

**RESOLUTION ADOPTING A LOCAL LAW AMENDING VILLAGE  
CODE §300-150, HOUSING, TO ESTABLISH AN AFFORDABLE  
HOUSING PROGRAM ADMINISTRATION**

**WHEREAS**, the Village Board of the Village of Sag Harbor is seeking to establish affordable and workforce housing opportunities within the Village to maintain its year-round residency; and

**WHEREAS**, in furtherance of this goal, the Board of Trustees is considering enacting a local law amending Village Code §150, Housing, to establish an affordable housing program administration; and

**WHEREAS**, this local law was introduced for discussion purposes on March 8, 2022, a public work session was held on this law on March 11, 2022, the law was formerly introduced at the April 12, 2022 Village Board meeting and public hearings were held on May 10, 2022 and June 14, 2022, at which time all persons either for or against the proposed local law were heard; the Village Board hereby incorporates the record of all prior public meetings held on this local law herein by reference; and

**WHEREAS**, the Suffolk County Planning Commission determined that the proposed legislation is a matter for local determination by letter dated June 10, 2022; and

**WHEREAS**, the Harbor Committee conducted a consistency review on Thursday, April 7, 2022 and found the proposed legislation consistent with Chapter 275; and

**WHEREAS**, the Village of Sag Harbor Planning Consultant, Nelson Pope & Voorhis, determined that the proposed action is a Type II Action pursuant to the State Environmental Quality Review Act, (SEQRA), and no further environmental review is required; and now, therefore, be it

**RESOLVED**, that the companion planning study prepared in connection with the proposed local laws establishing affordable housing the Village of Sag Harbor entitled “Planning Analysis - Village of Sag Harbor Affordable Housing Legislation” dated, June 2022 is hereby adopted; and be it further

**RESOLVED**, that the following local law is hereby adopted:

LOCAL LAW NO. 11 OF 2022

Be it enacted by the Village Board of Trustees of the Village of Sag Harbor as follows:

A LOCAL LAW to amend Village Code §150, Housing, to establish an affordable housing program administration.

### **SECTION 1. Legislative Intent.**

Sag Harbor has been made and defined by people whose lives and livelihood have come from its unique location and history. Its modern economy is now more diverse and dynamic. Tourism, recreation, and the arts make it an attractive location for full- and part-time residents. Village businesses, schools, volunteer organizations and governmental services rely on individuals and families who make Sag Harbor their home. They are the core of the community, and yet, the cost of living, particularly housing, increasingly prevents them from living and working and doing business here. The goal of the legislation is help maintain a vital, cohesive, and prosperous population who are or wish to be vested in the full-time activities of a thriving village. It seeks to do this by helping make housing costs affordable for these residents in need.

The Mayor and Board of Trustees have as a central goal to assist those who currently live and work here, but who may not be able to remain here for lack of affordable housing. At the same time, it is within our goal to address the needs of young adults to find a place to make a home in their own community and seniors who may wish to remain in this community.

**SECTION 2. Amendment.** Please see the following and amend Village Code §150, Housing, by deleting those words that are stricken and adding those words that are underlined:

#### Chapter 150. Administration of Affordable Housing Units

##### § 150-1. Purpose; findings.

###### A.

The purpose of this chapter is to provide for control and administration of affordable housing units created pursuant to Chapter 300 (Zoning) of the Village of Sag Harbor. The administration of the affordable housing program seeks to make housing costs affordable to the full income range of year-round residents in need.

##### § 150-2. Definitions.

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

## **AFFORDABLE AND WORKFORCE HOUSING**

Housing for individuals and families at or below 120% of the median income for the Nassau-Suffolk primary metropolitan statistical area as defined by the federal Department of Housing and Urban Development. For the purposes of this article, the affordable and workforce housing units shall be of consistent design to those of the rest of the development.

## **AFFORDABLE HOUSING UNIT INVENTORY**

The listing maintained by the Village, or its designee, of units reserved for low and moderate-income.

## **AFFORDABLE UNIT**

A below-market-rate dwelling unit that is facilitated through zoning incentives pursuant to Chapter 300 (Zoning)-and the cost for which rent or mortgage are not to exceed 35% of the occupants' net income.

