

Village of Croton-on-Hudson



Report of the Croton Housing Taskforce November 2021

Members:

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I. Introduction

In November 2019, Westchester County released the Westchester County Housing Needs Assessment. This Assessment showed the extent of the housing crisis facing Westchester County as a whole and provided municipality specific information about the housing crisis facing our Village. On January 6, 2020, Mayor Brian Pugh and the Board of Trustees created an ad-hoc Croton Housing Taskforce with the following members: Hollis Anzani, Jana Bluestein, Adam Decker, Julie Evans, Greg Maher, Carol Shanesy, Nance Shatzkin, Sherry Horowitz (Trustee Liaison) and Brian Pugh (Trustee Liaison). The Task Force was charged with examining all aspects of housing in Croton-on-Hudson with special attention to affordability and the issues raised by the Westchester County Housing Needs Assessment.

In constituting a Task Force, the Mayor and the Board of Trustees were acting in line with the recommendations of the Village's 2003 Comprehensive Plan, which recommended that "creative study of the existing situation will aid in understanding the need for affordable housing in the future and in identifying opportunities for expansion of the affordable housing stock. Studies should be designed to identify the economic groups now living in the Village as well as their living conditions. This should include an inventory of existing rental stock, both legal and illegal under current rules, with a determination of the rents being charged and the income of the occupants. Analysis of this data will prove invaluable in the ongoing effort to identify and meet affordable housing needs. Future planning for affordable housing in the Village should include exploration of opportunities to create choices allowing senior citizens to "age in place" and remain in the community as well as for new families to enter the community."

The Task Force took seriously its charge and over the course of almost two years met regularly to analyze the data collected by the Westchester Housing Needs Assessment as well as other demographic information available regarding housing in Croton. We were specifically interested in determining whether the County Needs Assessment was accurate in its resident numbers, its reflections on the condition of current housing stock for both owners and tenants and the recommendations set forth in the County Housing Needs Assessment, as well as other solutions proposed to specific housing concerns including those tried by other New York municipalities. To build upon the expertise already present in the Task Force members, we invited participation from Dan O'Connor, Village Engineer, Rose Noonan of the Housing Action Council, Alec Roberts of Community Housing Innovations Inc., Andrew Germansky of Westhab, Inc. and Rebecca Garrard, of Citizen Action of New York. We also spoke with Village residents who live in our existing multi-family buildings to hear their concerns about their buildings and the responsiveness of the Village to their needs. We researched and reached out to other Westchester and State municipalities to discover what has been tried, what has succeeded and what is being

considered as solutions to our housing crisis. Finally, we were proud to host a public-facing meeting where Norma Drummond, Westchester County Planning Commissioner, presented a Village-specific presentation on the findings of the Westchester County Housing Needs Assessment and Croton residents were given the opportunity to discuss the Housing Assessment as well as housing concerns generally.

During the period in which the Task Force met, the global pandemic altered many of the very facts we were researching. As the Task Force continued its work, it became clearer that the pandemic had exacerbated existing affordability and housing shortages in the Village. There is also early evidence that changes to the character of work following the pandemic may necessitate changes to the traditional ways our Village has functioned and our traditional revenue sources. The pandemic has also pointed to the need for consistent re-evaluation and re-collection of data as it becomes available via the decennial census or other data collection events.

The overarching goals around which our last Comprehensive Plan (2003) was built were preserving traditional qualities, strengthening assets, and protecting resources. It is the belief of this Task Force that the recommendations set forth herein will help Croton-on-Hudson build a stronger community while addressing the crisis of affordability in Westchester County and Croton-on-Hudson. Many of the neighborhoods which best define the unique beauty and character of our Village, including the residential neighborhoods of Harmon and the mixed-use developments of the Upper Village highlight a way forward for Croton that allows for the organic growth of our community while preserving the traditional qualities that make the Village such a beloved place for all of our residents.

The 2003 report stated that “The Village should build on its successes by continuing to maintain and improve on the existing economic diversity of housing stock. The Village, in partnership with the Croton Housing Network, has identified and employed a variety of opportunities to advance the creation of this affordable housing in the Village. These have included: new construction, Village-contributed land, developer-contributed land, homes built by developers, use of derelict Village property, and developer-included units. These strategies, along with the possibilities for acquisition of existing buildings for conversion to affordable units should be identified and explored. The population and income groups whose needs are not currently being met should be identified through the evaluation of currently available information and the independent acquisition of data by the Village. Creative study of the existing situation will aid in understanding the need for affordable housing in the future and in identifying opportunities for expansion of the affordable housing stock. Studies should be designed to identify the economic groups now living in the Village as well as their living conditions. This should include an inventory of existing rental stock, both legal and illegal under current rules, with a determination of the rents being charged and the income of the occupants. Analysis of this data will prove invaluable in the

ongoing effort to identify and meet affordable housing needs. Future planning for affordable housing in the Village should include exploration of opportunities to create choices allowing senior citizens to “age in place” and remain in the community as well as for new families to enter the community.” These recommendations still require action by the Board of Trustees. The specific recommendations set forth below offer a number of strategies the Board of Trustees should consider as they seek to accomplish the goals set forth in the 2003 Comprehensive Plan and the 2017 Update to the 2003 Comprehensive Plan.

II. Data

As part of the Westchester Housing Needs Assessment (see Appendix {__}), snapshots of housing data for each municipality were prepared by Westchester County and the Hudson Valley Pattern for Progress using data from numerous sources, including HUD, the decennial census, American Community Survey (ACS) estimates and multiple listing service (MLS) listings. The snapshot sets forth the specific parameters of the housing affordability crisis in our Village. The snapshot stated that there were 842 (28%) renter-occupied units and 2,187 (72%) owner-occupied units. The last available data on home sales was from 2018 and the report was prepared before the pandemic so any additional increase in home prices and the effects thereof were not included in the snapshot.

The County Assessment identified 25 Owner Households and 0 Rental Households as Substandard. The definition of Substandard used is from HUD and means that the housing lacks complete plumbing or kitchen facilities. It also identified 10 Owner Households and 10 Renter Households as Severely Overcrowded. As defined by HUD severely overcrowded means that there are more than 1.5 persons per room in the household. As defined by HUD, severely cost burdened means that more than 50% of income is used to pay for rent. The number of households that were identified as severely cost burdened were 200 Renter Households and 345 Owner Households, for a total of 545 severely cost burdened households in Croton. 47.5% of renters live in housing that is either unaffordable or severely cost burdened.

One other point that becomes clear in the data, is that there is a growing gap between the median income of an owner-occupied household versus a renter-occupied household. Based on 2017 ACS data, the Westchester County Housing Needs Assessment identified the median income of a renter-occupied housing unit in Croton-on-Hudson as \$52,439 whereas the median income of owner-occupied units is \$149,223. The gap is not surprising given that the Needs Assessment also calculated the minimum income needed for the median home in Croton-on-Hudson as \$218,000 (single-family, condo or co-op; again, based on 2017 ACS Data). All of these numbers predate the pandemic and the rapid increase in home values across the Village. Owning a home in Croton-on-Hudson, the data indicates, is increasingly impossible for those with annual incomes of less than \$200,000. This means diversity is made more difficult by the lack of housing opportunities for those below the highest income levels. Anyone making less than \$200,000 a year finds scarce opportunities to live in Croton.

The Task Force sought out ways to verify the information presented in the snapshot from other sources. It became clear that because of privacy limitations, it would be impossible to verify completely the numbers used in the worksheet by outside sources or through existing census data. However, the sense of the Task Force was that existing overcrowded

and substandard rental units might be even higher than the numbers presented on the worksheet because of apartments that are unregulated and unknown to the Village.

One incredible source of information who provided great insights to the Task Force was our Village Engineer, Dan O'Conner. Mr. O'Connor spoke with us at length about the data from the snapshot as well as other questions the Task Force had regarding land use and village infrastructure. Mr. O'Connor provided us with a list of *in rem* and village-owned properties in the Village; however, he noted that these lots were often either already in use as recreation and park areas or were for various reasons impossible to build on. He also noted the difficulty in determining how many unused lots there are in Croton and made the astute point that changing goals and changing engineering capabilities could quickly change how usable a lot was and what the best use of the lot was.

Although he had the same limitations as a local municipality in verifying the information in the snapshot, Mr. O'Conner believed that the numbers seemed accurate based on his experiences and knowledge of the Village. Mr. O'Conner noted that the Village Engineer and the Village generally, were severely restricted in their ability to determine the situation inside residential properties. Mr. O'Conner noted that properties in the Village were not subject to any annual condition review and the right of privacy generally restricted the Village from inspecting owner-occupied units. Although the number of sub-standard owner-occupied units was unfortunate, the Village's hands were generally tied regarding enforcement and even in its abilities to offer to make repairs or provide some sort of funding as the Village could neither provide gifts nor loans to households.

