

**NOTICE OF PENDING ORDINANCE**  
**NOTICE IS HEREBY GIVEN**

that at a virtual meeting of the Council of the Borough of North Plainfield held on June 9, 2020 there was introduced and read for the first time, and passed on such first reading, an ordinance, a true copy whereof is printed below and that said Council did then and there fix the regular meeting of said Council to be held on July 21, 2020 at 4:00 p.m. or as soon thereafter as the matter may be heard, and the Borough Council Chambers, 263 Somerset Street, North Plainfield, New Jersey as the place when and where said ordinance will be further considered for final passage, at which time and place, or at any time and place to which such meeting shall from time to time be adjourned, all persons interested will be given an opportunity to be heard concerning such ordinance. At the present time it is anticipated that the regular meeting to be held on July 21, 2020, may also be a virtual meeting. In that event, a Notice of Virtual Meeting will be published and posted on the Borough's website providing the information necessary for all interested persons to be heard concerning such ordinance.

The said ordinance as introduced and passed on first reading as aforesaid is in the following words and figures:

**BOROUGH OF NORTH PLAINFIELD**  
**SOMERSET COUNTY, NEW JERSEY**

**ORDINANCE NO. 20-04**

**AN ORDINANCE REPEALING AND REPLACING IN ITS ENTIRETY ARTICLE IX OF CHAPTER XXII OF THE "CODE OF THE BOROUGH OF NORTH PLAINFIELD" REGARDING AFFORDABLE HOUSING, TO ADDRESS THE REQUIREMENTS OF THE FAIR HOUSING ACT AND THE UNIFORM HOUSING AFFORDABILITY CONTROLS (UHAC) AND TO COMPLY WITH THE BOROUGH'S THIRD ROUND AFFORDABLE HOUSING OBLIGATIONS**

**WHEREAS**, the North Plainfield Borough Planning Board adopted a 2017 Housing Element and Fair Share Plan, which plan was subsequently endorsed by the Mayor and Borough Council; and

**WHEREAS**, this ordinance implements and incorporates the adopted and endorsed Housing Element and Fair Share Plan and addresses the requirements of N.J.A.C. 5:93-1 *et seq.*, as amended and supplemented, N.J.A.C. 5:80-26.1 *et seq.* as amended and supplemented, and the New Jersey Fair Housing Act of 1985;

**NOW THEREFORE, BE IT ORDAINED** by the Mayor and Council of the Borough of North Plainfield, in Somerset County, New Jersey, as follows:

**Section 1. Article IX repealed and replaced.** Article IX, “Fair Share Ordinance,” in Chapter XXII, “Land Development,” in the “Borough Code of the Borough of North Plainfield” (“Code”) is hereby repealed and replaced with the following new Article IX as follows:

## **ARTICLE IX AFFORDABLE HOUSING**

### **Part 1 Affordable Housing**

#### **22-131.1. Purpose and applicability.**

The purpose of this chapter is to include provisions addressing the Borough of North Plainfield’s constitutional obligation to provide for its fair share of low- and moderate-income housing, as directed by the Supreme Court and consistent with N.J.A.C. 5:93-1 et seq., as amended and supplemented, N.J.A.C. 5:80-26.1 et seq., as amended and supplemented, and the New Jersey Fair Housing Act of 1985. This chapter is intended to assure compliance with the regulations of the Council on Affordable Housing (“COAH”) set forth at N.J.A.C. 5:93-1 et seq., and the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.1 et seq., including provisions for unit affordability controls as well as eligibility for low- and moderate-income households. This chapter shall apply except where inconsistent with applicable law.

#### **22-131.2. Intent.**

It is the intent of this chapter to regulate the development and management of low- and moderate-income units constructed in compliance with the Housing Plan Element and Fair Share Plan of the Borough of North Plainfield.

