

## **Model Ordinance Provision For A Homeownership Affordability Retention Lien**

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### **INTRODUCTION**

The following model zoning ordinance provision was drafted to implement a technique for retaining the affordability of owner-occupied housing units that have been designated as affordable by a developer as a condition of approval by a local planning under an “inclusionary zoning” ordinance. This model is not a complete ordinance for implementing “inclusionary zoning” as defined in New Hampshire RSA 674:21, IV(a). It only defines one technique (among many) for retaining the affordability of a housing unit approved under such an ordinance.

Because RSA 674:21, IV(a) requires that affordable housing incentives can only be voluntary on the part of the developer, a community may wish to provide a variety of options for what is meant by “affordable housing.” Which option should be utilized for a particular development can be discussed and finalized by the planning board and developer during the process of board review. These issues, as well as your community’s overall strategy for addressing the affordability of housing, what part an “inclusionary” zoning provision might play in that strategy, what type of incentives would be most effective in your community, and what construction standards should apply – require serious and thorough consideration, but are beyond the scope of this model.

Of the methods that are available to municipalities to retain affordability of a home for more than one buyer, this method:

- requires the least amount of interaction with and oversight of buyers/owners,
- is designed to work easily with the existing real estate, financial, and legal systems,
- allows the buyer/owner access to any appreciation or risk of depreciation (most like normal ownership),
- requires the least amount of administrative effort,
- allows for easy conversion to other forms of affordability retention if desired, and
- provides for increasing the subsidy or cashing-out if the home becomes unaffordable to the target clientele.

The administration of this model can be contracted out by a municipality and funded by each transaction. New Hampshire Housing is prepared to offer this service to municipalities that adopt the recommended model. Other entities are also qualified to administer a program based on this model, or the municipality may choose to administer it by itself.

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**ORDINANCE SYNOPSIS**

Through an inclusionary zoning approval, new homes are created and subsequently sold to low or moderate income households for a price that is lower than the value of the units. It is not adequate to simply require the building of lower cost units. A portion of the benefit that the municipality is providing to the developer through the inclusionary zoning ordinance must be passed to the first buyer, creating a municipal interest in the property. Otherwise, the buyer would be, in effect, penalized with resale encumbrances for purchasing a home at its *full market value*.

The initial sale price is based on what would be affordable to a household with an income no greater than 80% of the area's median. The difference between the value and the price becomes a property interest in the form of a lien or second mortgage held by the municipality. The lien is generally not payable and increases in value with the Consumer Price Index.

Future resale of the property is governed by a covenant that requires an appraisal of the unit's value, a reduction of the sale price by the amount of the lien, and a calculation of the income required to buy the property at this reduced price. The income limit of the intended beneficiaries shifts with the difference between real property appreciation in the local market and household income growth in the area. Should the income shift outside of the range that is intended, the municipality may recover the value of its interest in the property.

The municipality retains a right of first refusal in most property transfers. The value of the municipal lien is limited to prevent over-subsidization, and the lien is not payable except in limited circumstances. Over-subsidization can erode the concept of home ownership, jeopardize the maintenance of the home, and potentially over-burden a low income household which while qualifying for the purchase, would build less equity in the home. Keep in mind that the owner cannot pay down the subsidy. Only the municipality can reduce the subsidy and only upon sale.

On each transaction, a fee is paid by the seller to cover program administration costs. The municipality may administer the program, or it may contract with a qualified entity of its choosing. Conventional mortgage financing can be used by the buyers, and the buyers retain property value appreciation and assume the risk of ownership. Incomes of owner-occupants are not monitored once they have purchased a home. As an alternative to ongoing municipal participation and to facilitate the use of other mechanisms to retain affordability, the model also provides for the municipality to direct sales of units to non-profit organizations whose primary purpose is to provide affordable housing.