Although there was a greater ability to monitor rental and multi-family units, this was also fairly limited, with the exception of the units subject to the Emergency Tenant Protection Act of 1974 (ETPA), which created additional tools. There was also nothing in the Village Code requiring landlords to publicly provide information about the rental unit nor the existence of the rental itself in the current Village Code. Nor was there a large number of requirements for rental units.

Finally, and worthy of further study and review but largely outside the purview of our Task Force, Mr. O'Connor mentioned that the existing assessment system and our lack of a town-wide reassessment since the 60s, had the effect of creating disparities in valuation and actively incentivized homeowners to not perform work to code or seek Village approval before modification. This could also be affecting the number of unknown rental units in the Village and limiting the number of residents who have applied for Accessory Dwelling Units.

We next sought out tenants in our existing multi-family buildings who were willing to discuss their relationships with their landlords and with the Village. We spoke with one

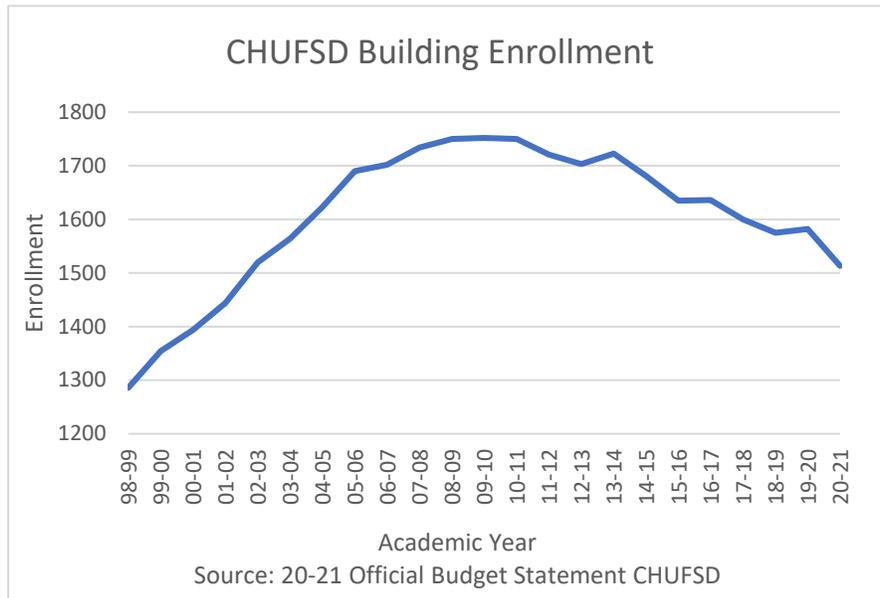
tenant in Bari Manor who remained appreciative of the Village's efforts to protect the residents of Bari Manor in 2003 by declaring a housing emergency and placing all multi-family buildings with more than 50 units under the rules set forth in New York's ETPA. In our discussions with the tenant, he provided data indicating that the landlord was not always ideal, but the ETPA provided tenants with additional rights, particularly the right to have the building maintained and serviced as set forth in the ETPA and the right to renewal leases for most tenants, which prevents Bari Manor from retaliatory eviction.

In contrast, our discussion with a tenant in a multi-family building not covered by the ETPA revealed many of the problems for tenants in Croton-on-Hudson. First, there is not very much available inventory, which empowers the landlords and leaves tenants in fear of retaliatory eviction. Second, there are very few regulations at the Village-level providing any protection of tenant rights or guaranteeing service and maintenance. Not only were there few regulations protecting residents, but enforcement of the regulations that did exist was hard to come by. Nowhere was information provided to tenants about which Village offices covered which issues. There was also no real coverage in the evening or weekends beyond the fire department and the police department. When the fire department did come out to her building, they immediately recognized a number of safety issues but there was nowhere for the resident to report those issues or have them properly redressed.

We were also provided data from village residents at the Housing Forum held on January 28, 2021 where Norma Drummond, Westchester County Planning Commissioner, presented the findings of the Westchester County Housing Needs Assessment both at the County and the Village level. The vast majority of speakers addressed the need for more affordable housing in Croton and the growing unaffordability of Croton-on-Hudson to residents and people who work in surrounding areas. A number of speakers also expressed concern about the specific numbers in the report regarding just how unaffordable living in Croton-on-Hudson is for many of its residents.

Those few speakers who expressed concerns about increasing housing stock, whether as affordable or market rent housing, expressed concerns about the Village's infrastructure capabilities and a fear of overcrowding in our schools. Many of these same issues were raised again as the Village works toward the sale of and development into affordable housing of 41-51 Maple Street (Katz Property) by Regan Development. Similar concerns about the Village's growth capacity had already been discussed with the Village Engineer. He believed that the Village was well equipped for future development and believes that our water supply and sewer capacity are capable of handling far more use.

Table 1



Research from information available through the NYS Education Department gave us a picture of our school population that contrasts strongly with the expressed fears of overcrowding in our schools. From data published by the Croton Harmon Union Free School District, one can see the rise and fall of the school population over the past 20 years as set forth in Table 1. The most current information on the school building enrollment is the 2020-21 school year with a school population of 1,513. The previous year, unaffected by COVID, had a school building population of 1,582. This represents a significant decrease from the population of 1,752 as recently as the 2009-2010 School Year. Given the long history of changes in the composition of the Croton Harmon Union Free School District as well as the buildings composing the district, even the high watermark of Croton’s school population in 2009-2010 should not necessarily be considered a limit on our potential for students.

III. Recommendations

A. Protecting Our Residents

One of the first questions raised by the Croton Housing Task Force after seeing the data in the Westchester Housing Needs Assessment was whether the data collected for Croton was accurate. To that end, we attempted to independently validate the accuracy of information in the County report.

This data collection process emphasized two separate and related points: (i) the historical preference for single family home construction in the Village has left us short of multi-family housing and rental units of all kinds. The multi-family units that do exist tend to be concentrated in specific areas of the village and to be over 50 years old. (ii) Information regarding both the number of units being rented and the condition of those units is severely limited by the current systems in place. Although the Westchester Housing Needs Assessment pointed to substandard conditions in both owned and rental units, privacy and property rights concerns make it difficult for the Village to act on owner-occupied units. However, the commercial relationship between owner and tenant allows the Village government more authority to ensure safe housing in rental units. Additionally, the small size of Croton's rental inventory means market forces cannot operate effectively.

The Village should start by creating a registry of all rental units in the Village. This registration system should include all rental units where there is more than one unit of housing on the lot. This simple registry will empower the Village by providing real information about the number of rental units in the Village. It will also help the Village Engineer and emergency services by equipping them with up-to-date building information and emergency contact information. Such registration would renew at a regular term (2 or 3 years). Numerous recent natural disasters, including the flooding following Hurricane Ida, have emphasized the need for municipalities to know about all rental units in their jurisdiction and ensure that those units are safe for their occupants. The registration ordinance passed by the town of Amherst, NY is attached as Appendix A as a model. A fee structure should be created that penalizes non-compliance with the registration or not providing adequate emergency contact information.

The registry should also be paired with a right of inspection of the units by the Village Engineer and the Village Fire Inspector. The Village should consider the best way to implement the right of inspection, whether it would occur at the time of registration and renewal or whenever the unit is vacated. This right of inspection should be explicitly granted as part of the registration requirements, as shown in the model ordinance in Appendix A.

The Village should provide all rental tenants with an annual notice of their rights under the Village Code and New York Law including information about relevant code requirements for rental units. Information should also be provided to all property owners in the Village to provide an opportunity for owners to confirm that their unit is part of the registry.

The Village should also streamline information for tenants on the Village Website. The website should include a list of correct contacts and emergency contacts for tenants when issues arise that are not being successfully remediated by their landlord. The Village website should also provide a thorough listing of available rights and code requirements for tenants, both those under and those not under the regulations of ETPA.

The Village Board should consider supplementing the publicly available information on the website with a dedicated annual meeting at which rental unit occupants can approach the Village Board with issues regarding both housing conditions and their ability to communicate with the Village regarding these issues.

For multi-unit buildings built before 1974, the Village should consider decreasing the threshold of the ETPA. When Croton declared a housing emergency in 2003, it set a threshold of 50 units before multi-unit buildings were subject to the terms of ETPA. It is clear that in the 18 years since Croton's declaration, the tenants of Bari Manor, the only building in Croton bound by the terms of ETPA, have benefited from the added protections ETPA provides. However, Croton has the highest ETPA unit threshold in Westchester. The Village Board should consider lowering the threshold to provide the protections of ETPA to more residents in Croton to 10 or even to 6, which is the lowest number allowed by the New York ETPA statute. The Village should also consider an ETPA carveout for multi-family buildings that work directly with the Village to provide safe and affordable housing along the lines of the ETPA regulations passed by the Village of Ossining.

