

September 12, 2006

By Certified Mail and Regular Mail with Ordinance in full

TO: Morris County Planning Board

NJ League of Municipalities

Borough of Madison Planning Board

Madison Free Public Library

Morris County Free Public Library

Municipal Clerk: Borough of Chatham, Township of Chatham, Borough of Florham Park, Township of Harding, Township of Morris

FROM: Marilyn Schaefer, Borough Clerk

SUBJECT: BOROUGH OF MADISON NOTICE OF PENDING LAND DEVELOPMENT ORDINANCE 47-2006

NOTICE IS HEREBY GIVEN that Land Development Ordinance 47-2006 was submitted in writing at a Regular meeting of the Mayor and Council of the Borough of Madison in the County of Morris and State of New Jersey, held on September 11, 2006, was introduced by title and passed on first reading, and said governing body will further consider the same for second reading and final passage thereof during a Regular Meeting of the Council scheduled to begin at 7:45 p.m. or as soon as practical thereafter on **Wednesday, October 11, 2006**, at the Municipal Building, Hartley Dodge Memorial, Kings Road, in the Borough of Madison, at which time and place a public hearing will be held and all interested persons shall be given an opportunity to be heard concerning said ordinance. Copies of Ordinance 47-2006 may be obtained without charge at the office of the Clerk, Borough Hall, 50 Kings Road in the Borough of Madison during regular business hours on Monday through Friday for the period up to and including the scheduled public hearing.

STATEMENT OF PURPOSE: The Madison Planning Board has recommended that the Madison Land Development Ordinance be amended to provide for the regulation of the development and management of low and moderate income housing units constructed in compliance with the Housing Element of the Master Plan of the Borough of Madison; and the Borough Council has determined to make such amendment; therefore, Chapter 195 of the Borough Code, entitled "Land Development Ordinance of the Borough of Madison" is amended to include the ARTICLE IX "Affordable Housing".

ORDINANCE 47-2006

ORDINANCE OF THE COUNCIL OF THE BOROUGH OF MADISON AMENDING CHAPTER 195 OF THE MADISON BOROUGH CODE ENTITLED "LAND DEVELOPMENT ORDINANCE OF THE BOROUGH OF MADISON" TO ESTABLISH ARTICLE IX, ENTITLED "AFFORDABLE HOUSING"

WHEREAS, the Madison Planning Board has recommended that the Madison Land Development Ordinance be amended to provide for the regulation of the development and management of low and moderate income housing units constructed in compliance with the Housing Element of the Master Plan of the Borough of Madison; and

WHEREAS, the Borough Council has determined to make such amendment.

NOW, THEREFORE, BE IT ORDAINED, by the Council of the Borough of Madison, County of Morris, State of New Jersey that:

SECTION 1: Chapter 195 of the Borough Code, entitled "Land Development Ordinance of the Borough of Madison" is amended to include the following:

ARTICLE IX

Affordable Housing

§195-47. Intent.

It is the intent of this Article to regulate the development and management of low and moderate income housing units constructed in compliance with the Housing Element of the Master Plan of the Borough of Madison.

§195-48. Madison Affordable Housing Corporation

The Mayor and Borough Council hereby appoint, constitute and designate the Madison Affordable Housing Corporation (MADISON AFFORDABLE HOUSING CORPORATION) to monitor compliance of the Borough of Madison in providing housing for low and moderate income families as per regulations set forth by the New Jersey Council on Affordable Housing (COAH). The MADISON AFFORDABLE HOUSING CORPORATION shall adopt all such rules, regulations and procedures as are necessary to effectuate the foregoing and to meet the

intent of performing all the responsibilities, functions and duties of the Affordable Housing Policy set forth in Article VIII.

Reserved

The Madison Affordable Housing Corporation is hereby granted and shall have and exercise the following powers:

- 1) Review with the assistance of the Affordable Housing Administrator, regulations pertaining to the sale and rental of affordable housing units.

- 2) With the assistance of the Affordable Housing Administrator, prepare amendments and additions to regulations as it deems necessary or appropriate to implement the purpose of this Article. Such amendments and additions shall be submitted to the Governing body and shall not become effective until approved by the Borough Council.

- 3) Hold hearings upon notice to adjudicate the complaints of developers or applicants, owners and renters if the developer, applicant, owner or enter is not satisfied with the rulings of the Affordable Housing Administrator. In matters involving a hearing, the Affordable Housing Administrator shall give ten (10) days written notice to all parties involved and shall give all interested parties an opportunity to be heard.