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*Because this is a model, it is not specifically tailored to fit into any particular zoning ordinance; rather it is intended to complement in general terms an inclusionary zoning provision adopted under RSA 674:21, IV(a). Some modification of either may be necessary for them to work together within the format and structure of a particular municipal zoning ordinance.*

**SECTION \_\_: RETENTION OF HOUSING  
AFFORDABILITY**

**A. Authority and Purpose**

1. Authority: This ordinance is adopted as an “innovative land use control” pursuant to RSA 674:21.

2. Purpose: The purpose of this ordinance is to provide a means by which the Municipality may promote the long-term affordability of housing units built as part of a development approved by the planning board under the terms of the Municipality’s inclusionary zoning provisions, or which might have been promised as affordable as a condition of some other Municipal approval. It is intended to ensure that the units remain affordable to households of low- and moderate-income, while also facilitating homeowners’ capacity to benefit from property value appreciation. It creates a lien interest in the property held by the Municipality, enforceable by the Municipality as a mortgage.

*Note that the population targeted by this model ordinance is low- and moderate-income households. Although statutes freely use the terms “low-income” and “moderate-income”, there is no standard definition of what that means. For the purposes of this ordinance, and to meet the terms of RSA 672:1, III(e), this model targets households that earn up to 120% of AMI, with an initial target of 80% AMI.*

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**B. General Provisions**

1. Definitions. For purposes of this section:

(a) "Affordable Housing Unit" means a residential dwelling unit intended to be affordable to persons of low or moderate incomes, which an applicant agrees to produce as a condition of approval of an "inclusionary" development as described in Section \_\_\_\_\_ of this Ordinance. More particularly an "Affordable Housing Unit" means the following, as determined by the planning board at the time a particular development is granted approval by the Board: A unit of housing which – in addition to any other specific conditions of approval imposed by the planning board at the time of approval – is required to be administered in accord with the general provisions as set forth herein; which is subject to the procedures set forth in Subsection C below at the time of its initial conveyance; and which is conveyed subject to a contingent subsidy lien and covenants in favor of the Municipality, as set forth in Subsection D below.

(b) The "Developer" means the person or entity which applies for and receives planning board approval for an "inclusionary" project as set forth in Section \_\_\_\_\_ of this Ordinance, any person or entity to which rights to construct such a project under such an approval have been conveyed, or any person or party acting as contractor or agent for such a party, or who otherwise performs acts in furtherance of constructing or implementing the approval, or fulfilling any conditions thereof.

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(c) "Housing Cost" means the estimated monthly cost to an Owner of an Affordable Housing Unit, including mortgage principal and interest, property taxes (municipal, school, county, and state), homeowner's insurance, mortgage insurance, and any applicable homeowner's association fees. Interest calculations shall be based upon the prevailing market interest rate at the time of conveyance for a 30-year fixed-rate conventional mortgage. Schedules used to determine Housing Cost may be adopted and revised as needed by the \_\_\_\_\_ [the local governing body or planning board].

(d) The "Municipality" means the [Town/City] of \_\_\_\_\_; provided that, however, and except where responsibilities are specifically assigned herein or where statute creates a non-delegable responsibility, the tasks and functions required herein to be performed by the Municipality shall be performed by \_\_\_\_\_ [the local governing body] or its designee, or may be delegated in whole or in part by vote of \_\_\_\_\_ [the local governing body] to a third-party designee such as a nonprofit organization or quasi-governmental agency, subject to the supervision of \_\_\_\_\_ [the local governing body] or its designee.

(e) The "Owner" shall mean the person(s) who initially separately purchases and occupies the completed Affordable Housing Unit, under the procedures set forth in Subsection C below, as well as any person(s) who subsequently purchases the unit under the procedures required under Subsection D below.

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(f) The “Fair Market Value” of the Affordable Housing Unit, at the time of the initial or any subsequent conveyance shall be the price which such unit would command at that time in an arm’s-length transaction on the open market if the unit were not subject to any of the restrictions of this Section, and the Owner were to purchase the property in fee simple absolute.

(g) “First Mortgage” means a recorded mortgage which is senior to any other mortgages or liens against the Affordable Housing Unit (other than the lien for real estate taxes and homeowner assessments, if any), and which is used to secure a loan to an eligible buyer to purchase the unit.