Increased information and enforcement of our existing code creates the possibility that current tenants will be unable to live in their units because of code violations that make the unit unsafe or uninhabitable. The existence of illegal and substandard rental units in our Village benefits nobody except unscrupulous property owners. The discovery and repair of these unsafe conditions before they cause a life-endangering event risking harm to the tenant or to our first responder community is better for our Village even if it increases the risk of temporary displacement. This displacement cost should be borne by the landlord making use of our local hotel properties per regulation. However, to offset the inconvenience of displacement for affected tenants, the Village should work with our existing housing and assistance non-profits.

B. Ensuring Fairness and Inclusion in Housing

It is important for the Village to be proactive in ensuring that all applicants have fair and inclusive access to housing opportunities. This is important for several reasons, including that it is required by law and that open housing enables a vibrant and diverse community. In its current affordable housing requirement language, the Village does not specify how such units will be distributed or managed, which leaves open the potential that a developer with no experience in affordable housing will be responsible for a small number of units in their larger development. There is nothing to ensure appropriate experience and knowledge is applied in the marketing, rent-up or management of such units.

To mitigate the risk that the set-aside units are not effectively managed, it is recommended that the Village require a commercial or private organization to enlist the assistance of an organization that specializes in affordable housing to assist with the units allocated to meet the affordable housing requirement. A list of Village-approved organizations would be made available to any project developer, who could then independently work out the details of a contractual relationship.

There are 3 organizations that are currently known to the Village that fit the requirements for this role: Croton Housing Network, Inc.; Housing Action Council; and WestHab. Croton Housing Network (CHN) is a unique and invaluable asset to the Village as it seeks to protect and increase access to affordable housing. An all-volunteer organization, it has been active for over 30 years – completing six projects that have added 7 affordable home ownership opportunities and 29 affordable rental units. It has worked extensively with both Housing Action Council and WestHab for the creation and management of its own units.

The Housing Action Council is a regional not-for-profit organization dedicated to expanding housing opportunities for low and moderate income households. Its role is to provide technical assistance and to expand the capacity of community-based organizations to sponsor affordable housing developments. In addition, it provides comprehensive home ownership and home improvement counseling, and provides program design and implementation services to municipalities. It currently manages the Yonkers Affordable Housing Department which is responsible for implementing a housing desegregation order.

Westhab was founded to address the affordable housing crisis in Westchester County. It started by acquiring vacant buildings and renovating them into quality transitional and permanent housing and then expanded its focus to renovate and operate shelters in Westchester. Today, Westhab's housing and social services are augmented by its property management services for other not-for-profits focused on affordable housing.

It has become a leading organization in developing affordable and supportive housing, operating homeless shelters, and providing youth programs and employment services.

By directing local developers to these organizations, the Village can assure the appropriate expertise is in place.

C. Planning for the Future

Croton-on-Hudson contains a diverse collection of housing stock with a heavy emphasis on single family development. What most gives Croton-on-Hudson its character though are the walkable, closely built areas in Harmon, Morningside and the Upper Village. These neighborhoods have long served Croton-on-Hudson by providing walkable neighborhoods, allowing for a diversity of incomes and a vibrant community. The 2003 Master Plan and the 2017 Update, while rightly celebrating the distinct nature of Croton-on-Hudson, did not proactively work to create new and expanded neighborhoods based on Croton's strength. Therefore, planning for future development should always seek to build walkable neighborhoods, housing that is available and affordable for all income levels and which provides easy access to the Croton-Harmon train station and to Rt. 9A, our vital links to the larger New York metropolitan area.

The Village Board should consider updating the Comprehensive Plan to better address the potential for smart growth in Croton-on-Hudson and better recognize the strengths of our community and the needs to act to better prepare our Village for the future. The advantage of an update close to the decennial census is that such an update will not be using stale data as it contemplates the planning needs of our community.

Working under the recommendations of the existing Comprehensive Plan, the Village should work towards the articulated goals of maintaining economic diversity and preserving the historical character of the Village. The 2003 Master Plan recognized the dissonance between the zoning restrictions in place versus the large number of existing non-conforming uses. Given that the non-conforming uses, such as the mixed-use buildings in the Upper Village and on Riverside and the small lots of Harmon and Morningside give Croton-on-Hudson its historical character, the recommendation of this committee is that the Board work to make the zoning requirements better match the historical character of Croton-on-Hudson. This would complement the action items described above which help preserve the historical character of our Village by ensuring that our existing buildings are maintained to appropriate standards.

The Village should therefor consider rezoning more of the Upper Village as Multi/Family Mixed Use. This would conform to the general character of the Upper Village, particularly along Maple. The Village should also consider a Strategic Zoning Study for the Upper Village, including considering new and innovative ideas to increase parking in the Upper Village, rightly described in the 2003 Master Plan as "the historic and administrative center of the Village."

The Village should consider the use of a floating zone to create a zoning district which matches the Village's need for additional multi-family, traditionally affordable and statutory affordable housing.

The Village should also consider creating increased flexibility in existing zoning districts, especially in the RA-40 and RA-60 zoning districts, to encourage right-sized multi-unit housing in the Village.

The Village should consider revising its current target of affordable units to better address the housing crisis in our area. Possibilities include revising the target to better match housing needs, such as creating a housing target that all tenants in the Village spend no more than 50% of their income in rent. Creating firm deadlines for the realization of affordable units might increase the number of available units.

Given that most of the existing land in Croton-on-Hudson is in use, future construction will by necessity often involve the repurposing and replacing of existing structures including potentially re-zoning to allow for repurposed use. The Village Board should take a more proactive stance in encouraging development that better suits the needs of the Village.

The Village Board should also consider the creation of a Community Land Trust, not just to preserve open space but as a means of collecting lots to guide planning and create strategic development, including the development of affordable housing.

As part of the development of the Community Land Trust, the village should make sure that it is notified by the Town of Cortlandt of all *in rem* properties being put up for auction by the Town of Cortlandt and should consider purchasing those properties for use in the Land Trust.

Further the Village Board should work with the Village Engineer to identify existing large lots and existing construction that may be suitable for future affordable housing/mixed use development.

Finally, the Village Board should work with the Village Manager, the Village Engineer, the Village Treasurer and local building owners to develop a yellow flag list of properties that may be ripe for redevelopment or are in financial distress and could be repurposed under guidance from the Village.

The Village of Croton-on-Hudson was an early innovator in adopting an Accessory Dwelling Unit ordinance to facilitate the legal construction of additional dwelling units in zoned single family housing districts. The Village should consider modifying its existing

ordinance to facilitate additional legal accessory dwelling units. One consideration for the village would be to adopt the Model Accessory Dwelling Unit Ordinance recently passed by the Westchester County Board of Legislators.

To encourage careful reflection on growth and the existence of limits and non-limits on the infrastructure and school capacity of our village, the Board should consider directing the Village Manager and Village Engineer to create a fact sheet, based on information available to them and to the Croton Harmon Union Free School District regarding historical growth rates in Croton, historical school population levels, current infrastructure and school capacity information and other information regarding theorized growth restraints.

Finally, the pandemic may have pushed forward trends towards working from home and away from traditional commuting with parking in the lots at Croton-Harmon Train Station. The recent improvements to Croton Point Avenue may also decrease the need for the number of cars parked at the Croton-Harmon Train Station. At the same time, the movement of the DPW Garage away from the train station has opened additional areas closer to the train station for parking. Given these conditions, the village should consider whether existing Village owned properties currently used for train station parking may be ripe for development, particularly the development of additional multi-unit housing as these locations are well suited for transit-oriented development.

IV. Appendices

- A. Amherst, NY Rental Unit Registration Code
- B. County Model Ordinance
- C. Westchester County Housing Needs Assessment – Croton Profile
- D. Floating Zone Ordinance Model

Chapter 44 of the Town of Amherst Code

Town of Amherst, NY / Part I: Administrative Legislation
Chapter 44 Rental Unit Registration

§ 44-1 Legislative findings and intent.

The Town Board of the Town of Amherst hereby finds and declares that the rental of dwelling units constitutes a business which impacts upon the public health, safety and general welfare of the people of the Town of Amherst. The intent of this Chapter is to regulate the offering for rental of dwelling units to protect the public health, safety and general welfare of the people of the Town of Amherst and to further achieve the following beneficial purposes:

A.

The protection of the character and stability of residential areas;

B.

The correction and prevention of housing conditions that adversely affect or are likely to adversely affect the life, safety, general welfare and health, including the physical, mental and social well-being of persons occupying dwellings;

C.

The enforcement of minimum standards for heating, plumbing, adequate bathroom facilities and other recognized acceptable sanitary living conditions necessary for health and safety;

D.

The enforcement of minimum standards for light and ventilation necessary for health and safety;

E.

The enforcement of minimum standards for the maintenance of existing residential buildings and the prevention of slum and blight conditions;

F.

The preservation of the value of land and buildings throughout the Town.

§ 44-2 Definitions.

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

COMMISSIONER

The Commissioner of Building or his/her designee.

DWELLING UNIT

A room or group of rooms within a building forming a single habitable unit which may be occupied by a person for living or sleeping.

HOUSING CODE

All state and local laws, codes, ordinances, rules and regulations for the establishment and maintenance of housing standards.