- 4) With the assistance of the Affordable Housing Administrator, review requests from federal, state, county or local agencies regarding funding or applications for funding.

- 5) With the assistance of the Affordable Housing Administrator, make recommendations to the Borough Council regarding how town funds or funds collected from developer's contributions for affordable housing should be spent and propose priorities for such expenditures.

6) Review all affirmative marketing plans submitted by any developer, applicant or owner in connection with affordable housing under the auspices of COAH.

7) Administer all resale and re-rental transactions as per Sections 195-58 through 195-61 of this Article.

§195-48. Affordable Housing Administrator.

The Madison Affordable Housing Corporation shall appoint an Affordable Housing Administrator (the Administrator) to monitor sales and re-sales of affordable housing units.

Initial sales and rental transactions of affordable housing units shall be administered by the developer under the advisory review of the Borough of Madison Affordable Housing Corporation as per Section 195-57 of this Article. All resale and re-rental transactions of all affordable housing units shall be administered by the Madison Affordable Housing Corporation as per section 195-57 of this Article.

The Administrator may delegate the administration of all or part of the duties named in this Article to the Department of Community Affairs, a nonprofit organization or another qualified entity. Such delegation must be approved by the Madison Affordable Housing Corporation.

The administrator may charge a reasonable fee of program participants for the administration of this affordability controls program.

§195-49. Submission of affordable housing plan.

The developer of low and moderate income housing units shall submit to the Madison Affordable Housing Corporation a description of the mechanism to be used to insure that the required low and moderate income units are sold or rented only to low and moderate income

households for a period of not less than twenty (20) years. In addition to such description, actual samples of language to be included in the nature of covenants shall be submitted.

§195-50. Occupancy selection.

The Administrator shall designate an application period during which applications to purchase or rent affordable housing units will be accepted.

Applications shall be accepted only if submitted on an application form prepared and/ or approved by the Administrator. Applications shall be completely filled out and notarized. Knowingly or intentionally making any false statement on a form shall be grounds for disqualifying an applicant even if the applicant is otherwise eligible. The following information shall be required:

A copy of IRS form 1040A or 1040EZ (Tax Computation Form) for each of the three (3) years prior to date of the application.

A letter from all employers stating present annual income or four (4) consecutive pay stubs dated within one hundred twenty (120) days of the interview date.

A letter or appropriate reporting form verifying benefits, including, but not limited to, social security or pension.

A letter or appropriate reporting forms verifying any other source of income claimed by the applicant household.

Reports that verify income from assets to be submitted by banks or other financial institutions managing trust funds, money market accounts, stocks or bonds.

Reports that verify assets that do not earn regular income such as real estate and savings with delayed earnings provisions.

The Administrator shall determine whether the applicant meets the Income and other requirements established in these regulations. The review process for a prospective purchaser shall involve a credit background report; to be an eligible applicant, the applicant shall have an acceptable credit history such that there is a realistic possibility that he will be approved for a mortgage.

The Administrator will determine which eligible applicants shall be offered the opportunity to purchase or rent affordable housing units. Selection from among the eligible applicants shall be on a random basis subject only to the priority schedule established in Subsection E and the provisions established hereunder.

Residency and size of household priorities:

The Administrator may designate certain sales or rental units for preferential purchase or rent by income eligible members of a household that reside in the Borough of Madison or work in the Borough of Madison and reside elsewhere provided that if the sum of the affordable housing units purchased or rented by Borough of Madison residents or employees equals fifty percent (50%) of the Borough of Madison's Fair Share, there shall be no further priority for Borough of Madison residents or employees.

This prioritization shall be inapplicable to the other fifty percent (50%) of the affordable housing units.

A household of the size provided for in this subchapter shall have priority over households with a lesser number of persons for a one (1) bedroom, two (2) bedroom and three (3) bedroom units.

Three (3) bedroom Four (4) or more persons

(a household of more than four (4) shall be treated the same as a household of four (4).

Two Bedroom Three (3) persons

One Bedroom Two (2) persons

All applicants shall be classified by the Administrator in one of the priority categories set forth above on the basis of the information provided in the initial application.

Appeals. In the event that applicant is determined to be ineligible for a low or moderate income unit by the Administrator, the applicant may submit additional proofs and request reconsideration by the Madison Affordable Housing Corporation as per section 195-48 of this Article. Such request for reconsideration shall be made within ten (10) days of receipt of notice of denial by the applicant.