(h) “Qualified Purchaser” means a purchaser who has been certified by the Municipality as meeting income standards to purchase an Affordable Housing Unit. It also includes a non-profit organization, the primary purpose of which is to provide or to facilitate the acquisition of housing that is affordable to low- and moderate-income households.

(i) “Area Median Income” means Area Median Income (“AMI”) for a family of four as established and updated periodically by the U.S. Dept. of Housing and Urban Development for the Fair Market Rent Area where the Municipality is located.

2. The planning board shall, as a condition of approval, make an initial determination of the following with respect to all included Affordable Housing Units which, unless modified pursuant to C.3 below, shall serve as the basis for conveyance by the Developer:

*Remember that in many cases where the “Municipality” is identified to take some action under this model, that task can be performed by the municipality’s designee, who can be an employee or a third-party contractor. See the definition of “Municipality” above.*

*The Median Area Income is not the published income limit for various HUD programs. Those limits have additional rules applied to them. The Median Area Income is usually published with the program income limits.*

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(a) An estimated projected Fair Market Value for the Affordable Housing Units to be constructed by the Developer, using Developer projections or such other available information as the planning board may require. Construction details shall be provided in sufficient detail to enable a reasonable projection of such Value, and compliance with such details shall be deemed a condition of approval.

(b) An initial target income level for the initial conveyance of the Affordable Housing Units, which shall not be greater than 80% of the Area Median Income ("AMI").

(c) A corresponding initial selling price for each Affordable Housing Unit, which shall be set at a level that is projected to require a Housing Cost no greater than 30% of the initial target income determined in (b) above.

(d) A corresponding projected initial subsidy for each Affordable Housing Unit, which shall be the difference between the estimated projected Fair Market Value and the initial selling price. The projected initial subsidy shall be between fifteen and thirty-three percent of the estimated projected Fair Market Value of the unit, inclusive.

3. Except as expressly set forth in this Section, in the conditions of Development approval by the planning board, or in a lien and covenant document recorded pursuant to Subsection C below, an Owner shall have the same rights and privileges with respect to the Affordable Housing Unit as would any person who owned the unit in fee simple absolute, including but not limited to the right of quiet enjoyment, the right to make improvements, and the right to convey a First Mortgage interest, as detailed below.

**C. Procedures At Time Of Initial Conveyance.** An Affordable Housing Unit shall not be separately conveyed, or initially occupied, except in accordance with the following procedures:

*AMI figures are available from New Hampshire Housing at [www.nhhfa.org](http://www.nhhfa.org).*

*The subsidy range limits are established so that the Municipality's interest in the property isn't so great as to discourage the owner-occupant from making improvements or maintaining the property, or so little as to be within the margin of error for appraisals.*

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1. During construction and upon completion of construction, the Municipality shall inspect the unit to confirm that all applicable codes, ordinances, conditions of approval (including construction details presented at the time of approval) and all other legal requirements have been met.

*This inspection should be done as part of the building inspection process that normally occurs during construction.*

2. Upon successful inspection, the Municipality at the Developer's expense shall cause an independent appraisal to be performed to determine the Fair Market Value of the unit.

*As early as possible in the application process, the developer should be made aware of this expense and others incurred in accordance with C.9. below,*

3. The initial selling price shall be as set by the planning board at the time of plan approval under (B)(2) of this Section; provided, however, that under unusual circumstances the Developer may petition the planning board, which may for good cause and following a hearing for which reasonable notice is provided to the Developer and such others as the planning board may require, amend the initial selling price, the projected initial subsidy, and/or the initial target income level.

*This is to recognize that there may be significant changes to the market or to construction costs between the time of planning board approval and the completion of the Affordable Housing Unit. This helps to protect the Developer from unexpected change; compare with C.10 below.*

4. The Municipality or its agent shall be responsible for certifying potential purchasers as meeting the relevant target income requirements and eligible to purchase the unit and for ranking Qualified Purchasers. Any potential buyer identified by the Developer or its agent must be referred to the Municipality. If, after the impartial application of objective criteria for priority eligibility have been applied to all persons wishing to purchase the unit, there exists more than one top priority income-eligible purchaser ready, willing, and able to execute a purchase and sales agreement at the initial selling price, then the final choice of purchasers shall lie with the Developer.

