

# **Exhibit 9**

WESTCHESTER COUNTY FAIR AND AFFORDABLE HOUSING  
IMPLEMENTATION PLAN

Appendix D-1(i): Model Ordinance Provisions

August 9, 2010

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Westchester County  
Affordable Affirmatively Furthering Fair Housing Units  
Model Ordinance Provisions

*These model ordinance provisions are proposed to supplement existing municipal zoning codes in Westchester County municipalities for the purposes of ensuring the provision and promotion of fair and affordable housing development throughout the County of Westchester. The text below contains recommended zoning language, as well as advisory comments which are italicized.*

**Affordable Affirmatively Furthering Fair Housing**

**1. Definitions**

**Affordable Affirmatively Furthering Fair Housing (AFFH) Unit**

A for-purchase housing unit that is affordable to a household whose income does not exceed 80% of the area median income (AMI) for Westchester as defined annually by the U.S. Department of Housing and Urban Development (HUD) and for which the annual housing cost of a unit including common charges, principal, interest, taxes and insurance (PITI) does not exceed 33% of 80% AMI, adjusted for family size and that is marketed in accordance with the Westchester County Fair & Affordable Housing Affirmative Marketing Plan.

A rental unit that is affordable to a household whose income does not exceed 60% AMI and for which the annual housing cost of the unit, defined as rent plus any tenant paid utilities, does not exceed 30% of 60% AMI adjusted for family size and that is marketed in accordance with the Westchester County Fair & Affordable Housing Affirmative Marketing Plan.

**2. Required Affordable FFH Unit Component**

Within all residential developments of 10 or more units created by subdivision or site plan approval, no less than 10% of the total number of units must be created as affordable AFFH units. In residential developments of five to nine units, at least one affordable AFFH unit shall be created.

*A municipality should require that a higher percentage of units be set aside as affordable AFFH units on sites where there is no, or marginal, land cost and significant infrastructure is in place. One type of such potential site is an existing office park which can meet specific criteria (e.g. has routinely vacant parking spaces during business hours). A study prepared by the County Department of Planning ("Office Park Housing" March 2008) recommends an inclusionary requirement of 15% in such situations.*

No preferences shall be utilized to prioritize the selection of income-eligible tenants or purchasers for affordable AFFH units created under this subsection.

*The zoning provisions may address a process to target non-resident workforce of a municipality for occupancy of not more than 25% of the affordable AFFH units in a particular development if a legal and feasible means is identified to show such targeted non-resident workforce is more diverse than the existing resident population.*

Notwithstanding the above, all such affordable AFFH units, whether for purchase or for rent, shall be marketed in accordance with the Westchester County Fair & Affordable Housing Affirmative Marketing Plan.

**3. Incentives for Creation of Additional Fair and Affordable Housing**

*A municipality should utilize one or more of a variety of incentives to encourage the creation of affordable AFFH units above the number required to be created by the ordinance (no less than 10% as per Section 3 above). Potential incentives include allowing higher densities such as "1.5 additional two-bedroom market-rate units for each affordable AFFH unit provided over the required 10%," the easing of minimum height, bulk and setback requirements and an allowance for shared parking so as to reduce infrastructure costs.*

**4. Maximum Rent and Sales Price**

The maximum monthly rent for an affordable AFFH unit and the maximum gross sales price for a FAH unit shall be established in accordance with U.S. Department of Housing and Urban Development guidelines as published in the current edition of the "Westchester County Area Median Income (AMI) Sales & Rent Limits" available from the County of Westchester.

**5. Time Period of Affordability**

Units designated as affordable AFFH units must remain affordable for a minimum of 50 years from date of initial certificate of occupancy for rental properties and from date of original sale for ownership units.

**6. Property Restriction**

A property containing any affordable AFFH units must be restricted using a mechanism such as a declaration of restrictive covenants in recordable form acceptable to Municipal Counsel which shall ensure that the affordable AFFH unit shall remain subject to affordable regulations for the minimum 50 year period of affordability. Among other provisions, the covenants shall require that the unit be the primary residence of the resident household selected to occupy the unit. Upon approval, such declaration shall be recorded against the property containing the affordable AFFH unit prior to the issuance of a Certificate of Occupancy for the development.

