- and moderate-income unit to a qualified purchaser.

B. Each restricted rental unit shall remain subject to the requirements of the UHAC for a period of at least 30 years. The affordability control period for the restricted rental units in a development shall commence on the first date that a certified household occupies a unit and shall terminate only at such time that the municipality opts to release the unit from the requirements of this subchapter pursuant to the UHAC, except that the affordability controls shall remain in effect until the date on which a rental unit shall become vacant, provided that the occupant household continues to earn a gross annual income of less than 80 percent of the applicable median income. If, at that time, a rental household's income is found to exceed 80 percent of the regional median income, the rental rate restriction shall expire at the later of either the next scheduled lease renewal or 60 days.

5-7 Foreclosure and first purchase money mortgages.

The affordability controls applicable to any restricted unit within the Township of Marlboro shall remain in place and shall not be released despite the entry and enforcement of any judgment of foreclosure with respect to the restricted ownership unit.

A. Provisions for first purchase money mortgagees.

(1) The terms and restrictions of this chapter shall be subordinate only to the first purchase money mortgage lien on any very low-, low- and moderate-income unit and in no way shall impair the first purchase money mortgagee's ability to exercise the contract remedies available to it in the event of default as such remedies are set forth in the first purchase money mortgage documents for the unit.

(2) So long as the first purchase money mortgage is not sold to the Federal National Mortgage Association or in the secondary mortgage market, the first purchase money mortgagee and/or mortgage servicer shall serve written notice upon the Agency within 10 days after the first purchase money mortgage is three months in arrears and within 10 calendar days of the filing of the complaint seeking foreclosure of the first purchase money mortgage held on a very low-, low- and moderate-income unit.

(3) The obligation of the first purchase money mortgagee and/or servicer to notify the Agency shall cease automatically and immediately upon the sale of the first purchase money mortgage to the Federal National Mortgage Association or in the secondary mortgage market, unless the rules and regulations are amended so as to not prohibit or exclude placing such obligation, in which case an instrument duly evidencing same must be recorded with the office of the Recorder, Monmouth County, New Jersey, and the Clerk of the Township of Marlboro before any such obligation shall exist.

(4) Provided that the first purchase money mortgagee is obligated to give the Agency the above-mentioned notices, the first purchase money mortgage shall also serve written notice of any proposed foreclosure sale upon the Agency at least 30 days prior to the first scheduled date of such sale.

(5) The first purchase money mortgagee shall serve notice upon the Agency within 30 days of the sale of the first purchase money mortgage to the Federal National Mortgage Association or in the secondary mortgage market.

B. The Township of Marlboro and/or the Agency or any instrumentality designated by the Township shall have the right to purchase any mortgage which is in default at any time prior to the entry of a foreclosure judgment or within the redemption period there-after. Notification of a default and of the institution of a foreclosure action and of a Sheriff's sale shall be served in writing upon the Chairman of the Agency as aforesaid. The Township of Marlboro shall at all times be considered a party defendant and/or shall have the right to intervene in any foreclosure action seeking foreclosure of a first mortgage and/or shall have the right to redeem and acquire the owner's equity of redemption or to acquire the unit from the owner upon such terms and conditions as may be determined by the Agency.

C. In the event of foreclosure, the agency shall attempt to identify a qualified very low-, low- and moderate-income purchaser(s) as the case may be and shall give notice to the foreclosing party, and effort shall be made within the confines of the applicable foreclosure laws to sell the housing unit to qualified very low-, low- and moderate-income households. If such

efforts are unsuccessful, the restrictive covenants shall remain in full force and effect. In any case, the Township shall not lose credit for the very low-, low- and moderate- income unit relating to which the foreclosure proceeding took place.

