

**BOROUGH OF MILLTOWN**

**ORDINANCE 19 -1479**

**AN ORDINANCE OF THE BOROUGH COUNCIL OF THE BOROUGH OF MILLTOWN  
AMENDING BOROUGH CODE CHAPTER 34 "COMPREHENSIVE DEVELOPMENT "**

**BE IT ORDAINED, by the governing body of the Borough of Milltown, County of Middlesex,  
State of New Jersey, as follows**

Section 1. The Borough Code of the Borough of Milltown is hereby amended and supplemented so as to amend Chapter 34, entitled "Comprehensive Development" so as to repeal Section 34-18 "Affordable Housing" in its entirety and replace with Section 34-18 "Affordable Housing" which shall read in its entirety as follows:

**34-18 AFFORDABLE HOUSING**

**34-18.1 Title, Intent and Purpose**

- a. Title. This Section shall be known as the Affordable Housing Ordinance of the Borough of Milltown.
- b. Intent and Purpose. The intent and purpose of this Section are as follows:
  1. To address Milltown's constitutional obligation by providing for its fair share of low-income and moderate-income housing, as directed by the Superior Court and consistent with the Uniform Housing Affordability Controls ("UHAC"). N.J.A.C. 5:80-26.1, et seq., as may be amended and supplemented, and pursuant to the New Jersey Fair Housing Act of 1985. including the requirements for very low-income housing established in P.L. 2008, c.46 (the "Roberts Bill") and the now expired Second Round Rules, previously set forth at N.J.A.C. 5:91 and N.J.A.C. 5:93 ("Second Round Rules"). This Section is intended to provide assurances that very-low, low-income and moderate-income units ("affordable units") are created with controls on affordability over time and that low-income and moderate-income households shall occupy these units.

**34-18.2 Borough of Milltown Housing Element and Fair Share Plan.**

- a. The Milltown Borough Planning Board has adopted a Housing Element and Fair Share Plan pursuant to the Municipal Land Use Law at N.J.S.A. 40:55D-1, et seq.
- b. The Fair Share Plan has been endorsed by the governing body.
- c. The Fair Share Plan describes the methods by which Milltown shall address its fair share for low-income and moderate-income housing as determined by the Superior Court and documented in the Housing Element.
- d. This Section implements and incorporates the Fair Share Plan and addresses the requirements of the Second Round Rules.
- e. Monitoring Reports.

The Borough of Milltown shall file monitoring reports with the Superior Court and place the reports on its municipal website. Any plan evaluation report of the Housing Element and Fair Share Plan and monitoring prepared by the Special Master in accordance with N.J.A.C. 5:91 shall be available to the public at the Milltown Borough Hall, Borough Clerk's Office, 39 Washington Avenue, Milltown, New Jersey, 07643.

**34-18.3 Definitions.** The following terms when used in this Section shall have the meanings:

- a. **Act** shall mean the Fair Housing Act of 1985, P.L. 1985, c. 222 (N.J.S.A. 52:27D-301 et seq.)
- b. **Adaptable** shall mean constructed in compliance with the technical design standards of the Barrier Free Subcode, N.J.A.C. 5:23-7.