*Remember, certification and ranking of potential purchasers can be done by the Municipality or by its agent, pursuant to B.1(d) above.*

*Real estate agents acting on behalf of the Developer can deal directly with the Municipality by identifying potential purchasers.*



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5. The \_\_\_\_\_ [local governing body] shall from time to time establish rules and procedures for determining income-eligibility and priority for ranking Qualified Purchasers, such rules and procedures to be consistent with U.S. Dept. of Housing & Urban Development Program Requirements at 24 CFR Part 5, Subpart F. Such rules may give priority to persons who are already residents of the Municipality, or who are or will be employed in the Municipality. There shall be no requirement for continuing Owner income-eligibility, and no Owner shall, subsequent to purchase, be deemed in violation of this Section or of the Subsidy Lien and Restrictive Covenant for lack of income-eligibility, unless false or fraudulent information is found to have been provided by said Owner at the time of initial eligibility determination.

*Because the price of the Affordable Housing Unit is fixed, the Developer should have no concern over how the Municipality ranks the potential purchasers.*

6. The Developer shall not convey, or agree to convey, the Affordable Housing Unit for a total consideration any higher than the initial selling price as set by the planning board. The Developer shall not convey, or agree to convey, the unit except to the top priority Qualified Purchaser; provided, however, that if the Municipality fails to identify a Qualified Purchaser, or if the Developer, after exercising a good faith effort, fails to produce a purchaser who is subsequently certified by the Municipality as a Qualified Purchaser and who is ready, willing and able to execute a purchase and sales agreement at the initial selling price within 120 days after the Municipality grants a Certificate of Occupancy in (C)(1) above, the Developer may convey the unit to any purchaser of the Developer's choosing; nevertheless such conveyance shall remain subject to the initial selling price, as set by the Board, and the recording of a Subsidy Lien and Restrictive Covenant, as set forth below. The Developer shall not use these provisions to avoid selling the unit to any Qualified Purchaser, including one identified by the Municipality.

*The municipality is responsible for setting the Initial Sale Price and has assumed that there will be sufficient buyers that will buy all the restricted units in the development. If income-qualified buyers cannot be identified, the developer cannot be left unable to sell the units. At the same time the municipality should not give up its subsidy interest in the units. If not resolved under C.10. below, the units may be sold to buyers with incomes higher than the limit. With the Subsidy Lien and Covenant in place the unit is, in effect, reserved for a future income-qualified buyer.*

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7. The initial Owner shall, at the time of closing, execute and convey to the Municipality a covenant document, to be called a "Subsidy Lien and Restrictive Covenant", which shall be recorded in the \_\_\_\_\_ County Registry of Deeds together with the Owner's deed. This document shall contain the initial value of the Municipality's subsidy lien, and all the elements required under (D) below.

8. The initial value amount of the Municipality's subsidy lien shall be the difference between the appraised value reached under (C)(2) above, and the unit's initial selling price. The burden of the creation of the subsidy shall fall upon the Developer as a condition of approval.

9. In addition, the Developer shall, at the time of the closing, pay to the Municipality an administrative fee for each unit, which shall be used by the Municipality to fund the administration of the unit under this Subsection, including appraisals, drafting of documents, costs incurred for program administration by an independent agent of the Municipality, and other expenses relating to the Municipality's subsidy lien. The amount of the administrative fee shall be two percent (2%), or as otherwise determined by the \_\_\_\_\_ [governing body], of the unit's initial selling price, provided however that the \_\_\_\_\_ [governing body] may if warranted, pursuant to RSA 41:9-a, prospectively alter the rate of the fee to more accurately reflect actual administrative costs. The fee shall be accounted for in the same manner as an impact fee, as provided in RSA 674:21, V(c).