D. Surplus funds. In the event of a foreclosure sale by the holder of the first purchase money mortgage, the owner shall be personally obligated to pay to the agency any surplus funds. For purposes of this subsection, surplus funds shall be the total amount paid to the Sheriff in excess of the greater of the maximum resale price of the unit and the amount required to pay and satisfy the first purchase money mortgage, including the costs of foreclosure plus any second mortgages approved by the Agency. Surplus funds shall also include all payments to any junior creditors out of such surplus funds, even if such were to the exclusion of the owner. The Agency shall be given a first-priority lien, second only to the first purchase money mortgagee of a unit and any taxes or public assessments by a duly authorized governmental body, equal to the full amount of such surplus funds. This obligation of the owner to pay this full amount of surplus funds to the Agency shall be deemed to be a personal obligation of the owner of record at time of the foreclosure sale, and the Agency shall be empowered to enforce the obligation of the owner in any appropriate court of law or equity as though the same were a personal contractual obligation of the owner. Neither the first purchase money mortgagee nor the purchaser at the foreclosure sale shall be responsible or liable to the Agency for any portion of this excess. The Agency may utilize up to 30% of the surplus funds realized in any one calendar year, but in no event to exceed \$10,000 per calendar year, for the purpose of funding operating expenses of the year, for the purpose of funding operating expenses of the Agency. Other surplus funds shall be used for increasing the opportunities for affordable housing within the Township in accordance with the provisions of this chapter.

E. Owner's equity.

(1) Owner's equity shall be determined to be the difference between the maximum resale price of the unit and the total of the assessments, property taxes and other liens which may have been attached against the unit prior to the foreclosure, provided that such total is less than the maximum resale price.

(2) If there are sums to which the owner is properly entitled, such sums shall be turned over to the owner or placed in an escrow by the Agency for the owner for a maximum period of two years. Any interest accrued or earned on such balance while being held in escrow shall belong to and shall be paid to the Agency.

(3) This provision is subject, however, to applicable laws of the State of New Jersey governing the distribution and payment of proceeds of foreclosure sales.

5-8. Affirmative marketing.

A. 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 or sponsor of affordable housing. The affirmative marketing plan is also intended to target those potentially eligible persons who are least likely to apply for affordable units in that region. It is a continuing program that directs all marketing activities toward the COAH Housing Region in which the municipality is located and covers the period of deed restriction.

B. As administrative agent, the agent shall assure the affirmative marketing of affordable units is accomplished.

C. In implementing the affirmative marketing plan, administrative agents shall designate an experienced staff person approved by COAH to provide counseling services to very low-, low- and moderate-income applicants on subjects such as budgeting, credit issues, mortgage qualification, rental lease requirements, and landlord/tenant law.

D. The affirmative marketing plan shall provide the following information:

- (1) The name and address of the project;
- (2) The number of units, including the number of sales and/or rental units;
- (3) The price of sales and/or rental units;
- (4) The name of the sales agent and/or rental manager;
- (5) A description of the random selection method that will be used to select occupants of affordable housing; and
- (6) Disclosure of required application fees.

E. The affirmative marketing plan shall describe the media to be used in advertising and publicizing the availability of housing. The plan shall include the following:

- (1) The names of specific newspapers of general circulation within the housing region;
- (2) The names of specific radio and television stations broadcasting throughout the housing region;
- (3) The names of other publications circulated within the housing region, such as neighborhood oriented weekly newspapers, religious publications and organizational newsletters;
- (4) The names of employers throughout the housing region that will be

contacted to post advertisements and distribute flyers regarding available affordable housing;

(5) The names of specific community and regional organizations that will aid in soliciting very low-, low- and moderate-income applicants. Such organizations may include non-profit, religious, governmental, fraternal, civic, and other organizations; and

(6) Other advertising and outreach efforts to groups that are least likely to be reached by commercial media efforts.

F. The affirmative marketing process for available affordable units shall begin at least four months prior to expected occupancy. In implementing the marketing program, the administrative agent shall undertake all of the following strategies:

(1) Publication of one advertisement in a newspaper;

(2) Broadcast of one advertisement by a radio or television station;
and

(3) At least one additional regional marketing strategy using one of the sources listed under E3 through 6 above.

G Such advertising and outreach shall take place during the first week of the marketing program and each month thereafter until all the units have been leased or sold. The advertisement shall include at least the following:

(1) The location of the units;

(2) Directions to the housing units;

(3) A range of prices for the housing units;

(4) The size, as measured in bedrooms, of the housing units;

(5) The maximum income permitted to qualify for the housing units;

(6) The location of applications for the housing units;

(7) The business hours when interested households may obtain an application for a housing unit; and

(8) Application fees, if any.