- c. **Administrative agent** shall mean the entity responsible for the administration of affordable units in accordance with this Section UHAC (N.J.A.C. 5:80-26.1 et seq.), and the Second Round Rules.
- d. **Affirmative marketing** shall mean a regional marketing strategy designed to attract buyers and/or renters of affordable units pursuant to N.J.A.C. 5:80-26.15.
- e. **Affordability average** shall mean the average percentage of median income at which new restricted units in an affordable housing development are affordable to low- and moderate-income households.
- f. **Affordable** shall mean a sales price or rent within the means of a low- or moderate-income household as defined herein 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.
- g. **Affordable Development** shall mean a housing development all or a portion of which consists of restricted units.
- h. **Affordable Housing Development** shall mean a development included in the Housing Element and Fair Share Plan, and includes, but is not limited to, an inclusionary development, a municipal construction project or a 100 percent affordable development.
- i. **Affordable Housing Program(s)** shall mean any mechanism in a municipal Fair Share Plan prepared or implemented to address a municipality's fair share obligation.
- j. **Affordable Unit** means a housing unit proposed or created pursuant to the Act, credited pursuant to N.J.A.C. 5:93, and/or funded through an affordable housing trust fund.
- k. **Agency** shall mean the New Jersey Housing and Mortgage Finance Agency established by P.L. 1983, c. 530 (N.J.S.A. 55:14K-1, et seq.).
- l. **Age-Restricted Unit** shall mean a housing unit designed to meet the needs of, and exclusively for, the residents of an age-restricted segment of the population such that: 1) all the residents of the development where the unit is situated are 62 years or older; or 2) at least 80 percent of the units are occupied by one person that is 55 years or older; or 3) the development has been designated by the Secretary of the U.S. Department of Housing and Urban Development as "housing for older persons" as defined in Section 807(b)(2) of the Fair Housing Act, 42 U.S.C. 3607.
- m. **Alternative Living Arrangement** shall mean a structure in which households live in distinct bedrooms, yet share kitchen and plumbing facilities, central heat and common areas. Alternate living arrangements includes, but is not limited to: transitional facilities for the homeless, Class A, B, C, D, and E boarding homes, as regulated by the New Jersey Department of Community Affairs; residential health care facilities as regulated by the New Jersey Department of Health; group homes for the developmentally disabled and mentally ill as licensed and/or regulated by the New Jersey Department of Human Services; and congregate living arrangements.
- n. **Assisted Living Residence** shall mean a facility licensed by the New Jersey Department of Health and Senior Services to provide apartment-style housing and congregate dining and to assure that assisted living services are available when needed for four or more adult persons unrelated to the proprietor and that offers units containing, at a minimum, one unfurnished room, a private bathroom, a kitchenette and a lockable door on the unit entrance.
- o. **Certified Household** shall mean a household that has been certified by an Administrative Agent as a low-income household or moderate-income household.

- p. **COAH** shall mean the Council on Affordable Housing, which is in, but not of, the Department of Community Affairs of the State of New Jersey, that was established under the New Jersey Fair Housing Act (N.J.S.A. 52:27D-301 et seq.).
- q. **DCA** shall mean the State of New Jersey Department of Community Affairs.
- r. **Deficient Housing Unit** shall mean a housing unit with health and safety code violations that require 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.
- s. **Developer** shall mean any person, partnership, association, company or corporation that is the legal or beneficial owner or owners of a lot or any land proposed to be included in a proposed development including the holder of an option to contract or purchase, or other person having an enforceable proprietary interest in such land.
- t. **Development** shall mean 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.
- u. **Inclusionary Development** shall mean a development containing both affordable units and market rate units. This term includes, but is not necessarily limited to: new construction, the conversion of a non-residential structure to residential use and the creation of new affordable units through the reconstruction of a vacant residential structure.
- v. **Low-Income Household** shall mean a household with a total gross annual household income equal to 50 percent or less of the median household income.
- w. **Low-Income Unit** shall mean a restricted unit that is affordable to a low-income household.
- x. **Major System** shall mean the primary structural, mechanical, plumbing, electrical, fire protection, or occupant service components of a building which include but are not limited to, weatherization, roofing, plumbing (including wells), heating, electricity, sanitary plumbing (including septic systems), lead paint abatement or load bearing structural systems.
- y. **Market-Rate Units** shall mean housing not restricted to low- and moderate-income households that may sell or rent at any price.
- z. **Median Income** shall mean the median income by household size for the applicable housing region, as adopted annually by COAH, or another agency of the State of New Jersey, or approved by the New Jersey Superior Court.
- aa. **Moderate-Income Household** shall mean a household with a total gross annual household income in excess of 50 percent but less than 80 percent of the median household income.
- bb. **Moderate-Income Unit** shall mean a restricted unit that is affordable to a moderate-income household.
- cc. **Non-Exempt Sale** shall mean any sale or transfer of ownership other than the transfer of ownership between husband and wife; the transfer of ownership between former spouses ordered as a result of a judicial decree of divorce or judicial separation, but not including sales to third parties; the transfer of ownership between family members as a result of inheritance; the transfer of ownership through an executor's deed to a class A beneficiary and the transfer of ownership by court order.
- dd. **Random Selection Process** shall mean 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).

