

**RESOLUTION NO. 415 -2019, ADOPTING LOCAL LAW
NO. 21 -2019, A LOCAL LAW TO IMPROVE THE COUNTY'S
AFFORDABLE HOUSING PROGRAMS**

WHEREAS, there was duly presented and introduced to this County Legislature at a meeting held on December 18, 2018, a proposed local law entitled, "**A LOCAL LAW TO IMPROVE THE COUNTY'S AFFORDABLE HOUSING PROGRAMS**"; now, therefore be it

RESOLVED, that said local law be enacted in form as follows:

LOCAL LAW NO. 21 -2019, SUFFOLK COUNTY, NEW YORK

**A LOCAL LAW TO IMPROVE THE COUNTY'S AFFORDABLE
HOUSING PROGRAMS**

**BE IT ENACTED BY THE COUNTY LEGISLATURE OF THE COUNTY OF
SUFFOLK**, as follows:

Section 1. Legislative Intent.

This Legislature hereby finds and determines that the County of Suffolk administers a number of affordable housing programs to aid in the development of rental and owner-occupied affordable housing units for the benefit of County residents.

This Legislature also finds and determines that Article XXXVI of the SUFFOLK COUNTY ADMINISTRATIVE CODE details the requirements developers and non-profit organizations must satisfy in order to obtain County assistance for affordable housing developments.

This Legislature further finds and determines that most rental properties are required to retain their affordability standards for a minimum of ten years.

This Legislature finds that properties developed for first-time homebuyers at affordable prices are currently required to be owner-occupied for a period of five to ten years. There is no restriction on the resale price of these properties after these time periods lapse.

This Legislature determines that properties that receive County investment as part of an affordable housing program should provide affordable housing in perpetuity to ensure that a permanent stock of units is available for qualified applicants.

This Legislature also finds that classifying properties as income-restricted affordable units will help future generations of residents remain on Long Island and grow with their communities.

Therefore, the purpose of this law is to amend Article XXXVI of the SUFFOLK COUNTY ADMINISTRATIVE CODE to require that a percentage of all parcels developed as affordable housing with the assistance of the County remain so in perpetuity.

Section 2. Amendments.

Article XXXVI of the SUFFOLK COUNTY ADMINISTRATIVE CODE is hereby amended as follows:

SUFFOLK COUNTY ADMINISTRATIVE CODE

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Article XXXVI. Affordable Housing

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§ A36-1. Definitions.

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CAPITAL IMPROVEMENT- A structural change or restoration of some aspect of a property that will either substantially add to the value of the real property, or appreciably prolong the useful life of the real property; becomes part of the real property or is permanently affixed to the real property and is intended to become a permanent installation. For purposes of this article, Capital Improvements shall exclude all regular repairs or maintenance.

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PARTICIPATING MUNICIPALITY - A municipality within the County of Suffolk which has agreed by a duly adopted resolution of its governing board to accept a transfer of property pursuant to § 72-h of New York State General Municipal Law.

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§ A36-2. Suffolk County housing opportunities programs.

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B. New York State General Municipal Law § 72-h transfer program.

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(2) Deed restrictions.

(a) Parcels transferred pursuant to this section shall be to a first-time homebuyer and shall contain deed restrictions as follows:

[1] For owner-occupied housing:

[a] Property must always remain the principal residence of the owner and remain affordable in perpetuity [for a period of at least five consecutive years]. If the property contains an accessory apartment, the owner must

occupy the principal portion of the home and not the accessory apartment as their principal residence;