5-9. Responsibilities of developers.

A. The responsibilities of the developer shall include but not be limited to the following:

(1) Submission of information as to financing terms readily available to very low-, low- and moderate-income households for use by the Agency in computing maximum sales prices.

(2) Submission of an affordable housing plan and an affirmative marketing plan to the Agency for approval, and submission of proofs of publication to ensure compliance with said plan.

(3) The marketing of all very low-, low- and moderate-income units in accordance with the requirements of this chapter.

(4) Submission of quarterly reports to the Agency detailing the number of very low-, low- and moderate-income households who have signed leases or purchase agreements, as well as the number who have taken occupancy of lower-income units, including household size, number of bedrooms in the unit, sales price and monthly carrying costs or, in the case of rental units, the monthly rental charges and utilities included.

(5) The developer's responsibilities hereunder shall expire automatically with respect to for-sale of very low-, low- and moderate-income units upon the date upon which the last very low-, low- and moderate-income unit within the particular development is sold by the developer. With respect to the rental of very low-, low- and moderate-income units, the developer's responsibilities shall be assumed by the landlord and shall be performed by the landlord so long as such unit is a rental of a very low-, low- and moderate-income unit and is subject to the restrictions of this chapter.

5-10. Responsibilities of owners.

A. Prior to reselling or renting his or her very low-, low- or moderate-income unit, the owner shall provide written proof to the Agency that the resale or rental has been approved by the authorized state agency.

B. The owner shall only resell or rent his or her very low-, low- or moderate-income unit to a qualified purchaser or renter as determined by the Township's administrative agent.

C. The owner shall be responsible for guaranteeing that the necessary documents are executed and filed at the closing of title or rental of a very low-, low- or moderate-income unit to assure that the unit remains affordable to and occupied by very low-, low- or moderate-income households.

D. In the event that any first mortgagee or other creditor of an owner of a very low-, low- and/or moderate-income unit exercises its contractual or legal remedies available in the event of default or nonpayment by the owner of a very low-, low- and moderate-income unit, the owner shall notify the Agency in writing within 10 days of such exercise by the first mortgagee or creditor and no later than 10 days after service of any summons and complaint.

E. Any owner of a very low-, low- and moderate-income unit shall notify the Agency within 10 days, in writing, of any default in the performance by the owner of any obligation under either the master deed of the condominium association, including the failure to pay any lawful and proper assessment by the condominium association, or any mortgage or other lien against the very low-, low- and moderate-income unit, which default is not cured within 60 days of the date upon which the default first occurs.

F. The owner shall not permit any lien of any kind, which includes, but is not limited to, any lien imposed by any federal, state or municipal authority, other than a first purchase money mortgage, Agency-approved second mortgage and/or lien of the Agency to attach and remain on the property for more than 60 days.

G. The owner of a very low-, low- and moderate-income unit shall keep the unit in good repair and shall not commit waste thereon.

H. The owner shall pay all taxes and public assessments and assessments by the condominium association levied upon or assessed against the unit, or any part thereof, as and when the same becomes due and before penalties accrue.

I. If a very low-, low- and moderate-income unit is part of a condominium association, the owner, in addition to paying any assessments required to be paid by the master deed of the condominium, shall further fully comply with all of the terms, covenants or conditions of said master deed, as well as fully comply with all terms, conditions and restrictions of this chapter.

J. The owner will pay all charges of any utility authority when the same become due and before penalties accrue.

5-10.5. Responsibilities of condominium or homeowners' associations.

As to any complex, development or property which contains a very low-, low- or moderate-income restricted unit for which a condominium association organized under the Condominium Act (N.J.S.A. 46:8B-1 et seq.), or a homeowners' association has control, management and/or supervision over such affordable unit(s), the condominium or homeowners' association shall provide written notice to the Agency if any owner and/or tenant of an affordable unit (regardless of whether it is very low-, low- or moderate-income qualified) shall become delinquent in the payment of any monthly assessment(s), fee(s) or charge(s) where the delinquency has existed for a period of ninety (90) days. This written notice shall be provided to the Agency regardless of the amount of the assessment(s), fee(s), or charge(s) that are delinquent for a period of ninety (90) days.

5-11. Violations.