- ee. **Regional Asset Limit** shall mean the maximum housing value in each housing region affordable to a four-person household with an income at 80 percent of the regional median as defined by adopted/approved regional income limits..
- ff. **Rehabilitation** shall mean the repair, renovation, alteration or reconstruction of any building or structure, pursuant to the Rehabilitation Subcode, N.J.A.C. 5:23-6.
- gg. **Rent** shall mean 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.
- hh. **Restricted Unit** shall mean a dwelling unit, whether a rental unit or ownership unit, that is subject to the affordability controls of N.J.A.C. 5:80-26.1, as may be amended and supplemented, but does not include a market-rate unit financed under the New Jersey Housing & Mortgage Finance Agency's Urban Home Ownership Recovery Program ("UHORP") or the Market Oriented Neighborhood Investment Program ("MONI")..
- ii. **Special Master** shall mean an expert appointed by a judge to make sure that judicial orders are followed. A master's function is essentially investigative, compiling evidence or documents to inform some future action by the court.
- jj. **UHAC** shall mean the Uniform Housing Affordability Controls set forth in N.J.A.C. 5:80-26.1 et seq.
- kk. **Very Low-Income Household** shall mean a household with a total gross annual household income equal to 30 percent or less of the median household income.
- ll. **Very Low-Income Unit** shall mean a restricted unit that is affordable to a very low-income household.
- mm. **Weatherization** shall mean building insulation (for attic, exterior walls and crawl space), siding to improve energy efficiency, replacement storm windows, replacement storm doors, replacement windows and replacement doors, and is considered a major system for rehabilitation.

**34-18.4 Affordable Housing Programs.** Milltown has determined that the following programs will be used to satisfy its affordable housing obligations:

- a. A rehabilitation program pursuant to Section 34-18.5
- b. New construction pursuant to Section 34-18-7.
- c. A multi-family or single-family attached development providing a minimum of five (5) new housing units created through any future municipal rezoning or Zoning Board action, use or density variance, redevelopment plan, or rehabilitation plan that provide for densities at or above six (6) units per acre is required to include an affordable housing set-aside of 20% if the affordable units will be for sale and 15% if the affordable units will be for rent. This requirement does not give any developer the right to any such rezoning, variance or other relief, or establish any obligation on the part of Milltown to grant such rezoning, variance or other relief. No subdivision shall be permitted or approved for the purpose of avoiding compliance with this requirement.

**The following general guidelines apply to all developments that contain low-income and moderate-income housing units, including any currently unanticipated future developments**

**that will provide low-income and moderate-income housing units.**

**34-18.5 Rehabilitation.**

- a. Milltown's rehabilitation program shall be designed to renovate deficient housing units occupied by low-income and moderate-income households such that, after rehabilitation, these units will comply with the New Jersey State Housing Code pursuant to N.J.A.C. 5:28. The rehabilitation program shall include an owner occupancy rehabilitation program and a renter occupancy rehabilitation program.
- b. Milltown shall designate an administrative agent for its rehabilitation program by resolution on an annual basis.
- c. Both owner occupied and renter occupied units shall be eligible for rehabilitation funds.
- d. All rehabilitated units shall remain affordable to low-income and moderate-income households for a period of 10 years (the control period). For owner occupied units, the control period shall be enforced with a lien, and, for renter occupied units, the control period shall be enforced with a deed restriction.
- e. Milltown shall make available up to \$20,000 per unit toward the hard costs of rehabilitation. In addition, the administrative costs associated with the rehabilitation program shall be determined on an annual basis with the Administrative Agent for the rehabilitation program.
- f. The Borough of Milltown shall adopt a resolution committing to fund any shortfall in the rehabilitation program.
- g. The Administrative Agent shall provide a rehabilitation manual for the owner occupied units and a rehabilitation manual for the rental units that shall be adopted by resolution of the governing body. Both manuals shall be continuously available for public inspection in the Office of the Borough Clerk and in the office of the Administrative Agent.
- h. Units in a rehabilitation program shall be exempt from UHAC, but shall be administered in accordance with the following:
  1. Upon the initial rental of a vacant unit subsequent to rehabilitation, or if a renter-occupied unit is re-rented prior to the end of controls on affordability, the deed restriction shall require the unit to be rented to a low-income or moderate-income household at an affordable rent and to be affirmatively marketed pursuant to UHAC.
  2. If a unit is renter-occupied, upon completion of the rehabilitation, the maximum rent shall be the lesser of the current rent or the maximum permitted rent pursuant to UHAC.
  3. Rents in rehabilitated units may increase annually based on the standards in UHAC.
  4. Applicant and/or tenant households shall be certified as income eligible in accordance with UHAC regulations, except that households in owner-occupied units shall be exempt from the regional asset limit.