## **AFFORDABILITY COVENANT**

A restriction imposed on a deed to real property and the certificate of occupancy for a dwelling unit reserved for affordable units that limits equity upon resale of the real property, restricts capital improvements, and ensures long-term affordability.

## **APARTMENT**

As defined in § 300-1 of the Village Code.

## **APARTMENT HOUSE**

As defined in § 300-1 of the Village Code.

## **CERTIFICATE OF ELIGIBILITY**

The document issued by the Village, or its designee, that confirms the applicant (head of a household), meets the criteria for an income-eligible household.

## **COMMUNITY SERVICES PROVIDER**

As defined in § 300-1 of the Village Code.

## **CONSUMER PRICE INDEX**

The Consumer Price Index (CPI) as published by the United States Department of Labor, Bureau of Labor Statistics for the New York Metropolitan Area.

### **DENSITY BONUS**

A density increase of at least 10% over the otherwise maximum allowable residential density under the Village Zoning Code, Chapter 300, as of the date of the application by the applicant to the Village. All density calculations resulting in fractional units shall be rounded up to the nearest whole number. The granting of a density bonus shall not require, in and of itself, a comprehensive plan amendment, zoning change or other approval. The density bonus shall not be included as part of the calculation which determines the number of affordable units that constitute 10% of the total.

### **HEAD OF HOUSEHOLD**

The individual considered the head of the household for an individual family, which for purposes of this chapter, shall be the applicant.

### **INCOME-ELIGIBLE HOUSEHOLDS**

Those individuals/families whose household incomes are classified as at or below 120% of the median income for the Nassau-Suffolk primary metropolitan statistical area as defined by the federal Department of Housing and Urban Development.

### **MULTI-FAMILY UNIT**

As defined in § 300-1 of the Village Code.

### **MULTIPLE DWELLING, FAMILY RESIDENTIAL DEVELOPMENT**

Developments subject to the provisions of § 300-80.3 of the Village Code.

### **PERMANENT FIXED IMPROVEMENT**

An improvement to a lot or unit reserved for an affordable or workforce housing income household which cannot be removed without substantial damage to the subject premises or total loss of value of said improvements. No adjustment shall be deemed a permanent fixed improvement unless the actual initial cost of the improvement to the owner exceeds 1% of the purchase price paid by the owner.

## **QUALIFIED ACTIVE MEMBER OF FIRE/EMS VOLUNTEER COMMUNITY SERVICE**

A volunteer involved in providing emergency medical services or fire protection in the Village of Sag Harbor, including but not limited to volunteer emergency medical technicians, volunteer firefighters, volunteer fire police, as decided by the administration or bylaws of the given agency providing such fire protection or emergency services. For purposes of administering the provisions of this chapter for qualified active members of fire/EMS volunteer community services, the Village of Sag Harbor shall utilize the approved list compiled by the given agency for the Length of Service Award Program (LOSAP) and supplemental listings provided by the given agency which list persons who have met the point requirements of LOSAP having remained active in service but no longer are eligible for LOSAP listing due to age restrictions, and further provided that the bylaws of the agency providing fire protection or ambulance services in the Village are not exclusionary in nature in order to conform to the Fair Housing Act.<sup>[1]</sup>

### **VILLAGE**

The Village of Sag Harbor.

[1]

Editor's Note: See 42 USC § 3601 et seq.

### **§ 150-3. Interagency coordination; priority review.**

A.

Whenever the Planning Board receives a referral on a special exception application pursuant to § 300-11.5, from the Village Trustees that contains affordable units, the Planning Board shall assign a first priority status to the application as the next agenda item (or as soon as practicable) to be reviewed by the Planning Board in the performance of its duties. Such applications shall retain first priority status for as long as there is compliance with all sections of this Code through the approval process, including resubmissions and revisions and if, in the opinion of the Planning Board, the applicant continues to apply a good-faith, diligent effort to prepare, submit and process the application. Should the application no longer comply with the sections cited herein or, in the opinion of the Planning Board, the applicant is not applying in a good-faith effort with respect to this Code, a normal priority shall be reassigned to the application by a written resolution of the Planning Board

### **§ 150-4. Administration and control of housing opportunities created pursuant to Chapter 300 (Zoning) of Village Code.**

A.

The Village or its designee shall be responsible for the administration and enforcement of affordable units, as defined in § 150-2, created pursuant to Chapter 300 (Zoning) of the Village Code.