*The developer has the most control over the cost to construct the units and the ultimate appraised value of the units. The Developer must manage these in order to achieve an appraised value that is between 17.65% and 49% higher than the Initial Sale Price, thus creating the subsidy.*

*As noted above in C.2., the developer should be made aware of these expenses early in the application process. This will allow the developer to judge whether the incentive offered will cover those expenses as well as provide the subsidy to the buyer.*

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10. Notwithstanding the foregoing, the initial selling price, the projected initial subsidy, and/or the initial target income as conditions of approval may be reviewed and recalculated by the planning board as needed between the date of approval and conveyance by the Developer, for the purposes of ensuring that the objectives of this ordinance are met. Amendment of any such condition shall only be made following a hearing for which reasonable notice is provided to the Developer and such others as the planning board may require.

*This helps to protect the Municipality's interest in the project; compare with C.3 above.*

**D. Subsidy Lien And Restrictive Covenant.** The "Subsidy Lien and Restrictive Covenant" required under (C)(7) above shall set forth the initial value amount of the subsidy lien as determined under (C)(8) above, shall incorporate all of the requirements for subsequent conveyances of the Affordable Housing Unit as set forth in (E) through (H) below, shall provide that any and all of such requirements shall be subject to enforcement pursuant to (I) below, and shall, in addition, incorporate the following conditions and restrictions:

1. The unit shall be the primary residence of the Owner, and shall be occupied by the Owner.

2. The unit shall at all times be maintained in conformity with all applicable building or housing codes, land use ordinances or conditions of approval, and any other applicable provisions of federal, state, or local law. The Owner shall immediately notify the Municipality of any existing or anticipated violation of any such requirement, or of any provision of the Subsidy Lien and Restrictive Covenant.

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3. The Owner shall not, without the prior written consent of the Municipality, convey any mortgage or other lien interest in the unit, other than a First Mortgage interest. The Municipality's Subsidy Lien interest shall generally be deemed the equivalent of a second mortgage interest subordinate to any such First Mortgage, and shall entitle the Municipality to the right to notice as a lienholder for all purposes, including foreclosure notice under RSA 479:25. The Municipality may consider an alternative lien position on a case-by-case basis, based on a reasonable assessment of risk and an appraisal of value.

*Treatment of the Municipality's interest as a second mortgage affords the Owner ready access to conventional mortgage financing.*

**E. Subsequent Conveyances Of The Unit.** Except in the cases of purchase of a unit by the Municipality in accordance with (F) or (G) below, or release or termination of the Subsidy Lien and Restrictive Covenant by the Municipality in accordance with (H) below, no Owner of an Affordable Housing Unit shall convey the unit except in accordance with the following procedures:

*The subsidy lien stays with the property, thereby reducing the cost to future purchasers.*

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1. An Owner may at any time notify the Municipality in writing of an intent to convey the unit. The Municipality shall, as soon as practicable, cause an appraisal to be conducted to arrive at a current Fair Market Value of the unit (including the value of any fixtures or improvements made by the Owner). If the Owner disagrees with or has doubts or questions concerning the accuracy of the appraisal, the Owner may choose to fund a second appraisal, and the current Fair Market Value shall be deemed to be the average of the two appraisals unless otherwise agreed. If the Owner does not convey the unit within one year after providing written notice of intent to convey the unit or otherwise rescinds its notice of intent to dispose of the unit either directly in writing to the Municipality or constructively by either failing to market the property or withdrawing it from the market, the Owner shall reimburse the Municipality for the cost of its appraisal of the unit. Subsequent notices of intent to convey the unit shall require a new appraisal.

*The Owner is free to make improvements to the property and to realize all of the value added to the property because of such improvements; there is no equity sharing requirement in this model.*

*One consequence of this approach is that an Owner who makes substantial improvements to his/her property may cause the property to become unaffordable in future sales. This will require the Municipality to either enhance the subsidy (making the property affordable to the Qualified purchasers) or to retire the subsidy and use its value in other housing units.*

*Even if the subsidy is retired, the municipality receives the benefit of an improved property.*