Waiting list. The Administrator may establish a waiting list for the remaining eligible applicants in the manner established in section 195-47. After all the units are occupied, the Administrator may choose to accept new applications. If an applicant is deemed eligible, the applicant shall be placed on the waiting list at the bottom of the particular priority classification for which the applicant qualifies. The Administrator shall periodically recertify the applicants on the waiting list to ensure that the list remains current and that the applicants are still qualified for the units to which they applied.

§195-56. Income eligibility standards.

The Madison Affordable Housing Corporation shall adopt income eligibility ceilings for low and moderate income units for various sized households based upon the United States Department of Housing and Urban Development (HUD) "uncapped median income by family size" for Morris County and as adopted by COAH. No applicant with a household income in excess of these ceilings shall be eligible to rent the low and moderate income units.

Upon annual adoption of updated income standards by COAH, the Administrator shall modify its income eligibility ceilings accordingly.

For purposes of determining income and eligibility, the Administrator shall consider:

All sources of income, whether taxable or nontaxable, including social security and pensions.

Imputed income. For the purpose of determining eligibility and rents, interest on the present value of real property and extraordinary personal property owned by the applicant shall be imputed and deemed additional income. Interest shall be imputed at the average interest rate on money market accounts in the region as determined by the Administrator and or HUD.

The income and assets of all members of the household as well as the income and assets of any individual who is expected to occupy the unit for which the household is seeking to qualify shall be included in the determination of eligibility and of rents. The form used for verification of household income shall include as affidavit attesting that the application contains the complete income of all current or anticipated household members.

§195-57. Initial sales and rental prices.

All units offered for sale or rent are to be affordable to a cross-section of low and moderate income households; with respect to low income households, that shall include households earning between forty percent (40%) and fifty percent (50%) of area median income, adjusted for household size, and with respect to moderate income households, that shall include households earning between fifty percent (50%) and eighty percent (80%) of area median income, adjusted for household size.

For affordable housing, the average selling price of units in each unit size category shall not exceed a price affordable to a household earning fifty-seven and one-half percent (57.5%) of the area median income, adjusted for household size.

In order to ensure that units are affordable throughout the range set forth in Subsection A above, the developer shall establish a range of stratified prices of sales units for the low and moderate income units, for each unit size. The developer shall provide, to the extent practicable for the following distribution of sales process for every twenty (20) low and moderate income units:

Low 1 at 40.0 through 42.5 percent

3 at 42.6 through 47.5 percent

6 at 47.6 through 50.0 percent

Moderate 1 at 50.1 through 57.5 percent

1 at 57.6 through 64.5 percent

1 at 64.6 through 68.5 percent

1 at 68.6 through 72.5 percent

2 at 72.6 through 77.5 percent

4 at 77.6 through 80.0 percent

The average of the range shall not exceed the levels set forth in Subsection B above.

Sales prices shall be considered affordable where the household purchasing the unit will not spend more than twenty-eight percent (28%) of gross household income, after a ten percent (10%) down payment, including the monthly principal and interest, taxes, insurance and the homeowners association fees, if any. In making these calculations, the following considerations shall govern:

1. Mortgage payments shall be determined on the basis of a thirty (30) year fixed rate mortgage at the prevailing interest rate obtainable from at least two (2) major lenders in Morris County;
2. Property taxes shall be determined by applying the equalized property tax rate in the Borough of Madison currently in effect to the proposed selling price of the unit;

3. The developer shall use the best available assumptions to determine the insurance and homeowners association fees to be applied to the units, subject to the approval of the Administrator as to reasonableness only for use in this calculation.

4. Homeowners association fees shall be set at a specified percentage of those paid by market purchasers. This percentage must be included in the master deed of any inclusionary development.

Rental prices shall be considered affordable where the household renting the affordable housing unit will not spend more than thirty percent (30%) of gross household income for rent, including utilities. Maximum rent shall be calculated as a percentage of the regional median income adopted by the COAH that applies to the rental housing unit. The allowance for utilities shall be the personal benefit allowance for utilities as defined by HUD.

The Administrator shall submit all sales and rental prices, including (where applicable) the proposed stratification, proposed affordability level and documentation for all elements as set forth in Section 195-55 to the Madison Affordable Housing Corporation, which may modify the prices where necessary to comply with this rule. No representation with respect to the price of any low and moderate income unit may be made by the Administrator until that price has been approved by the Affordable Housing Corporation.