**34-18.6 Phasing Schedule for Inclusionary Zoning.** In inclusionary developments or redevelopments, the phasing schedule shall be as provided in COAH Regulations, as may be amended.

**34-18.7 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 of all restricted rental units shall be very low-income units (affordable to a household earning 30 percent or less of median income). 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 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 of the total low- and moderate-income units;
    - (b). At least 30 percent of all low- and moderate-income units shall be two bedroom units;
    - (c). At least 20 percent 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. The 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 Subcode, N.J.A.C. 5:23-7.
  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;
    - (b). An adaptable kitchen on the first floor;
    - (c). An interior accessible route of travel on the first floor;
    - (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;
    - (e). An interior accessible route of travel between stories within an individual unit, except that if all of the terms of Subsection-18-7(b)(2)(a) through 34-18.7(b)(2)(d) above have been satisfied, an interior accessible route of travel shall not be required between stories within an individual unit;
    - (f). An accessible entranceway as set forth at P.L. 2005, c. 350 (N.J.S.A. 52:27D-311a et seq.) and the Barrier Free Subcode, N.J.A.C. 5:23-7, or evidence that Milltown has collected funds from the developer sufficient to make 10 percent of the adaptable entrances in the development accessible:
      - (i). 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.
      - (ii). To this end, the builder of restricted units shall deposit funds within the Borough of Milltown's affordable housing trust fund sufficient to install accessible entrances in 10 percent of the affordable units that have been constructed with adaptable entrances.

- (iii). The funds deposited under Subsection 34-18.7(b)(2)(f)(ii) above shall be used by the Borough of Milltown for the sole purpose of making the adaptable entrance of any affordable unit accessible when requested to do so by a person with a disability who occupies or intends to occupy the unit and requires an accessible entrance.
- (iv). The developer of the restricted units shall submit a design plan and cost estimate for the conversion from adaptable to accessible entrances to the Construction Official of the Borough of Milltown.
- (v). Once the Construction Official has determined that the design plan to convert the unit entrances from adaptable to accessible meet the requirements of the Barrier Free Subcode, N.J.A.C. 5:23-7, and that the cost estimate of such conversion is reasonable, payment shall be made to the Borough'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.
- (vi). Full compliance with the foregoing provisions shall not be required where an entity can demonstrate that it is "site impracticable" to meet the requirements. Determinations of site impracticability shall be in compliance with the Barrier Free Subcode, N.J.A.C. 5:23-7.

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-income 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, and by the Superior Court, utilizing the regional income limits established.
- 2. The maximum rent for restricted rental units within each affordable development shall be affordable to households earning no more than 60 percent of median income, and the average rent for restricted rental units shall be affordable to households earning no more than 52 percent 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 13 percent of all low-income and moderate-income rental units shall be affordable to very low-income households earning no more than 30 percent of median income. These very low-income units shall be part of the low-income requirement.
- 4. 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, and 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 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, 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 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 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 of the eligible monthly income of the appropriate household size as determined under N.J.A.C. 5:80-26.4, as may be amended and supplemented; provided, however, that the rent shall be subject to the affordability average requirement of N.J.A.C. 5:80-26.3, as may be amended and supplemented.
  9. The price of owner-occupied low- and moderate-income units may increase annually based on the percentage increase in the regional median income limit for each housing region. In no event shall the maximum resale price established by the Administrative Agent be lower than the last recorded purchase price.
  10. The rent of low- and moderate-income units may be increased annually based on the percentage increase in the Housing Consumer Price Index for the United States. This increase shall not exceed nine percent 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.

**34-18.8 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.

**34-18.9 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 occupying the unit, strive to:

- a. Provide an occupant for each bedroom;



- b. Provide children of different sex with separate bedrooms;
- c. Provide separate bedrooms for parents and children; and
- d. Prevent more than two persons from occupying a single bedroom.

**34-18.10 Occupancy Standards.**

(1) 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 Section for a period of at least thirty (30) years, until Milltown 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 Section, 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 Ordinance 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.

**34-18.11 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-income 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 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 34-18.14, Capital

Improvements to Ownership Units.

**34-18.12 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 very low-income and low-income ownership units shall be reserved for households with a gross household income less than or equal to 50 percent of median income and moderate-income ownership units shall be reserved for households with a gross household income less than 80 percent of median income.
- b. 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 a certified household for a period not to exceed one year.
- c. 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 of the household's certified monthly income.