B. The Village or its designee shall promulgate all rules and regulations, including model agreements, subject to Village Board approval, and any other instruments necessary to implement this chapter and the provisions of Chapter 300 (Zoning).

C.

The Village or its designee shall cause to be prepared and shall maintain an affordable housing unit inventory, as defined in § 150-2, of all units reserved for low and moderate-income households created pursuant to Chapter 300 (Zoning).

D.

To the extent permitted by law and federal, state, and county programs, priority for affordable housing opportunities facilitated by the zoning incentives pursuant to Chapter 300 (Zoning) shall be as follows:

(1)

Income-eligible households residing year-round or working in the Village of Sag Harbor. For those persons working in the Village of Sag Harbor, a higher priority will be given to those income eligible households in which at least one adult family member is currently employed by the Village of Sag Harbor. Higher priority will be given to at least one adult member who, in addition to being income eligible, is a qualified active member of Sag Harbor Fire/EMS volunteer community services.

(2)

Income-eligible households residing year-round or working in the Town of Southampton or Town of East Hampton. Higher priority will be given to at least one adult member who, in addition to being income eligible, is a qualified active member of Sag Harbor Fire/EMS volunteer community services, and then to those income eligible households residing in the Sag Harbor School District.

E.

Where a unit is reserved for income-eligible households and restricted pursuant to a grant or subsidy from the federal government, State of New York or other municipal agency to provide affordable housing opportunities consistent with the intent of this chapter, the Village or its designee may accept such eligibility priorities and restrictions in lieu of the restrictions set forth in this chapter, subject to approval by resolution by the Village Trustees.

### **§ 150-5. Policies and procedures.**

A.

Lottery procedures.

(1)

A lottery administered by the Village, or its designee, for the units reserved for income-eligible households created pursuant to Chapter 300 (Zoning), shall be held consistent with the procedures promulgated by the New York State Affordable Housing Corporation.

(2)

Certificates of occupancy (COs) for any units in the housing development shall not be issued by the Building Inspector until the housing lottery is administered by the Village or its designee for the units reserved for income eligible households created pursuant to Chapter 300 (Zoning).

(3)

The Building Inspector may issue COs for up to 50% of the market-rate units within a particular development prior to issuing a certificate of occupancy for the affordable units; thereafter, certificates of occupancy shall be issued for all the affordable units prior to issuing any additional COs for the market-rate units.

B.

Initial sales price or rental price for affordable units; ongoing requirements.

(1)

Upon receipt of an application for the issuance of a certificate of occupancy for a dwelling unit reserved for an income-eligible household, or earlier if requested by the owner, but not prior to the issuance of a building permit, the Building Inspector shall send a copy of the application to the Village or its designee, who shall inform the owner in writing within 30 days of the maximum monthly rental or initial maximum sales price for the dwelling unit and the maximum household income for eligibility for occupancy of said unit.

(2)

The maximum monthly rental or initial maximum sales price for a dwelling unit and the maximum household income for eligibility for occupancy of said unit shall be determined by the Village or its designee in accordance with the following criteria, unless provided for under other applicable law for a particular development.

(a)

Maximum monthly rent. The maximum gross monthly rent (rent plus tenant-paid utilities) shall not exceed the Small Area Fair Market Rent (SAFMR) as promulgated for Sag Harbor using zip code 11963, by the Secretary of the United States Department of Housing and Urban Development (HUD).

(b)

Maximum sales price. The sale price for the dwelling unit shall not exceed 300% of the maximum annual aggregate family income for a family earning at or below 120% of the median family income for a family of that size promulgated for the Nassau-Suffolk, NY HUD Metro FMR Area and published annually by the Secretary of the United States Department of Housing and Urban Development pursuant to Section 3(b)(2) of the United States Housing Act of 1937 [42 U.S.C. § 1437a(b)(2)] and Part 813, Subpart A, Section 102, of Title 24, Subtitle B, of the Code of Federal Regulations (24 CFR 813.102).