#### **22-131.3. Reporting requirements.**

- a. Trust fund activity. On the first (1<sup>st</sup>) anniversary of the entry of the order granting North Plainfield a final judgment of compliance and repose in *In re Borough of North Plainfield Compliance with Mount Laurel Third (3<sup>rd</sup>) Round Affordable Housing Obligation*, and every anniversary thereafter through the end of the repose period, the Borough shall provide annual reporting of its affordable housing trust fund activity to the New Jersey Department of Community Affairs, Council on Affordable Housing or Division of Local Government Services, or other entity designated by the State of New Jersey, with a copy provided to Fair Share Housing Center and posted on the municipal website, using forms developed for this purpose by the New Jersey Department of Community Affairs, Council on Affordable Housing or Division of Local Government Services. The reporting shall include an accounting of all affordable housing trust fund activity, including the source and amount of funds collected and the amount and purpose for which any funds have been expended.

- b. Affordable housing activity. On the first (1<sup>st</sup>) anniversary of the entry of the order granting North Plainfield a final judgment of compliance and repose in *In re Borough of North Plainfield Compliance with Mount Laurel Third Round Affordable Housing Obligation*, and every anniversary thereafter through the end of the repose period, the Borough shall provide annual reporting of the status of all affordable housing activity within the Borough through posting on the municipal website, with copies provided to Fair Share Housing Center, using forms previously developed for this purpose by the Council on Affordable Housing or any other forms endorsed by the court-appointed special master and Fair Share Housing Center. For the midpoint realistic opportunity review due on July 1, 2020, as required pursuant to N.J.S.A. 52:27D-313, the Borough shall post on its municipal website, with copies provided to Fair Share Housing Center, a status report as to its implementation of its affordable housing plan and an analysis of whether any unbuilt sites or unfulfilled mechanisms continue to present a realistic opportunity. Such posting shall invite any interested party to submit comments to the Borough, with copies provided to Fair Share Housing Center, regarding whether any sites no longer present a realistic opportunity and should be replaced. Any interested party may by motion request a hearing before the court regarding these issues.
  
- c. Very low income housing. For the review of very low income housing requirements required by N.J.S.A. 52:27D-329.1, within thirty (30) days of the third (3<sup>rd</sup>) anniversary of the entry of the order granting North Plainfield a final judgment of compliance and repose in *In re Borough of North Plainfield Compliance with Mount Laurel Third Round Affordable Housing Obligation*, and every third (3<sup>rd</sup>) year thereafter, the Borough will post on its municipal website, with copies provided to Fair Share Housing Center, a status report as to its satisfaction of its very low income requirements, including the family very low-income requirements referenced herein. Such posting shall invite any interested party to submit comments to the Borough, with copies provided to Fair Share Housing Center, on the issue of whether the Borough has complied with its very low-income housing obligation.

#### **22-131.4. Definitions.**

The following terms when used in this chapter shall have the meanings given in this Section:

##### **ACT**

The Fair Housing Act of 1985, P.L. 1985, c. 222 (N.J.S.A. 52:27D-301 et seq.)

##### **ADAPTABLE**

Constructed in compliance with the technical design standards of the Barrier Free Subcode, N.J.A.C. 5:23-7.

##### **ADMINISTRATIVE AGENT**

The entity designated by the Borough to administer affordable units in accordance with this chapter, the regulations of the Council on Affordable Housing set forth at N.J.A.C.

5:93 *et seq.*, and the Uniform Housing Affordability Controls set forth at N.J.A.C. 5:80-26 et seq.

#### AFFIRMATIVE MARKETING

A regional marketing strategy designed to attract buyers and/or renters of affordable units pursuant to N.J.A.C. 5:80-26.15.

#### AFFORDABILITY AVERAGE

The average percentage of median income at which new restricted units in an affordable housing development are affordable to low- and moderate-income households.

#### AFFORDABLE

A sales price or rent level that is within the means of a low- or moderate-income household as defined within N.J.A.C. 5:93-7.4, and, in the case of an ownership unit, that the sales price for the unit conforms to the standards set forth in N.J.A.C. 5:80-26.6, as may be amended and supplemented, and, in the case of a rental unit, that the rent for the unit conforms to the standards set forth in N.J.A.C. 5:80-26.12, as may be amended and supplemented.

