

**TOWNSHIP OF WATERFORD
COUNTY OF CAMDEN
STATE OF NEW JERSEY**

ORDINANCE NO. 2020-11

**ORDINANCE OF THE TOWNSHIP OF WATERFORD TO PROVIDE FOR AND
REGULATE AFFORDABLE HOUSING**

WHEREAS, on January 19, 2017, the Mayor and Township Committee of Waterford Township approved Resolution # 2017-72, and thereby confirmed that Waterford Township had endorsed and adopted a Housing Element and Fair Share Plan ["HEFSP"] pursuant to N.J.S.A. 52:27D-310 et seq., which obligated the Township to facilitate the development of a minimum of 189 affordable housing units that would be available to very low, low- and moderate-income households during the period between 2015 and 2025; and

WHEREAS, as a result of the governing body's endorsement and adoption of the HEFSP, the New Jersey Superior Court Law Division for Camden County entered a Prior Round Judgment of Compliance and Repose and Judgment Approving Settlement Agreement with the Fair Share Housing Center ["the Fair Share Judgment"] on April 13, 2017, under Docket No.: CAM-L-2594-15; and

WHEREAS, the Fair Share Judgment required, inter alia, that the Township promptly introduce an Ordinance to implement the terms of the Settlement Agreement and the zoning requirements set forth therein; and

WHEREAS, in 2017 the Township Committee failed to enact the Ordinance required by the April 13, 2017 Final Judgment; and

WHEREAS, in order to satisfy the directive of the New Jersey Superior Court, the current Township Committee must now establish, by Ordinance, the regulations and standards required by the April 13, 2017 Final Judgment.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Township Committee of the Township of Waterford, County of Camden, State of New Jersey as follows:

Section 1 – Affordable Housing Obligation.

- (a) This Ordinance is intended to assure that low- and moderate-income units (“affordable units”) are created with controls on affordability over time and that low- and moderate-income households shall occupy these units. This Ordinance shall apply except where inconsistent with applicable law.
- (b) The Waterford Township 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-2, et. seq. The Fair Share Plan has been endorsed by the governing body. The Fair Share Plan describes the way the Township of Waterford shall address its obligation for low- and moderate-income housing and documented in the Housing Element.
- (c) This section implements and incorporates the Fair Share Plan and the requirements of the Settlement Agreement approved by the Court with Fair Share Housing.

Section 2. Definitions

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

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

“Adaptable” means constructed in compliance with the technical design standards of the Barrier Free Subcode, N.J.A.C. 5:23-7.

“Administrative Agent” shall mean the individual or entity within Waterford Township responsible for administration of affordable units in accordance with this section, N.J.A.C. 5:80-26.1, et seq.

“Affirmative marketing” means a regional marketing strategy designed to attract buyers and/or renters of affordable units pursuant to N.J.A.C. 5:80-26.15.

“Affordability average” means the average percentage of median income at which restricted units in an affordable housing development are affordable to low- and moderate-income households.

“Affordable” means a sales price or rent deemed to be within the means of a low- and moderate-income household; in the case of an ownership unit, the sales price for the unit shall conform 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 shall conform to the standards set forth in N.J.A.C. 5:80-26.12, as may be amended and supplemented.

“Affordable development” means a housing development all or a portion of which consists of restricted units.

“Affordable housing development” means a development included in or approved pursuant to the Housing Element and Fair Share Plan or otherwise intended to address the Township’s fair share obligation and includes, but is not limited to, an inclusionary development, a municipal construction project or a 100 percent affordable development.

“Affordable housing program(s)” means any mechanism in the Township’s Fair Share Plan prepared or implemented to address the Township’s fair share obligation.

“Affordable unit” means a housing unit proposed or created pursuant to the Act, approved for crediting by the Court and/or funded through an affordable housing trust fund.

“Agency” means the New Jersey Housing and Mortgage Finance Agency established by P.L. 1983, c. 530 (N.J.S.A. 55:14K-1 et seq.).

“Age-restricted unit” means 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.

“Assisted living residence” means 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.

“Certified Household” means a household that has been certified by an Administrative Agent as a low-income household or moderate-household.

“DCA” means the State of New Jersey Department of Community Affairs.

