

**PENDING ORDINANCE O-26-41
TOWNSHIP OF MONTCLAIR**

**AN ORDINANCE TO AMEND CHAPTER 65 AFFORDABLE HOUSING OF THE
CODE OF THE TOWNSHIP OF MONTCLAIR, NEW JERSEY**

September 15, 2026 (date of introduction)
September 29, 2026 (date of public hearing)

WHEREAS, pursuant to N.J.S.A. 52:27D-313(a), the Township Council of the Township of Montclair petitioned the Affordable Housing Dispute Resolution Program (“Program”) to review and approve its Fourth Round Housing Element and Fair Share Plan by and through a Complaint for Declaratory Judgment, Docket No. ESX-L-000297-25; and

WHEREAS, the Township of Montclair Planning Board has adopted a HEFSP pursuant to the Municipal Land Use Law at N.J.S.A. 40:55D-1, et seq. and the Fair Share Plan describes the ways the municipality shall address its fair share of very low-, low- and moderate-income housing as approved by the Superior Court and documented in the Housing Element; and

WHEREAS, the Township of Montclair’s Fourth Round Housing Element and Fair Share Plan promotes an affordable housing program pursuant to P.L. 2024, c.2, which amended the Fair Housing Act (N.J.S.A. 52:27D-301, et. seq.); and

WHEREAS, Chapter 65 Affordable Housing of the Montclair Code must be amended to implements and incorporates the relevant provisions of the HEFSP and addresses the requirements of P.L 2024, Chapter 2, the FHA, N.J.A.C. 5:99, NJ Supreme Court upheld COAH regulations at N.J.A.C. 5:93 and 5:97, and UHAC at N.J.A.C. 5:80-26.1, as may be amended and supplemented;

NOW, THEREFORE BE IT ORDAINED by the Mayor and Council of the Township of Montclair, in the County of Essex, State of New Jersey that it hereby amends Chapter 65 of the Montclair Code as follows:

Chapter 65. Affordable Housing.

§65-4.1 Administrative Agent

A. The Township of Montclair shall designate or approve, for each project or program within its Fair Share Plan, an administrative agent to administer the affordable housing program and/or affordable units in accordance with the requirements of the Act, the Dispute Resolution Program, and N.J.A.C. 5:99-7.

B. The fees for administrative agents shall be paid as follows:

(1) Administrative agent fees related to affirmative marketing and advertising of rental units shall be paid by the developer/owner if required as a condition of approval by the Planning Board or Board of Adjustment.

(2) Administrative agent fees related to the affirmative marketing and advertising for the initial sale of units shall be paid by the developer if required as a condition of approval by the Planning Board or Board of Adjustment.

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(3) Administrative agent fees related to the affirmative marketing and advertising of resales shall be paid by the seller of the affordable home.

(4) Administrative agent fees related to ongoing administration and enforcement shall be paid by the municipality.

~~A.~~

~~B.C.~~ The administrative agent shall administer and enforce the affordability controls set forth in this subchapter, which actions are reviewable by the Municipal Housing Liaison pursuant to N.J.S.A. 52:27D-321. The primary responsibility of the administrative agent is to ensure that the restricted units under administration are sold or rented, as applicable, only to very-low-, low-, and moderate-income households. The administrative agent shall also fulfill the requirements and responsibilities identified at N.J.A.C. 5:99-7.

(1) Pursuant to N.J.A.C. 5:99-7.2, the administrative agent shall have the authority to discharge and release any or all instruments, as set forth at N.J.A.C. 5:80-26 appendices, filed of record to establish affordability controls.

(2) In order to ensure the orderly transfer of control responsibility from a municipality to an administrative agent, from one administrative agent to another administrative agent, or other transfer, the procedures for changing administrative agents as outlined at N.J.A.C. 5:99-7.4 must be followed.

~~C.D.~~ The administrative agent's enforcement responsibility for implementing such practices and procedures may not be delegated or otherwise transferred to any other party, except to a successor administrative agent. Anything in this subchapter to the contrary notwithstanding, the Agency and DCA each may, in its discretion, contract with for-profit and nonprofit organizations to carry out delegated administrative agent functions, provided, however, that in any such case the Agency or DCA shall maintain primary responsibility for the delegated functions.