§195-58. Procedures for resale transaction.

All resale transactions of affordable housing units shall be administrated by the Madison Affordable Housing Corporation. From the date on which the MAHC receives notice of intent to sell by the owner of a low and moderate income unit, the MAHC shall have the exclusive right to purchase the unit or to refer prospective purchasers to that unit for a period of ninety (90) days unless waived in writing by the MAHC. In the event that a contract for the unit is executed within the ninety (90) day period set above and the prospective buyer is unable to close, the period during which the MAHC shall have the exclusive right to market the unit is automatically extended for a period of twenty-one (21) days from the date it is notified of the buyer's inability to close.

In the event no contract has been entered into for the unit at the end of a ninety (90) day period, the owner of the unit may seek approval from the MAHC to sell the unit directly. If the MAHC determines at that point not to purchase the unit, it shall authorize the applicant to sell the unit as

follows. However, if the MAHC determines that the failure to enter into a contract was the result of negligence, absence of good faith effort or lack of cooperation on the part of the Seller, the MAHC shall require the applicant to attempt to sell the unit for an additional ninety (90) days period.

In the case of a low income unit, to a low or moderate income buyer; or

In the case of a moderate income unit to a buyer whose income does not exceed one hundred twenty percent (120%) of median.

Any subsequent sale shall be fully subject to the resale restrictions contained in these regulations. The deed to the above income purchaser shall specifically contain a deed restriction establishing that it is subject to all the affordability controls outlined in this Article.

§195-59. Calculation of resale price.

The resale price of the affordable housing unit shall be the base price increased pursuant to subsection A and B herein.

Percentage increase in household income. The price approved by the MAHC at which the seller acquired the property shall be the base price. The base price shall be multiplied by one hundred percent plus the percentage increase in the HUD uncapped median income by family size for Morris County from the time of acquisition of the property to the date that notice of intent to sell is given to the MAHC. For example, if the base price is one hundred thousand dollars (\$100,000) and the median income at the time of initial acquisition is thirty-two thousand dollars (\$32,000) and at the time of the resale transaction the median income has increased twenty-five percent (25%) to forty thousand dollars (\$40,000), then the resale price is as follows:

$$\frac{100}{100} + \frac{25}{100} = 1.25$$

100 100

$\$100,000 \times 1.25 = \$125,000$

Improvements. In addition, the seller shall be entitled to add to the selling price of the unit, the cost of any eligible capital improvement, affordable housing which pursuant to N.J.A.C. 5:92-12.8 renders the unit suitable for a larger household.

Upon request of an owner of an affordable housing unit, the MAHC shall consider within thirty (30) days whether to grant prior approval of an improvement and to approve a specific dollar amount up to the amount actually expended for that improvement.

§195-60. Exempt sales

The following transactions shall be deemed nonsales for the purpose of this plan. The owner of the affordable unit shall be entitled to a statement of exemption from the MAHC upon application.

Transfer of an affordable housing unit between husband and wife;

Transfer of ownership of an affordable housing unit between former spouses as a result of a judicial decree, judgment or order of divorce, but not including sales to third parties;

Transfer of ownership of an affordable housing unit as a result of inheritance;

Transfer of ownership of an affordable housing unit through an order of the Superior court.

A grant of exemption shall not eliminate the resale control restrictions set forth in these regulations. Any subsequent sale shall be subject to all of the terms of these regulations.

§195-61. Rental increases.

All re-rental transactions shall be administered by the MAHC. The rents of affordable housing units may increase based on the percentage increase in median income for Morris County housing region as determined from the uncapped Section 8 income limits, published by HUD, or other recognized standard adopted by COAH that applies to the rental housing unit.

§195-62. Rental of low and moderate income sales unit.

No owner of an affordable housing unit may lease the unit to a tenant without prior written approval of the MAHC. Such approval shall not be granted except when justified by particular and unusual circumstances. An owner seeking such approval shall submit a written request to the MAHC setting forth the particular circumstances of the case including the reasons for the request to rent, the proposed duration of the tenancy and certification that the proposed tenant is a qualified low or moderate income household. In the event the MAHC approved the request, it shall notify the owner of the unit. The owner shall rent the unit only to a qualified low or moderate income tenant for the period approved by MAHC at a rent affordable to a low or moderate income tenant, whichever is applicable.

§195-63. Conversion of rental units to sales units.