- [b] The income of the first-time homebuyer must not exceed 80% of the HUD-established area median income limits for the Nassau-Suffolk PMSA adjusted by family size, or, in the case where a waiver has been issued by the Director as authorized under § A36-2B(1), income must not exceed 120% of the HUD-established median income limits for the Nassau-Suffolk PMSA adjusted by family size;
- [c] The [subsidized] purchase price of the home ownership unit, after all subsidies are applied, shall not exceed [60% of the median sales price for Suffolk County based on State of New York Mortgage Agency (SONYMA) guidelines] the amount equal to 80% of the HUD-established area median income limit for the Nassau-Suffolk PMSA, with adjustments for bedroom size not exceeding the HUD policy on occupancy standards under the Fair Housing Act, multiplied by 2.5, or, in the case where a waiver has been issued by the Director as authorized under § A36-2B(1), shall not exceed the amount equal to 120% of the HUD-established area median income limit for the Nassau-Suffolk PMSA, with adjustments for bedroom size not exceeding the HUD policy on occupancy standards under the Fair Housing Act, multiplied by 2.1; [and]
- [d] Construction must be completed and the housing occupied by eligible purchasers within three years of transfer unless an extension of time is granted in writing by the Director after good cause is shown. Said extension shall not exceed two two-year extensions unless approved by duly enacted resolution[.];
- [e] Parcels shall only be sold by the owner to an approved purchaser at an affordable rate, as set forth below. The Participating Municipality shall certify to the Director that any resale complies with the requirements as set forth below.
 - [i] Purchasers must be approved by the Participating Municipality as conforming with the requirements as a first-time homebuyer with income in the established range as set forth in A36-2B(2)(a)[1][b]. Any individual interested in selling an affordable unit must notify the Participating Municipality in writing that the unit is for sale and have the sale approved by the Participating Municipality.
 - [ii] Ownership of affordable units may not be transferred by will, devise, intestacy, gift, purchase on the open market, or otherwise, except that an affordable unit may be conveyed by its owner to a trust, provided that the owner is a beneficiary of the trust and the terms of the trust require that the trustee, within 120 days of the date of the beneficiary's death, or the date when the unit is no longer being used as the beneficiary's primary residence (domicile) and the unit must be offered for sale. Prior to conveying an affordable unit to a trust, a copy of the trust instrument shall be provided to, and approved by, the Participating Municipality and certified to the Director. Title may also

be transferred to a court-appointed referee in mortgage foreclosure proceedings provided the unit is offered for sale and transferred to a qualified purchaser, and a copy of the Order of Reference and Order of Sale is provided to the Participating Municipality and certified to the Director.

[iii] Resale prices shall be restricted as set forth in section A-36-2B(2)(a)[1][c]. Notwithstanding any other provision to the contrary, the resale price of an affordable unit may be increased by an amount not to exceed fifty percent (50%) of the documented Capital Improvements made by the seller, as approved by the Participating Municipality, up to a maximum amount of twenty five thousand dollars (\$25,000.00).

[iv] Prior to closing, a copy of the executed Contract of Sale shall be provided to the Participating Municipality along with an executed and sworn affidavit by the Seller and Purchaser, attesting that the Contract of Sale is true and accurate, that there are no other agreements between the Seller and the Purchaser, and that the Purchaser has not and will not pay any amounts to the Seller which are not reflected in the Contract of Sale.

[f] In the event that a parcel transferred under this program is subject to an action in foreclosure, the Participating Municipality, or its designated agent, shall have a right of first refusal to purchase the parcel.

[g] [(e)] Failure to comply with any of the restrictions herein shall result in the property reverting to Suffolk County.

[2] For rental housing:

* * * *

[e] Property must remain in the possession of tenants who meet the income limits and rental limits set forth in § A36-2B(2)(a)[2][a] and [b] above [for at least 10 consecutive years after the transfer date] in perpetuity.

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D. Workforce housing and affordable housing programs other than the New York State General Municipal Law § 72-h transfer programs.

(1) Funding initiatives.