#### AFFORDABLE HOUSING DEVELOPMENT

A development included in or approved pursuant to the Housing Element and Fair Share Plan or otherwise intended to address the Borough's fair share obligation, and includes, but is not limited to, an inclusionary development, a municipal construction project or a one hundred (100%) percent affordable housing development.

#### AFFORDABLE HOUSING PROGRAM(S)

Any mechanism in a municipal fair share plan prepared or implemented to address a municipality's fair share obligation.

#### AFFORDABLE UNIT

A housing unit proposed or created pursuant to the Fair Housing Act and approved for crediting by the court and/or funded through an affordable housing trust fund.

#### AGENCY

The New Jersey Housing and Mortgage Finance Agency established by P.L. 1983, c. 530 (N.J.S.A. 55:14K-1 et seq.).

#### AGE-RESTRICTED UNIT

A housing unit designed to meet the needs of, and exclusively for, the residents of an age-restricted segment of the population such that: 1) all the residents of the development wherein the unit is situated are sixty-two (62) years of age or older; or 2) at least eighty (80%) percent of the units are occupied by one person who is fifty-five (55) years of age or older; or, 3) the development has been designated by the Secretary of the U.S. Department of Housing and Urban Development as "housing for older persons," as defined in Section 807(b)(2) of the Fair Housing Act, 42 U.S.C. § 3607.

#### ALTERNATIVE LIVING ARRANGEMENTS

A structure in which households live in distinct bedrooms, yet share kitchen and plumbing facilities, central heat and common areas. Alternative living arrangements include, but are not limited to: transitional facilities for the homeless; Class A, B, C, D and E boarding homes as regulated by the State of New Jersey, Department of Community Affairs; residential health care facilities as regulated by the State of New Jersey Department of Health; group homes for the developmentally disabled and mentally ill as licensed and/or regulated by the New Jersey Department of Human Services; and, congregate living arrangements.

#### ASSISTED LIVING RESIDENCE

A facility that is licensed by the State of New Jersey Department of Health and Senior Services to provide apartment-style housing and congregate dining and to assure that assisted living services are available when needed for four (4) or more adult persons unrelated to the proprietor and that offers units containing, at a minimum, one (1) unfurnished room, a private bathroom, a kitchenette and a lockable door on the unit entrance.

#### BOROUGH

The Borough of North Plainfield, in Somerset County, New Jersey.

#### CERTIFIED HOUSEHOLD

A household that has been certified by an administrative agent as a low-income household or moderate-income household.

#### COAH or THE COUNCIL

The Council on Affordable Housing, as established by the New Jersey Fair Housing Act (N.J.S.A. 52:27D-301 et seq.).

#### DCA

The State of New Jersey, Department of Community Affairs.

#### DEFICIENT HOUSING UNIT

A housing unit with health and safety code violations that requires the repair or replacement of a major system. A major system includes weatherization, roofing, plumbing (including wells), heating, electricity, sanitary plumbing (including septic systems), lead paint abatement and/or load bearing structural systems.

#### DEVELOPER

Any person, partnership, association, company or corporation that is the legal or beneficial owner or owners of a lot or any land included in a proposed development including the holder of an option to contract to purchase, or other person having an enforceable proprietary interest in such land.

#### DEVELOPMENT

The division of a parcel of land into two or more parcels, the construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any use or change in the use of any building or other structure, or of any mining, excavation or landfill, and any use or change in the use of any building or other structure, or land or extension of use of land, for which permission may be required, pursuant to N.J.S.A. 40:55D-1 *et seq.*

#### FAIR SHARE PLAN

The plan that describes the mechanisms, strategies and the funding sources, if any, by which the Borough proposes to address its affordable housing obligation as established in the Housing Element, including the draft ordinances necessary to implement that plan, and addresses the requirements of *N.J.A.C. 5:93-5*.

#### HOUSING ELEMENT

The portion of the Borough's Master Plan, required by the Municipal Land Use Law ("MLUL"), *N.J.S.A. 40:55D-28b(3)* and the Act, that includes the information required by *N.J.A.C. 5:93-5.1* and establishes the Borough's fair share obligation.