Rental units may be converted for sale as condominium, cooperative or fee simple units, but any sale of converted units shall continue to be restricted to persons meeting the income eligibility standards as set forth in section 195-56 unless COAH otherwise requires.

§195-64. Exemption from rent control ordinances.

All rental units, both market and affordable, shall not be subject to any rent control ordinance which may be adopted in the Borough of Madison during the time period in which the affordability housing price controls are effective.

§195-65. Duration of controls.

Except as otherwise provided in these regulations, all units for sale or resale subject to the provisions of this Article shall be subject to resale and rental controls for a period of twenty (20) years from the date of acquisition of the unit by the initial purchaser or lessee.

All lower income dwelling units shall be covered by covenants to ensure that in all initial sales and rentals, and in all subsequent resales and re-rentals, the units will continue to remain available and affordable to the lower income households for which they were intended for the period specified in this subsection in accordance with the requirements and standards established by COAH.

§195-66. Expiration of controls.

The restrictive covenant governing the deeds of the low and moderate income units shall include an option permitting purchase of the affordable unit at the maximum allowable restricted sales price at the time of the first non-exempt sale after controls on affordability have been in effect on the unit for the period specified in this Article. The option to buy shall be available to the Borough of Madison, the New Jersey Department of Community Affairs (DCA), the New Jersey Housing and Mortgage Finance Agency (NJHMFA), or a qualified non-profit as determined by the New Jersey Council on Affordable Housing (COAH).

All restrictive covenants governing low and moderate income units shall require the owner to notify the MAHC by certified mail of any intent to sell the unit ninety (90) days prior to entering into an agreement for the first non-exempt sale after controls have been in effect on the housing units for the period specified in this Article.

Upon receipt of such notice, the option to buy the unit at the maximum allowable restricted sales price shall be available for ninety (90) days. The MAHC shall notify the Borough of Madison, DCA, NJHMFA and COAH that the unit is for sale. If the Borough of Madison exercises this option, it may enter into a contract of sale. If the Borough of Madison fails to exercise this option within ninety (90) days, the first of the other entities giving notice to the seller of its intent to purchase during the ninety (90) day period shall be entitled to purchase the unit. If the option to purchase the unit at the maximum allowable restricted sale price is not exercised by a written intent to sell, the owner may proceed to sell the housing unit. If the owner does not sell the unit within one (1) year of the date of the delivery of notice of intent to sell, the option to buy the unit shall be restored and the owner shall be required to submit a new notice of intent to sell ninety (90) days prior to any future proposed date of sale.

Any option to buy a housing unit at the maximum allowable restricted sales price shall be exercised by certified mail and shall be deemed exercised upon mailing.

Borough of Madison.

1. If the Madison Affordable Housing Corporation, as an entity of the municipality elects to purchase a low or moderate income unit pursuant to this Article, it may:

a) Convey or rent the housing unit to a low or moderate income purchaser or tenant at a price or rent not to exceed the maximum allowable restricted sales price or rental for a period of up to twenty (20) years.

b) Convey the unit at fair market value subject to the deposit of the price differential in a trust account devoted solely to the creation, rehabilitation or maintenance of low and moderate income housing. Price differential is defined as the difference between the restricted sales price and fair market value as determined at the date of a proposed contract of sale after reasonable real estate broker fees have been paid. Money in the trust account may not be expended until the MAHC develops a plan for its use which is reviewed and approved by the Governing Body of the Borough of Madison.

2. In the event the Borough of Madison purchases low or moderate income housing units, the Borough shall maintain them as low income housing units.

3. In the event the Borough of Madison elects to purchase low or moderate income housing units and convey them at fair market value, the Borough shall:

- a) Notify COAH of any proposed sale and resales price ninety (90) days before closing;
- b) Notify COAH of the price differential;
- c) Deposit the price differential in a trust account devoted solely to the creation, rehabilitation or maintenance of low and moderate income housing; and
- d) Notify COAH by February 1 of each calendar year of the existing balance within this trust account.

4. Money deposited in trust accounts may not be expended until the municipality submits and COAH approves a repayment housing plan. COAH may approve the repayment housing plan if it determines that it provides a realistic opportunity for the creation, rehabilitation or maintenance of low and moderate income housing.

