

Ordinance 2010-001

Third Round Affordable Housing Ordinance Millstone Borough / Somerset County

AN ORDINANCE ADDRESSING REQUIREMENTS OF THE COUNCIL ON AFFORDABLE HOUSING (COAH) RELATED TO MILLSTONE BOROUGH'S SUBSTANTIVE CERTIFICATION OF ITS THIRD ROUND HOUSING ELEMENT AND FAIR SHARE PLAN AND AMENDING THE DEVELOPMENT ORDINANCE OF THE BOROUGH OF MILLSTONE, SOMERSET COUNTY, NEW JERSEY.

BE IT ORDAINED by the Mayor and Borough Council of the Borough of Millstone, Somerset County:

1. A NEW Article VI, AFFORDABLE HOUSING, and Section D-142 thereof are hereby adopted to address Millstone's constitutional obligation to provide for its fair share of low- and moderate-income housing, consistent with the provisions of N.J.A.C. 5:97 et seq. and N.J.A.C. 5:80-26.1 and pursuant to the New Jersey Fair Housing Act of 1985. This ordinance is also intended to provide assurances that low and moderate income units (the "affordable units") are created with controls on affordability over time and that low and moderate income people occupy these units. This ordinance shall apply except where inconsistent with applicable law.

The Millstone Borough Planning Board adopted the Housing Element pursuant to the MLUL at N.J.S.A. 40:55D-1 et seq. on December 18, 2008. A Fair Share Plan consistent with this Housing Element was adopted by the Planning Board on December 18, 2008 and endorsed by the Governing Body on December 18, 2008. This Fair Share Plan describes the methods by which Millstone will address its Fair Share obligation as determined by the Housing Element. This ordinance implements and incorporates that Fair Share Plan and addresses the requirements of N.J.A.C. 5:97 et seq. Millstone will annually file a monitoring report with the Council delineating the status of its certified plan and this report will be available to the public at the Municipal Building and from the Council on Affordable Housing at PO Box 813, Trenton, New Jersey 08625-0813.

D-142 AFFORDABLE HOUSING

A. MUNICIPAL FAIR SHARE OBLIGATION

The fair share obligation in Millstone consists of a two-unit rehabilitation obligation, a 21 unit prior round obligation and a four-unit growth share obligation that represents one affordable unit for every four market rate residential units receiving a certificate of occupancy subsequent to January 1, 2004 plus one affordable housing unit for every 16 jobs created through the expansion or creation of non-residential development in accordance with the schedule determined by the New Jersey Council on Affordable Housing (COAH).

B. DEFINITIONS

“Administrative agent” means the entity responsible for administering the affordability controls of this ordinance with respect to specific restricted units, as designated pursuant to N.J.A.C. 5:80-26.14.

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

“Affordable” means, 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 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.

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

“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.) and in, but not of, the DCA.

“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 where the head of the household is a minimum age of either 62 years, or 55 years and meets the provisions of the 42 U.S.C. §§3601 et seq., except that due to death, a remaining spouse of less than 55 years of age shall be permitted to continue to reside.

“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 offer, at a minimum, one unfurnished room, a private bathroom, a kitchenette and a lockable door on the unit entrance.

“Balanced Housing” means the Neighborhood Preservation Balanced Housing Program of the DCA as set forth at N.J.S.A. 52:27D-320 and N.J.A.C. 5:43.

“Certified household” means a household that has been certified by an administrative agent as a low-income household or moderate-income household.

“COAH” means the Council on Affordable Housing in, but not of, the DCA, established under the New Jersey Fair Housing Act (N.J.S.A. 52:27D-301 et seq.).

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

“Fair Share Round” means any one of three periods in time during which the Council established municipal obligations to provide affordable housing and the first round was from 1987-1993 and the second period was from 1993-1999 and the third is for 2000–2018.

“HAS” means the Housing Affordability Service, formerly known as the “Affordable Housing Management Service,” at the New Jersey Housing and Mortgage Finance Agency.

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

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

“Median income” means the median income by household size for an applicable county, as adopted annually by COAH.

“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 median income.