OWNER

The owner or owners of the dwelling unit or lesser estate therein, a mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee or agent of the owner.

SHORT TERM RENTAL

The rental of a dwelling unit for a time period between one and thirty days.

§ 44-3 Rental dwelling unit registration required; exemptions.

A.

Registration required. No person shall allow to be occupied, or rent to another for occupancy, any dwelling unit unless the owner has first obtained either a short term rental dwelling unit registration certificate or a rental dwelling unit registration certificate as hereafter provided.

B.

Exemptions. Exemptions. The provisions of this Chapter shall not apply to owner-occupied properties containing two or fewer dwelling units and are not short-term rentals; properties granted an exception to these provisions by a majority vote of the Town Board; properties owned by a college or university for inhabitation by administrative officers and/or faculty free of charge; properties owned by a faith-based organization for use as a living quarters by clergy free of charge; properties subject to the Erie County PHA Consortium Section 8 Renters Association; hotels; motels; properties located in MFR-4a, MFR-5, MFR-6 and MFR-7; hospitals; nursing homes; assisted living facilities; group homes or other dwelling units which offer or provide medical or nursing services if such units are subject to state or federal licensing or regulations concerning the safety of the users, patients or tenants.

[Amended 10-26-2020 by L.L. No. 13-2020; 4-5-2021 by L.L. No. 5-2021]

§ 44-4 Application for registration.

A.

Within ninety (90) days after the effective date of this Chapter, the owner of each non-exempt rental dwelling unit existing on the effective date of this Chapter shall make written application to the Commissioner for a rental dwelling unit registration certificate. In addition, the owner of each dwelling unit constructed after the effective date of this Chapter shall make written application to the Commissioner for a rental dwelling unit registration certificate as herein provided prior to initial occupancy. Such application shall be made on a form furnished by the Commissioner and shall set forth the following information, in addition to

other information required by the Commissioner from time to time which may be necessary to administer, enforce, and insure compliance with the provisions of this Chapter and the housing code:

(1)

Name, principal residence address, principal business address and telephone number, including cell phone number, of the owner.

(2)

If the owner is an association, limited liability partnership, joint tenancy, tenancy in common or tenancy by the entirety, then each and every owner or general partner shall be indicated on the application and register an address in accordance with Subsection **A(1)** of this section.

(3)

If the owner is a corporation or LLC, the principal place of business of the corporation must be provided and the name, title and residence address of all officers, managing or general agents must be included.

(4)

If the owner has designated an agent or management company, then the name, principal residence address, principal business address and telephone number, including all phone numbers of such agent or management company must be included in addition to that of the owner.

(5)

It shall be the responsibility of the owner to properly register any change of address, agent or any other information which occurs after the filing of the application.

(6)

For purposes of this section, a post office box shall not be accepted as the owner's address. Further, the building intended to be licensed shall not be accepted as the owner's address unless it is the principal place of business or residence of the owner.

(7)

The owner shall specify the address to which all notices of violation issued pursuant to § 44-14 of this Chapter, and other violations of the housing codes, and invoices for fees are to be forwarded.

(8)

If the owner does not reside within the County of Erie (New York State), the name address and telephone number of a contact/agent who resides in the County of Erie; Niagara or Genesee must be provided.

(9)

If the property was constructed prior to 1978, the owner shall certify that the owner is aware of the possibility of lead paint in the property; that the owner is aware of federal disclosure requirements concerning property that may contain lead paint and has complied with federal disclosure requirements; and that the owner is familiar with the use of lead-safe methods during painting, renovation, or repair of the property. Said certification will be made available for completion on the Town of Amherst webpage and in the Building Department at Town Hall.

(10)

Properties may only be used for the purpose of short term rentals if the Town has issued a short term rental certificate. Properties used for the purpose of short term rentals shall be subject to an annual inspection to determine compliance with the housing code.

B.

Failure to provide any of the information required by sub-section A as set forth above shall be grounds to deny a short term rental dwelling unit registration certificate or a rental dwelling unit certificate.

§ 44-5 Issuance or denial of rental dwelling unit registration.

[Amended 4-5-2021 by L.L. No. 5-2021]

The Town of Amherst shall issue a short term rental dwelling unit certificate or a rental dwelling unit certificate for such properties after satisfactory completion of the Town's inspection and assuring that all local property taxes on the rental unit are up to date. If upon completion of an inspection of a building and dwelling units therein the Commissioner finds noncompliance with the housing code, or that local property taxes are not up to date, the Commissioner shall issue a notice of violation in accordance with § 44-14 of this Chapter for the correction of any violations of the housing code. Upon re-inspection, if the Commissioner finds noncompliance with the notice of violation the Commissioner shall deny a certificate or revoke any issued certificate in accordance with the procedure set forth in § 44-14 of this Chapter. The Commissioner shall issue a written statement setting forth the reasons for the denial or revocation.

§ 44-6 Effect of denial or revocation.

A.

Vacant units. When either a short term rental dwelling unit registration certificate or rental unit registration certificate has been denied or revoked, no further rental and occupancy of dwelling units then vacant shall be permitted until a rental dwelling unit registration certificate has been issued.

B.

Occupied units. In addition to other penalties under this Chapter, when a short term rental dwelling certificate or rental dwelling unit registration certificate has been denied or revoked, the dwelling units containing such violations shall be vacated after the Commissioner provides notice to the owner and the occupants of the dwelling units containing said violations. Such notice shall direct the owner and occupants of the dwelling units containing such violations to vacate within a period of time as determined by the Commissioner and may provide a reasonable period for the owner or occupants an opportunity to correct such violations. For the owner, such notice shall be mailed by first class mail to the owner at the address provided by the owner pursuant to § 44-4 of this Chapter or personally served upon the owner by delivering the notice to the owner or by delivering the notice to a person of suitable age and discretion at the owner's residence or place of business. For the occupants, such notice shall be mailed to the occupant at the dwelling unit or posted conspicuously at the occupant's dwelling unit. Vacated dwelling units shall not be reoccupied until a rental dwelling unit registration certificate has been issued.

C.

Occupied units: immediate hazard. In addition to other penalties under this Chapter, when a short term rental unit certificate or rental dwelling unit registration certificate has been denied or revoked for reasons which, in the determination of the Commissioner, present violations of the housing code that create an immediate hazard to the health and safety of the occupants, the dwelling units containing such violations shall be vacated within the period of time determined by the Commissioner. The Commissioner's determination shall be in writing and shall direct the owner and occupants of the dwelling units containing such violations to vacate the premises within a period of time not to exceed thirty (30) days, as determined by the Commissioner. The Commissioner's determination shall be mailed by first-class mail to the owner at the address provided by the owner pursuant to § 44-4 of this Chapter or personally served upon the owner by delivering the notice to the owner or by delivering the notice to a person of suitable age and discretion at the owner's residence or place of business. The Commissioner's determination shall also be posted at the subject building and, to the extent possible, it shall also be posted conspicuously at each dwelling unit. Vacated dwelling units shall not be reoccupied until a rental dwelling unit registration certificate has been issued.

D.

The notices provided under this section shall not be used to institute, or deemed to establish sufficient grounds for, a summary eviction proceeding under the Real Property Actions and Proceedings Law.

E.

Failure to comply with the inspection requirement shall result in denial or in the immediate revocation of the rental dwelling unit certificate.

F.

The terms and conditions of this section shall apply to holders of short term rental dwelling unit certificates.

§ 44-7 Term of rental dwelling unit registration.

A rental dwelling unit registration issued pursuant to this Chapter shall expire no later than three (3) years after the date of its issuance, unless sooner revoked pursuant to § 44-14. A short term rental unit certificate issued pursuant to this Chapter shall expire one (1) year after its date of issuance. Within sixty (60) days prior to the expiration of a rental dwelling unit registration certificate or a short term rental unit certificate, the owner shall make written application for a rental dwelling unit registration certificate in accordance with § 44-4 of this Chapter. In no event shall a certificate be issued pursuant to this Chapter remain in effect more than three (3) years after the date of its issuance unless further extended by the Commissioner for sufficient cause.

§ 44-8 Transfer of rental dwelling unit registration.

The terms and conditions of this section shall also apply to holders of short term rental dwelling unit certificates. A rental dwelling unit registration issued pursuant to this Chapter is transferable to any person who has acquired ownership of a registered building for the unexpired portion of the term for which it was issued, provided that an application to transfer such certificate is filed with the Commissioner within thirty (30) days of title transfer, the information required by § 44-4 is provided and the dwelling units therein are in compliance with the housing code.

§ 44-9 Revocation of rental dwelling unit registration certificate.

A.

The terms and conditions of this section shall also apply to holders of short term rental dwelling unit certificates. A rental dwelling unit registration certificate issued pursuant to this chapter may be revoked by the Commissioner for any one or more of the following reasons:

[Amended 4-5-2021 by L.L. No. 5-2021]

(1)

Fraud, misrepresentation or a false statement as to a material fact in the application.