**34-18.13 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 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).

**34-18.14 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 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.

**34-18.15 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 Section for a period of at least 30 years, until Milltown 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 Middlesex. 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 Section 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.

**34-18.16 Rent Restrictions for Rental Units; Leases.**

- a. A written lease shall be required for all restricted rental units, except for units in an assisted living residence, and tenants, shall be responsible for security deposits and the full amount of the rent as stated on the lease. A copy of the current lease for each restricted rental unit shall be provided to the Administrative Agent.
- 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 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 Section.

**34-18.17 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 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 of median income.
  3. Moderate-income rental units shall be reserved for households with a gross household income less than 80 percent 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, 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 (40 percent 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 (40 percent 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 (40 percent for households eligible for age-restricted units) of eligible monthly income for rent in the past and has proven its ability to pay;
  3. The household is currently in substandard or overcrowded living conditions;
  4. The household documents the existence of assets with which the household proposes to supplement the rent payments; or
  5. The household documents proposed third-party assistance from an outside source such as a family member in a form acceptable to the Administrative Agent and the owner of the unit.
- c. The applicant shall file documentation sufficient to establish the existence of the circumstances in Subsection 34-18.17(a)(1) through Subsection 34-18.17(b)(5) above with the Administrative Agent, who shall counsel the household on budgeting.

**34-18.18 Municipal Housing Liaison.**

- a. Milltown shall appoint a specific municipal employee to serve as a Municipal Housing Liaison responsible for administering the affordable housing program, including affordability controls, the Affirmative Marketing Plan, monitoring and reporting, and, where applicable, supervising any contracted Administrative Agent. Milltown hereby creates the position of Municipal Housing Liaison. Milltown shall adopt a Resolution appointing a Municipal Housing Liaison. The Municipal Housing Liaison shall be approved by the Superior Court and shall be duly qualified before assuming the duties of Municipal Housing Liaison.
- b. The Municipal Housing Liaison shall be responsible for oversight and administration of the affordable housing program for Milltown, including the following responsibilities which may not be contracted out to the Administrative Agent:
  1. Serving as Milltown'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 of Milltown's Fair Share Plan;
  3. Compiling, verifying and submitting annual reports as required by the Superior 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 as offered or approved by the Superior Court.
  6. The implementation of the Affirmative Marketing Plan and affordability controls.
  7. When applicable, supervising any contracting Administrative Agent.
- c. Subject to the approval of the Superior Court, the Borough of Milltown shall designate one or more Administrative Agent(s) to administer newly constructed affordable units in accordance with N.J.A.C. 5:93UHAC. An Operating Manual shall be provided by the Administrative Agent(s) to be adopted by resolution of the governing body and subject to approval of the Superior Court. The Operating Manuals shall be available for public inspection in the Office of the Borough Clerk

and in the office(s) of the Administrative Agent(s). The Municipal Housing Liaison shall supervise the contracting of Administrative Agent(s).

**34-18-19 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 Section 5:80-26.14, 16 and 18 thereof, which include:

- a. Affirmative Marketing.
  1. Conducting an outreach process to affirmatively market affordable housing units in accordance with the Affirmative Marketing Plan of the Borough of Milltown and the provisions of N.J.A.C. 5:80-26.15; and
  2. Providing counseling or contracting to provide counseling services to low-income and moderate-income applicants on subjects such as budgeting, credit issues, mortgage qualification, rental lease requirements, and landlord/tenant law.
- b. 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-income and 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 of Milltown when referring households for certification to affordable units.
- c. 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 Middlesex County Register of Deeds or Middlesex 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 Certification of Occupancy or certifications pursuant to N.J.A.C. 5:80-26.10.
- d. Resale and re-rental.
  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 re-rental; and
  2. Instituting and maintaining an effective means of communicating information to low-income and moderate-income households regarding the availability of restricted units for resale or re-rental.
- e. 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 section;
  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.
- f. 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 or other appropriate municipal fund approved by the DCA; and
  6. Creating and publishing a written operating manual, as approved by the Superior Court, setting forth procedures for administering the affordability controls.
- g. 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.
  3. The Administrative Agent shall attend continuing education sessions on affordability controls, compliance monitoring, and affirmative marketing as offered or approved by the Superior Court.