5. The Borough of Madison shall have the right to determine that the most desirable means of promoting an adequate supply of low and moderate income housing is to prohibit the exercise of the repayment option and maintain controls on lower income housing units sold within the municipality beyond the period required by this Article. Such determination shall be made by resolution of the municipal governing body. The resolution shall specify the time period for which the repayment option shall not be applicable. During such period, no seller in the municipality may utilize the repayment option permitted by section 195-66 D.

If the Borough of Madison exercises the option outlined above, it shall:

- a) Provide public notice in a newspaper of general circulation; and
- b) Notify the Madison Affordable Housing Corporation of its governing body's action. The MAHC shall ensure that the deed restriction on all affected housing units reflect the extended period of controls.

State option. When the DCA or NJHMFA elects to purchase a low or moderate income unit pursuant to this section it may:

6. Convey or rent the housing unit to a low or moderate income purchaser or tenant at a price or rent not to exceed the allowable restricted sales price or rental; or

7. Convey the unit at fair market value and utilize the price differential to subsidize the construction rehabilitation or maintenance of low and moderate income housing within the appropriate housing region.

Nonprofit option. Nonprofit agencies that have been designated by COAH shall be eligible to purchase low or moderate income units pursuant to this section for the sole purpose of conveying or renting the housing unit to a low or moderate income purchaser or tenant at a price or rent not to exceed the allowable restricted sales price or rental. Low income units shall be made available to low income purchasers or tenants and the housing units shall be regulated by the restrictive covenant and lien adopted by COAH. The term of the controls on affordability shall be the same as those required by this Article.

Seller option. An eligible seller of a low or moderate income unit which has been controlled for the period established in this plan who has provided notice of intent to sell may proceed with the sale if no eligible entity as outlined in section 195-66 exercises its option to purchase within ninety (90) days.

8. The seller may elect to:

a) Sell to a qualified low and moderate income household at the controlled unit sales price, providing the unit is regulated by the restrictive covenant and lien adopted by the Agency for a period of up to twenty (20) years; or

b) Exercise the repayment option and sell to any purchaser at market price, providing that ninety-five (95%) percent of the price differential is paid to the MAHC as instrument of the municipality, at closing.

9. If the sale will be to a qualified low and moderate income household, the MAHC shall certify the income qualifications of the purchaser and shall ensure the housing unit is regulated by the restrictive covenant and lien required by the Board.

10. The Madison Affordable Housing Corporation shall examine any contract of sale containing a repayment option to determine if the proposed sales price bears a reasonable relationship to the housing unit's fair market value. In making this determination, the MAHC may rely on comparable sales data or an appraisal. The MAHC shall not approve any contract of sale where there is a determination that the sales price does not bear a reasonable relationship to fair market value. The MAHC shall make a determination within twenty (20) days of receipt of the contract of sale and shall calculate the repayment option payment.

11. The Madison Affordable Housing Corporation shall also adopt an appeal procedure by which the seller may submit written documentation requesting the MAHC to (i) recompute the repayment obligation if the seller believes an error has been made or to (ii) reconsider a determination that the sales price does not bear a reasonable relationship to fair market value. A repayment obligation determination made as a result of an owner's appeal shall be a final administrative determination of the MAHC.

12. The repayment shall occur at the date of closing and transfer of title for the first non-exempt transaction after the expiration of controls on affordability. Repayment proceeds shall be deposited in a trust account devoted solely to the creation, rehabilitation or maintenance of low and moderate income housing. Money deposited in trust accounts may not be expended until the Madison Affordable Housing Corporation develops and obtains municipal approval of a plan for its use.

Continued application of options. When a housing unit has been maintained as a low and moderate income unit after controls have been in effect for the period specified in section 195-65, the restrictive covenant governing the housing units shall allow the municipality, the state, nonprofit agencies and sellers of low and moderate income units to again exercise all the same options as provided in this Article.

§195-67. Foreclosure.

Any mortgage for a low and moderate income unit shall contain a provision requiring the holder of a mortgage on the property to inform the Madison Affordable Housing Corporation at any time that the purchaser of a unit is forty-five (45) days or more in arrears on payment of his mortgage payments. The MAHC shall further be notified by the mortgagee in the event of institution of a foreclosure action. This notification provision does not apply to any mortgage which prohibits notice to a third party.

The Madison Affordable Housing Corporation shall at all times have the right to intervene in any foreclosure action. In addition, the MAHC shall have the right to advance and pay all sums necessary to cure any arrears, to cure any other default or exercise any right of redemption or pay and satisfy any first mortgage or other lien so that the unit may be preserved and retained as a low and moderate income unit. All sums advanced by the MAHC shall become a lien against the unit and shall have higher priority than any other lien except that of a first mortgage or tax or other lien held by any governmental agencies.