(2)

A finding that a rental dwelling unit registration was issued in error and not in accordance with applicable law.

(3)

A violation of any of the provisions of this Chapter, including noncompliance with a notice of violation issued pursuant to § 44-14.

(4)

The Commissioner, or his/her designated representative, determines that the rental dwelling unit does not substantially conform with this chapter or the New York State Uniform Fire Prevention and Building Code.

(5)

A finding by the Commissioner that the owner or other person responsible for payment of property taxes of the rental dwelling unit is in arrears on said property taxes.

B.

Prior to such revocation, the Commissioner shall hold a hearing, after at least ten (10) days' notice of the time and place of the hearing provided to the owner. The Commissioner shall issue a written statement setting forth the reasons for his/her decision.

§ 44-10 Duties of certificate holder.

The terms and conditions of this section shall also apply to holders of short term rental dwelling unit certificates. Every holder of a rental dwelling unit registration certificate shall:

A.

Conspicuously post the certificate in a protected mounting in the public corridor, hallway or lobby of the building for which the certificate was issued. This posting shall be in a common entrance. If no common entrance exists, then posting shall be made at the entrance of each dwelling unit. In the alternative to such posting, the license shall be produced by the owner at the request of a tenant, a prospective tenant or upon demand of the Commissioner.

B.

Conform with all other applicable state, county and Town laws and ordinances on matters not specifically addressed in this Chapter.

C.

The rental agreement or lease for a dwelling unit regulated under this Chapter must include a disclosure of the smoking policy for the premises on which the

dwelling is located. The disclosure must state whether smoking is prohibited on the premises, allowed on the entire premises or allowed in limited areas on the premises. If the smoking policy allows smoking in limited areas on the premises, the disclosure must identify the areas on the premises where smoking is allowed.

§ 44-11 Review of fee schedule.

The Commissioner shall annually review the fee schedule set by § 44-20 and recommend changes as he/she deems appropriate to the Town Board.

§ 44-12 Penalties for offenses.

A.

Any violation of this Chapter by a person, firm, corporation or other entity shall be a violation punishable in accordance with the general penalty provisions under § 83-1-5 of the Town Code of the Town of Amherst, with said penalties to be in addition to the revocation of a rental dwelling unit registration certificate issued under the provisions of this Chapter. In addition, the annual registration fee will double thirty (30) days after the due date has passed and a second invoice for payment has been sent first-class mail to the owner. In addition, a summons will be issued sixty (60) days after the due date has passed and a fine in the amount of Seventy-Five Dollars and Zero Cents (\$75.00) will be imposed in addition to all outstanding registration fees and late charges. Furthermore, a notice to vacate may be issued and all tenants removed for failure to register a dwelling unit thirty (30) days after the due date has passed and after notice to the owner and occupants by the Commissioner.

B.

Notwithstanding the lack of a specific reference thereto, failure to comply with any section, provision or requirement of this Chapter or of the Town Code or of any other State or federal law, code or ordinance shall be a violation and shall be punishable by a fine or penalty of not more than One Thousand Five Hundred Dollars and Zero Cents (\$1500.00) or by imprisonment for not more than fifteen (15) days, or by both such fine and imprisonment, for each such offense and any other applicable state statutes. This Chapter is a part of the Town's health, safety, housing, building, fire prevention and housing codes, and a violation thereof shall be deemed to be a violation for purposes of state statutes allowing escrow of rent to remedy violations. Any charges involving violations of this Chapter may be brought before the Amherst Town Court.

C.

Lead-based paint violations are subject to fines pursuant to § 83-1-5 of the Town Code of the Town of Amherst, Schedule of fines and penalties. In addition, upon a finding of existing lead-based paint violations, the owner of the affected property

must remediate said violation. Remediation is complete when a licensed lead inspector provides a letter of compliance for said property, or when a licensed lead risk assessor provides a one (1) year letter of interim control for the property. Letters of interim control are valid for one (1) year and may be renewed only once. In addition, the Commissioner or his/her designee, may determine that a lead-based paint violation is in compliance. Failure to remediate may result in the revocation of the property's rental registration certificate.

§ 44-13 Enforcement inspection criteria and authority.

A.

Upon the rental dwelling unit being registered, the owner of the rental dwelling unit consents to the inspection of the dwelling unit by the Commissioner or his/her designated representative. The Commissioner, or his/her designated representative, may make an inspection of the rental dwelling unit to determine whether or not such rental dwelling unit is in substantial compliance with this chapter and the New York State Uniform Fire Prevention and Building Code. At the conclusion of said inspection, the Commissioner, or his/her designated representative, shall provide the owner, or the owner's representative, at the inspection with a copy of the results of the inspection.

(1)

For properties constructed prior to 1978, the owner of the rental dwelling unit consents to the inspection of the dwelling unit for lead violations or hazards. Upon testing of paint in the property, any owner found to have a property with existing lead-based paint violations must remediate the violation according to provisions set forth in this chapter. Where violations or hazard are present, the rental dwelling unit registration certificate holder must submit proof of completion of a local EPA Accredited Renovation, Repair and Painting Training Program in the time allotted by the Building Department.

B.

If the results of the inspection conducted pursuant to § 44-13A above demonstrate that the dwelling unit is in substantial compliance with this Chapter and the New York State Uniform Fire Prevention and Building Code, the owner of the dwelling unit shall be entitled to retain his/her her rental dwelling unit registration certificate.

§ 44-14 Notice of violation.

A.

Whenever the Commissioner determines that a building or a dwelling unit contained therein is in violation of the housing code, he/she shall issue a notice of violation setting forth at a minimum:

(1)

The location of the subject property;

(2)

Specific violations of the Town Code; and

(3)

A reasonable time, not to exceed thirty (30) days, for the correction of any violations.

B.

Such notice may contain any additional information as determined by the Commissioner which may be necessary to achieve the goals of this Chapter.

C.

For purposes of this Chapter, the Commissioner, upon good cause shown, may grant additional time to correct violations of the housing code beyond thirty (30) days for sufficient cause as determined by the Commissioner. Any such extensions shall be issued in writing by the Commissioner stating the reasons for such extension and otherwise in accordance with the requirements of this Section.

D.

The notice of violation may be mailed by first class mail to the address provided by the owner pursuant to § 44-4 of this Chapter.

E.

The terms and conditions of this section shall also apply to holders of short term rental dwelling unit certificates.

§ 44-15 Tenant accountability.

A.

The terms and conditions of this section shall also apply to holders of short term rental dwelling unit certificates. With respect to the dwelling unit which the tenant occupies, controls or uses, the tenant shall be responsible for the following:

(1)

Occupancy limitations and the lawful use of a dwelling unit.

(2)

Maintenance of the dwelling unit in a clean, safe and sanitary condition.

(3)

Maintenance of plumbing, cooking and refrigeration equipment, appliances, fixtures and facilities contained in the dwelling unit in a clean and sanitary condition and providing reasonable care in the operation and use thereof.

(4)

Keeping exits in the dwelling unit free and clear.

(5)

Disposing of garbage and refuse into provided facilities in a sanitary manner and keeping the dwelling unit free and clear from garbage, refuse and debris.

(6)

Keeping domestic animals and pets in an appropriate manner and under control.

B.

To the extent that the owner can provide the Commissioner with competent evidence that tenants have not complied with the above standards or that the tenants have contributed to the existence of housing code violations at the property, the Commissioner may deem such circumstances to be sufficient cause to extend time for the correction of the violations pursuant to § 44-14 of this Chapter.

§ 44-16 Appeals.

A.

Any person affected by any notice or order which has been issued under any provision of this Chapter or of any rule or regulation adopted pursuant thereto may request and shall be granted a hearing on the matter before the Zoning Board of Appeals. Upon receipt of a written petition from such person, which petition shall contain a brief statement of the grounds therefor, the Zoning Board of Appeals shall hold a hearing, at which time such person shall be given an opportunity to show why such notice or order should be modified or withdrawn. No such hearing shall be required unless the petition therefor shall have been filed with the Zoning Board of Appeals within five (5) days after the date the notice or order was issued. On receipt of such petition, the Zoning Board of Appeals shall set a time and place for such hearing and shall give the petitioner written notice thereof. The hearing shall be commenced not later than the next scheduled meeting of the Zoning Board of Appeals date after which the petition was filed. After such hearing, the Zoning Board of Appeals may sustain, modify or withdraw the notice or order complained of by the petitioner, depending upon his finding as to whether the provisions of this Chapter and of rules and regulations adopted pursuant thereto have been complied with. After any such hearing, in the case of any notice or order suspending any permit required by this Chapter, when such notice or order has been sustained by the Zoning Board of Appeals, such suspended permit shall be deemed to have been revoked. The proceedings at such hearing, including the findings and decision of the Zoning Board of Appeals, shall be reduced to writing and entered as a matter of public record with the Town Clerk. Such record shall also include a copy of every notice or order issued in connection with the matter. Any person aggrieved by the decision of the Zoning

Board of Appeals may appeal therefrom to any court of competent jurisdiction under the procedures provided by the laws of this State.

