

ARTICLE XV  
**Affordable Housing**  
**[Added 12-10-2013 by L.L. No. 12-2013<sup>1</sup>]**

**§ 43-190. Title.**

This article shall be known as the "Affordable Housing Ordinance" of the City of Yonkers.

**§ 43-191. Declaration of purpose.**

This Affordable Housing Ordinance is adopted in furtherance of the following related and more specific purposes:

- A. To implement a program whereby all newly constructed or substantially rehabilitated multifamily housing developments in Yonkers will be required to include affordable housing units.
- B. To provide for the construction and rehabilitation of housing units for rental or sale that will be affordable to households earning between 30% and 100% of the Westchester County area median income.
- C. To provide for a variety of affordable housing units in both size and type.
- D. To promote affordable housing units throughout the City.
- E. To promote the provision of affordable housing units in a dispersed manner.
- F. To provide measures to ensure that affordable housing units remain affordable for specified periods of time.

**§ 43-192. Definitions of terms.**

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

**AFFORDABLE HOUSING TRUST FUND (AHTF)** — A trust fund created for the use of receiving funds from developers required to provide affordable housing units that have been granted the option of paying into the AHTF in lieu of developing the required number

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1. **Editor's Note: This local law also repealed former Article XV, Affordable Housing, and further provided that it would take effect on the 90th day following its adoption but would not apply "to any approved residential development, or any amendment thereto, or any proposed residential development with a completed application, proposed contract of sale, or proposed development lease, or any amendment thereto, filed with the City Council or any City Board or Commission on or before November 22, 2013."**

of affordable units. The AHTF shall further the purpose of the renovation, rehabilitation, and/or remediation of units and infrastructure dedicated for affordable housing. The AHTF Committee must apply at least 50% of the AHTF funds to assist projects promoting the construction, rehabilitation or redevelopment of units that will be affordable to households earning between 30% and 49% of AMI. The AHTF Committee shall apply 10% of the AHTF funds to the assistance of housing for seniors or disabled persons. The AHTF Committee shall apply the remaining 40% of the AHTF funds to such other purposes as it deems appropriate to further the purposes of this article. All decisions by the AHTF Committee regarding the allocation of funds are within its discretion. Nothing in this article shall be construed as providing to any developer or other applicant any AHTF funds or other subsidy from the City as a matter of right.

**AFFORDABLE HOUSING TRUST FUND COMMITTEE (AHTF COMMITTEE)** — A committee composed of the following five voting members: the Mayor of the City of Yonkers, or his/her designee; the Deputy Mayor of the City of Yonkers, or his/her designee; the Commissioner of Planning and Development of the City of Yonkers, or his/her designee; the Majority Leader of the Yonkers City Council, or his/her designee; and the Minority Leader of the Yonkers City Council, or his/her designee. The AHTF Committee shall administer the AHTF and perform such other duties as provided in this article.

**AFFORDABLE HOUSING UNIT** — A dwelling unit, as defined herein, which has been made affordable by public subsidy or by internal cross subsidy to a specified income group as defined herein, and for which affordability controls, as defined in § 43-198, shall apply.

**AREA MEDIAN INCOME (AMI)** — The most recently updated annual median household income figures, adjusted for family size, calculated and published by the U.S. Department of Housing and Urban Development (HUD) for Westchester County, New York State.

**BONUS INCLUSIONARY DEVELOPMENT** — A multifamily development in which more than 10% of the dwelling units are affordable housing units.

**CITY OF YONKERS** — A municipal corporation established pursuant to the laws of the State of New York with offices at 40 South Broadway, Yonkers, New York, 10701.

**DEVELOPER** — The lead entity responsible for the assemblage of property and overseeing the planning, design, financing, construction, marketing, and lease or sale of a multifamily development.

**DWELLING UNIT OR DWELLING** — A building, or entirely self-contained portion thereof, containing its own sleeping, sanitary and cooking facilities, occupied or intended to be occupied for residential purposes by one family. (All references to a family herein shall include a single-person family.)