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

“MONI” means the Agency’s Market Oriented Neighborhood Investment Program, as it may be authorized from time to time by the Agency.

“95/5 unit” means a restricted ownership unit that is part of a housing element that received substantive certification from COAH pursuant to N.J.A.C. 5:93 before October 1, 2001.

“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.

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

“Regional asset limit” means the maximum housing value affordable to a four-person household with an income at or above 80% of the regional median as defined by the Council’s annually adopted income limits.

“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 for its Section 8 program. 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, but does not include a market-rate unit financed under UHORP or MONI.

“UHORP” means the Agency’s Urban Homeownership Recovery Program.

C. AFFORDABLE HOUSING PROGRAMS

Millstone has determined that it will use the following programs to satisfy its affordable housing obligation: family, age-restricted and handicapped housing.

The following general guidelines apply to all developments that contain low-and moderate-income units, and any future developments that may occur.

D. REHABILITATION

Millstone does not intend to utilize a rehabilitation program.

E. PHASING SCHEDULE FOR ZONING

In inclusionary zones, including zones subject to a growth share ordinance, the following schedule shall be followed:

<u>Percentage of Market-Rate Units Completed</u>	<u>Minimum Percentage of Low- and Moderate-Income Units Completed</u>
25	0

25+1	10
50	50
75	75
90	100

F. NEW CONSTRUCTION

(1) Low/Mod Split and Bedroom Distribution of Affordable Housing Units

- (a) The fair share obligation shall be divided equally between low- and moderate-income households.
- (b) In each affordable development, at least 50 percent of the restricted units within each bedroom distribution shall be low-income units.
- (c) 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 is 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 are two bedroom units;
 - (iii) At least 20 percent of all low- and moderate-income units are three bedroom units; and
 - (iv) The remainder may be allocated at the discretion of the developer.
 - (v) Age-restricted low- and moderate-income units may utilize a modified bedroom distribution, and, at a minimum, the number of bedrooms shall equal the number of age-restricted low- and moderate-income units within the affordable development.

(2) Accessible Townhouse Units

- (a) The first floor of all townhouse dwelling units and of all other multistory dwelling units for which credit is sought pursuant to P.L. 1985, c. 222 (N.J.S.A. 52:27D-301 et seq.), on or after October 1, 2006, the effective date of P.L. 2005, c. 350 (N.J.S.A. 52:27D-311a et seq.), and for which an application for a construction permit has not been declared complete by the enforcing agency pursuant to P.L. 2005, c. 350 (N.J.S.A. 52:27D-311a et seq.) and which were included in a prior round fair share plan or in a third round fair share plan and for which credit continues to be sought shall be subject to the technical design standards of the Barrier Free Subcode, N.J.A.C. 5:23-7.
- (b) To receive Council credit for a townhouse unit or other multistory dwelling unit that is attached to at least one other dwelling unit Millstone shall ensure that:

- (i) Townhouses or other multistory dwelling units that are attached to at least one other dwelling unit for which credit is sought for low or moderate income housing 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 accessible route of travel;
 - [i] An interior accessible route of travel shall not be required between stories;
 - [d] An adaptable room that can be used as a bedroom, with a door or the casing for the installation of a door, on the first floor; and
 - [e] 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 Millstone has collected funds from the development sufficient to make 10 percent of the adaptable entrances in the development accessible;
- (ii) In the case of a unit or units which are 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;
- (c) The builder of the unit or units shall deposit funds, sufficient to adapt 10 percent of the affordable units in the projects which have not been constructed with accessible entrances, with Millstone, for deposit into the municipal affordable housing trust fund;
- (d) The funds under (b)3 above shall be available for the use of Millstone for the 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;
- (e) The developer of the affordable project subject to P.L. 2005, c. 350 (N.J.S.A. 52:27D-311a et seq.) shall submit the design with a cost estimate for conversion to Millstone; and
- (f) Once Millstone has determined that the plans to adapt the entrances of the townhouse or other multistory unit meet the requirements of the Barrier Free Subcode, N.J.A.C. 5:23-7, the Chief Financial Officer shall ensure that the funds are deposited into that fund.