(3)

To the extent practical, units reserved for affordable units shall meet or exceed the following minimum dwelling unit size to accommodate household or family size:

<u>Household or Family Size</u>	<u>Minimum Dwelling Unit Size</u>
<u>1</u>	<u>Efficiency Unit</u>
<u>2</u>	<u>1-bedroom</u>
<u>3 to 4</u>	<u>2-bedroom</u>
<u>5 to 6</u>	<u>3-bedroom</u>
<u>7 to 8</u>	<u>4-bedroom</u>

Note: The table above shall not be construed as a limitation on occupancy.

(4)

No certificate of occupancy may be issued by the Building Inspector until the Village or its designee has provided the maximum monthly rental or initial maximum sales price for the dwelling unit and the maximum household income for eligibility for occupancy of said unit, except as provided elsewhere in this chapter.

C.

Eligibility certificates required.

(1)

The Village or its designee shall certify the eligibility of all applicants for rental or sale of affordable units. An eligibility certificate shall be issued to said applicant in writing and shall be dated.

(2)

In the case of rental units, the Village or its designee shall annually reexamine or cause to be reexamined the eligibility of each rental occupant household.

(3)



On or before March 31 of each year thereafter, the Village or its designee shall notify the owner or manager of the subject affordable unit as to the rent, sales and income eligibility requirements for such units based upon figures derived from the preceding year unless otherwise provided for under applicable law for a particular development.

(4)

The owner or manager of the affordable unit shall certify to the Village or its designee on or before May 31 of each year that all rentals comply with the provisions of this chapter and Chapter 300.

(5)

In the case of for-sale units, the Village or its designee shall ensure the eligibility of a purchaser is certified prior to closing of title.

D.

Restrictions on rental units. Unless otherwise prohibited as a condition of approval for the particular development under Chapter 300 (Zoning) or within covenants and restrictions associated with the subject property, affordable rental units shall be subject to the following conditions:

(1)

The apartment or dwelling unit shall remain the primary residence of the income-eligible household for the term of the lease, and the occupants shall maintain the subject premises in conformity with Chapter 300 (Zoning).

(2)

The apartment or dwelling unit shall not be used or leased as a seasonal rental.

(3)

The lease for said unit shall be for a one-year term. As long as an occupant household remains eligible and has complied with the terms of the lease, the occupant shall be offered a one-year renewal of the lease. If an occupant's annual income shall exceed the eligible income level by more than 20%, and there is an eligible applicant for the unit, the occupant household may complete the current lease term and shall be offered, if available, another unit for which the occupant household is income-eligible, or a market-rate unit in the development. If no such dwelling unit is available, the occupant household may be allowed to sign one additional one-year lease, but no further renewal shall be permitted.

(4)

In the circumstances referenced in Subsection **D(3)** above, if such should occur in the same housing complex and another unit is available for which the occupant household is income-eligible, the Village or its designee shall have the authority to

request the Building Inspector to substitute certificates of occupancy for the respective units rather than having an occupant household relocate within the same complex, provided that the units are comparable.

E. Restrictions on ownership units.

(1)

The occupant household of an affordable dwelling unit shall occupy the premises as its primary residence and shall not rent or lease the premises or any portion thereof to others.

(a)

The apartment or dwelling unit shall not be used or leased as a seasonal rental.

(2)

Use of a one-family dwelling shall be in conformity with Chapter 300 (Zoning).

(3)

Resale of affordable units.

(a)

The Village shall have first right of refusal to purchase all affordable housing for dwelling units that are offered for resale.

(b)

No individual/family who purchases an affordable housing unit facilitated through the provisions of Chapter 300 may sell their home for a profit within the first three years of ownership.

(c)

The equity realized in units sold after three years of ownership will be based on the equivalent percentage of the Consumer Price Index (CPI) as compiled by the United States Department of Labor. The percentage will be calculated from the date of the initial purchase to the date of resale. In addition, the seller shall be compensated for permanent fixed improvements that have been made to the home. Depreciation shall apply to capital improvements, as applicable.

(d)

Maximum resale price cannot exceed the initial purchase price plus the cost of permanent fixed improvements, adjusted for the change in the consumer price index for "all items" for the New York Metropolitan Area during the period of ownership of such dwelling unit and such improvements plus reasonable and necessary resale expenses.

F.

Distribution of units reserved for affordable units. Affordable units shall be physically integrated into the design of the development in a manner satisfactory to the Planning Board during site plan review, and the bedroom mix of dwelling units associated with the development shall be distributed in the same proportion as all other dwelling units in the development, unless a different proportion is approved by the Planning Board as being better related to the housing needs.