**34-18-20 Affirmative Marketing Requirements**

- a. The Borough of Milltown shall adopt by resolution an Affirmative Marketing Plan, subject to approval of the Superior Court, compliant with N.J.A.C. 5:80-26.15, as may be amended and supplemented.
- 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 COAH Housing Region 3 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 COAH Housing Region 3 comprised of Middlesex, Somerset and Hunterdon 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 resales and re-rentals. The Administrative Agent designated by the Borough of Milltown 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-income 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 prior to the expected date of occupancy.
- h. Applications for affordable housing shall be available in several locations, including, at a minimum, the County Administrative Building and/or the County Library for each county within the housing region; the municipal administration building and the municipal library in the municipality in which the units are located; and the developer's rentals 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.

**34-18-21 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 Borough shall have all remedies provided at law or equity, including but not limited to foreclosure, tenant eviction, municipal fines, a requirement for household recertification, acceleration of all sums due under a mortgage, recoupment of any funds from a sale in the violation of the regulations, injunctive relief to prevent further violation of the regulations, entry on the premises, and specific performance.
- 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 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 Borough may file a Court action pursuant to N.J.S.A. 2A:58-11 alleging a violation, or violations, of the regulations governing the affordable housing unit. If the Owner, Developer or Tenant is found by the Court to have violated any provision of the regulations governing affordable housing units the Owner, Developer or Tenant shall be subject to one or more of the following penalties, at

the discretion of the Court:

- (a). A fine of not more than \$500.00 per day 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 a continuation of the initial offense;
  - (b). In the case of an Owner who has rented a low-income or moderate-income unit in violation of the regulations governing affordable housing units, payment into the Borough of Milltown Affordable Housing Trust Fund of the gross amount of rent illegally collected;
  - (c). In the case of an Owner who has rented a low-income 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 Borough may file a Court action in the Superior Court seeking a judgment, which would result in the termination of the Owner's equity or other interest in the unit, in the nature of a mortgage foreclosure. Any 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-income 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-income 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-income and moderate-income unit. The excess, if any, shall be applied to reimburse the Borough for any and all costs and expenses incurred in connection with either the Court action resulting in the judgment of violation or the Sheriff's sale. In the event that the proceeds from the Sheriff's sale are insufficient to reimburse the Borough in full as aforesaid, the violating owner shall be personally responsible for 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 Borough for the owner and shall be held in such escrow for a maximum period of two (2) years or until such earlier time as the owner shall make a claim with the Borough for such. Failure of the owner to claim such balance within the two-year period shall automatically result in a forfeiture of such balance to the Borough. Any interest accrued or earned on such balance while being held in escrow shall belong to and shall be paid to the Borough, whether such balance shall be paid to the owner or forfeited to the Borough.
  - (c). Foreclosure by the Borough due to violation of the regulations governing affordable housing units shall not extinguish the restrictions of the regulations governing affordable housing units as the same apply to the low-income 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 Borough may acquire title to the low-income 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-income 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-income and moderate-income unit to be either sold at the Sheriff's sale or acquired by the Borough shall obligate the owner to accept an offer to purchase from any qualified purchaser which may be referred to the owner by the Borough, with such offer to purchase being equal to the maximum resale price of the low-income 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.

**34-18-22 Appeals.**

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

SECTION 2 . All ordinances or parts of ordinances inconsistent herewith are hereby repealed.

SECTION 3. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions hereof.

SECTION 4. This ordinance shall take effect after second reading and publication as required by law.

<b>Motion/ Second</b>	<b>Roll Call</b>	<b>Ay e</b>	<b>Nay</b>	<b>Abstai n</b>	<b>Absen t</b>	Adopted on First Reading Dated: September 23, 2019
Motion	Council President Dixon	X				
	Councilman Farkas	X				
	Councilwoman Kerber				X	
	Councilman Ligotti	X				
	Councilwoman Mehr	X				
Second	Councilman Revolinsky	X				_____ Gabriella Siboni, RMC Borough Clerk

<b>Motion/ Second</b>	<b>Roll Call</b>	<b>Ay e</b>	<b>Nay</b>	<b>Abstai n</b>	<b>Absen t</b>	Adopted on Second Reading Dated:
	Council President Dixon					
	Councilman Farkas					

Councilwoman Kerber  
Councilman Ligotti  
Councilwoman Mehr

Councilman Revolinsky

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Gabriella Siboni, RMC  
Borough Clerk

Approval by the Mayor on this day of, 2019

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Eric A. Steeber, Mayor