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Repeal of Affordable Housing Chapter and enactment of New 102 entitled BELOW MARKET HOUSING INCENTIVES

A LOCAL LAW to repeal in its entirety Chapter 102 of the Code of the Town of Yorktown entitled "AFFORDABLE HOUSING" and enact a new Chapter 102 of the Code of the Town of Yorktown entitled "BELOW MARKET HOUSING INCENTIVES"

Be it enacted by the Town Board of the Town of Yorktown as follows:

Section I. Statement of Authority.

This Local Law is authorized by the New York State Constitution, the provisions of the New York Municipal Home Rule Law, the provisions of the Statute of Local Governments, the relevant provisions of the Town Law of the State of New York, the laws of the Town of Yorktown and the general police power vested with the Town of Yorktown to promote the health, safety and welfare of all residents and property owners in the Town.

Section II.

Chapter 102 of the Code of the Town of Yorktown entitled AFFORDABLE HOUSING is hereby repealed in its entirety.

Section III.

Chapter 102 of the Code of the Town of Yorktown entitled BELOW MARKET HOUSING INCENTIVES is hereby enacted.

**§ 102-1. Findings; policy.**

The Town Board of the Town of Yorktown finds that:

- A. There is a regional demand and need for Below Market Rate Housing Units (BMRHUs).
- B. In order for the Town of Yorktown and the region to have long term prosperity and diversity in housing, options should be encouraged.

- C. New development projects present the best opportunities to create a diverse regional housing stock.
- D. The Town's Comprehensive Plan supports incentivizing the creation of a diverse housing stock with the creation of Below Market Rate Housing.
- E. Presently, the Yorktown Community Housing Board administers the Town's hereto before established affordable housing program and establishes guidelines for pricing based upon regional averaged incomes.
- F. It is the policy of the Town to provide builders incentives to create the Below Market Rate Housing within their development proposals.

**§ 102-2. Applicability.**

This chapter shall apply to any new site plans or residential subdivisions of land that propose to include BMRHUs as part of their residential development.

**§ 102-3. Purpose.**

The purpose of this chapter is to encourage and incentivize new residential developments in the Town to include a supply of below market rate housing.

**§ 102-4. Definitions.**

As used in this chapter, the following terms shall have the meanings indicated:

**ADDITIONAL DENSITY BONUS** – Those additional units created pursuant to Section §300-249(B).

**AGGREGATE INCOME** - The gross annual income of all members of a household, including but not limited to taxable income, nontaxable income, investment income, accident and health plan benefits, insurance policy proceeds, distributions from trust funds, social security payments, unemployment compensation and alimony payments, excluding the earnings of working minors and/or full-time students, alimony paid and taxable tuition benefits. The annual term shall be such as fixed by the Yorktown Community Housing Board.

**BELOW MARKET RATE HOUSING UNIT (BMRHU)** – Below Market Rate rental units created pursuant to this Chapter shall be marketed to households which meet the criteria of 80% or less of the Westchester County median income as determined by HUD

annually and whose combined annual rental cost and tenant-paid utilities do not exceed 30% of said income.

Below Market Rate homeownership units (single-family, residential condominium, or residential cooperative apartment) created pursuant to this Chapter shall be marketed to households which meet the criteria of 80% or less of the Westchester County median income as determined by HUD annually, and whose annual total sum of secured loan principal and interest, private mortgage insurance, property taxes, home insurance, common charges, and homeowner-paid utilities do not exceed 30% of said household income.

DENSITY BONUS – the unit count of additional density permitted in a residential development, which shall equal 10% of the maximum market rate unit count in such residential development which proposes to include 10% Below Market Rate Housing Units. See Section §300-248(A).

HIGH HOME RENT – A rent limit updated annually by HUD and published by Westchester County for use in affordable housing programs that calculate maximum rent based on 60% of area median income.

HUD – U.S. Department of Housing and Urban Development.

INDEX – Consumer Price Index (CPI) 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.

LOW HOME RENT – A rent limit updated annually by HUD and published by Westchester County for use in affordable housing programs that calculate minimum rent based on 50% of area median income.