“Division” means the Division of Housing and Community Resources in the DCA.

“Inclusionary development” means 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.

“Low-income household” means a household with a total gross annual household income equal to 50 percent or less of the regional median household income by household size.

“Low-income unit” means a restricted unit that is affordable to a low-income household.

“Market-rate units” means housing not restricted to low- and moderate-income households that may sell or rent at any price.

“Median income” means the median income by household size for the applicable housing region, as adopted annually by COAH or a successor Regulatory Agency.

“Moderate-income household” means a household with a total gross annual household income in excess of 50 percent but less than 80 percent of the regional median household income by household size.

“Moderate-income unit” means a restricted unit that is affordable to a moderate-income household.

“Non-exempt sale” means 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.

“Rent” means 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. In assisted living residences, rent does not include charges for food and services.

“Restricted unit” means 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.

“UHAC” means the Uniform Housing Affordability Controls set forth in N.J.A.C. 5:80-26.1, et seq.

“Very low-income household” means a household with a total gross annual income equal to 30 percent or less of the regional median household income by household size.

“Very low-income unit” means a restricted unit that is affordable to a very-low income household.

Section 3. Affordable Housing Programs

A. Rehabilitation Program.

Waterford Township has no Third Round present need rehabilitation obligation. However, it will continue to work with Camden County under a separate Community Development Block Grant Program Cooperation Agreement, not part of this Ordinance.

Section 4. Inclusionary Zoning

A. To ensure the efficient use of land through compact forms of development and to create realistic opportunities for the construction of affordable housing within the Township, inclusionary zoning shall permit minimum presumptive densities and presumptive maximum affordable housing set-asides as follows:

1. The Township of Waterford established the Haines Boulevard Redevelopment Area which is located on 146 acres in the northwest corner of the Township. The Area is adjacent to the Atco Train Station and has potential to create a Transit Oriented Development and bring residents closer to the station, as well as bring in commercial uses that will serve both the community and the commuters.

In 2001 the Township Committee declared the Area an “Area in Need of Redevelopment” as defined in the New Jersey Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq. In 2001 the Township Committee adopted a Redevelopment Plan which was replaced by a Redevelopment Plan adopted in April 2016 and amended in September 2016.

The Amended Redevelopment Plan provides for up to 240 affordable housing units to be developed and made available to very low, low, and moderate-income households within the Redevelopment Area. All new residential development or mixed commercial/residential development producing five (5) or more residential units shall be required to be set aside a minimum of 20% of all units as affordable for low- and moderate-income households. In addition, projects where 100% of the residential units are made affordable for low- and moderate-income households shall be credited toward that obligation.

2. 13% of all constructed restricted units shall be very low-income units, with half of the very low-income units available to families.

3. Additional incentives to subsidize the creation of affordable housing available to very-low income households may be included in the zoning section of this ordinance or specified in a developer’s or redeveloper’s agreement.

4. Phasing. In inclusionary developments the following schedule shall be followed:

Maximum % of Market-Rate Units Completed in any Development	Minimum % of Total Planned Units which Must be Completed and Available as Very Low-, Low-and Moderate-Income Units
10	3
20	5
30	8
40	10
50	13
60	15
70	18
80	20
90	23

5 **Design.** In inclusionary developments, to the extent possible, very low- low-and moderate- income units shall be integrated with the market units.

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

Section 5. New Construction

The following general guidelines apply to all newly constructed and currently unanticipated future developments that contain low-and moderate-income housing units, that will provide very low-, low-and moderate-income housing units.

A. Low/Moderate Split and Bedroom Distribution of Affordable Housing Units:

1. Constructed restricted units shall be divided equally between low- (including very 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.

2. In each affordable development, at least 50 percent of the restricted units within each bedroom distribution shall be available to and affordable by very low income and low-income households, with the remainder affordable to moderate-income households. At least 25% shall be rental units, with half of those rental units available to families. At least 50% of all the units shall be available to families.

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

i. The combined number of efficiency and one-bedroom units shall be no greater than 20 percent of the total low- and moderate-income units;

ii. At least 30 percent of all low- and moderate-income units shall be two-bedroom units;

iii. At least 20 percent of all low- and moderate-income units shall be three-bedroom units; and

iv. 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. A non-waivable age-restricted cap of 25% shall be imposed as credit toward the Township's Fair Share obligation.