**7. Unit Appearance and Integration**

Within single-family developments, the affordable AFFH units may be single-family homes or may be incorporated into one or more two-family homes. Each single-family affordable AFFH unit may be located on a lot meeting seventy-five per cent (75%) of the minimum lot area for the single-family homes in the development. Each such two-family home shall be located on a lot meeting the minimum lot area for the single-family homes in the development. All such units shall be indistinguishable in appearance, siting and exterior design from the other single-family homes in the development, to the furthest extent possible. Interior finishes and furnishings may be reduced in quality and cost to assist in the lowering of the cost of development of the affordable AFFH units.

Within multi-family developments, the affordable AFFH units shall be physically integrated into the design of the development and shall be distributed among various sizes (efficiency, one-, two-, three- and four-bedroom units) in the same proportion as all other units in the development. The affordable AFFH units shall not be distinguishable from other market rate units from the outside or building exteriors. Interior finishes and furnishings may be reduced in quality and cost to assist in the lowering of the cost of development of the affordable AFFH units.

**8. Minimum Floor Area**

The minimum gross floor area per affordable AFFH unit shall not be less than 80% of the average floor area of non-restricted housing units in the development and no less than the following:

<b><u>Dwelling Unit</u></b>	<b><u>Minimum Gross Floor Area (square feet)</u></b>
Efficiency	450
1 bedroom	675
2 bedroom	750
3 bedroom	1,000 (including at least 1.5 baths)
4 bedroom	1,200 (including at least 1.5 baths)

For the purposes of this section, paved terraces or balconies may be counted toward the minimum gross floor area requirement in an amount not to exceed 1/3 of the square footage of such terraces or balconies.

As an alternative or supplemental standard -- The minimum gross floor area per affordable AFFH unit shall be in accordance with the standards set forth by the New York State Division of Housing and Community Renewal & the New York State Housing Trust Fund Corporation in Section 4.03.03 of the most recent edition of its joint Design Manual. [http://nysdchr.gov/Publications/DesignHandbook/UF2009\\_DesignHandbook.pdf](http://nysdchr.gov/Publications/DesignHandbook/UF2009_DesignHandbook.pdf)

**9. Occupancy standards**

For the sale or rental of affordable AFFH units, the following occupancy schedule shall apply:

<b><u>Number of Bedrooms</u></b>	<b><u>Number of Persons</u></b>
Efficiency	Minimum: 1 , Maximum: 1
1 Bedroom	Minimum: 1 , Maximum: 3
2 Bedroom	Minimum: 2 , Maximum: 5
3 Bedroom	Minimum: 3 , Maximum: 7
4 Bedroom	Minimum: 4 , Maximum: 9

**10. Affirmative Marketing**

The affordable AFFH units created under the provisions of this section shall be sold or rented, and resold and re-rented during the required period of affordability, to only qualifying income-eligible households. Such income-eligible households shall be solicited in accordance with the requirements, policies and protocols established in the Westchester County Fair & Affordable Housing Affirmative Marketing Plan so as to ensure outreach to racially and ethnically diverse households.

**11. Resale Requirements**

In the case of owner-occupied affordable AFFH units, the title to said property shall be restricted so that in the event of any resale by the home buyer or any successor, the resale price shall not exceed the then-maximum sales price for said unit, as determined in this ordinance, or the sum of:

- (i) the net purchase price (i.e. gross sales prices minus subsidies) paid for the unit by the selling owner, increased by the percentage increase, if any, in the Consumer Price Index for Urban Wage Earners and Clerical Workers in the New York-Northern New Jersey Area, as published by the United States Bureau of Labor Statistics (the "Index") on any date between (a) the month that was two months earlier than the date on which the seller acquired the unit and (b) the month that is two months earlier than the month in which the seller contracts to sell the unit. If the Bureau stops publishing this index, and fails to designate a successor index, the Municipality will designate a substitute index; and
- (ii) the cost of major capital improvements made by the seller of the unit while said seller of the unit owned the unit as evidenced by paid receipts depreciated on a straight line basis over a 15 year period from the date of completion and such approval shall be requested for said major capital improvement no later than the time the seller of the unit desires to include it in the resale price.

Notwithstanding the foregoing, in no event shall the resale price exceed an amount affordable to a household at 80% of AMI at the time of the re-sale.

**12. Lease Renewal Requirements**

Applicants for rental affordable AFFH units shall, if eligible and if selected for occupancy, sign leases for a term of no more than two years. As long as a resident remains eligible and has complied with the terms of the lease, said resident shall be offered renewal leases for a term of no more than two years each. Renewal of a lease shall be subject to the conditions of federal, state or county provisions that may be imposed by the terms of the original development funding agreements for the development or to the provisions of other applicable local law.