MARKET RATE UNIT (MRU) – Dwelling units in single-family, residential condominium, and residential cooperative apartment buildings which are purchased or rented for residency by the owner thereof at market-rate purchase prices, without governmental or other subsidy to such owner.

MEDIAN INCOME – annual household income which does not exceed 100% of the Westchester County median annual income for its household size (based on U.S. Census and as updated by HUD).

TENANT – Individual or individuals named as tenant in a lease of a rental BMRHU.

YCHB – Yorktown Community Housing Board.

**§ 102-5. General provisions applicable to below market rate housing units.**

- A. Any new residential development may propose to the Planning Board inclusion of Below Market Rate Housing Units (BMRHUs). The proposed density of the development shall be as calculated in Chapter 300 Article XXXI, Section §300-249.
- B. Siting of BMRHUs. All BMRHUs constructed under this section shall be situated within the proposed subdivision or development and be no less accessible to public amenities, such as open space, than the market rate units.
- C. Minimum design and construction standards for BMRHUs. BMRHUs within single-family market-rate developments shall be integrated with the rest of the development, shall be similar in appearance, siting and exterior design to the furthest extent practical, and shall be distributed among various unit sizes consistent with the other units in the development. BMRHUs within multifamily developments 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) consistent with the other units in the development. From the outside or building exteriors, the BMRHUs shall be similar in appearance to the market-rate units.
- D. Minimum floor area. The minimum gross floor area per BMRHU shall be no less than the following:

Dwelling Unit Size	Minimum Gross Floor Area (square feet)	
	Rental Unit	Homeownership Unit
Efficiency	450	N/A
1-bedroom	675	700
2-bedroom	800	950
3-bedroom	1,000	1,200
4-bedroom (including at least 1.5 baths)	1,200	1,400

- E. Occupancy Standards. For the initial sale or rental of BMRHUs, the following occupancy schedule shall apply:

Dwelling Unit Size	Number of Persons	
	Minimum	Maximum
Efficiency	1	1
1-bedroom	1	3
2-bedroom	2	4
3-bedroom	3	6
4-bedroom	4	8

- F. Timing of construction or provision of BMRHUs. The construction of BMRHUs shall occur proportionately with the construction of the market-rate units in the subdivision or development. Additional Density Bonus units shall not receive Certificates of Occupancy until all building permits have been issued for construction of the Below Market Rate Housing Units.

**§ 102-6. Eligibility.**

- A. Eligibility of purchaser. To be eligible to purchase affordable housing, a household's aggregate income shall not exceed 80% of the area median income (AMI) for Westchester County as calculated annually by the HUD and published by the County of Westchester. In the event that there are no eligible purchasers for an affordable housing unit whose income does not exceed 80% of AMI, the YCHB may allow applicants whose income exceeds 80% but does not exceed 90% of AMI to apply to purchase the unit.
- B. Eligibility of renter. To be eligible to rent affordable housing, a household's aggregate income shall not exceed 60% of the area median income (AMI) for Westchester County as calculated annually by the U.S. Department of Housing and Urban Development and published by the County of Westchester.
- C. Inclusion of assets in determining income. To ensure that the affordable housing units herein will, in fact, be purchased or rented by those persons with the need for the same, income from nonretirement net assets will be considered in calculating a household's aggregate income. If no such income is reported or verified, annual income equivalent to 2% of the nonretirement assets shall be imputed.

**§ 102-7. Occupant selection standard.**

When affordable housing is sold or rented, the following standards shall be used to determine occupancy:

- A. A household must be income-eligible.
- B. The number of persons in the household must fall within the occupancy standards for the size of the unit as listed in Section 102-6(D).
- C. Among income-eligible households which meet the occupancy standards, below market rate units will be offered in the order of applicants with the earliest date of receipt of the pre-application. If there is a tie due to identical dates of receipt of pre-applications, a lottery will be used to determine the order of those applications on the list.
- D. For below market rate homeownership units, the eligible purchaser must provide a refundable, good faith binder of 1% of the sales price of the affordable unit.