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:

i. An adaptable toilet and bathing facility on the first floor;

ii. An adaptable kitchen on the first floor;

iii. An interior accessible route of travel on the first floor;

iv. An interior accessible route of travel shall not be required between stories within an individual unit.

v. An adaptable room that can be used as a bedroom with a door or the casing for the installation of a door, on the first floor; and

vi. 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 the Waterford Township has collected sufficient funds from the developer to make ten percent (10%) of the adaptable entrances in the development accessible:

a. 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.

b. To this end, the builder of restricted units shall deposit funds within the Waterford Township's affordable housing trust fund sufficient to install accessible entrances in 10 percent of the affordable units that have been constructed with adaptable entrances.

c. The funds deposited under paragraph "b" above shall be used by Waterford Township 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.

d. 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 Waterford Township.

e. 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 Waterford Township's affordable housing trust fund in care of the Municipal Treasurer who shall ensure that the funds are deposited into the affordable housing trust fund and appropriately earmarked.

f. 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. Maximum Rents and Sales Prices.

1. In establishing rents and sales prices of affordable housing units, the Administrative Agent shall follow the procedures set forth in UHAC, utilizing the regional income limits established by the DCA or other successor Agency recognized by the Court.

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 low- and moderate-income units shall be affordable to households earning no more than 52 percent of median income. At least 13 percent of affordable rental units shall be affordable to households earning no more than 30 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.

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 different prices for each bedroom type, and low-income ownership units must be available for at least two different prices for each bedroom type.

5. In determining the initial sales prices and rents for compliance with the affordability average requirements for restricted units other than assisted living facilities, the following standards shall be used:

- i. A studio shall be affordable to a one-person household;
- ii. A one-bedroom unit shall be affordable to a one- and one-half-person household;
- iii. A two-bedroom unit shall be affordable to a three-person household;

iv. A three-bedroom unit shall be affordable to a four and one-half person household; and

v. A four-bedroom unit shall be affordable to a six-person household.

6. In determining the initial rents for compliance with the affordability average requirements for restricted units in assisted living facilities, the following standards shall be used:

i. A studio shall be affordable to a one-person household;

ii. A one-bedroom unit shall be affordable to a one- and one-half-person household; and

iii. 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, except those financed by the New Jersey Urban Homeownership Recovery Program or Market Oriented Neighborhood Investment program, 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.

Section 6. Affirmative Marketing Requirements

- (a) Waterford Township shall adopt by Resolution an Affirmative Marketing Plan, that complies with N.J.A.C. 5:80-26.15, as may be amended and supplemented.
- (b) The Affirmative Marketing Plan shall reflect 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 also intended to target those potentially eligible persons who are least likely to apply for affordable units in that region. It shall be a continuing program that directs all marketing activities toward Housing Region Five and covers the period of deed restriction.
- (c) The Affirmative Marketing Plan shall provide a regional preference for all households that live and/or work in Housing Region Five which is comprised of Burlington, Camden and Gloucester Counties.
- (d) The Administrative Agent designated by Waterford Township shall assure that the affirmative marketing of all affordable units occurs, consistent with the Township's Affirmative Marketing Plan.
- (e) In implementing the Affirmative Marketing Plan, the Administrative Agent shall provide a list of counseling services to low- and moderate-income applicants on subjects such as budgeting, credit issues, mortgage qualification, rental lease requirements, and landlord/tenant law.
- (f) The affirmative marketing process for available affordable units shall begin at least four months prior to the expected date of occupancy.
- (g) The costs of the advertising and the affirmative marketing of the affordable units shall be the responsibility of the developer, sponsor or owner, unless otherwise determined or agreed to by Waterford Township.