A. Any person or entity who violates any term, condition, or requirement of this chapter or violates any term, condition or requirement of the New Jersey Fair Housing Act (N.J.S.A. 52:27D-301 et seq.) or violates any term,

condition or requirement of the Substantive or Procedural Rules of the New Jersey Council on Affordable Housing (N.J.A.C. 5:96 and/or 5:97 et seq.) or violates the Uniform Housing Affordability Controls Act or any term, condition or requirement imposed by the New Jersey Housing and Mortgage Finance Agency (N.J.A.C. 5:80-26.1 et seq.) shall be subject to punishment as set forth in this Chapter.

B. Upon the occurrence of a violation of any of the laws or regulations set forth in section 5-11, or the breach of any affordable housing agreement governing the affordable unit, the Township of Marlboro shall have all remedies provided at law or equity, including but not limited to, foreclosure, ejectment, a requirement for household recertification, acceleration of all sums due under a mortgage, recoupment of any funds from a sale in violation of the regulations, injunctive relief, or, the issuance of a municipal summons to prevent further violation of this ordinance, the Act, the UHAC, the regulations and/or affordable agreement governing the home or unit.

C. After providing written notice of a violation to an owner, developer or tenant of a very low-, low- or moderate-income unit and advising the owner, developer or tenant of the penalties for such violations, the Township may take the following action(s) against the owner, developer or tenant for any violation that is not cured for a period of 60 days after service of the written notice:

(1) The Agency may file an action in either the Superior Court or the Municipal Court, as applicable, pursuant to N.J.S.A. 2A:58-11 alleging a violation or violations of this chapter, the Act, the UHAC and/or any regulation promulgated by the Council on Affordable Housing. If the owner is found by the court to have violated any provision of this chapter, the Act, the UHAC, and/or any rule promulgated by the Council on Affordable Housing, as applicable, the owner shall be subject to one or more of the following penalties, at the discretion of the court:

(i) A fine of not more than \$1,250 or imprisonment for a period not to exceed 90 days, or both. Each and every day that the violation continues or exists shall be considered a separate and specific violation of these provisions and not as a continuing offense;

(ii) In the case of an owner who has resold his or her very low-, low- or moderate-income unit in violation of the above laws, payment into the Township of Marlboro Affordable Housing Trust Fund of the difference between the unauthorized resale price and the maximum resale price allowed by this chapter;

(iii) In the case of an owner who has rented his or her very low-, low- or moderate-income unit in violation of the above laws, payment into the Township of Marlboro Affordable Housing Trust Fund of the unauthorized rental charge as defined in the UHAC under N.J.A.C. 5:80-26.18(d)(6); or

(iv) In the case of an owner who has rented his or her very low-, low- or moderate-income unit in violation of this chapter payment of the innocent tenant's reasonable relocation costs, as determined by the court.

(2) The Agency may file a court action in the Superior Court seeking a judgment which would result in the termination of the owner's equity or other interest in the unit, in the nature of a mortgage foreclosure. Any judgment shall be enforceable as if same were a judgment of default of the first purchase money mortgage and shall constitute a lien against the very low-, low- or moderate-income unit.

(i) Such judgment shall be enforceable, at the option of the Agency, by means of an execution sale by the Sheriff, at which time the very low-, low- or moderate-income unit of the 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 Agency, including attorney's fees. The owner shall have his right to possession terminated as well as his title conveyed pursuant to the Sheriff's sale.

(ii) 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 very low-, low- or moderate-income unit. The excess, if any, shall be applied to reimburse the Agency for any and all costs and expenses incurred in connection with either the court action resulting in the judgment or Sheriff's sale. In the event that the proceeds from the Sheriff's sale are insufficient to reimburse the Agency in full as aforesaid, the owner shall be personally responsible for and to the extent of such deficiency, in addition to any and all costs incurred by the Agency 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 Agency 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 Agency for such. Failure of the owner to claim such surplus within the two-year period shall automatically result in a forfeiture of such surplus to the Agency. Any interest accrued or earned on such surplus while being held in escrow shall belong to and shall be paid to the Agency, whether such surplus shall be paid to the owner or forfeited to the Agency.