**§ 102-8. Initial sale or rental price.**

- A. The YCHB shall establish the initial maximum gross sales price or maximum rental price for BMRHUs. The YCHB shall be guided by the definitions of rental BMRHUs and homeownership BMRHUs as indicated in §102-4 above, as well as by the guidelines of HUD in the most recent edition of the Westchester County Area Median Income (AMI) Sales and Rental Limits, published by Westchester County.
- B. The YCHB shall establish the initial maximum gross sales price for a homeownership BMRHU. The maximum initial sales price shall be determined such that monthly housing costs shall not exceed 33% of 80% AMI, as adjusted based on unit size using 1.5 persons per bedroom, and calculating the mortgage based on 95% of the sales price utilizing an average of prevailing mortgage rates for thirty-year, fixed-rate mortgages. To calculate housing costs for establishment of affordability of homeownership BMRHUs, the YCHB shall include the estimated principal and interest on the mortgage loan, estimated property taxes and homeowners' insurance (otherwise known as PITI), as well as any estimated common charges, homeowners' association fees, and/or common maintenance fees.
- C. The YCHB shall establish the initial maximum monthly rent for a rental BMRHU. To calculate initial rent, the YCHB will use the HOME rents based on unit size, as set forth in the most recent edition of the Westchester County Area Median Income

(AMI) Sales and Rent Limits. The maximum rents shall be the Low HOME rents, if the unit size is less than 120% of the minimum floor area as specified in §102-5(C) herein. If the floor area of the unit is 120% or more of the minimum floor area, the maximum rental shall be the High HOME rent.

- D. Where development funding agreements from Westchester County, New York State, or United States government agencies specify another methodology for determining rent or sales price, the provisions of such agreements shall supersede the methodology provision of this chapter.

**§ 102-9. Perpetuating affordability.**

- A. Homeownership units designated as BMRHUs shall remain affordable in perpetuity. The owner or occupant of below market rate housing may not lease or sublet the unit without the prior authorization of the Community Housing Board. The Community Housing Board shall not permit affordable housing to be leased or sublet unless the following conditions are met:

- (1) The lessee or sublessee meets the conditions established herein for initial occupancy of affordable housing.
- (2) The rent charged is in accordance with the provisions and intent of this section.
- (3) The lease or sublease shall not exceed one year.

- B. Rental units designated as BMRHUs shall remain permanently affordable.

- C. A property containing any BMRHUs shall be restricted using a mechanism such as a declaration of restrictive covenants in recordable form acceptable to Town Attorney and to the YCHB which shall ensure that the BMRHUs shall remain subject to affordable regulations for the period of affordability as set forth herein. 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 BMRHUs prior to the issuance of a certificate of occupancy for the development.

- D. In the case of owner-occupied BMRHUs, the title to said property shall be restricted so that in the event of any resale by the home buyer or any successor, the maximum resale price shall be the lower of D(1) or D(2) below:

- (1) 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 (CPI) for Urban Wage Earners and Clerical Workers in the New York-Northern New Jersey Area, as published by the U.S. Bureau of Labor Statistics (Index) on the dates between the month the seller acquired the unit and the month that the unit is offered for resale, plus the cost of major capital improvements made by the seller of the unit while said seller of the unit owned the unit, as previously approved by the YCHB and evidenced by paid receipts presented to the YCHB no later than the time the seller of the unit has placed it for sale. Approval for any increase to the potential resale price due to major capital improvements shall be at the sole discretion of the YCHB. In reviewing such requests, the primary consideration shall be maintenance of the affordability of the BMRHU. If the Index referenced above ceases to be published by the U.S. Bureau of Labor Statistics and a successor index has not been designated, the YCHB shall recommend to the Town Board a comparable substitute index or methodology for proposed adoption by amendment of this chapter by local law. The last published edition of the Index shall continue to be used until enactment of a successor index.
  
- (2) The price affordable to a household at 80% of AMI at the time the unit is offered for resale. This price shall be determined such that monthly housing costs shall not exceed 30% of 80% AMI, as adjusted based on unit size using 1.5 persons per bedroom, and calculating the mortgage based on 95% of the sales price utilizing an average of prevailing mortgage rates for thirty-year, fixed rate mortgages. Monthly housing costs shall include the estimated principal and interest on the mortgage loan, estimated property taxes and homeowners' insurance (otherwise known as PITI), as well as any estimated common charges, homeowners' association fees, and/or common maintenance fees.