#### INCLUSIONARY DEVELOPMENT

A development containing both affordable units and market rate units. This term includes, but is not limited to: new construction, the conversion of a non-residential structure to residential use and the creation of new affordable units through the gut rehabilitation or reconstruction of a vacant residential structure.

#### LOW-INCOME HOUSEHOLD

A household with a total gross annual household income equal to fifty (50%) percent or less of the regional median household income by household size.

#### LOW-INCOME UNIT

A restricted unit that is affordable to a low-income household.

#### MAJOR SYSTEM

The primary structural, mechanical, plumbing, electrical, fire protection, or occupant service components of a building which include but are not limited to, weatherization, roofing, plumbing (including wells), heating, electricity, sanitary plumbing (including septic systems), lead paint abatement and load bearing structural systems.

#### MARKET-RATE UNITS

Housing not restricted to low- and moderate-income households that may sell or rent at any price.

#### MEDIAN INCOME

The median income by household size for the applicable housing region, as adopted annually by COAH or a successor entity approved by the court.

#### MODERATE-INCOME HOUSEHOLD

A household with a total gross annual household income in excess of fifty (50%) percent but less than eighty (80%) percent of the regional median household income by household size.

#### MODERATE-INCOME UNIT

A restricted unit that is affordable to a moderate-income household.

#### MULTIFAMILY UNIT

A structure containing five (5) or more dwelling units.

#### NON-EXEMPT SALE

Any sale or transfer of ownership other than the transfer of ownership between husband and wife; the transfer of ownership between former spouses ordered as a result of a judicial decree of divorce or judicial separation, but not including sales to third parties; the transfer of ownership between family members as a result of inheritance; the transfer of ownership through an executor's deed to a class A beneficiary and the transfer of ownership by court order.

#### RANDOM SELECTION PROCESS

A process by which currently income-eligible households are selected for placement in affordable housing units such that no preference is given to one applicant over another except for purposes of matching household income and size with an appropriately priced and sized affordable unit (e.g., by lottery).

#### REGIONAL ASSET LIMIT

The maximum housing value in each housing region affordable to a four-person household with an income at eighty (80%) percent of the regional median as defined by duly adopted Regional Income Limits published annually by COAH or a successor entity.

#### REHABILITATION

The repair, renovation, alteration or reconstruction of any building or structure, pursuant to the Rehabilitation Subcode, N.J.A.C. 5:23-6.

#### RENT

The gross monthly cost of a rental unit to the tenant, including the rent paid to the landlord, as well as an allowance for tenant-paid utilities computed in accordance with allowances published by DCA for its Section 8 program. In assisted living residences, rent does not include charges for food and services.

#### RESTRICTED UNIT

A dwelling unit, whether a rental unit or an ownership unit, that is subject to the affordability controls of N.J.A.C. 5:80-26.1, as amended and supplemented, but does not include a market-rate unit financed under UHORP or MONI.

#### UHAC

The Uniform Housing Affordability Controls, as set forth in N.J.A.C. 5:80-26 et seq.

**VERY LOW-INCOME HOUSEHOLD**

A household with a total gross annual household income equal to thirty (30%) percent or less of the regional median household income by household size.

**VERY LOW-INCOME UNIT**

A restricted unit that is affordable to a very low-income household.

**WEATHERIZATION**

Building insulation (for attic, exterior walls and crawl space), siding to improve energy efficiency, replacement storm windows, replacement storm doors, replacement windows and replacement doors, and is considered a major system for purposes of a rehabilitation program.

**22-131.5. Inclusionary zoning requirements.** To create realistic opportunities for the construction of affordable housing, any residential development consisting of ten (10) or more dwelling units, at a density above six (6) units per acre, that is permitted pursuant to a variance or rezoning shall comply with the following:

- a. A minimum of fifteen (15%) percent of the total number of units shall be set aside as affordable housing units if the affordable units will be for rent. If the calculation of the total number of affordable units required yields a fraction of less than one-half of a unit (0.5) then either a pro-rated payment in lieu or one (1) additional unit shall be provided. If the calculation of the total number of affordable units required yields a fraction greater than one-half of a unit (0.5), the obligation shall be rounded up and the additional unit shall be provided.
- b. A minimum of twenty (20%) percent of the total number of units shall be set aside as affordable housing units if the affordable units will be for sale. If the calculation of the total number of affordable units required yields a fraction of less than one-half of a unit (0.5), then either a pro-rated payment in lieu or one additional unit shall be provided. If the calculation of the total number of affordable units required yields a fraction of greater than one-half of a unit (0.5), the obligation shall be rounded up and the additional unit shall be provided.