Section 7. Occupancy Standards

- (a) In determining the initial rents and the initial sales prices for restricted units, other than assisted living facilities, the standards set forth in N.J.A.C. 5:80-26.4(b) shall apply.
- (b) In referring certified households to specific restricted units, to the extent feasible, and without causing an undue delay in occupying the unit, the Administrative Agent shall strive to:
 - 1. Provide an occupant for each bedroom;
 - 2. Provide children of different sex with separate bedrooms;
 - 3. Provide separate bedrooms for parents and children; and

4. Prevent more than two persons from occupying a single bedroom.

Section 8. Affordability 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 30 years, unless otherwise prohibited by law, until Waterford takes action to release the unit from such requirements; prior to such action, a restricted ownership unit shall 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 Section 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 Township 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.
- (g) 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.
- (h) The Township shall retain the right of first refusal to purchase a restricted ownership following the 30 year interval from the date of the initial Certificate of Occupancy subject to the conditions set forth in N.J.S.A. 5:80-26.5(g)

- (i) Otherwise, the sale of a unit following the termination of the 30 year control period can be made by the owner to any purchaser at fair market value, but only after the owner records the Release executed by the Administrative Agent.

Section 9. Buyer Income Eligibility for Ownership Units

- (a) Buyer income eligibility for restricted ownership units shall be delivered in accordance with N.J.A.C. 5:80-26.1, as may be amended and supplemented, such that low-income ownership units shall be reserved for households with a gross household income less than or equal to 50 percent of median income, and moderate-income ownership units shall be reserved for households with a gross household income less than eighty percent (80%) of median income.
- (b) The Administrative Agent shall certify a household as eligible for a restricted ownership unit when the household is a low-income household or a moderate income household, as applicable to the unit, and the estimated monthly housing cost for the particular unit (including principal, interest, taxes, homeowner and private mortgage insurance and condominium or homeowner association fees, as applicable) does not exceed thirty-three percent (33%) of the household's certified monthly income.

Section 10. Limitations on indebtedness secured by ownership unit; subordination

- (a) Prior to incurring any indebtedness to be secured by a restricted ownership unit the Administrative Agent shall determine in writing that the proposed indebtedness complies with the provisions of this Section.
- (b) With the exception of original purchase money mortgages, during a control period neither an owner nor a lender shall at any time cause or permit the total indebtedness secured by a restricted ownership unit to exceed ninety-five percent (95%) of the maximum allowable resale price of that unit, as such price is determined by the Administrative Agent in accordance with N.J.A.C. 5:80-26.6(b).

Section 11. Price Restrictions for Ownership Units

- (a) Price restrictions for Ownership Units shall be in accordance with N.J.A.C. 5:80-26.6 as may be amended and supplemented. The initial purchase price for a restricted ownership unit shall be approved by the Administrative Agent with the above requirements.
- (b) The Administrative Agent shall approve all resale prices in writing in advance of a resale.
- (c) The initial purchase price of a restricted ownership unit financed under the New Jersey Urban Homeownership Recovery Program or Market Oriented Neighborhood Investment program shall be calculated as set forth in N.J.A.C. 5:80-26.6(c).
- (d) The maximum resale price for a restricted ownership unit shall be in accordance with NJAC 5:80-27.6(d) and the owner may apply to the Administrative Agent to increase the maximum sales price for the unit on the basis of capital improvements as defined.

Section 12. 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 Waterford takes action to release the unit from such requirements. Prior to such action, a restricted rental unit shall 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 Camden County Clerk. The deed shall also identify each affordable unit by apartment number and/or address and whether that unit is designated as a very low, low- or moderate-income unit. Neither the unit nor its affordability designation shall change throughout the term of the deed restriction. A copy of the filed document shall be provided to the Administrative Agent and the Waterford Township Municipal Clerk 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.

Section 13. Price Restrictions for Rental Units; Leases

- (a) Restrictions on rents shall be in accordance with N.J.A.C. 5:80-26.12 as may be amended or supplemented. The initial rent for a restricted rental unit shall be approved by the Administrative Agent and calculated not to exceed thirty percent (30%) of eligible monthly income determined under NJAC 5:80-26.3 and 26.4.
- (b) The maximum rent for affordable units within each affordable development shall be affordable to households earning no more than sixty percent (60%) of the median income in Housing Region 5. The average rent for low and moderate income rented units shall be affordable to households earning no more than fifty-two percent (52%) of median income in Housing Region 5. The developers and/or any municipal sponsors of restricted rental units shall establish at least one rent for each bedroom type for very low income, low income, and moderate income units, provided that at least thirteen percent (13%) of the restricted units in such development project shall be available for households earning no more than thirty percent (30%) of the median income Housing Region 5.
- (c) 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.