§195-68. Foreclosure exemption from resale controls.

In the event of a foreclosure by an institutional first mortgagee, the unit shall be exempt from all further resale restrictions provided that the following conditions have been satisfied:

The first mortgage did not exceed one hundred percent (100%) of the authorized sales price of the unit by the current occupant (unless written authorization was given by the MAHC for the owner to enter into a mortgage for a higher amount).

The MAHC has been given both notice of the default by the mortgagee, as well as notice of the institution of foreclosure. In addition, the MAHC has not exercised its right to cure the default.

The lender who is the foreclosing mortgagee is the successful bidder at a sheriff's sale and takes title by deed from the sheriff; or the MAHC has given written approval for a deed in lieu of foreclosure.

§195-69. Second mortgages.

No second mortgages shall be placed upon the property without prior written approval of the MAHC. In determining whether to grant an approval for the second mortgage, the MAHC shall consider the need for the second mortgage and the impact that the second mortgage shall have upon the ability of the MAHC to maintain this unit as a low and moderate income unit. Under no circumstances shall a foreclosure of a second mortgage constitute grounds for elimination of the resale controls provided for in this regulation. Prior written approval shall be denied unless second mortgages are specifically authorized by COAH regulations and the application is consistent with these regulations.

§195-70. Sale of personal items.

Items of personal property which are permanently affixed to the unit (e.g. refrigerator, freezer, washer, dryer) and which were not included when the affordable housing unit was purchased may be the subject of separate negotiations between the parties subsequent to the signing of the contract for the purchase of the house. Any agreed price for the purchase of any items of personal property shall be reasonable considering the original cost, nature, age and condition of the item. The price to be paid for items of personal property shall not be used as a mechanism to avoid or circumvent the limitations on the resale price of the unit itself. In no event shall the right to purchase the unit be conditioned upon the buyer's willingness to agree to purchase any item or items of personal property of the seller.

§195-71. Certification of occupancy.

No certificate of occupancy for a low and moderate income unit shall be issued until the developer shall have submitted and have approved by the Madison Affordable Housing Corporation a deed restriction encompassing all provisions of these regulations.

No certificate of occupancy shall be issued for the resale of a low and moderate income unit unless the MAHC shall certify that the resale complies with the terms of these regulations.

No low and moderate income unit may be occupied by an initial purchaser or resale purchaser without a certificate of occupancy.

§195-72. Affirmative marketing.

The administrator shall develop and implement as affirmative marketing program for affordable housing units that shall include the following:

An announcement that specifies eligibility requirements, and a request for applications for low and moderate income units shall be placed in the following newspapers:

- i. The Madison Eagle.
- ii. The Daily Record
- iii. The Star Ledger

Press released announcing the availability of low and moderate income units shall be submitted to local newspapers including the above.

The availability and eligibility requirements of low and moderate income units shall be announced to the Morris County Housing Authority, The Housing Authority of the Borough of Madison, local religious and other civic organizations and other appropriate local and area wide groups and the cable television access channel.

The purchase and rental of affordable housing units shall be prioritized as per Section 195-55 E.

The marketing program shall commence at least one hundred twenty (120) days before the issuance of wither a temporary or permanent certificate of occupancy. The marketing program will continue until all low and moderate income units are occupied and for as long as affordable units are subject to occupancy limitations.

§195-73. Waiver.

In the event of a special hardship or in the event that a minor technical modification of these regulations is necessary to effectively implement the policy of this Article, the MAHC may waive or modify these regulations relating to occupancy selection, sale or resale prices, or income eligibility standards provided that such waiver of modification is (a) consistent with the intent of these regulations and the Land Use Regulations; and (b) does not violate COAH policy, regulations or statute.

§195-74. Severability.

The provisions of this Article are hereby declared to be severable. If any section, sentence, clause or phrase shall for any reason, be held to be invalid or unconstitutional such judgment, decision, ruling or order shall not affect the validity of the remaining sections, clauses, phrases of this Article.

§195-75. Repealer.

All other ordinances in conflict or inconsistent with any provisions of this Article are hereby repealed to the extent of such conflict or inconsistency.

SECTION 2: This ordinance shall take effect as provided by law.

Marilyn Schaefer

Borough Clerk