G.

Sustainable affordability.

(1)

All affordable housing units facilitated through the provisions of Chapter 300 shall be affordable in perpetuity. Where required by the Village of Sag Harbor or its designee, affordability covenants must be recorded in the Suffolk County Clerk's Office subject to approval by the Village Attorney

(2)

Where an affordable unit is restricted pursuant to a grant or subsidy from the federal government, State of New York or other municipal agency to provide affordable housing consistent with the intent of this chapter, the Village or its designee may accept such restrictions in lieu of the restrictions set forth in this chapter, provided that the Village Trustees approve by majority vote and file their decision in writing in the office of the Village Clerk.

H.

Certificates of occupancy. All certificates of occupancy issued for affordable dwelling units shall be endorsed with a notation that occupancy of such units is conditioned upon continued compliance with the provisions of Chapter 150, Chapter 300 (Zoning) and all regulations and conditions promulgated thereunder.

I.

Assessment. The encumbrance of an affordability covenants and restrictions on the deeds or certificates of occupancy issued for affordable dwelling units shall be taken into consideration by the Assessor in determining the assessments on such units.

## Article II, Long Island Affordable Workforce Housing Act

[Adopted 1-13-2009 by L.L. No. 2-2009 (Ch. 53B of the 1968 Compilation)]

### § 150-6 Definitions.

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

#### **AFFORDABLE WORKFORCE HOUSING**

Housing for individuals and families at or below 130% of the median income for the Nassau-Suffolk primary metropolitan statistical area as defined by the

~~federal Department of Housing and Urban Development. For the purposes of this article, the affordable workforce housing units shall be of consistent design to those of the rest of the development.~~

## **~~DENSITY BONUS~~**

~~A density increase of at least 10% over the otherwise maximum allowable residential density under the Village Zoning Code, Chapter 300, as of the date of the application by the applicant to the Village. All density calculations resulting in fractional units shall be rounded up to the nearest whole number. The granting of a density bonus shall not require, in and of itself, a comprehensive plan amendment, zoning change or other approval. The density bonus shall not be included as part of the calculation which determines the number of affordable units that constitute 10% of the total.~~

### **§ 150-6 Workforce Housing Program.**

#### **A.**

When the Village Planning Board approves a subdivision plat or site plan for five or more residential units or a mixed-use development that incorporates five or more residential units, except as otherwise provided in Subsection **B** of this section, the applicant shall receive a density bonus or other incentive pursuant to a written agreement between the applicant and the Village, and the Village shall require of the applicant:

#### **(1)**

The set aside of at least 10% of such units for affordable workforce housing on site;  
or

#### **(2)**

The provision of other land and the construction of the required affordable workforce housing units that are not part of the applicant's current subdivision plat or site plan but are to be provided on another site within the Village; or

#### **(3)**

The payment of a fee equal to two times the median income for a family of four for the Nassau-Suffolk primary metropolitan statistical area as defined by the federal Department of Housing and Urban Development, for each additional unit which results, or would have resulted, from the density bonus or, when such fee exceeds the appraised value of each lot resulting from such density bonus, then such fee shall be equal to the appraised value of the lot or lots, or the equivalent thereof, for each additional unit created by the density bonus. All fees collected by the Village as provided in this section shall, at the sole discretion of the Village, be:

**(a)**

Deposited in a single trust fund under the control of the Village to be kept in trust and separate and apart from all other monies of the Village, for the specific purpose of constructing affordable workforce housing, acquiring land for the purpose of providing affordable workforce housing or rehabilitating structures for the purpose of providing affordable workforce housing. Pending expenditures from such trust fund, monies therein may be invested in the manner provided by law. Any interest earned or capital gain realized on the monies so deposited shall accrue to and become part of such trust fund; or

**(b)**

Paid to another local government within the Suffolk County pursuant to an intermunicipal agreement, to be kept in trust and separate and apart from all other monies of such other local government, for the specific purpose of constructing affordable workforce housing, acquiring land for the purpose of providing affordable workforce housing or rehabilitating structures for the purpose of providing affordable workforce housing within such other local government. Pending expenditures from such trust fund, monies therein may be invested in the manner provided by law. Any interest earned or capital gain realized on the monies so deposited shall accrue to and become part of such trust fund; or