- (d) 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.
- (e) Application fees (including the charge for any credit check) shall not exceed five (5) 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 Ordinance.

Section 14. 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 thirty percent (30%) of median income.
 - 2. Low-income rental units shall be reserved for households with a gross household income less than or equal to fifty percent (50%) of median income.
 - 3. Moderate-income rental units shall be reserved for households with a gross household income less than or equal to eighty percent (80%) of median income.
- (b) The Administrative Agent shall certify a household as eligible for a restricted rental unit when the household is a very low-income, low-income household or a moderate-income household, as applicable to the unit, and the rent proposed for the unit does not exceed thirty-five percent (35%) (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 thirty-five percent (35%) (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 thirty-five percent (35%) (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.

Section 15. Administration

- A. Administrative Agent. The affordability controls required in this Ordinance shall be administered and enforced by one or more Administrative Agent(s).

The Township recognizes its obligation under the Fair Housing Act to appoint an Administrative Agent with respect to complying with the Township's Housing Element and Fair Share Plan for affordable housing. Initially, the Township shall serve as its own Administrative Agent. The basis for the Township itself serving as the Administrative Agent is that all affordable housing units to meet the Township's Fair Share Obligation for the 2015-2025 period are intended to be constructed in accordance with the Township's Redevelopment Plan in the Haines Boulevard Redevelopment Area. The Township has determined to solicit and negotiate with Redevelopers for the Haines Boulevard Redevelopment Area to include Redevelopers for the Township's affordable housing obligation. At such time as the Township has negotiated a Redevelopment Agreement(s) with a Redeveloper(s) for all or part of the Township's Affordable Housing Obligation, it shall then determine whether to appoint a separate Administrative Agent to work with the Redeveloper(s) to advertise for and market the affordable housing units toward meeting the Township's Third Round Obligation unless a Redeveloper itself becomes the Administrative Agent. The Administrative Agent's fees and cost of advertising and the affirmative marketing of the affordable housing units shall be included as a Redeveloper's responsibility in the Redevelopment Agreement(s) between the Township and the Redeveloper(s). The Administrative Agent then appointed by the Township shall comply with the requirements of this Ordinance and any applicable duties and requirements contained in the agreement between the Township of Waterford and the Administrative Agent.

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

1. Attending continuing education opportunities on affordability controls, compliance monitoring and affirmative marketing as offered or approved by the Court.
2. Affirmative Marketing;
3. Household Certification;
4. Affordability Controls;
5. Records retention;
6. Resale and re-rental.
7. Processing requests from unit owners; and
8. Enforcement, though the ultimate responsibility for retaining controls on the units rests with the municipality.

9. The Administrative Agent shall have authority to take all actions necessary and appropriate to carry out its responsibilities, hereunder.

10. When an Administrative Agent is appointed by the Township the duties shall be more specifically defined and described in the appointment Resolution, and shall include all of the specific regulatory duties set forth in the UHAC.

Section 16. Enforcement of Affordable Housing Regulations

(a) Upon the occurrence of a breach of any of the regulations governing the restricted unit by an owner, developer or tenant the municipality shall have all remedies provided at law or equity, including but not limited to foreclosure, tenant eviction, 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 day after service of the written notice:

1. The municipality may file a court action pursuant to N.J.S.A. 2A:58-11 alleging a violation or violations, of the regulations governing the affordable housing unit. If an 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.

i. A fine of not more than Five Hundred Dollars (\$500) 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 rented his or her low- or moderate-income unit in violation of the regulations governing affordable housing units, payment into Waterford Township's Affordable Housing Trust Fund of the gross amount of rent illegally collected.

iii. In the case of an owner who has rented his or her low- or moderate-income unit in violation of the regulations governing affordable housing units, payment of an innocent tenant's reasonable relocation costs, as determined by the court.

2. The municipality may file a court action in the New Jersey Superior Court seeking a judgment, for 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 the same were a judgment of default of the First Purchase Money Mortgage and shall constitute a lien against the low- and moderate-income unit.