**§ 102-10. Sale price.**

The price established by the YCHB in accordance with the foregoing shall be the maximum resale price. Should no buyer eligible under the terms herein contract for and close on the purchase of the BMRHU as this maximum price, the homeowner may, at his sole discretion, reduce the price or withdraw the unit from the market. The Town shall not be deemed to guarantee the resale price of the unit, which may be affected by factors such as the housing market and condition of the unit. A buyer of a BMRHU shall be deemed to have fully assumed the risks associated with the future value of the unit. The deed restrictions are for the sole purpose of ensuring that the unit is sold to an income-eligible buyer at no more than the maximum resale price as determined above and

marketed in accordance with the Westchester County Fair and Affordable Housing Affirmative Marketing Plan.

**§ 102-11. Rents, leases and lease renewals of rental BMRHUs.**

A. Initial leases and renewal of leases offered under the provisions of this chapter shall contain the following provision in twelve-point or larger type font:

“This unit is a below market rate housing unit governed by Chapter 102 of the Code of the Town of Yorktown. Initial and continuing eligibility for leasing the unit requires submission of names of, and income documentation for, all occupants of the unit, and use of the unit as the primary residence of the tenant. Such income and residency documentation will be requested and must be submitted prior to each renewal of the lease. Failure to submit income documentation and proof of residency will result in nonrenewal and/or termination of the lease. If upon lease renewal tenant’s annual gross income exceeds by more than 40% the maximum income for eligibility then allowable, then the tenant may complete the current lease term. If a non-restricted rental unit is available in the development at the termination of such lease term, and if the resident meets the credit and/or financial qualification that the owner or manager requires of other applicants for non-restricted rental units, the owner or manager shall offer the tenant a lease for such non-restricted rental unit. If no such dwelling unit shall be available at said time and accepted by the tenant, the owner shall offer the tenant a one-year lease for the BMRHU the tenant occupies, but shall not offer the tenant a renewal of the lease beyond the expiration of said term.”

B. A tenant of a rental BMRHU shall be required to submit the names all occupants of the BMRHU along with income documentation of each occupant to the owner or manager of the BMRHU within 30 days of receipt of written request by the owner or manager as described in §102.10(C) herein, for the purpose of verifying the tenant’s continued eligibility to lease the unit. Intentional submission of inaccurate or misleading income information shall be grounds for denial of a renewal lease and may cause the tenant to be subject to criminal prosecution.

C. One hundred and fifty days prior to the expiration of the lease, the owner or manager shall request income documentation from the tenant. The owner or manager shall review eligibility based on the rent and income guidelines provided by the YCHB and in effect at the time. If the tenant remains eligible, the owner or manager shall offer the tenant a renewal lease at a rent no greater than the Low HOME rent for the unit size occupied, or the High HOME rent if applicable as described in Section §102-7(C). If the tenant fails to submit income documentation for all occupants of a rental BMRHU as provided in Subsection B above, the owner shall not offer the tenant a

renewal lease and shall terminate the tenant's lease.

- D. Applicants for rental BMRHUs shall, if income eligible and if selected for occupancy in accordance with the Westchester County Fair and Affordable Housing Affirmative Marketing Plan, 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.
- E. Renewal of a lease shall be subject to the provisions that may be imposed by Westchester County, New York State or United States agencies in accordance with the terms of the original development funding agreements for the development or the provisions of other applicable law.
- F. If the tenant's income documentation establishes that the tenant's annual gross income exceeds by more than 40% the maximum income for eligibility then allowable, as defined herein, then the tenant may complete the tenant's current lease term. If a non-restricted rental unit is available in the development at the termination of such lease term, and if the resident meets the credit and/or financial qualifications that the owner or manager requires of other applicants for non-restricted rental units, the owner or manager shall offer the tenant a lease for such non-restricted rental unit. If no such dwelling unit shall be available at said time and accepted by the tenant, the owner shall offer the tenant a one-year lease for the BMRHU the tenant occupies, but shall not offer the tenant a renewal of the lease beyond the expiration of said term.
- G. Nothing herein shall preclude the owner or manager from following standard industry practices in evaluating the background or credit history of prospective tenants and making reasonable business judgements regarding the acceptability of applicants. If an applicant is rejected for good cause, another applicant shall be selected.
- H. Nothing herein shall preclude the owner or manager from enforcing the terms of the lease and rules and regulations, including initiating an action in a court having jurisdiction over landlord-tenant matters for nonpayment of rent or for holdover in a BMRHU for cause or ineligibility hereunder.
- I. Security deposit requirements of eligible rental BMRHUs shall be limited to one month's rent deposit.
- J. Improvements restriction. An owner of a below market rate housing unit shall not make any structural improvements and/or changes to a BMRHU without the approval of the Yorktown Community Housing Board.