(iii) Foreclosure by the Agency due to violation of this chapter, the Act, the UHAC, and/or the rules promulgated by the Council on Affordable Housing shall not extinguish any affordability controls in effect as to any very low-, low- or moderate income unit. Title shall be conveyed to the purchaser at the Sheriff's sale, subject to the restrictions and provisions of this chapter and the Affordable Housing Agreement. The owner determined to be in violation of the provisions of section 5-11 and from whom title and possession were taken by means of the Sheriff's sale shall not be entitled to any right of redemption.

(iv) 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 Agency may acquire title to the very low-, low- or 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 very low-, low- or moderate-income unit could have been sold under the terms of this chapter. This excess shall be treated in the same manner as the excess which would have been realized from an actual sale as previously described.

(v) Failure of the very low-, low- or moderate-income unit to be either sold at the Sheriff's sale or acquired by the Agency shall obligate the owner to accept an offer to purchase from any qualified purchaser which may be referred to the owner by the Agency, with such offer to purchase being equal to the maximum resale price of the very low-, low- or moderate-income unit as permitted by the terms and provisions of this chapter.

(vi) The owner shall remain fully obligated, responsible and liable for complying with the terms and restrictions of this chapter until such time as title is conveyed from the owner.

(3) In the event of an unlawful rental of a very low-, low- or moderate income unit in violation of this chapter, the Act, the UHAC, and/or any regulation promulgated by COAH, and where the tenant has entered into the tenancy without knowledge of its unlawful nature, the Township, upon request by the tenant, may pursue a rent to equity remedy. Under such a rent to equity program, the tenant, including the immediate family of such tenant, shall be given an opportunity to purchase the unit from the affordable owner, and the affordable owner shall be compelled to sell the unit to the tenant, with the total of all rent paid to the owner being credited to tenant as down payment money paid to the affordable owner. Any person seeking to obtain a unit under a rent to equity program must first be certified as eligible under the provisions of N.J.A.C. 5:80-26.16.

(4) In addition to, and not in the place of the foregoing remedies, the Agency may also issue a summons for each and every violation of the provisions of this chapter which will be enforceable in the Marlboro Township Municipal Court. The persons or entities that may be cited with a violation of this chapter include any condominium association or homeowners' association that has a duty to report pursuant to Section 5-10.5, any unit owner or other person with an interest in an affordable housing unit such as a lessee or tenant, in any building, premises, home, or unit, where such violation has been committed or shall exist. Any person or entity found to have violated this chapter shall be subject to a fine of not more than \$1,250.00 or imprisonment for a period not to exceed ninety (90) days, or both, at the discretion of the Marlboro Township Municipal Court. Each and every day that such violation continues or exists may be treated by the

Municipal Court as a separate and specific violation of these provisions and not as a continuing offense.

5-12. Severability.

If any section, subsection, paragraph, sentence or other part of this article is adjudged unconstitutional or invalid, such judgment shall not affect or invalidate the remainder of this article, but shall be confined in its effect to the section, subsection, paragraph, sentence or other part of this article directly involved in the controversy in which said judgment shall have been rendered and all other provisions of this article or chapter shall remain in full force and effect.

Article I(A), Municipal Housing Liaison.

5-13. Purpose.

The purpose of this article is to create the administrative mechanisms needed for the execution of Marlboro Township's responsibility to assist in the provision of affordable housing pursuant to the Fair Housing Act of 1985.

5-14. Definitions.

As used in this article, the following terms shall have the meaning indicated:

MUNICIPAL HOUSING LIAISON is the individual charged by the governing body with the responsibility for oversight and administration of the affordable housing program for Marlboro Township.

ADMINISTRATIVE AGENT is the individual or entity responsible for administering the affordability controls of some or all units in the affordable housing program for Marlboro Township to ensure that the restricted units under administration are affirmatively marketed and sold or rented, as applicable, only to very low-, low-, and moderate-income households.

5-15. Establishment of Municipal Housing Liaison; powers and duties.

A. Establishment of the position of Municipal Housing Liaison. There is hereby established the position of Municipal Housing Liaison for Marlboro Township. Marlboro Township hereby designates the liaison to act between COAH, the Township and any developer or sponsor of affordable housing.