**INCLUSIONARY DEVELOPMENT** — A multifamily development in which a portion of the dwelling units are affordable housing units as required by § 43-194.

**LARGE MULTIFAMILY HOUSING DEVELOPMENT** — A multifamily development containing 100 or more dwelling units.

**MARKET RATE DWELLING UNIT** — A building, or entirely self-contained portion thereof, containing its own sleeping, sanitary and cooking facilities, occupied or intended to be occupied for residential purposes by one family that is not income-restricted or publicly subsidized.

**MEDIUM MULTIFAMILY HOUSING DEVELOPMENT** — A multifamily development containing between 75 and 99 dwelling units.

**MULTIFAMILY DEVELOPMENT** — One or more residential buildings developed in a single project collectively containing 20 or more dwelling units.

**SMALL MULTIFAMILY HOUSING DEVELOPMENT** — A multifamily development containing between 21 and 74 dwelling units.

**TERM OF AFFORDABILITY** — The duration, beginning on the date of first rental or sale, that a new or rehabilitated affordable housing unit must remain affordable to its originally intended income category.

**UNDUE CONCENTRATION** — A census tract within the City of Yonkers where the number of low-income persons living in the census tract is greater than 50% as defined by the most recently published U.S. Census Bureau demographics for the City of Yonkers.

### **§ 43-193. Districts.**

This article constitutes an overlay district to the D-MX, UR-LD, UR-MD, UR-HD, SBD, M, MG, B, A and BA Zones. This article shall apply to multifamily developments which will require zoning changes, variances, special exceptions or other discretionary approvals from the City to begin construction after the effective date of this article.

### **§ 43-194. Required number and distribution of affordable housing units in inclusionary developments.**

- A. Except as provided in Subsection F, all large multifamily housing developments shall contain a minimum number of affordable housing units equal to 10% of the maximum aggregate number of units authorized for construction in such development. The affordable housing units shall be made available to families (including single-person families) with an annual household income in the following proportion and income-eligibility ranges:
- (1) Forty percent of the units shall be provided to households earning between 40% and 65% of AMI.
  - (2) Twenty percent of the units shall be provided to households earning between 66% and 80% of AMI.
  - (3) Forty percent of the units shall be provided to households earning between 81% and 100% of AMI.
- B. All medium multifamily housing developments shall contain at least two affordable housing units. The units shall be provided to families with an annual household income in the following proportion and income-eligibility ranges:
- (1) Fifty percent of the units shall be provided to households earning between 40% and 65% of AMI.
  - (2) Fifty percent of the units shall be provided to households earning between 66% and 100% of AMI.
- C. All small multifamily housing developments shall contain at least one affordable housing unit. In the event that one affordable housing unit is built, that unit shall be provided to individuals and families with an annual household income between 40% and 65% of AMI. In the event that more than one affordable housing unit is built, the units shall be provided to individuals and families with an annual household income in the following proportion and income-eligibility ranges:
- (1) Fifty percent of the units shall be provided to households earning between 40% and 65% of AMI.
  - (2) Fifty percent of the units shall be provided to households earning between 66% and 100% of AMI.
- D. Any development of fewer than 20 units is exempt from the requirements of this article.
- E. In calculating the required number of affordable housing units based on the percentage required, a fraction of a unit less than 0.5 shall be rounded down to the nearest whole number, and a

fraction of a unit 0.5 or greater shall be rounded up to the nearest whole number.

