

WESTCHESTER COUNTY FAIR AND AFFORDABLE HOUSING
IMPLEMENTATION PLAN

**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.

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.

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.