B. The Municipal Housing Liaison shall be responsible for oversight and administration of the affordable housing program including the following responsibilities:

(1) Serving as Marlboro Township's primary point of contact for all inquiries from the State, affordable housing providers, administrative agent(s), and interested households;

(2) Monitoring the status of all restricted units in the Township's Fair Share Plan;

(3) Compiling, verifying, and submitting annual reports as required by COAH;

(4) Coordinating meetings with affordable housing providers and the administrative agent, as applicable;

(5) Attending continuing education opportunities on affordability controls, compliance monitoring, and affirmative marketing as offered or approved by COAH.

C. The following administrative powers and duties are assigned to the Municipal Housing Liaison:

(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 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;

(2) 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;

(3) Authority to take all actions necessary and appropriate to carry out his or her responsibilities hereunder.

5-16. Severability.

If any section, subsection, paragraph, sentence or other part of this article is adjudged unconstitutional or invalid, such judgment shall not affect or invalidate the remainder of this article, but shall be confined in its effect to the section, subsection, paragraph, sentence or other part of this article directly involved in the controversy in which said judgment shall have been rendered and all other provisions of this article or chapter shall remain in full force and effect.

BE IT FURTHER ORDAINED, that 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; and

BE IT FURTHER ORDAINED, that any ordinances or parts thereof in conflict with the provisions of this Ordinance are repealed to the extent of such conflict; and

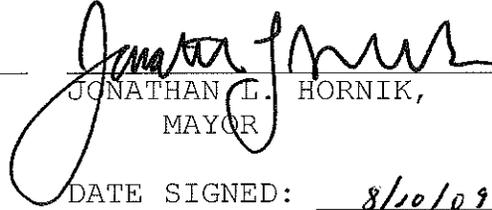
BE IT FURTHER ORDAINED, that this Ordinance shall take effect upon passage and publication in accordance with applicable law.

PASSED: July 16, 2009

ADOPTED: August 6, 2009



ALIDA MANCO
MUNICIPAL CLERK



JONATHAN L. HORNIK,
MAYOR
DATE SIGNED: 8/10/09

ORDINANCE # 2009-24

ORDINANCE SUMMARY

TAKE NOTICE that on July 16, 2009, the Township Council of the Township of Marlboro introduced Ordinance # 2009-24 entitled

AN ORDINANCE AMENDING ARTICLE I, GENERAL PROVISIONS AND ARTICLE IA, AFFORDABLE HOUSING LIAISON OF CHAPTER 5 ENTITLED "AFFORDABLE HOUSING" OF THE CODE OF THE TOWNSHIP OF MARLBORO AND REPLACING SAME WITH A NEW ARTICLE I, GENERAL PROVISIONS, AND A NEW ARTICLE IA, MUNICIPAL HOUSING LIAISON OF CHAPTER 5 ENTITLED "AFFORDABLE HOUSING"

TAKE FURTHER NOTICE that Ordinance 2009-24 amends Chapter 5, Sections 5-1 through 5-12 by bringing the existing ordinance provisions in compliance with A500 which became law on July 18, 2008, and more specifically, by including and making reference to provisions for very low income units. Additionally, the new ordinance also strengthens the enforcement powers of the Marlboro Township Municipal Housing Liaison (MHL) by enlarging his enforcement powers. Under the new ordinance condominium and homeowners' associations now have a duty to report unit owners and/or tenants occupying affordable units who become delinquent in their payment of dues. The purpose in the reporting requirement is in response to the foreclosure crisis which has affected Marlboro's affordable housing stock. By requiring that the Township be put on notice for an existing delinquency Marlboro will be in a better position to safeguard affordability restrictions and prevent the loss of any affordable units to foreclosure. The failure of an association to report can result in the penalties which can be enforced by the MHL.

TAKE FURTHER NOTICE that this Ordinance shall be considered for final passage on August 6, 2009, at 8:00 p.m. at the Marlboro Township Town Hall, 1979 Township Drive, Marlboro, New Jersey, at which time all persons interested will be given an opportunity to be heard concerning this Ordinance.

TAKE FURTHER NOTICE that a copy of this Ordinance may be obtained at no cost by any member of the general public, during regular business hours, at the Office of the Township Clerk, 1979 Township Drive, Marlboro, New Jersey.