- (g) Full compliance with this section 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.

(3) Maximum Rents and Sales Prices

- (a) Millstone hereby establishes that the maximum rent for affordable units within each affordable development shall be affordable to households earning no more than 60 percent of median income and the average rent for low- and moderate-income units shall be affordable to households earning no more than 52 percent of median income.
- (b) 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.
- (c) 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 and in achieving this affordability average, moderate-income ownership units must be available for at least three different prices for each bedroom type, and low-income ownership units must be available for at least two different prices for each bedroom type.
- (d) At least 13 percent of the affordable housing in Millstone must be affordable to households at 30 percent of median income.

G. UTILITIES

- (1) Affordable units shall utilize the same type of heating source as market units within the affordable development.
- (2) Those tenant-paid utilities that are included in the utility allowance shall be so stated in the lease and shall be consistent with the utility allowance approved by DCA for its Section 8 program.

H. OCCUPANCY STANDARDS

- (1) Occupancy standards for affordable housing units are pursuant to N.J.A.C. 5:80-26.4:
 - (a) In determining the initial rents and initial sales prices 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.
- (b) For 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 two person household or to two one-person households.
- (c) 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:
- (i) Provide an occupant for each unit bedroom;
 - (ii) Provide children of different sex with separate bedrooms; and
 - (iii) Prevent more than two persons from occupying a single bedroom.

I. CONTROL PERIODS FOR OWNERSHIP UNITS AND ENFORCEMENT MECHANISMS

- (1) Control periods for ownership units are pursuant to N.J.A.C. 5:80-26.5 and each restricted ownership unit shall remain subject to the requirements of this ordinance until Millstone Township elects to release the unit from such requirements pursuant to action taken in compliance with N.J.A.C. 5:80-26.1 and prior to such an election, a restricted ownership unit must remain subject to the requirements of N.J.A.C. 5:80-26.1 for at least 30 years.
- (a) At the time of the first sale of the unit, the 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 requirements of this ordinance, 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.

- (b) All conveyances of restricted ownership units shall be made by deeds and restrictive covenants pursuant to N.J.A.C. 5:80-26.1.
- (c) 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.
- (d) A restricted ownership unit shall be required to obtain a Continuing Certificate of Occupancy or a certified statement from the municipal building inspector stating that the unit meets all code standards upon the first transfer of title that follows the expiration of the applicable minimum control period provided under N.J.A.C. 5:80-26.5(a).

J. PRICE RESTRICTIONS FOR OWNERSHIP UNITS, HOMEOWNER ASSOCIATION FEES, AND RESALE PRICES

- (1) Price restrictions for ownership units are pursuant to N.J.A.C. 5:80-26.1, including;
 - (a) The initial purchase price for a restricted ownership unit shall be approved by the administrative agent. The initial purchase price for all restricted ownership units shall be calculated so that the monthly carrying costs 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 an appropriate household size as determined under N.J.A.C. 5:80-26.4; provided, however, that the price shall be subject to the affordability average requirement of N.J.A.C. 5:80-26.3.
 - (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 affordable developments shall provide no distinction between the condominium or homeowner association fees and special assessments paid by low- and moderate-income purchasers and those paid by market purchasers, although condominium units subject to a municipal ordinance adopted before October 1, 2001, which provides for condominium or homeowner association fees and/or assessments different from those provided for in this subsection shall have such fees and assessments governed by said ordinance.
 - (d) The owners of 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 that add an additional bathroom.

K. BUYER INCOME ELIGIBILITY

- (1) Buyer income eligibility for ownership units is pursuant to N.J.A.C. 5:80-26.1, 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 80 percent of median income.
- (2) 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 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 eligible monthly income.