If no such provisions are applicable and if a resident's annual gross income should subsequently exceed the maximum then allowable, as defined in this chapter, then:

**Option (a):** said resident may complete their current lease term and shall be offered a non-restricted rental unit available in the 30% development at the termination of such lease term, if available. If no such dwelling unit shall be available at said time, the resident may be allowed to sign one additional one-year lease for the affordable AFFH unit they occupy but shall not be offered a renewal of the lease beyond the expiration of said term.

**-OR-**

**Option (b):** said resident shall pay the greater of (1) the rent amount payable under the provisions of this ordinance or (2) 30% of the resident's monthly adjusted household income provided that the increased rent may not exceed the market rent in that development for units with the same number of bedrooms.

**-OR-**

**Option (c):** said resident shall pay the greater of (1) the rent amount payable under the provisions of this ordinance or (2) 30% of the resident's monthly adjusted household income provided that the increased rent may not exceed the market rent in that development for units with the same number of bedrooms for a term of not more than one (1) year.

**13. Administrative and Monitoring Agency**

*A municipal office or department or a local non-profit agency must be designated to administer the requirements of this section. The designated office, department or agency will be responsible for monitoring the affordable AFFH units during the units' periods of affordability and for monitoring compliance with the affirmative marketing responsibilities of those creating the affordable AFFH units*

#### **14. Expedited Project Review Process**

**(a) Pre-application meeting:** The applicant for a development including affordable AFFH units shall be entitled to attend at least one pre-application meeting at which representatives will be in attendance from each municipal agency, board, commission and staff expected to play a role in the review and approval of the development application and construction. The purpose of the pre-application meeting will be to expedite the development application review process through:

- The early identification of issues, concerns, code compliance and coordination matters that may arise during the review and approval process.
- The establishment of a comprehensive review process outline, proposed meeting schedule and conceptual timeline.

**(b) Meeting schedule and timeline:** Municipal departments, agencies, authorities, boards, commissions, councils, committees and staff shall endeavor to honor the proposed meeting schedule and conceptual timeline established as an outcome of the pre-application to the greatest extent possible during the review and approval process, subject to the demonstrated cooperation of applicant to adhere to same. Should the approval process extend beyond one year, an applicant for a development including affordable AFFH units shall be entitled to at least one additional meeting per year with the same departments, agencies, authorities, boards, commissions, councils or committees to review any and all items discussed at previous pre-application meetings.

**(c) Calendar/agenda priority:** Municipal departments, agencies, authorities, boards, commissions, councils or committees with review or approval authority over applications for developments including affordable AFFH units shall give priority to such applications by placing applications for developments including affordable AFFH units first on all meeting and work session calendars and agenda and, when feasible based on the ability to conduct required reviews and public notice, with the intent of shortening minimum advance submission deadlines to the extent practicable.

WESTCHESTER COUNTY FAIR AND AFFORDABLE HOUSING  
IMPLEMENTATION PLAN

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**Questions and Answers  
on  
Affordable Affirmatively Furthering Fair Housing Units  
Model Ordinance Provisions**

June 26, 2013

Below are questions on application of the Model Ordinance Provisions that have arisen in review sessions and discussions with local officials from several municipalities. The County's response follows each question.

**1. Are there two typographical errors in the Model Ordinance Provisions?**

Yes, two have been identified subsequent to approval by the federal housing monitor:

- In title of #2, an "A" should be added before "FFH".
- In the text of #12 (a), the figure "30%" should be deleted; it does not belong in this sentence.

**2. Can the County identify the Model Ordinance Provisions that are not flexible?**

Based on provisions of the Housing Settlement, the non-flexible provisions are:

- #1. Definitions of AFFH unit, eligible income requirements and calculation of housing cost.
- #2. No preferences to prioritize selection of income-eligible residents.
- #4. Setting rent and sales prices.
- #6. Property restriction for affordability of a minimum 50 years and that the unit be the primary residence of the occupants.
- #10. Affirmative marketing in accordance with County marketing plan.

**3. Can a preference procedure continue for selection of tenants/purchasers for previously approved affordable units?**

The answer is dependent on local circumstance. We are aware that the deed restrictions for previously approved units (some approved up to 30 years ago) may reference local regulations that contain such preferences and specific procedures. Also, local approvals may have been based on the existence and the continuation of such preferences. In such situations, a legal basis may exist that such provisions are not subject to change.