B.

No provision or requirement herein contained for a hearing shall in any way whatsoever affect or impair the right of the Commissioner to at any time bring such legal proceedings, actions or prosecutions as otherwise or elsewhere are permitted by law or ordinance.

C.

Whenever the Commissioner finds that an emergency exists which requires immediate action to protect the public health, he/she may, without notice or hearing, issue an order reciting the existence of such an emergency and requiring that such action be taken as he deems necessary to meet the emergency. Notwithstanding the other provisions of this Chapter, such order shall be effective immediately. Any person to whom such order is directed shall comply therewith immediately but, upon written petition to the Commissioner, shall be afforded a hearing as soon as possible. After such hearing, depending upon his/her finding as to whether the provisions of this chapter and the rules and regulations adopted pursuant thereto have been complied with, the Commissioner shall continue such order in effect or modify or revoke it.

§ 44-17 Severability.

If a term, part or provision, section, subdivision or paragraph of this Chapter shall be held unconstitutional, invalid or ineffective, in whole or in part, such determination shall not be deemed to affect, impair or invalidate the remaining terms, parts, provisions, sections, subdivisions and paragraphs.

§ 44-18 Commissioner's regulations.

The Commissioner is authorized to promulgate regulations consistent with the provisions of this Chapter in order to carry out the objectives of this legislation.

§ 44-19 Remedies not exclusive.

The provisions of this Chapter are not exclusive and are in addition to and do not supersede or preempt other remedies or provisions of the town, state, or federal laws and housing codes as may apply.

§ 44-20 Fees.

A.

Certificate issuance. There is no fee at the time of application, for the issuance of a rental dwelling unit registration certificate. The certificate shall be valid for three (3) years. Upon application, the owner shall schedule the property for an inspection at which point a fee of seventy-five dollars (\$75) per rental unit shall be paid.

B.

Short term rental dwelling unit certificate fees. All owners engaged in short term rentals where the property is owner occupied, shall pay an annual fee of Two Hundred Fifty Dollars (\$250.00) per unit. The owner of a property engaged in short term rentals where the property is not owner occupied shall pay an annual fee of Five Hundred Dollars (\$500.00) per unit.

Renewal fee. The owner of a rental dwelling unit shall pay an annual renewal fee of Seventy Five Dollars and Zero Cents (\$75.00) per rental unit. The owner remains obligated to pay such fee during ownership of the rental dwelling unit and shall pay any delinquencies therein before transferring all or any part of the ownership of said unit. Notwithstanding the foregoing, a new owner making application for a certificate is obligated, and shall be required, to pay all such current and delinquent annual fees with the application. All funds generated from the Rental Dwelling Unit Registration Ordinance shall be placed in a designated account. The use of these funds shall be solely for the hiring of an additional staff person and/or necessary equipment for the Rental Dwelling Unit Registration Program in the Building Department.

C.

No fee for new buildings. There shall be no fee charged for the issuance of a rental dwelling unit registration certificate for new dwellings at the completion of their construction covered by a building permit.

D.

Inspection fees. Every property owner shall pay a fee of Seventy-Five Dollars and Zero Cents (\$75.00), to be assessed against the property, for each inspection after the second inspection in which violations of a state or local building code are found, unless such fee is waived by the Commissioner. Inspectors shall assess the fee, after consultation with the Commissioner, when, in the evaluation of the inspector, the status of the violation has not progressed or been satisfactorily completed. The fee shall not be applicable to inspections ordered after the commencement of a court action.

APPENDIX B

B. Westchester County Model Ordinance

Model Ordinance Accessory Dwelling Unit (ADU) Westchester County Department of Planning November, 2019

1. Purpose and Intent. Accessory dwelling units are allowed in certain situations to:
 - a. Create new housing units while respecting the look and scale of single-dwelling development;
 - b. Support more efficient use of existing housing stock and infrastructure;
 - c. Offer environmentally friendly housing choices with less average space per person and smaller associated carbon footprints;
 - d. Provide housing that responds to changing family needs, smaller households, and increasing housing costs; and
 - e. Provide accessible housing for seniors and persons with disabilities.
2. Definition. An accessory dwelling unit (ADU) is a smaller, secondary home on the same lot as a primary dwelling. ADUs are independently habitable and provide the basic requirements of shelter, heating, cooking, and sanitation. There are two types of ADUs:
 - a. Accessory apartments are attached to or part of the primary dwelling. Examples include converted living space, attached garages, basements or attics; additions; or a combination thereof.
 - b. Accessory cottages are detached structures. Examples include converted garages or new construction.
3. Eligibility. An ADU may be added to a house on any residentially zoned lot.
4. Number. One ADU is permitted per residentially zoned lot.
5. Occupancy. A lot or parcel of land containing an ADU shall be occupied by the owner of the premises, and the owner may live in either the ADU or the primary dwelling unit.
6. Creation. An ADU may be created through new construction, conversion of an existing structure, addition to an existing structure, or conversion of a qualifying existing house to an accessory cottage while simultaneously constructing a new primary dwelling on the site.
7. Density. ADUs are exempt from the residential density standards of this code.
8. Approval. The Building Inspector/Administrator must approve the proposed ADU as complying with the standards of this ordinance. Applications for ADUs must meet the following criteria:
 - a. The applicant must demonstrate that the ADU complies with all development and design standards of this section.
 - b. The applicant must demonstrate that the proposed modifications comply with applicable building and fire safety codes.
 - c. The applicant must provide certification by the Westchester County Department of Health that the water supply and sewage disposal facilities are adequate for the projected number of residents.
9. Application Fees and Information. Application fees for ADU's shall not be more than 30 percent of the application fee for a single-family dwelling unit. The information required on the applications for creating or legalizing ADU's shall be the same information that is required to construct a single-family dwelling unit.
10. Occupancy and Use. Occupancy and use standards for an ADU shall be the same as those applicable to a primary dwelling on the same site.
11. Design. Design standards for ADUs are stated in this section. If not addressed in this section, base zone development standards apply. All ADUs (accessory apartments and accessory cottages) must meet the following requirements:
 - a. All ADU's:
 - i. Size. An ADU may be no more than 800 square feet or the size of the primary dwelling, whichever is less.
 - ii. Parking. No additional parking is required for an ADU. Existing required parking for the primary dwelling must be maintained or replaced on-site.
 - b. Accessory apartments must meet the following additional requirements:
 - i. Location of entrances. Only one entrance may be located on the facade of the primary dwelling facing the street, unless the primary dwelling contained additional entrances before the accessory apartment was created.
 - ii. Exterior stairs. Fire escapes or exterior stairs for access to an upper level accessory apartment shall not be located on the front of the primary dwelling.
 - c. Accessory cottages must meet the following additional requirements:
 - i. Height. The maximum height allowed for an accessory cottage is the lesser of [20-25] feet or the height of the primary dwelling.
 - ii.

Building setbacks. Accessory cottages must be located at least six feet behind the primary dwelling, unless the accessory cottage is in an existing detached structure that does not meet this standard. iii. Building coverage. The building coverage of an accessory cottage may not be larger than the building coverage of the primary dwelling. iv. Yard setbacks. No portion of an existing building that encroaches within a required yard setback may be converted to or used as an accessory cottage unless the building complies with setback exemptions available elsewhere in the code (e.g. garages)

APPENDIX C

C. Westchester County Housing Needs Assessment – Croton Profile

D. Model FAH Floating Zone – Rye Brook, NY

250-26.1 FAH Fair and Affordable Housing District.

[Added 12-13-2011 by L.L. No. 8-2011]

A.

Findings. The Village of Rye Brook finds that:

(1)

The 2009 Stipulation and Order of Settlement and Dismissal ("Stipulation") in the case of United States of America ex rel. Anti-Discrimination Center of Metro New York, Inc. v. Westchester County, New York, requires Westchester County to implement a plan to provide 750 units of fair and affordable housing in eligible municipalities throughout the county;

(2)

The Village of Rye Brook has been identified as an eligible municipality for the development of fair and affordable housing pursuant to the terms of the Stipulation;

(3)

Pursuant to the Stipulation, Westchester County has developed a Fair and Affordable Housing Implementation Plan which includes model ordinance provisions for consideration by the eligible municipalities in an effort to ensure the provision and promotion of fair and affordable housing development throughout the county;

(4)

The model ordinance provisions, as modified to suit the needs of the Village of Rye Brook, set forth the necessary requirements to encourage the development of fair and affordable housing and ensure such housing remains fair and affordable for at least the fifty-year period as required pursuant to the Stipulation;

(5)

Equitable distribution of affordable housing promotes sustainable and integrated residential patterns, increases fair and equal access to economic, educational and other opportunities and advances the health and welfare of the residents of the Village of Rye Brook;

(6)

A streamlined and flexible land use review process for fair and affordable housing development projects is necessary to promote and encourage the development of such housing within the Village of Rye Brook; and

(7)

Development of fair and affordable housing in a way that affirmatively furthers fair housing is a matter of public interest and promotes the general health, safety and welfare of the community.