L. CONTROL PERIOD FOR RENTAL UNITS

- (1) Each restricted rental unit shall remain subject to the requirements of this ordinance until Millstone elects to release the unit from such requirements, however, prior to such a municipal election, a restricted rental unit must remain subject to the requirements of this ordinance for a period of at least 30 years.
 - (a) 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 and a copy of the filed document shall be provided to the administrative agent within 30 days of the receipt of a certificate of occupancy.
 - (b) A restricted rental unit shall remain subject to the affordability controls of this ordinance, despite the occurrence of any of the following events:
 - (i) sublease or assignment of the lease of the unit;
 - (ii) sale or other voluntary transfer of the ownership of the unit; or
 - (iii) the entry and enforcement of any judgment of foreclosure.

M. PRICE RESTRICTIONS FOR RENTAL UNITS AND RENT INCREASES; LEASES

- (1) The initial rent for a restricted rental unit shall be approved by the administrative agent and 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; provided, however, that the rent shall be subject to the affordability average requirement of N.J.A.C. 5:80-26.3.

- (a) Rents may be increased annually based on the Housing Consumer Price Index for the United States, as published annually by COAH. Rents may not be increased more than once a year.
- (b) A written lease is required for all restricted rental units, except for units in an assisted living residence, and tenants are responsible for security deposits and the full amount of the rent as stated on the lease.
- (c) No additional fees or charges may be added to the approved rent (except, in the case of units in an assisted living residence, for the customary charges for food and services) without the express written approval of the administrative agent and application fees (including the charge for any credit check) may not exceed five percent of the monthly rental of the applicable restricted unit and shall be payable to the administrative agent to be applied to the costs of administering the controls in this ordinance as applicable to the unit.

N. TENANT INCOME ELIGIBILITY PURSUANT TO N.J.A.C. 5:80-26.1.

- (1) Pursuant to N.J.A.C. 5:80-26.13, tenant income eligibility shall be determined as follows:
 - (a) Low-income rental units shall be reserved for households with a gross household income less than or equal to 50 percent of median income. Moderate income rental units shall be reserved for households with a gross household income less than 80 percent of median income. Very low income units shall be reserved for households with a gross household income equal to or less than 30 percent of median income
 - (b) The administrative agent shall certify a household as eligible for a restricted rental unit when the household is a 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; provided, however, that this limit may be exceeded if one or more of the following circumstances exists:
 - (i) 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;
 - (ii) 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;
 - (iii) The household is currently in substandard or overcrowded living conditions;

- (iv) The household documents the existence of assets, with which the household proposes to supplement the rent payments; or
 - (v) 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 (b) above with the administrative agent, who shall counsel the household on budgeting.

O. MUNICIPAL HOUSING LIAISON

- (1) COAH requires Millstone to appoint a specific municipal employee to serve as a Municipal Housing Liaison responsible for administering its affordable housing program, including affordability controls and the Affirmative Marketing Plan, and, where applicable, supervising any contracting Administrative Agent. Millstone adopted an ordinance on May 21, 2007 creating the position of Municipal Housing Liaison. Millstone adopted a resolution on February 19, 2007 appointing a Municipal Housing Liaison. Subject to the approval of COAH, the Municipal Housing Liaison shall be appointed by the Governing Body and may be a full or part time municipal employee.
- (2) The Municipal Housing Liaison shall be responsible for oversight and administration of the affordable housing program for Millstone, including the following responsibilities which may not be contracted out, exclusive of Subsection (f) which may be contracted out:
- (a) Serving as Millstone’s primary point of contact for all inquiries from the State, affordable housing providers, Administrative Agents, and interested households;
 - (b) Monitoring the status of all restricted units in Millstone’s Fair Share Plan;
 - (c) Compiling, verifying, and submitting annual reports as required by COAH;
 - (d) Coordinating meetings with affordable housing providers and Administrative Agents, as applicable;
 - (e) Attending continuing education opportunities on affordability controls, compliance monitoring, and affirmative marketing as offered or approved by COAH;
 - (f) If applicable, serving as the Administrative Agent for some or all of the restricted units in Millstone as described in P. below.
- (3) Subject to approval by COAH, Millstone may contract with or authorize a consultant, authority, government or any agency charged by the Governing Body, which entity shall

have the responsibility of administering the affordable housing program of Millstone, except for those responsibilities which may not be contracted out as described above. If Millstone contracts with another entity to administer all or any part of the affordable housing program, including the affordability controls and Affirmative Marketing Plan, the Municipal Housing Liaison shall supervise the contracting Administrative Agent.