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2. The Municipality shall set the maximum resale price of the unit by adjusting the recorded initial value amount of its subsidy lien by the change in the US Bureau of Labor Statistics Consumer Price Index for All Urban Consumers (CPI-U) for Boston, Brockton-Nashua, MA-NH-ME-CT for Shelter or a comparable housing cost index should the CPI-U be discontinued, calculating from the time of such recording, then subtracting that adjusted subsidy lien amount from the current Fair Market Value determined under (E)(1) above. The Municipality shall also, based upon that maximum resale price, determine a revised target income level for which the unit would be affordable at such a resale price, such that the unit's Housing Cost would be no greater than 30% of the revised target income. If the revised target income level is greater than 120% of the Area Median Income or if the adjusted subsidy lien amount is not between fifteen and thirty-three percent of the Fair Market Value, the Municipality may retire or modify the subsidy lien in accordance with (H) below. An increase to the subsidy lien will result in a corresponding decrease to the maximum resale price; a decrease to the subsidy lien will result in a corresponding increase to the maximum resale price. In neither case will the Owner's equity be affected, if any.

*By adding to the value of the subsidy lien, the municipality will reduce the maximum purchase price, thereby making the housing unit more affordable. Alternatively, the municipality can "cash out" or retire the lien if the price of the housing unit no longer meets affordability targets. The municipality then can reinvest the value of the retired lien in other units, if it has previously established a fund for that purpose.*

*When increasing the value of a subsidy lien, the municipality should be careful not to "over-subsidize" the housing unit by making the lien be greater than 33% of the unit's fair market value.*

*When decreasing the value of a subsidy lien, the municipality should be careful not to "under-subsidize" the housing unit, such that the difference between the maximum selling price and the fair market value is within the margins of error for an appraisal. The model uses 15% as a minimum lien value.*

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3. The Municipality or its agent shall be responsible for certifying potential purchasers as meeting the revised target income requirements, in the same manner set forth in (C)(4) above, and for ranking Qualified Purchasers. Any potential buyer identified by the Owner or its agent must be referred to the Municipality. If, after the impartial application of objective criteria for priority eligibility have been applied to all persons wishing to purchase the unit, there exists more than one top priority income-eligible purchaser ready, willing, and able to execute a purchase and sales agreement at the maximum resale price, then the final choice of purchasers shall lie with the current Owner.

*Real estate agents acting on behalf of the Owner can deal directly with the Municipality by identifying potential purchasers.*

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4. The Owner shall not convey, or agree to convey, the Affordable Housing Unit for a total consideration any higher than the maximum resale price as determined under (E)(2). The Owner shall not convey, or agree to convey, the unit except to persons who have been certified as income-eligible under (E)(3); provided, however, that if the Municipality fails to identify a Qualified Purchaser, or if the Owner, after exercising a good faith effort, fails to produce a purchaser who is subsequently certified by the Municipality as a Qualified Purchaser and who is ready, willing, and able to execute a purchase and sales agreement at the maximum resale price within 120 days after the Owner's written notice of intent to convey the unit, the Owner may convey the unit to any purchaser of the Owner's choosing; nevertheless such conveyance shall remain subject to the maximum resale price, to the purchaser income qualification procedures for subsequent conveyances, and to the Subsidy Lien and Restrictive Covenant, and such a conveyance shall permit, but shall not obligate, the Municipality to modify or retire the adjusted subsidy lien in accordance with (H) below. Nothing in the foregoing shall be construed to relieve or limit the Owner's obligation to engage in good faith and energetic efforts to market the unit for purposes of identifying a purchaser who is likely to meet the income qualification standards herein. The Owner shall not use these provisions to avoid selling the unit to any Qualified Purchaser, including one identified by the Municipality.

*In the absence of a qualified purchaser, the 120-day limit is designed to protect the Owner and the holder of the First Mortgage by allowing the Unit to be sold to buyers who are not income qualified. However, the subsidy lien continues to restrict the property and future sales will continue to be subject to the Maximum Price limit and its corresponding target income.*



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5. At the time of closing, the new Owner shall execute a Subsidy Lien and Restrictive Covenant, substantively similar to that executed by the prior Owner, and the Municipality shall execute a certification of compliance with the conveyance procedures required by the Subsidy Lien and Restrictive Covenant. Both of these documents shall be recorded together with the new Owner's deed. The seller shall also, at the time of the closing, pay to the Municipality an administrative fee of two percent (2%), or as otherwise determined by the \_\_\_\_\_ [governing body], of the resale price, but such fee shall be subject to adjustment, as set forth in (C)(9) above.