B.

Purpose. The FAH District is a floating zoning district, as hereinafter defined, unmapped at its initial adoption, that may be applied to particular parcels by an amendment to the Zoning Map of the Village of Rye Brook upon the Village of Rye Brook Board of Trustees' own motion or upon an applicant's submission of a Petition, as hereinafter defined, and approval of the Petition by the Board of Trustees. The Board of Trustees finds that the purpose of this district is to provide flexible land use regulations, a streamlined permitting process and incentives to encourage the development of fair and affordable housing within the Village that will remain fair and affordable for at least 50 years as required pursuant to the Stipulation. The FAH District is established in furtherance of the public health, safety and welfare of the Village by encouraging a balanced demographic.

C.

Applicability. The provisions herein shall apply to a Petition and application for site plan and/or subdivision approval regarding any parcel(s) in any zoning district in the Village of Rye Brook for the construction of affordable housing, provided at least 50% of the proposed dwelling units will be AFFH units.

D.

Definitions. As used in this section, the following terms shall have the meanings indicated:

AFFORDABLE AFFIRMATIVELY FURTHERING FAIR HOUSING (AFFH) UNIT

(1)

A for-purchase housing unit that is affordable to a household whose income does not exceed 80% of the area median income (AMI) for Westchester County as defined annually by the U.S. Department of Housing and Urban Development (HUD) and for which the annual housing cost to a unit, including common charges, principal, interest, taxes and insurance (PITI) does not exceed 33% of 80% AMI, adjusted for family size and that is marketed in accordance with the Westchester County Fair and Affordable Housing Affirmative Marketing Plan; or

(2)

A rental housing unit that is affordable to a household whose income does not exceed 60% AMI and for which the annual housing costs of the unit, defined as rent plus any tenant-paid utilities, does not exceed 30% of 60% AMI, adjusted for family size and that is marketed in accordance with the Westchester County Fair and Affordable Housing Affirmative Marketing Plan.

FIXED IMPROVEMENT

An improvement to real property which has been attached to the property in such a way as to be an integral part of the premises, and its removal would do harm to the building or land.

FLOATING ZONING DISTRICT

Zoning district with boundaries which are not fixed by the ordinance which establishes the district and outlines procedures for fixing the boundaries, but which are established by later amendment to the Zoning Map of the Village of Rye Brook.

PETITION

A written petition for an amendment to the Zoning Map of the Village of Rye Brook.

PROGRAM ADMINISTRATOR

A local not-for-profit agency designated by the Board of Trustees.

E.

Application procedure.

(1)

Pre-submission sketch plan conference.

(a)

Prior to submission of a Petition to the Board of Trustees, the applicant shall file with the Building Department a request for a pre-submission sketch plan conference. The purpose of the pre-submission sketch plan conference is to expedite the development application review process by identifying early-on any issues, concerns, zoning code compliance and coordination matters that may reasonably be expected to arise during the review of the application and to propose strategies to address these matters. A non-binding conceptual timeline for review of the application shall also be established at the pre-submission sketch plan conference. The following representatives from the Village of Rye Brook, or their designees, may attend the pre-submission sketch plan conference: Mayor, Village Administrator, Building Inspector,

Superintendent of Public Works/Village Engineer, Planning Consultant and Chairperson of the Planning Board. Comments and suggestions made by Village representatives at the pre-submission sketch plan conference shall not be binding upon the Village.

[Amended 10-27-2020 by L.L. No. 9-2020]

(b)

Sketch plan and recommended submission.

[1]

A request for a pre-submission sketch plan conference shall be accompanied by a sketch plan which shall include the following:

[a]

Approximate location and dimensions of proposed principal and accessory structures;

[b]

Preliminary identification and calculation of the number of proposed AFFH Units;

[c]

Map of the area at a convenient scale which clearly shows the location of the site in respect to nearby streets, rights-of-way and adjacent properties; and [d] Brief written statement describing the proposed development.

[2]

In addition, it is recommended that the applicant submit the following prior to a pre-submission sketch plan conference:

[a]

Survey map accurately reflecting existing conditions and defining precisely the boundaries of the property, setbacks of all structures, location of easements and such other information as required by the Building Inspector or Superintendent of Public Works/Village Engineer, which may include but is not limited to a topographical survey. Such survey shall be certified by a New York State licensed land surveyor no more than one year prior to the date of the application;

[Amended 10-27-2020 by L.L. No. 9-2020]

[b]

Map of the subject property at a convenient scale which clearly shows easements, wetlands, watercourses, steep slopes and other existing and proposed pertinent features;

[c]

Topographic data at a minimum contour interval of two feet, showing existing and proposed contours on the property and a minimum of 25 feet into all adjacent properties;

[d]

Zoning Table; and

[e]

Such other information as the Building Inspector or Superintendent of Public Works/Village Engineer may reasonably require.

[Amended 10-27-2020 by L.L. No. 9-2020]

(2)

Submission of a Petition and application for site plan and/or subdivision approval. Application to rezone property to FAH in connection with a proposed development containing AFFH Units shall be made in the form of a Petition to the Board of Trustees sufficient to enable the Board of Trustees to evaluate the development proposal and its consistency with the purpose, criteria, minimum standards and general design standards set forth herein. The Petition shall be accompanied by an application for site plan and/or subdivision approval, where applicable, which shall include the information set forth at §§ **209-3C** and **219-30** in addition to a statement setting forth the percentage, type, number of bedrooms and location of AFFH Units. All application materials shall be submitted in electronic file format acceptable to the Building Department in addition to at least eight paper copies, or such other format or amount as determined by the Building Department. The Building Department may waive the electronic submission requirement only in extraordinary cases of technical infeasibility.

[Amended 10-28-2014 by L.L. No. 9-2014]

(a)

Waiver. Upon a finding by the Board of Trustees, based upon a recommendation by the Building Inspector or Superintendent of Public Works/Village Engineer that, due to the particular character or limited nature of development or change in use or to special conditions peculiar to a site, the submission of certain portions of information normally required as part of the site plan or preliminary plat is inappropriate or unnecessary or that strict compliance with said submission requirements will cause extraordinary and unnecessary hardship, the Board of Trustees may waive such submission requirements whenever, in the opinion of the Board of Trustees, such waiver will be consistent with the goal of promoting the public health, safety and

general welfare of the community. The findings for granting such waiver shall become a part of the public record.

[Amended 10-27-2020 by L.L. No. 9-2020]

(b)

Where a subdivision application is submitted with a Petition, the applicant shall not be required to obtain preliminary subdivision approval and may proceed directly to review of a final subdivision plat.

(c)

To the maximum extent practicable, upon submission of a complete application as determined by the Building Inspector, the Board of Trustees and the Planning Board shall give priority to such application by placing it above other public hearings, resolutions, reports and other business items on all meeting and work session calendars and agendas.

(3)

Referral to Planning Board. The Board of Trustees shall refer the Petition and application for site plan and/or subdivision approval to the Planning Board for report and recommendation. The Planning Board shall make a recommendation on the Petition and application for site plan and/or subdivision approval and shall report its findings, in writing, to the Board of Trustees.

(4)

Board of Trustees review.

(a)

Upon receipt of a report and recommendation from the Planning Board, the Board of Trustees shall hold a public hearing on the Petition and the application for site plan and/or subdivision approval.

(b)

Following the completion of the public hearing and following review of the application pursuant to the New York State Environmental Quality Review Act,¹ the Board of Trustees may act to approve, approve with modification or conditions, or disapprove the Petition in the exercise of its sole legislative discretion. Within 62 days following the close of the public hearing on the application for site plan and/or subdivision approval, the Board of Trustees shall act to approve, approve with modification or conditions, or disapprove such application(s).

[1]

Editor's Note: See Environmental Conservation Law § 8-0101 et seq.

(c)

Approval of the Petition shall result in an amendment of the Zoning Map to include the parcel(s) in the FAH District.

(d)

Approval of the Petition shall precede an approval of the accompanying site plan and/or subdivision application.

(5)

Duration of approval. Notwithstanding any provision to the contrary, any rezoning permitted as a result of the Board of Trustees' approval of a Petition pursuant to this section shall become null and void, and the zoning of the parcel shall revert back to its original zoning classification by resolution of the Board of Trustees, unless construction pursuant to a valid building permit is commenced within three years of the date of final site plan and/or subdivision approval, whichever approval is later, or such later date as extended by the Board of Trustees. Upon written request of the applicant, the Board of Trustees may grant an extension of the commencement of construction of up to one year upon good cause shown.

(6)

Amendments. Any amendment to an approved site plan and/or subdivision application shall be submitted to the Board of Trustees for review and approval in accordance with the same procedures required under this section, which may include, if applicable, a Petition.

(7)

Renovations, alterations and additions.