- (c) Such judgment shall be enforceable, at the option of the municipality, by means of an execution sale by the Sheriff, at which time the low- and moderate-income unit of the violating Owner shall be sold at a sale price which is not less than the amount necessary to fully satisfy and pay off any First Purchase Money Mortgage and prior liens and the costs of the enforcement proceedings incurred by the municipality, including attorney's fees. The violating Owner shall have the right to possession terminated as well as the title conveyed pursuant to the Sheriff's sale.
- (d) The proceeds of the Sheriff's sale shall first be applied to satisfy the First Purchase Money Mortgage lien and any prior liens upon the low- and moderate-income unit. The excess, if any, shall be applied to reimburse the municipality for any and all costs and expenses incurred in connection with either the court action resulting in the judgment of violation or the Sheriff's sale. In the event that the proceeds from the Sheriff's sale are insufficient to reimburse the municipality in full as aforesaid, the violating Owner shall be personally responsible for and to the extent of such deficiency, in addition to any and all costs incurred by the municipality in connection with collecting such deficiency. In the event that a surplus remains after satisfying all of the above, such surplus, if any, shall be placed in escrow by the municipality for the Owner and shall be held in such escrow for a maximum period of two (2) years or until such earlier time as the Owner shall make a claim with the municipality for such. Failure of the Owner to claim such balance within the two-year period shall automatically result in a forfeiture of such balance to the municipality. Any interest accrued or earned on such balance while being held in escrow shall belong to and shall be paid to the municipality, regardless if such balance shall be paid to the Owner or forfeited to the municipality.
- (e) Foreclosure by the municipality due to violation of the regulations governing affordable housing units shall not extinguish the restrictions of the regulations governing affordable housing units as the same apply to the low- and moderate-income unit. Title shall be conveyed to the purchaser at the Sheriff's sale, subject to the restrictions and provisions of the regulations governing the affordable housing unit. The Owner determined to be in violation of the provisions of the 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.
- (f) If there are no bidders at the Sheriff's sale or if insufficient amounts are bid to satisfy the First Purchase Money Mortgage and any prior liens, the municipality may acquire title to the low- and moderate-income unit by satisfying the First Purchase Money Mortgage and any prior liens and crediting the violating owner with an amount equal to the difference between the First Purchase Money Mortgage and any prior liens and costs of the enforcement proceedings, including legal fees and the maximum resale price for which the low- and moderate-income unit could have been sold under the terms of the regulations governing affordable housing units. This excess shall be treated in the same manner as the excess which would have been realized from an actual sale as previously described.
- (g) Failure of the low and moderate income unit to be either sold at the Sheriff's sale or acquired by the municipality shall obligate the owner to accept an offer to purchase from

any qualified purchaser which may be referred to the owner by the municipality, with such offer to purchase being equal to the maximum resale price of the low- and moderate-income unit as permitted by the regulations governing affordable housing units.

Section 17. Appeals

Appeals from all decisions of the Township's Administrative Agent shall be submitted by of Complaint filed with the Superior Court of New Jersey, Camden County.

SEVERABILITY

If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall be in affect the validity of the remaining portions thereof.

EFFECTIVE DATE

This Ordinance shall take effect upon passage and publication, as provided by law, and confirms Waterford Township's affordable housing requirements and rescinds any previous ordinances inconsistent with this Ordinance to the extent of such inconsistencies only.

NOTICE IS HEREBY GIVEN that the foregoing ordinance was introduced and passed on first reading at a meeting of the Township Committee of the Township of Waterford, held on August 12, 2020. Ordinance #2020-11 will be further considered for final passage after public hearing at a meeting of said Township Committee to be held on August 26, 2020, beginning at 7:00 P.M., at which time and place all persons interested will be given an opportunity to be heard concerning such ordinance. The meeting will be held electronically via ZOOM. The "Meeting ID is "939 9044 8271" and the Meeting Password is "Waterford". Copies of this Ordinance shall be made immediately available at the Township Clerk's Office in said Municipal Building at no cost to those members of the general public requesting same.

Published by: Dawn M. Liedtka, RMC, Township Clerk