*The certificate represents the Municipality's recognition that all procedures required by this ordinance and by the lien and covenant document were following during the transaction.*

6. Notwithstanding (E)(1) through (E)(5) above, the following types of conveyances are exempt from the Owner Conveyance provisions set forth in this Subsection:

(a) A conveyance to a first mortgagee resulting from foreclosure, or

(b) Any of the following, provided, however, that the unit shall, subsequent to such an exempt conveyance, remain subject to the provisions of the Subsidy Lien and Restrictive Covenant:

*The purpose of these exemptions is to maximize the property rights of the Owner while also protecting the Municipality's interest, by allowing the Owner flexibility to deal with significant life events.*

(i) A conveyance resulting from the death of an Owner where the conveyance is to the spouse who is also an Owner.

(ii) A conveyance to the Owner's estate following his or her death for the purpose of administering the estate and distributing the assets thereof during a limited period of time.

(iii) A conveyance resulting from the death of an Owner when the conveyance is to one or more children or to a parent or parents of the deceased Owner.

(iv) A conveyance by an Owner where the spouse of the Owner becomes the co-Owner of the Property.

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(v) A conveyance directly resulting from a legal separation or divorce, by which a co-Owner becomes the sole Owner of the unit.

**F. Right of First Refusal in Subsequent Conveyances.**

Upon receipt of a notice of intent to convey an Affordable Housing Unit under (E)(1) above, the Municipality shall have the right to purchase the property at the maximum resale price, as determined according to (E)(2) above. If the Municipality elects to purchase the unit, it shall exercise the purchase right by notifying the Owner, in writing, of such election ("Notice of Exercise of Right") within forty-five (45) days of the receipt of the Intent to Convey Notice, or the Right shall expire. Within seven (7) days of the Municipality exercising its purchase right, the Municipality and the Owner shall enter into a purchase and sale contract. The purchase by the Municipality must be completed within forty-five (45) days of the Municipality's Notice of Exercise of Right, or the Owner may convey the property as provided in (E) above. The time permitted for the completion of the purchase may be extended by mutual written agreement of the Owner and the Municipality. If the Municipality has in writing waived its purchase right, or if the Purchase Right has expired, or if the Municipality has failed to complete the purchase within forty-five (45) days of its Notice of Exercise of Right, the Owner may convey the unit according to (E) above for no more than the maximum resale price as calculated therein.

**G. Municipality's and Owner's Rights in Foreclosure**

1. The Owner shall give immediate written notice to the Municipality upon the first to occur:

(a) the date any notice of foreclosure is provided to the Owner or any foreclosure is commenced against the unit under the First Mortgage, or

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(b) the date when the Owner becomes twenty-one (21) days late in making a payment on any indebtedness encumbering the unit required to avoid foreclosure of the First Mortgage.

2. At any time within sixty (60) days after receipt of any notice described in (G)(1)(a) above, the Municipality may, but shall not be obligated to, proceed to make any payment required in order to avoid foreclosure or to redeem the unit after a foreclosure. Upon making any such payment, the Municipality shall succeed to all rights of the Owner to the Property and shall assume all of the Owner's rights and obligations under the First Mortgage, subject to the terms of the Subsidy Lien and Restrictive Covenant. In such event the Owner shall forthwith quit the unit and relinquish possession thereof to the Municipality, which shall assume ownership of the property.

3. The Owner may redeem his or her interest in the unit by payment to the Municipality of all sums paid by the Municipality in connection with the First Mortgage and all other sums reasonably expended by the Municipality in relation to the unit, plus eighteen percent (18%) simple interest from each date of expenditure. This redemption may only occur within forty-five (45) days after the Municipality succeeds to the Owner's rights to the unit, after which the Municipality may proceed to convey the property to an eligible buyer. Notwithstanding such redemption, the property shall nonetheless remain subject to the Subsidy Lien and Restrictive Covenant.