(a)

Renovations, alterations and additions to a structure approved in accordance with this section on a lot rezoned to the FAH District shall comply with the following:

[1]

The bulk and dimensional requirements of the property's zoning designation existing prior to its rezoning to FAH, including any amendments to such requirements; and

[2]

Any zoning modifications approved by the Board of Trustees as set forth in the approval resolution.

(b)

The applicant may request a variance from the applicable zoning requirements. The Board of Trustees shall have final approval authority for any request for a

variance from the applicable zoning requirements and shall review such request pursuant to the standard set forth in New York State Village Law § 7-712-b.

F.

Review criteria.

(1)

Permitted principal uses:

(a)

Attached or detached one-family dwellings;

(b)

Attached or detached two-family dwellings;

(c)

Multifamily dwellings; and

(d)

Mixed use (nonresidential and residential), provided nonresidential uses are permitted in the zoning district applicable to the subject property immediately prior to its rezoning to FAH.

(2)

Required AFFH Unit component.

(a)

Within all residential developments of two or more units created by subdivision or site plan approval, no less than 50% of the total number of units shall be created as AFFH Units.

(b)

No preferences shall be utilized to prioritize the selection of income-eligible tenants or purchasers for AFFH Units created under this subsection, unless otherwise authorized by Westchester County.

(c)

All AFFH Units, whether for purchase or for rent, shall be marketed in accordance with the Westchester County Fair and Affordable Housing Affirmative Marketing Plan.

(3)

Dimensional and bulk requirements.

(a)

The dimensional and bulk requirements applicable in the FAH District shall be those of the property's existing zoning designation prior to its rezoning to FAH, except as modified or waived by the Board of Trustees.

(b)

The Board of Trustees may permit modification or waiver of the applicable dimensional and bulk requirements as it deems appropriate upon balancing important concerns of the community's health, safety and welfare, including:

[1]

Consistency with the purpose and intent of the Village of Rye Brook Zoning Code and Official Map;

[2]

Furthering fair and affordable housing within the Village;

[3]

Harmony with the appropriate and orderly development of the immediate area;

[4]

Impacts upon the orderly development and quality of life for neighboring areas;

[5]

Advancement of economic development within the Village;

[6]

The location, nature and height of buildings, location of parking and the nature and extent of landscaping on the site such that the modified dimensional or bulk requirement will not hinder or discourage the appropriate development and use of adjacent land and buildings or substantially impair the value thereof;

[7]

Adverse environmental impacts; and

[8]

Whether the requested modification or waiver is the minimum necessary to maintain the economic viability of the development proposal.

(c)

In granting any modification or waiver, the Board of Trustees may attach such conditions as are, in its judgment, necessary to secure substantially the objectives of the standards or requirements so modified or waived.

(d)

Minimum floor area. The minimum gross floor area per AFFH Unit shall not be less than 80% of the average floor area of nonrestricted housing units in the development, if any, and no less than the gross floor area set forth below, except where a greater gross floor area is required pursuant to the New York State Uniform Fire Protection and Building Code,²¹ in which case such requirement shall apply. Gross floor area shall be measured from the exterior wall surfaces and/or center line of common wall(s) separating adjacent common space and/or dwelling units.

Dwelling Unit	Minimum Gross Floor Area
Efficiency	450 square feet
One-bedroom	675 square feet
Two-bedroom	750 square feet
Three-bedroom	1,000 square feet (including at least 1.5 baths)
Four-bedroom	1,200 square feet (including at least 1.5 baths)

[2]

Editor's Note: See Executive Law § 370 et seq.

(e)

Occupancy standards. For the sale or rental of AFFH Units, the following occupancy schedule shall apply, except where a lesser occupancy is required pursuant to the New York State Uniform Fire Protection and Building Code, in which case such requirement shall apply:

Number of Bedrooms	Number of Persons
Efficiency	Minimum: 1, maximum: 1
1	Minimum: 1, maximum: 3
2	Minimum: 2, maximum: 5
3	Minimum: 3, maximum: 7
4	Minimum: 4, maximum: 9

(4)

Unit appearance and integration in new developments and existing neighborhoods.

(a)

Within new one- or two-family developments and existing one- or two-family zoning districts, the AFFH Units may be one-, two- or multi-family homes. All such units shall be indistinguishable in appearance, siting and exterior design from the market-rate one-family homes in the development or the one- or two-family homes in the existing neighborhood, to the greatest degree possible. Interior finishes and furnishings may differ in quality from those of the market-rate units.

(b)

Within new multifamily developments of four or more families in all other zoning districts, the AFFH Units shall be physically integrated into the design of the development and shall be distributed among the various housing unit sizes (efficiency, one-, two-, three- and four-bedroom units) in the same proportion as market-rate units in the development. The AFFH Units shall not be

distinguishable from the market-rate units from the outside or building exteriors. Interior finishes and furnishings may differ in quality from those of the market-rate units.

G.

Maximum rent and sales price. The maximum monthly rent for an AFFH Unit and the maximum gross sales price for an AFFH Unit shall be as set forth in the current edition of the Westchester County Area Median Income (AMI), Sales & Rent Limits available from the County of Westchester.

H.

Duration of affordability. Units designated as AFFH Units shall remain affordable for a minimum of 50 years from the date of the issuance of the initial certificate of occupancy for rental properties and from the date of the original sale for ownership units.

I.

Property restrictions.

(1)

A declaration of restrictive covenants shall be submitted to the Program Administrator for its approval in recordable form acceptable to the Village Attorney for any property containing an AFFH Unit, whether for rent or for purchase, which shall ensure that the AFFH Units shall remain subject to affordable housing regulations for the minimum fifty-year period set forth at § **250-26.1H** of this chapter.

(2)

The declaration of restrictive covenants shall state that the AFFH Unit shall be the primary residence of the resident household selected to occupy the unit.

(3)

Upon approval by the Program Administrator the declaration of restrictive covenant shall be recorded in the Land Records Division of the Office of the Clerk of the County of Westchester prior to the issuance of a certificate of occupancy for any AFFH Unit.

J.

Affirmative marketing. The AFFH Units created under the provisions of this section shall be sold or rented, and resold and re-rented during the period of affordability established by the Board of Trustees during a time period of not less than 50 years, only to qualifying income-eligible households. Such income-eligible households shall be solicited in accordance with the requirements, policies and protocols established in the Westchester County Fair and Affordable Housing Affirmative Marketing Plan, for so long as the Westchester

County Fair and Affordable Housing Affirmative Marketing Plan remains in effect, so as to ensure outreach to racially and ethnically diverse households.

K.

Resale requirements.

(1)

The owner of an AFFH Unit shall be responsible for such unit's resale in conformance with the provisions of this chapter, procedures of the Program Administrator and any applicable federal, state or local requirements. The owner shall provide the Program Administrator with a notice of intent to sell or otherwise transfer title prior to entering into any contract for sale or transfer of the units. The Program Administrator will inform the owner in writing, of the applicable income eligibility and maximum resale price, as determined by the Program Administrator. Prior to closing, the owner shall submit to the Program Administrator sufficient information to demonstrate compliance under this chapter, the procedures of the Program Administrator and any federal, state or local requirements, to the satisfaction of the Program Administrator.

(2)

Title to property containing an AFFH Unit shall be restricted so that in the event of any transfer of title, including resale, by the home buyer or any successor, the resale price shall not exceed the then-maximum sales price for said unit, as determined in accordance with § **250-26.1G** of this chapter or the sum of the following, whichever is greater:

(a)

The actual purchase price of the unit by the home buyer;

(b)

The value of any Fixed Improvements made by the home buyer, as determined by the Program Administrator; and

(c)

Reasonable and necessary expenses incidental to the resale.

L.

Lease renewal requirements.

(1)

Renters of AFFH Units shall sign leases for a term of no more than two years. As long as a resident remains eligible and has complied with the terms of the lease, the resident shall be offered renewal leases for a term of no more than two years each. Prior to execution of a renewal lease, the owner shall submit sufficient information to the Program Administrator for the Program Administrator's verification of the proposed renter's income eligibility.

(2)

Renewal of a lease shall be subject to the conditions of federal, state or county provisions that may be imposed by the terms of the original development funding agreements for the development to which the AFFH Unit is a part or to the provisions of other applicable local law. If no such provisions are applicable and if a resident's annual gross income should subsequently exceed the maximum then allowable, then said resident shall pay the greater of the rent amount payable under the provisions of this section or 30% of the resident's monthly adjusted household income, provided that the increased rent may not exceed the market rent in that development for units within the same number of bedrooms for a term of not more than one year.

M.

Administration and monitoring.

(1)

The Board of Trustees shall, by resolution, designate a local not-for-profit agency to serve as Program Administrator.

(2)

The Program Administrator shall be responsible for administering the requirements of § **250-26.1J**, **K** and **L** of this chapter by monitoring the AFFH Units during their periods of affordability and by monitoring compliance with the affirmative marketing responsibilities of the developers of the AFFH Units