~~D.E.~~ In addition to those listed at N.J.A.C. 5:99-7.2, administrative agent practices and procedures include, but are not limited to, the following:

(1) 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 be offered, or in any other way committed, to any person other than a household duly certified to the unit by the administrative agent;

(2) Requiring that all certified applicants for restricted units execute a certificate substantially in the form, as applicable, of either the ownership or rental certificate set forth at N.J.A.C. 5:80-26 Appendix D-3, J, or K;

(3) Working with the **Municipal Housing Liaison** (MHL) to ensure that affordable housing opportunities are posted to the New Jersey Housing Resource Center pursuant to N.J.S.A. 52:27D-321.3 through 321.6, including, if necessary, levying fines for noncompliance and requiring new lotteries;

(4) Sending annual mailings to all owners of affordable dwelling units, reminding them of the following requirements:

(a) 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;

(b) That no sale of the unit will be lawful, unless approved in advance and in writing by the administrative agent, and that no sale may be for a consideration greater than the

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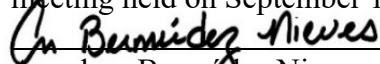
- maximum permitted resale price, as determined by the administrative agent;
- (c) That no refinancing, equity loan, secured letter of credit, or any other mortgage obligation or debt secured by the unit may be incurred except as approved in advance, in writing, by the administrative agent, and that at no time will the administrative agent approve any debt that would make the total of all such debt exceed 95 percent of the then-applicable maximum permitted resale price;
 - (d) That the owner of the unit shall at all times maintain the unit as their principal place of residence, which is defined as residing in the unit at least 260 days out of each calendar year;
 - (e) That, except as set forth at D(4)(h) below, at no time may 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, in writing, by the administrative agent;
 - (f) That the maximum permitted rent chargeable to affordable tenants must be mailed to tenants in accordance with E(1) below;
 - (g) Copies of all leases or lease renewal agreements for affordable rental units must be submitted annually to the administrative agent;
 - (h) If the affordable unit is a two-family home, that the owner may lease the rental unit only to certified households approved, in writing, by the administrative agent, may charge rent no greater than the maximum permitted rent as determined by the administrative agent, and shall submit for written approval of the administrative agent copies of all proposed leases prior to having them signed by any prospective tenant; and
 - (i) That no improvements may be made to any unit that would affect its bedroom configuration, except as provided at N.J.A.C. 5:80-26.10(a) and in any event, that no improvement made to the unit will be taken into consideration to increase the maximum permitted resale price, except for improvements approved in advance, in writing, by the administrative agent;
- (5) Securing from the Township lists of all affordable housing units for which tax bills are mailed to absentee owners, and notifying all such owners that they must either move back into or sell their unit;
 - (6) Establishing a program for diverting unlawful rent payments to the Township's affordable housing trust fund or other appropriate municipal fund approved by the Department. For purposes of this subsection, unlawful rent payments means:
 - (a) All rent monies paid by a person who has not been duly certified in accordance with the provisions at N.J.A.C. 5:80-26.17;
 - (b) All rent paid by a person or persons renting an ownership unit from an owner who has moved out of their unit illegally;
 - (c) Rent paid by a lawful tenant in excess of amounts permitted by law; and
 - (d) Rent paid to an affordable unit owner who is claiming a hardship, when the owner has not received prior authorization from the administrative agent as provided for at N.J.A.C. 5:80-26.8(a); and
 - (7) Establishing a rent-to-equity program, to be implemented in situations where an affordable unit owner has unlawfully rented their unit, and where the tenant has entered into a tenancy without knowledge of its unlawful nature. Under such a rent-to-equity program, the tenant, including the immediate family of the tenant, shall be given an opportunity to purchase the unit from the affordable unit owner, and the affordable unit

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owner shall be compelled to sell the unit to the tenant, with the total of all rent paid to the owner being credited to the tenant as down payment money paid to the affordable unit owner. Anything in this subchapter to the contrary, notwithstanding, any person offered a unit under such a rent-to-equity program must first be certified as eligible pursuant to N.J.A.C. 5:80-26.17.

RECORD OF COUNCIL VOTE ON INTRODUCTION						
COUNCIL MEMBER	MOVANT	SECOND	YES	NO	ABSTAIN	ABSENT
Deputy Mayor Andersen			✓			
Councilor Birmingham			✓			
Councilor D'Amato			✓			
Councilor Harrison	✓		✓			
Councilor Toler			✓			
Councilor Williams			✓			
Mayor Baskerville		✓	✓			

I HEREBY CERTIFY the foregoing to be a true copy of Ordinance O-26-41 introduced as amended by the Mayor and Council of the Township of Montclair, in the County of Essex, at its meeting held on September 15, 2026.



Angelese Bermudez Nieves, Township Clerk