(i) Funding initiatives for the workforce housing program by the County through the use of capital bond proceeds (WHS) shall include funding for:

(a) The acquisition of land by the County in conjunction with a municipality or reimbursement for the acquisition of land by a municipality, which shall include both vacant [parcels] and improved parcels;

- (b) The construction and/or reconstruction of parcels transferred to participating municipalities pursuant to New York State General Municipal Law § 72-h;
- (c) The reimbursement for infrastructure [Infrastructure] improvements in conjunction with municipalities, which shall include, but not be limited to, roads, parking, sewers, water, sidewalks, street lighting and appurtenant landscaping;
- (d) The acquisition of land by the County in conjunction with a property owner, municipality, developer, or participating employer of conservation easements or reimbursement for the acquisition of land by a property owner, municipality, developer, or participating employer of conservation easements, or the reimbursement for infrastructure improvements which shall include, but not be limited to, roads, parking, sewers, water, sidewalks, street lighting and appurtenant landscaping; and
- (e) The acquisition of land, by the County in conjunction with a property owner, developer, or participating employer or reimbursement for the acquisition of land by a property owner, developer, or participating employer which shall include both vacant [parcels] and improved parcels[, by the County in conjunction with a property owner, developer, or participating employer].

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(2) Program Requirements.

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(a) All housing subsidized pursuant to this section, must restrict a percentage of the affordable units to be affordable in perpetuity. Said percentage shall be equal to the ratio of the County subsidy to the projected development cost, with a maximum of 20% of the affordable units, as defined by Suffolk County, being restricted. If applicable, the total number of units restricted shall be rounded up to the next highest whole number.

(b) [(a)] The following provisions are applicable to § A36-2D(1)(i)(a), (b) and (c) and § A36-2D(1)(ii) above:

- [1] A municipality must enter into a development agreement with the County, which shall require the participating municipality to offer incentives, such as density bonuses, fast-track approvals and fee waiver, and/or financial assistance, such as community development block grant funds, industrial development bonds and/or tax credits, to the proposed affordable housing development prior to the acquisition of a parcel.
- [2] Prior to such acquisition or funding, the participating municipality shall, by resolution or other legislative act, approve the development [agreement] plan which shall specify the proposed builder, which may be a not-for-profit corporation or a for-profit builder; the number of units of housing; the targeted occupants; the method of selecting such occupants; and the sales/rental prices to be paid by the occupants. If a for-profit developer is utilized, then the amount

of profit realized by the builder must conform to New York State Affordable Housing Corporation (or its successors') guidelines.

(c) [(b)] The following provision is applicable to § A36-2D(1)(i)(d) and (e) above:

[1] The property owner, participating municipality, developer, or participating employer, as the case may be, must enter into an agreement with the County requiring the use of the parcel(s) for workforce housing purposes and specifying the proposed builder, which may be a not-for-profit corporation or a for-profit builder; the number of units of housing; the targeted occupants; the method of selecting such occupants; and the sales/rental prices to be paid by the occupants. If a for-profit developer is utilized, then the amount of profit realized by the builder must conform to New York State Affordable Housing Corporation guidelines, or any successor thereto.

(d)[(c)] Deed restrictions for all housing subsidized pursuant to this section, other than the New York State General Municipal Law § 72-h transfer program for homeowners displaced by natural disaster, must reflect the following guidelines:

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[5] Occupancy for owner occupied housing. Home ownership units that are not affordable in perpetuity must be owner-occupied and the principal residence of the occupant for at least 10 consecutive years. Units that are affordable in perpetuity must be owner-occupied as a principal residence in perpetuity. If an affordable unit contains an accessory apartment, the owner must occupy the principal portion of the unit and not the accessory apartment as their principal residence. Units subject to affordability requirements may only be sold at an affordable rate, following the criteria below, and the entity as identified within the development agreement must notify the Director in writing that the units are for sale and certify to the Director that the purchasers conform to the requirements as set forth below. [Failure to meet this requirement may result in repayment to the County equal to the value of the subsidy provided.]

[a] Purchasers must be a first-time homebuyer with income in the established range as set forth in A36-2D(2)(d)[3].