- (4) **The Municipal Housing Liaison is responsible for providing annual reports to COAH.**

P. ADMINISTRATIVE AGENT FOR MILLSTONE'S AFFORDABLE HOUSING UNITS

- (1) The affordability controls set forth in this ordinance shall be administered and enforced by the administrative agent. The primary responsibility of the administrative agent shall be to ensure that the restricted units under administration are sold or rented, as applicable, only to low and moderate-income households.
- (a) The administrative agent shall create and shall publish in plain English, and in such other languages as may be appropriate to serving its client base, a written operating manual, as approved by COAH, setting forth procedures for administering such affordability controls, including procedures for long-term control of restricted units; for enforcing the covenants of N.J.A.C. 5:80-26.18 and for releasing restricted units promptly at the conclusion of applicable control periods. The administrative agent shall have authority to take all actions necessary and appropriate to carrying out its responsibilities hereunder. The operating manual shall have a separate and distinct chapter or section setting forth the process for identifying applicant households seeking certification to restricted units, for reviewing applicant household eligibility, and for certifying applicant households in accordance with the household certification and referral requirements set forth in N.J.A.C. 5:80-26.16.
- (b) The administrative agent shall establish and maintain a ready database of applicant households as a referral source for certifications to restricted units, and shall establish written procedures to ensure that selection among applicant households be via the database, and in accordance with a uniformly applied random selection process and all applicable State and Federal laws relating to the confidentiality of applicant records.
- (c) Millstone shall select one or more administrative agents for those units. It (through a designated municipal employee, department, board, agency or committee) may elect to serve as the administrative agent for some or all restricted units in the municipality, or Millstone may select HAS or an experienced private entity approved by the Division, the Agency or COAH to serve as administrative agent for some or all restricted units in the municipality. The foregoing approval by COAH or the Division is to be based on the private

entity's demonstration of the ability to provide a continuing administrative responsibility for the length of the control period for the restricted units.

- (d) The administrative agent shall have the authority to discharge and release any or all instruments, as set forth in the Appendices of this ordinance, filed of record to establish affordability controls.

Q. AFFIRMATIVE MARKETING

- (1) The affirmative marketing plan is a regional marketing strategy designed to attract buyers and/or renters of all majority and minority groups, regardless of race, creed, color, national origin, ancestry, marital or familial status, gender, affectional or sexual orientation, disability, age or number of children to housing units which are being marketed by a developer or sponsor of affordable housing. The affirmative marketing plan is also intended to target those potentially eligible persons who are least likely to apply for affordable units in that region. It is a continuing program that directs all marketing activities toward the COAH Housing Region in which the municipality is located and covers the period of deed restriction.

(2) Millstone Borough will have a regional preference for residents and workers in Region 3 in its Affirmative Marketing Plan.

- (a) The administrative agent shall assure the affirmative marketing of affordable units.
- (b) If Millstone does not designate a municipal staff person, it shall contract with other experienced administrative agents approved by COAH to administer the affirmative marketing plan. If it contracts with another administrative agent to administer the affirmative marketing plan, it shall appoint a municipal housing liaison who shall supervise the contracting administrative agent. In addition, where the contracting administrative agent is not responsible for the entire affirmative marketing plan, Millstone shall outline who or what municipal agent is responsible for the remaining portion of the affirmative marketing plan. Millstone has the ultimate responsibility for the proper administration of the affirmative marketing program, including initial sales and rentals and resales and rentals.
- (c) In implementing the affirmative marketing plan, administrative agents shall designate an experienced staff person approved by COAH to provide counseling services to low and moderate income applicants on subjects such as budgeting, credit issues, mortgage qualification, rental lease requirements, and landlord/tenant law.
- (d) The affirmative marketing plan shall describe the media to be used in advertising and publicizing the availability of housing. In developing the plan, the administrative agent shall consider the use of language translations.