Inclusionary developments shall adhere to the following project phasing schedule:

Maximum Percentage (%) of Market-Rate Units Completed	Minimum Percentage (%) of Low- and Moderate-Income Units Completed
25	0
25+1	10
50	50
75	75
90	100

Design:

1. In inclusionary developments, to the extent possible, low- and moderate-income units shall be integrated with the market units.
2. In inclusionary developments, low- and moderate-income units shall have access to all of the same common elements and facilities as the market units.

**22-131.6. New construction**

- a. Low/moderate split and bedroom distribution of affordable housing units:
  1. The fair share obligation shall be divided equally between low- and moderate-income units, except that where there is an odd number of affordable housing units, the extra unit shall be a low-income unit.
  2. At least thirteen (13%) percent of all restricted rental units within each bedroom distribution shall be very low-income units (affordable to a household earning thirty (30%) percent or less of median income). The very low-income units shall be counted as part of the required number of low income units within the development.
  3. At least twenty five (25%) percent of the obligation shall be met through rental units, including at least half in rental units available to families.
  4. A maximum of twenty five (25%) percent of the Borough's obligation may be met with age restricted units. At least half of all affordable units in the Borough's Plan shall be available to families.
  5. In each affordable development, at least fifty (50%) percent of the restricted units within each bedroom distribution shall be low-income units including that thirteen (13%) percent shall be very-low income.
  6. Affordable developments that are not age-restricted shall be structured in conjunction with realistic market demands such that:
    - (a) The combined number of efficiency and one-bedroom units shall be no greater than twenty (20%) percent of the total low- and moderate-income units;
    - (b) At least thirty (30%) percent of all low- and moderate-income units shall be two-bedroom units;
    - (c) At least thirty (20%) percent of all low- and moderate-income units shall be three-bedroom units; and,
    - (d) The remaining units may be allocated among two (2) and three (3)-bedroom units at the discretion of the developer.
  7. Affordable developments that are age-restricted shall be structured such that the number of bedrooms shall equal the number of age-restricted low- and

moderate-income units within the inclusionary development. This standard may be met by having all one (1)-bedroom units or by having a two (2)-bedroom unit for each efficiency unit.

b. Accessibility requirements:

1. The first (1<sup>st</sup>) floor of all restricted townhouse dwelling units and all restricted units in all other multistory buildings shall be subject to the technical design standards of the Barrier Free Subcode, N.J.A.C. 5:23-7.
2. All restricted townhouse dwelling units and all restricted units in other multistory buildings in which a restricted dwelling unit is attached to at least (1) one other dwelling unit shall have the following features:
  - (a) An adaptable toilet and bathing facility on the first (1<sup>st</sup>) floor; and,
  - (b) An adaptable kitchen on the first (1<sup>st</sup>) floor; and,
  - (c) An interior accessible route of travel on the (1<sup>st</sup>) first floor; and,
  - (d) An adaptable room that can be used as a bedroom, with a door or the casing for the installation of a door, on the first (1<sup>st</sup>) floor; and,
  - (e) If not all of the foregoing requirements in 2.(a) through 2.(d) can be satisfied, then an interior accessible route of travel must be provided between stories within an individual unit, but if all of the terms of paragraphs 2.(a) through 2.(d) above have been satisfied, then an interior accessible route of travel shall not be required between stories within an individual unit; and,
  - (f) An accessible entranceway as set forth at P.L. 2005, c. 350 (N.J.S.A. 52:27D-311a et seq.) and the Barrier Free Subcode, N.J.A.C. 5:23-7, or evidence that the Borough has collected funds from the developer sufficient to make ten (10%) percent of the adaptable entrances in the development accessible:
    - (1) Where a unit has been constructed with an adaptable entrance, upon the request of a person with disabilities who is purchasing or will reside in the dwelling unit, an accessible entrance shall be installed.
    - (2) To this end, the builder of restricted units shall deposit funds within the Borough affordable housing trust fund sufficient to install accessible entrances in ten (10%) percent of the affordable units that have been constructed with adaptable entrances.
    - (3) The funds deposited under paragraph (f)(2) above shall be used by the Borough for the sole purpose of making the adaptable entrance of an affordable unit accessible when requested to do