[b] Ownership of affordable units may not be transferred by will, devise, intestacy, gift, purchase on the open market, or otherwise, except that an affordable unit may be conveyed by its owner to a trust, provided that the owner is a beneficiary of the trust and the terms of the trust require that the trustee, within 120 days of the date of the beneficiary's death, or the date when the unit is no longer being used as the beneficiary's primary residence (domicile), and the unit must be offered for sale. Prior to conveying an affordable unit to a trust, a copy of the trust instrument shall be provided to, and approved by, the entity as identified within the development agreement who must then certify to the Director. Title may also be transferred to a court-appointed referee in mortgage foreclosure proceedings provided the unit is offered for sale and transferred to a qualified purchaser, and a copy of the Order of Reference and Order of Sale is provided to the entity as

identified within the development agreement who must then certify to the Director.

[c] Resale prices shall be restricted as set forth in section A-36-2B(2)(a)[1][e][iiii]

[d] Prior to closing, a copy of the executed Contract of Sale shall be provided to the entity as identified within the development agreement who must then certify to the Director, along with an executed and sworn affidavit by the Seller and Purchaser, attesting that the Contract of Sale is true and accurate, that there are no other agreements between the Seller and the Purchaser, and that the Purchaser has not and will not pay any amounts to the Seller which are not reflected in the Contract of Sale.

[6] In the event that a parcel that is developed pursuant to this program is subject to an action in foreclosure, the participating municipality, or its designated agent, shall have a right of first refusal to purchase the parcel.

[[6]] [7] Affordability for funded rental units. Funded rental units shall have maximum rent equal to the HUD-established fair market rent adjusted for bedroom size for the Nassau-Suffolk PMSA or any municipality approved fair market rent standard, provided that the gross rent, as defined in 26 U.S.C. § 42(g)(2)(B), of said standard does not exceed 30% of the eighty-percent HUD-established area median income limit for the Nassau-Suffolk PMSA with adjustments for bedroom size not exceeding the HUD policy on occupancy standards under the Fair Housing Act. Funded rental units must remain affordable for at least 10 consecutive years or until the WHS or AHS is repaid to the County, whichever is later with a percentage of the units being affordable to the occupant in perpetuity.

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Section 3. Applicability.

This law shall apply to all affordable housing projects that submit an application to the County on or after the effective date of this law and all transfers pursuant to the New York State General Municipal Law § 72-h transfer program which have an authorizing resolution approved by this Legislature on or after the effective date of this law.

Section 4. Severability.

If any clause, sentence, paragraph, subdivision, section, or part of this law or the application thereof to any person, individual, corporation, firm, partnership, entity, or circumstance shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section, or part of this law, or in its application to the person, individual, corporation, firm, partnership, entity, or circumstance directly involved in the controversy in which such order or judgment shall be rendered.

Section 5. SEQRA Determination.

This Legislature, being the State Environmental Quality Review Act (SEQRA) lead agency, hereby finds and determines that this law constitutes a Type II action pursuant to Section 617.5(c)(20), (21), and/or (27) of Title 6 of the NEW YORK CODE OF RULES AND REGULATIONS (6 NYCRR) and within the meaning of Section 8-0109(2) of the NEW YORK ENVIRONMENTAL CONSERVATION LAW as a promulgation of regulations, rules, policies, procedures, and legislative decisions in connection with continuing agency administration, management and information collection. The Suffolk County Council on Environmental Quality (CEQ) is hereby directed to circulate any appropriate SEQRA notices of determination of non-applicability or non-significance in accordance with this law.

Section 6. Effective Date.

This law shall take effect on the sixtieth (60th) day immediately subsequent to filing in the Office of the Secretary of State.

[] Brackets denote deletion of existing language
___ Underlining denotes addition of new language

DATED: May 14, 2019

APPROVED BY:

/s/ Steven Bellone
County Executive of Suffolk County

Date: May 28, 2019

After a public hearing duly held on May 28, 2019
Filed with the Secretary of State on June 12, 2019