- (e) The affirmative marketing process for available affordable units shall begin at least four months prior to expected occupancy.
- (f) 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 administrative building(s) and the municipal library in the municipality in which the units are located; and the developer's sales office. Applications shall be mailed to prospective applicants upon request.
- (g) COAH shall review and assess the effectiveness of Millstone's affirmative marketing program.

R. HOUSEHOLD CERTIFICATION AND REFERRAL; RELATED PROJECT INFORMATION

- (1) No household may be referred to a restricted unit, or may receive a commitment with respect to a restricted unit, unless that household has received a signed and dated certification and has executed a certificate.
 - (a) The sources of income considered by the administrative agent shall be the types of regular income reported to the Internal Revenue Service and which can be used for mortgage loan approval.
 - (b) If the applicant household owns a primary residence with no mortgage on the property valued at or above the regional asset limit as published annually by COAH, a certificate of eligibility shall be denied unless the applicant's existing monthly housing costs exceed 38 percent of the household's eligible monthly income.
 - (c) The administrative agent shall employ a random selection process when referring households for certification to affordable units.

S. ENFORCEMENT OF AFFORDABLE HOUSING REGULATIONS

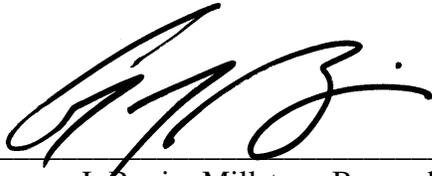
- (1) By submitting to the jurisdiction of COAH, Millstone is deemed to have delegated to its administrative agent the day-to-day responsibility for implementing practices and procedures designed to ensure effective compliance with the controls set forth in this ordinance. Millstone, however, shall retain the ultimate responsibility for ensuring effective compliance with this ordinance.
- (2) Administrative agent practices and procedures shall include, but shall not necessarily be limited to, the following:

- (a) 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. Requiring that all certified applicants for restricted units execute a certificate substantially in the form, as applicable, of either the ownership or rental certificates. 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 can be made.
- (b) If the unit is owner-occupied, that the unit may be resold only to a household that has been approved in advance and in writing by the administrative agent.
- (c) That no sale of the unit shall be lawful, unless approved in advance and in writing by the administrative agent, and that no sale shall be for a consideration greater than regulated maximum permitted resale price, as determined by the administrative agent.
- (d) That no refinancing, equity loan, secured letter of credit, or any other mortgage obligation or other debt secured by the unit may be incurred except as approved in advance and in writing by the administrative agent, and that at no time will the administrative agent approve any debt, if incurring the debt would make the total of all such debt exceed 95 percent of the then applicable maximum permitted resale price.
- (e) That the owner of the unit shall at all times maintain the unit as his or her principal place of residence, which shall be defined as residing at the unit at least 260 days out of each calendar year.
- (f) That, except as set forth in N.J.A.C. 5:80-26.18(c)4vii, at no time shall the owner of the unit lease or rent the unit to any person or persons, except on a short-term hardship basis, as approved in advance and in writing by the administrative agent.
- (g) That the maximum permitted rent chargeable to affordable tenants is as stated in the notice required to be posted in accordance with N.J.A.C. 5:80-26.18(d)3 of this ordinance, a copy of which shall be enclosed, and that copies of all leases for affordable rental units must be submitted annually to the administrative agent.
- (h) No individual or owner shall permit any bank or other lending institution from issuing any loan secured by the real property subject to the affordability controls set forth in this ordinance, if such loan would be in excess of amounts permitted by the restriction documents recorded in the deed or mortgage book in the county in which the property is located.

T. APPEALS

- (1) Appeals from all decisions of an administrative agent appointed pursuant to this ordinance shall be filed in writing with the Executive Director of COAH.
2. This ordinance shall take effect upon its filing with the Somerset County Planning Board and its passage and publication, as provided for by law.

I, Gregory Bonin, Borough Clerk of the Borough of Millstone, in the County of Somerset, State of New Jersey, do hereby certify the foregoing to be a true and correct copy of an ordinance adopted by the Millstone Borough Council during their meeting held on January 18, 2010.



Gregory J. Bonin, Millstone Borough Clerk

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