so by a person with a disability who occupies or intends to occupy the unit and requires an accessible entrance.

- (4) The developer of the restricted units shall submit a design plan and cost estimate to the Borough Construction Official for the conversion of adaptable to accessible entrances.
- (5) Once the Construction Official has determined that the design plan to convert the unit entrances from adaptable to accessible meet the requirements of the Barrier Free Subcode, N.J.A.C. 5:23-7, and that the cost estimate of such conversion is reasonable, payment shall be made to the Borough's affordable housing trust fund in care of the Borough's Chief Financial Officer who shall ensure that the funds are deposited into the affordable housing trust fund and appropriately earmarked.
- (6) Full compliance with the foregoing provisions shall not be required where an entity can demonstrate that it is "site impracticable" to meet the requirements. Determinations of site impracticability shall be in compliance with the Barrier Free Subcode, N.J.A.C. 5:23-7.

c. Maximum rents and sales prices:

1. In establishing rents and sales prices of affordable housing units, the administrative agent shall follow the procedures set forth in UHAC utilizing the most recently published regional weighted average of the uncapped Section 8 income limits published by HUD and by the Superior Court.
2. The maximum rent for restricted rental units within each affordable development shall be affordable to households earning no more than sixty (60%) percent of median income, and the average rent for restricted rental units shall be affordable to households earning no more than fifty two (52%) percent of median income.
3. The developers and/or municipal sponsors of restricted rental units shall establish at least one (1) rent for each bedroom type for both low-income and moderate-income units, provided that at least thirteen (13%) percent of all low- and moderate-income rental units shall be affordable to very low-income households, earning thirty (30%) percent or less of the regional median household income, with such very low-income units counted toward the low-income housing requirement.
4. The maximum sales price of restricted ownership units within each affordable development shall be affordable to households earning no more than seventy (70%) percent of median income, and each affordable development must achieve an affordability average of fifty five (55%) percent for restricted ownership units; in achieving this affordability average, moderate-income

ownership units must be available for at least three different sales prices for each bedroom type, and low-income ownership units must be available for at least two (2) different sales prices for each bedroom type.

5. In determining the initial sales prices and rent levels for compliance with the affordability average requirements for restricted units other than assisted living facilities and age-restricted developments, the following standards shall be used:
  - (a) A studio unit shall be affordable to a one (1)-person household;
  - (b) A one (1)-bedroom unit shall be affordable to a one and one-half (1 ½)-person household;
  - (c) A two (2)-bedroom unit shall be affordable to a three (3)-person household;
  - (d) A three-(3) bedroom unit shall be affordable to a four and one-half (4 ½)-person household; and
  - (e) A four (4)-bedroom unit shall be affordable to a six (6)-person household.
6. In determining the initial sales prices and rents for compliance with the affordability average requirements for restricted units in assisted living facilities and age-restricted developments, the following standards shall be used:
  - (a) A studio shall be affordable to a one (1)-person household;
  - (b) A one (1)-bedroom unit shall be affordable to a one and one-half (1 ½)-person household; and,
  - (c) A two (2)-bedroom unit shall be affordable to a two (2)-person household or to two (2) one (1)-person households.
7. The initial purchase price for all restricted ownership units shall be calculated so that the monthly carrying cost of the unit, including principal and interest (based on a mortgage loan equal to ninety-five (95%) percent of the purchase price and the Federal Reserve H.15 rate of interest), taxes, homeowner and private mortgage insurance and condominium or homeowner association fees do not exceed twenty-eight (28%) percent of the eligible monthly income of the appropriate size household as determined under N.J.A.C. 5:80-26.4, as may be amended and supplemented; provided, however, that the price shall be subject to the affordability average requirement of N.J.A.C. 5:80-26.3, as may be amended and supplemented.
8. The initial rent for a restricted rental unit shall be calculated so as not to exceed thirty (30%) percent of the eligible monthly income of the appropriate size household, including an allowance for tenant paid utilities, as determined