- K. The Town of Yorktown is committed to equal housing opportunity and fair housing, as further described in the Town's Housing Non-Discrimination Policy.

**§102-12. Administration.**

- A. At the time of the issuance of a building permit, the Building Inspector shall send a copy of such permit to the YCHB, which shall establish the maximum rental or sales price for affordable housing units in such subdivision and the maximum annual gross family income for eligibility for occupancy of said units, unless such price and eligibility is determined by another government agency or its designee in accordance with the terms of original development funding agreements for the development or the provisions of other applicable law.
- B. With respect to rental units, on or before April 30 of each year, the YCHB shall notify the owner or manager of each BMRHU of the rent and income eligibility requirements for such unit based upon the provisions herein. With respect to ownership units, the YCHB shall provide sales criteria for the sale of a BMRHU at the time of offering the unit for sale. The owner or manager of each multifamily rental development with BMRHUs shall annually certify to the satisfaction of the YCHB that the requisite number of BMRHUs have been assigned to income-eligible households in accordance with the guidelines herein. The annual certification shall include unit designations and tenant names and shall be signed by the owner or his or her designated representative. The YCHB shall have the right to review the underlying documentation for each BMRHU.
- C. BMRHUs shall not be resold for more than the amount that, at the then-prevailing interest rates, will result in the unit cost meeting affordable standards set by the YCHB as per the guidelines herein. All resales shall be made to income-eligible and qualified buyers who meet the requirements established by the YCHB according to the guidelines set forth herein.
- D. Notwithstanding the above, where development funding agreements from Westchester County, New York State, or United States government agencies specify another methodology for determining eligibility, rent and/or sales price, or for administration of the fair and affordable housing units created in accordance with this chapter, the provisions of such agreements shall supersede the methodology provisions of this chapter.

**§102-13. Expedited project review process.**

- A. Pre-application meeting: Upon written request to the Planning Department, the applicant for a development including BMRHUs shall be afforded a pre-application meeting with representatives from each municipal department likely to have a role in the review and approval of the development application and construction to discuss the early identification of issues, concerns, code compliance and coordination matters that may arise during the review and approval process, with respect to subdivision approvals, in accordance with §195-21 of the Town Code. For purposes of the review of residential site plans under this chapter, the procedures set forth in §195-21 shall apply.
  
- B. Meetings and timeline: Municipal departments shall work with the applicant to extend submission deadlines when circumstances warrant. This subsection shall not be construed to limit the number of multiagency meetings with the applicant throughout the approval process. Additional such meetings may be requested by the applicant and held on an as-needed basis.
  
- C. Calendar/agenda priority: Municipal departments, agencies, authorities, boards, commissions, councils or committees with review or approval authority over applications for developments including BMRHUs shall place such applications first on meeting and work session calendars and agendas, 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.

**Section IV. Severability.**

If any clause, sentence, phrase, paragraph or any part of this local law shall for any reason be adjudicated finally by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of this local law, but shall be confined in its operation and effect to the clause, sentence, phrase, paragraph or part thereof, directly involved in the controversy or action in which such judgment shall have been rendered. It is hereby declared to be the legislative intent that the remainder of this local law would have been adopted had any such provisions been excluded.

**Section V. Repeal**

All ordinances, local laws and parts thereof inconsistent with this Local Law are hereby repealed.

**Section VI. Effective Date.**

This Local Law shall become effective upon filing in the office of the Secretary of State in accordance with the provisions of the Municipal Home Rule Law.