F. A simple majority of the AHTF Committee may waive the on-site requirements of § 43-195A for any large multifamily housing developments and require them to contain a minimum number of affordable housing units equal to 5% of the maximum aggregate number of units authorized for construction in such development and provide a cash payment in lieu of affordable housing units in the following manner:

(1) Pay, in lieu of providing a minimum number of affordable housing units equal to 5% of the maximum aggregate number of units authorized for construction in such development, a fee to the AHTF in accordance with the following contribution requirements:

<b>Unit Size</b>	<b>Per-Unit AHTF Contribution</b>
Studio	\$90,000
1 bedroom	\$130,000
2 bedroom	\$150,000
3 bedroom	\$200,000

These unit contribution rates shall remain in effect through the end of 2014. Thereafter, annual contribution rates shall be established by the AHTF Committee based on rules and regulations promulgated by the AHTF Committee. Under no circumstances shall the Committee reduce the per-unit AHTF contribution levels listed above. For purposes of the developer's contributions to the AHTF, the provisions of § 43-197 (Bedroom distribution) shall govern. Specifically, the bedroom distribution for the affordable housing units payment in lieu of development shall be in the same proportion and mix as the market rate units; and

(2) Set aside a minimum number of affordable housing units equal to 5% of the maximum aggregate number of units authorized for construction in such developments. The units shall be provided to families with an annual household income in the following proportion and income-eligibility ranges:

(a) Forty percent of the units shall be provided to households earning between 40% and 65% of AMI.

- (b) Twenty percent of the units shall be provided to households earning between 66% and 80% of AMI.
- (c) Forty percent of the units shall be provided to households earning between 81% and 100% of AMI.

**§ 43-195. Inclusionary development benefits.**

- A. Developers of inclusionary developments and bonus inclusionary developments are eligible for a reduction in parking to one parking space per unit for each affordable housing unit made available to those units provided to households earning between 40% and 80% of AMI, in lieu of other City of Yonkers Zoning Code parking requirements.
- B. Developers of bonus inclusionary developments are eligible a density bonus of four market-rate units for each affordable housing unit provided, up to a maximum of 40 density bonus units in a development, above the minimum number of affordable housing units built on site. All market-rate density bonus units shall be provided on site, except that in a development undertaken in phases, stages or otherwise developed in distinct sections, such units may be located in other phases, stages or sections. This section shall not apply to any large multifamily development which receives a waiver from the AHTF Committee as permitted by § 43-194F.

**§ 43-196. Development locations.**

In addition to the standards of review for site plan approval set forth in this chapter, including Article IX, § 43-105, and Article XV, § 202, the Planning Board, as part of the environmental review of a proposed affordable housing development, shall consider the potential social and economic impacts of further undue concentration of a proposed inclusionary development or bonus inclusionary development on census tracts where the number of low-income persons living in the census tract is greater than 50%.

**§ 43-197. Bedroom distribution.**

An inclusionary development and bonus inclusionary development shall provide bedroom distribution for the affordable housing units in the same proportion and mix as the market rate units.

**§ 43-198. Affordability criteria.**

Affordable housing units shall meet the following affordability criteria with regards to rental and for-sale inclusionary developments and bonus inclusionary developments:

- A. Sold at a price, assuming a down payment of 5%, entailing a monthly carrying cost (which includes a mortgage with principal and interest payments, property taxes and homeowners' insurance, and may also include homeowners' association fees or maintenance or carrying costs, but excludes utilities) not exceeding at any time 33% (or such higher percentage as permitted by the applicable housing finance program) of the annualized monthly gross income of the household occupying the affordable housing unit; or
- B. Rented at a monthly rent (including an allowance for utilities) not exceeding at any time 30% of the annualized monthly gross income of the household occupying the affordable housing unit.

**§ 43-199. Term and transfer restrictions.**

- A. Affordable housing units shall be rented or sold only to households meeting (at the time of rental or sale) the affordability criteria in § 43-198 of this chapter as from time to time adjusted for Westchester County by the United States Department of Housing and Urban Development (HUD). Such units shall be the primary residence of the occupants, and subletting and assignments to avoid these requirements shall be prohibited.
- B. All affordable housing units subject to purchase shall have resale-price limitations (enforced by covenants running with the land, restrictions on registration of title, or any other appropriate legal mechanism approved by the AHTF Committee or the City) which will ensure that, for a minimum period 30 years, or the minimum period term of affordability required by a government entity providing subsidies, whichever is greater, from the time of their first sale, such housing units are sold or resold only to, and at a price affordable to, a household which is, at the time of purchase, in the same group (referred to in § 43-198 of this chapter) as was the seller at the time such previous owner first occupied the unit.
- C. The owner of rental affordable housing units shall be required to ensure that, by appropriate covenants enforceable by the AHTF Committee or the City, for a period of at least 30 years, or the minimum period term of affordability required by a government entity providing subsidies, whichever is greater, from the time of