**(c)**

Paid into a single trust fund under the control of the Long Island Housing Partnership to be kept in trust and separate and apart from all other monies of such partnership, 50% of which shall be used for the specific purpose of constructing affordable workforce housing, acquiring land for the purpose of providing affordable workforce housing or rehabilitating structures for the purpose of providing affordable workforce housing within Suffolk County. The remaining 50% of such funds shall be used to provide down-payment assistance to eligible homebuyers who qualify for the existing employer assistance housing benefit program administered by such partnership; or

**(d)**

Paid into a single trust fund under the control of the Sag Harbor Community Housing Trust, Inc., to be kept in trust and separate and apart from all other monies of such trust. Such trust fund shall be used for the specific purpose of providing a benefit to the residents and workforce of the Sag Harbor community and surrounding areas by: [Added 2-11-2014 by L.L. No. 3-2014; amended 4-11-2017 by L.L. No. 8-2017]

[1]

Constructing affordable workforce housing, acquiring land for the purpose of providing affordable workforce housing or rehabilitating structures for the purpose of providing affordable workforce housing within the Sag Harbor Community and surrounding areas; or

**[2]**

Providing down-payment assistance or other financial assistance for the purchase of affordable workforce housing by eligible homebuyers as shall be determined by the Board of Trustees within the Sag Harbor Community and surrounding areas; or

**[3]**

Being paid to another local government within Suffolk County pursuant to an intermunicipal agreement, to be kept in trust and separate and apart from all other monies of such other local government, for the specific purpose of constructing affordable workforce housing, acquiring land for the purpose of providing affordable workforce housing, or rehabilitating structures for the purpose of providing affordable workforce housing within such other local government. Pending expenditures from such trust fund, monies therein may be invested in the manner provided by law. Any interest earned or capital gain realized on the monies so deposited shall accrue to and become part of such trust fund; or

**[4]**

Being paid into a single trust fund under the control of the Long Island Housing Partnership (LIHP), to be kept in trust and separate and apart from all other monies of such partnership, 50% of which shall be used for the specific purpose of constructing affordable workforce housing, acquiring land for the purpose of providing affordable workforce housing, or rehabilitating structures for the purpose of providing affordable workforce housing within Suffolk County. The remaining 50% of such funds shall be used to provide down-payment assistance to eligible homebuyers who qualify for the existing Employer Assistance Housing Benefit Program administered by LIHP. The down-payment assistance funds shall be secured by a note and mortgage on the property purchased with such funds and shall be fully repaid to the fund by the recipient upon the sale or refinancing of the aforementioned property.

**B.**

The provisions of this article shall not apply when an applicant elects a lesser percentage than the maximum allowable residential density under the Village Zoning Code, Chapter **300**.

**C.**

The Village shall ensure that all affordable housing units created pursuant to this article remain affordable. Subsequent purchasers of such units shall have at the time of purchase, pursuant to the definition of "affordable workforce housing," an income at or below 120 ~~130~~% of the median income for the Nassau-Suffolk primary statistical area as defined by the federal Department of Housing and Urban Development.

**D.**

Within six months of the establishment of a trust fund, the Village shall issue guidelines and policies which shall govern the expenditure of trust fund monies.

**E.**

Mortgage counseling for the Long Island Workforce Housing Program. Persons purchasing affordable workforce housing created pursuant to this article, or who receive down-payment assistance pursuant to this article, must attend home-buyer education and mortgage counseling provided free of charge through the Long Island Housing Partnership.

Sag Harbor Village

**SECTION 3. Authority**

The Village of Sag Harbor hereby enacts this legislation pursuant to NYS Village Law, NYS Municipal Home Rule Law §§10(1)(i), 10(1)(ii)(a)(6), (11).

**SECTION 4. Severability.**

If any clause, sentence, paragraph, section or part of this local law shall be adjudged by any court of competent jurisdiction to be invalid, the judgment shall not affect, impair or invalidate the remainder of this local law but shall be confined in its operation to the clause, sentence, paragraph, section or part of this local law that shall be directly involved in the controversy in which such judgment shall be rendered.

**SECTION 5. Effective Date.**

This chapter shall take effect immediately upon filing in the office of the Secretary of State pursuant to the Municipal Home Rule Law.