**4. Can preferences be applied going forward for selection of tenants/purchasers of new units that are created as affordable housing not eligible under the Housing Settlement within the municipality?**

The Housing Settlement requires the County "to condition, as appropriate, the use of public funds and resources...by municipalities on commitments included in the funding agreement...that the municipalities shall, *inter alia*,...ban local residency requirements and preferences and other selection preferences that do not AFFH." Utilization of a preference procedure for the selection of owners or tenants for any new affordable units may limit a municipality's eligibility for any of the County's discretionary funds under the Discretionary Funding Policy effective March 1, 2012.



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**5. What degree of flexibility is there in the 10% Required Affordable AFFH Component? Must it be 10% with no rounding down?**

It should be 10% with rounding up so that the requirement is never less than 10%. However, if a municipal code establishes a general rule for how rounding is handled, local circumstance may conclude that the existing rule should apply.

**6. Must the local code include a requirement that one affordable AFFH unit be included in developments of 5 to 9 units?**

It is encouraged. We have been advised that this requirement may be considered onerous within some municipalities. The record of local consideration of the Model Ordinance Provisions should include a discussion that this provision was reviewed and identify why this provision is or is not suitable in a particular community or what alternative approaches are available, such as optional incentive density.

**7. Must the minimum gross floor area per affordable AFFH "single-family" unit be set as not less than 80% of average floor area of non-restricted single-family units?**

No. Experience has found that in some single-family developments that even 80% of the floor area of a market-rate unit may require an exceptionally large affordable unit. The municipality can provide that appropriate sizing be determined during application review based on consideration of the other objectives of the model ordinance provisions.

**8. May the minimum gross floor areas per affordable AFFH unit based on number of bedrooms be increased?**

Yes. The model ordinance provisions already provide an alternative and it is acknowledged that some municipalities have minimum floor area requirements in their code.

**9. Do the minimum gross floor areas per affordable AFFH unit include common areas within the building or are these specific for each unit?**

These standards can work both ways, but the interpretation should be consistent within the municipality.

**10. May the minimum/maximum occupancy standards be modified?**

Yes. The standards are recommendations. However, the modified standards should be compatible with criteria used to qualify residents for affordable AFFH units that take into consideration family size and number of bedrooms.

**11. Must a municipality set up an administrative and monitoring agency or designate a local non-profit if the County will provide the required services itself and/or with its consultant to monitor compliance with marketing requirements and initial sales and subsequent resales and refinancings, as well as to monitor the turnover of rental units and appropriate rents being charged? Will designating the County and its consultant suffice?**

For all affordable AFFH units that comply with terms of the Housing Settlement and qualify as meeting the County's obligation, the County will oversee all administrative matters to ensure that the obligations and terms for the affordable AFFH unit are in compliance. For such units, the municipality may designate the County and be consistent with this provision. The municipality should designate what other agency or process will be responsible for any units that do not qualify under the Housing Settlement.

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**12. Must there be a municipal role in affirmative marketing other than requiring that it be done consistent with the County plan?**

Yes. In accordance with the approved Affirmative Fair Housing Marketing Plan, municipalities must work with the County to provide information on housing opportunities to their employees and through their local networks by requesting agencies/organizations/libraries to post information regarding housing opportunities on their websites, or other means of communications, including sharing of press releases, public service announcements, fliers and links to the County's Homeseeker website.

**13. Is a municipality to choose one of the three options for lease renewal requirements?**

The three options are presented without preference but should not be construed to be the only options available. A municipality should select a policy suitable for its community. However, it is important to always include the phrase –

Renewal of a lease shall be subject to the conditions of federal, state or county provisions that may be imposed by the terms of the original development funding agreements for the development or to the provisions of other applicable local law.

Some public funding programs, such as federal tax credits, establish tenancy rules which may supersede a local requirement. Under the statute which created Low Income Housing Tax Credits, in the case where a tenant's income increases above the income guidelines, the property management company may neither 1) evict any tenant who qualified upon move in or 2) increase the rent beyond the tax credit affordable rent. This means that the tenant may continue leasing the apartment if they so desire. Also, any local provision will be subject to NYS and other applicable tenant protection laws."

**14. May the local ordinance include optional provisions for locating required inclusionary affordable AFFH units on another site within the community and/or for a developer providing a fee payment in-lieu of providing the required affordable AFFH unit(s) on the development site?**

Inclusion of such provisions is not encouraged as an objective of the Housing Settlement is to include affordable AFFH units within new developments. If such provisions are to be included, the record of local consideration of the model ordinance provisions should include a discussion of why such options are warranted in specific circumstances.