under N.J.A.C. 5:80-26.4, as may be amended and supplemented; provided, however, that the rent shall be subject to the affordability average requirement of N.J.A.C. 5:80-26.3, as may be amended and supplemented.

9. The price of owner-occupied low- and moderate-income units may increase annually based on the percentage increase in the regional median income limit for each housing region. In no event shall the maximum resale price established by the administrative agent be lower than the last recorded purchase price.
10. The rent of low- and moderate-income units may be increased annually based on the permitted percentage increase in the Regional Income Limits chart. This increase shall not exceed nine (9%) percent in any one (1) year. Rents for units constructed pursuant to low- income housing tax credit regulations shall be indexed pursuant to the regulations governing low- income housing tax credits.

**22-131.7. Utilities.**

- a. Affordable units shall utilize the same type of heating source as market units within an inclusionary development.
- b. Tenant-paid utilities included in the utility allowance shall be set forth in the lease and shall be consistent with the utility allowance approved by HUD for its Section 8 program.

**22-131.8. Occupancy Standards.**

- a. In referring certified households to specific restricted units, the administrative agent shall, to the extent feasible and without causing an undue delay in the occupancy of a unit, strive to:
  1. Provide an occupant for each bedroom;
  2. Provide children of different sexes with separate bedrooms;
  3. Provide separate bedrooms for parents and children; and,
  4. Prevent more than two (2) persons from occupying a single bedroom.

**22-131.9. Control periods for restricted ownership units and enforcement mechanisms.**

- a. Control periods for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.5, as may be amended and supplemented, and each restricted ownership unit shall remain subject to the requirements of this chapter for a period of at least thirty (30) years and thereafter until the Borough takes action by ordinance to release the unit from such requirements. Prior to such action, a restricted ownership unit shall

remain subject to the requirements of N.J.A.C. 5:80-26.1, as may be amended and supplemented.

- b. The affordability control period for a restricted ownership unit shall commence on the date the initial certified household takes title to the unit.
- c. Prior to the issuance of the initial certificate of occupancy for a restricted ownership unit and upon each successive sale during the period of restricted ownership, the administrative agent shall determine the restricted price for the unit and shall also determine the non-restricted, fair market value of the unit based on either an appraisal or the unit's equalized assessed value without the restrictions in place.
- d. At the time of the initial sale of the unit, the initial purchaser shall execute and deliver to the administrative agent a recapture note obligating the purchaser (as well as the purchaser's heirs, successors and assigns) to repay, upon the first non-exempt sale after the unit's release from the restrictions set forth in this chapter, an amount equal to the difference between the unit's non-restricted fair market value and its restricted price, and the recapture note shall be secured by a recapture lien evidenced by a duly recorded mortgage on the unit.
- e. The affordability controls set forth in this chapter shall remain in effect despite the entry and enforcement of any judgment of foreclosure with respect to restricted ownership units.
- f. A restricted ownership unit shall be required to obtain a continuing certificate of occupancy or a certified statement from the Construction Official stating that the unit meets all Uniform Construction Code standards upon the first transfer of title following the removal of the restrictions provided under N.J.A.C. 5:80-26.5(a), as may be amended and supplemented.

**22-131.10. Price restrictions for restricted ownership units, homeowner association fees and resale prices.**

- a. Price restrictions for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.1, as may be amended and supplemented, including:
  - 1. The initial purchase price for a restricted ownership unit shall be approved by the administrative agent.
  - 2. The administrative agent shall approve all resale prices, in writing and in advance of the resale, to assure compliance with the foregoing standards.
  - 3. The master deeds of inclusionary developments shall provide no distinction between the condominium or homeowner association fees and special assessments paid by low- and moderate-income purchasers and those paid by market purchasers.
  - 4. The owners of restricted ownership units may apply to the administrative agent to increase the maximum sales price for the unit on the basis of

anticipated capital improvements. Eligible capital improvements shall be those that render the unit suitable for a larger household or the addition of a bathroom.