first rental, such units are affordable to, and are re-rented only to, a household which is, at the time of re-rental, in the same income group as was the previous tenant at the time such previous tenant first occupied the unit.

- D. Affordable housing units for rental may be converted to units for sale, subject, however, to the same ownership eligibility standards as applicable to units for sale for the remainder of the affordability period from original occupancy referred to in the previous sentence. All tenants in place at the time initial notice of conversion is provided who meet the income qualifications set forth in § 43-198 of this chapter (as at that time adjusted) shall be permitted to purchase their unit at a price affordable to them as defined herein and in accordance with Article 9-B of the Real Property Law or § 352-eee of the General Business Law.
- E. Exempt transfers.
- (1) The affordability and other restrictions on resale and/or occupancy shall not apply to:
    - (a) The transfer of ownership of an affordable housing unit between spouses or former spouses ordered as a result of a judicial decree of divorce or separation agreement (not including transfers to third parties).
    - (b) The transfer of ownership of a unit between family members as a result of inheritance.
    - (c) Former HUD-insured multifamily projects which, following default on the mortgage, HUD acquires or is mortgagee in possession ("MIP"), to the extent that the provisions are inconsistent with applicable HUD statutes and regulations regarding management or disposition of HUD-owned projects or projects for which HUD is MIP.
  - (2) However, transfers referred to in Subsection E(1)(a) and (b) do not extinguish such restrictions (whatever be the legal mechanism through which the restrictions are enforced) which shall be fully complied with in the event of any subsequent sale or rental of a unit not specifically exempted hereby.
  - (3) An exempted transfer as heretofore provided in this subsection shall not toll the running of the minimum thirty-year period referred to in this section.



- F. This section shall not be interpreted as in any way affecting or diminishing, and shall apply together with, occupancy criteria (to be applied in good faith by the City or the developer) substantially of the type set forth in 24 CFR 960.205 to ensure that the personal and financial background of each potential tenant or owner of affordable housing units will not be detrimental to the viability of the housing development.

**§ 43-200. Applicant prescreening; qualification and enforcement.**

The developer shall be responsible for prescreening, qualifying and selecting applicants who wish to occupy (as tenants or purchasers) affordable housing units. The developer may contract with a qualified housing services provider to assist in outreach, screening and certifications. The AHTF Committee and designated City staff shall be permitted to review and monitor a developer's ongoing compliance with the provisions of this article, including the long-term enforcement of affordability covenants. In the event a developer fails to enforce the long-term affordability requirements of this article, the AHTF Committee and the City shall have the right to elect to take control of said function and enforce the requirements of this article.

**§ 43-201. Staging.**

- A. In all inclusionary developments and bonus inclusionary developments, the following staging schedule shall apply for rental or sale units:

<b>Percentage of Market Rate Units Receiving Certificates of Occupancy</b>	<b>Percentage of Assisted Units Receiving Certificates of Occupancy</b>
Up to 25%	0% (none required)
25% + 1 unit	At least 10%
50%	At least 50%
75%	At least 75%
100%	100%

- B. Certificates of occupancy shall be issued to market rate units when the required percentage of assisted units for the respective stage has been completed.

**§ 43-202. Administration.**

The AHTF Committee shall be responsible for establishing rules, regulations and procedures necessary for the implementation and administration of the AHTF as created by this article.

**§ 43-203. through § 43-209. (Reserved)**