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4. If the Municipality conveys the property it may recover all incidental and consequential costs as are reasonably incurred or estimated to be incurred by the Municipality in connection with its ownership and disposition of the property, including but not limited to insurance, maintenance, repairs or improvements, and marketing expenses. If after conveyance of the property by the Municipality there are excess proceeds above the Municipality's costs, then within 60 days of settlement by the purchaser or purchasers of the property conveyed, the municipality shall reimburse the Owner from whom the Municipality acquired the property in the amount of such excess proceeds.

**H. Retirement Or Modification Of Subsidy Lien.** At the time of any transfer of an Affordable Housing Unit, the Municipality may, but is not obligated to, retire or modify the subsidy lien if, in accordance with (E)(2) above, the revised target income level is greater than 120% of the Area Median Income, or if the adjusted subsidy lien amount is not between fifteen and thirty-three percent of the Fair Market Value. Upon making a determination that any such condition has been met, the Municipality may notify the Owner in writing of its intention to retire or modify the subsidy lien. The notice shall indicate the value of the subsidy lien to be retired, or the amount by which the Municipality will reduce or enhance the subsidy lien. Such notification shall be made within 45 days of the Owner's Notice of Intent, as provided under (E)(1) above.

*By adding to the value of the subsidy lien, the municipality will reduce the maximum purchase price, thereby making the housing unit more affordable. Alternatively, the municipality can "cash out" or retire the lien if the price of the housing unit no longer meets affordability targets. The municipality then can reinvest the value of the retired lien in other units, if it has previously established a fund for that purpose.*

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Reduction or retirement of the subsidy lien shall be accomplished at the time of closing by payment from the Owner to the Municipality, such payment to be deposited in the Municipality's Affordable Housing Revolving Fund [if one exists at the time]. Enhancement of the subsidy lien shall be accomplished at the time of closing by payment from the Municipality to the Owner. Retirement of the subsidy lien shall be accompanied by release of the restrictive covenant by the Municipality and shall eliminate the need to calculate a maximum resale price, allowing the unit to sell at its Fair Market Value.

*When increasing the value of a subsidy lien, the municipality should be careful not to "over-subsidize" the housing unit by making the lien be greater than 33% of the unit's fair market value.*

*When decreasing the value of a subsidy lien, the municipality should be careful not to "under-subsidize" the housing unit, such that the difference between the maximum selling price and the fair market value is within the margins of error for an appraisal. The model uses 15% as a minimum lien value.*

**I. Default And Other Enforcement.** Failure of the Owner to comply with the terms of this ordinance, with any condition of planning board approval, or with the terms of the recorded Subsidy Lien and Restrictive Covenant shall constitute default, which shall entitle, but which shall not obligate, the Municipality to undertake the following actions:

1. Foreclosure on the Subsidy Lien, in accordance with RSA 479:19 et seq., provided that the Owner shall have 60 days after receiving written notice of default from the Municipality to fully correct the reasons for default identified by the Municipality in its notice; and
2. Enforcement under RSA 676:17, 676:17-a, and 676:17-b.

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**J. Conveyances to Non-Profit Housing Organizations.** Notwithstanding the foregoing, the Municipality may require that initial or subsequent conveyances of Affordable Housing Units be made to a non-profit organization of the Municipality's choice, where the primary purpose of the organization is to provide or facilitate the acquisition of housing that is affordable to low- and moderate-income households. The Municipality shall release its Right of First Refusal under (F) above upon such conveyance, provided that upon subsequent conveyance the organization acquires a similar right of first refusal. The Municipality shall also release its Subsidy Lien and Restrictive Covenant upon conveyance to such an organization. Conveyance to such an organization shall be made at the initial selling price in C.3 or at the maximum resale price in E.2, as appropriate.

*The intent of allowing the Municipality to require sales to non-profit housing organizations is to allow housing created under this ordinance to be converted to other mechanisms that provide for long-term affordability, such as community land trusts.*