**22-131.11. Buyer Income Eligibility.**

- a. Buyer income eligibility for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.1, as may be amended and supplemented, such that low-income ownership units shall be reserved for households with a gross household income less than or equal to fifty (50%) percent of median income and moderate-income ownership units shall be reserved for households with a gross household income less than eighty (80%) percent of median income.
- b. Notwithstanding the foregoing, however, the administrative agent may, upon approval by the Mayor and Borough Council, and subject to the Court's approval, permit moderate-income purchasers to buy low-income units in housing markets if the administrative agent determines that there is an insufficient number of eligible low-income purchasers to permit prompt occupancy of the units. All such low-income units to be sold to moderate-income households shall retain the required pricing and pricing restrictions for low-income units.
- c. A certified household that purchases a restricted ownership unit must occupy it as the certified household's principal residence and shall not lease the unit; provided, however, that the administrative agent may permit the owner of a restricted ownership unit, upon application and a showing of hardship, to lease the restricted unit to another certified household for a period not to exceed one (1) year.
- d. The administrative agent shall certify a household as eligible for a restricted ownership unit when the household is a low-income household or a moderate-income household, as applicable to the unit, and the estimated monthly housing cost for the particular unit (including principal, interest, taxes, homeowner and private mortgage insurance and condominium or homeowner association fees, as applicable) does not exceed thirty-three (33%) percent of the household's eligible monthly income.

**22-131.12. Limitations on indebtedness secured by ownership unit; subordination.**

- a. Prior to incurring any indebtedness to be secured by a restricted ownership unit, the owner shall apply to the administrative agent for a determination in writing that the proposed indebtedness complies with the provisions of this Section, and the administrative agent shall issue such determination prior to the owner incurring such indebtedness.
- b. With the exception of first purchase money mortgages, neither an owner nor a lender shall at any time cause or permit the total indebtedness secured by a restricted ownership unit to exceed ninety five (95%) percent of the maximum allowable resale

price of the unit, as such price is determined by the administrative agent in accordance with N.J.A.C. 5:80-26.6(b).

**22-131.13. Capital improvements to ownership units.**

- a. The owners of restricted ownership units may apply to the administrative agent to increase the maximum sales price for the unit on the basis of capital improvements made since the purchase of the unit. Eligible capital improvements shall be those that render the unit suitable for a larger household or that adds an additional bathroom. In no event shall the maximum sales price of an improved housing unit exceed the limits of affordability for the larger household.
- b. Upon the resale of a restricted ownership unit, all items of property that are permanently affixed to the unit or were included when the unit was initially restricted (for example, refrigerator, range, washer, dryer, dishwasher, wall-to-wall carpeting) shall be included in the maximum allowable resale price. Other items may be sold to the purchaser at a reasonable price that has been approved by the administrative agent at the time of the signing of the agreement to purchase. The purchase of central air conditioning installed subsequent to the initial sale of the unit and not included in the base price may be made a condition of the unit resale provided the price, which shall be subject to ten (10)-year, straight-line depreciation, has been approved by the administrative agent. Unless otherwise approved by the administrative agent, the purchase of any property other than central air conditioning shall not be made a condition of the unit resale. The owner and the purchaser must personally certify at the time of closing that no unapproved transfer of funds for the purpose of selling and receiving property has taken place at the time of or as a condition of resale.

**22-131.14. Control periods for restricted rental units.**

- a. Control periods for restricted rental units shall be in accordance with N.J.A.C. 5:80-26.11, as may be amended and supplemented, and each restricted rental unit shall remain subject to the requirements of this chapter for a period of at least thirty (30) years and thereafter until the Borough takes action by ordinance to release the unit from such requirements. Prior to such action, a restricted rental unit shall remain subject to the requirements of N.J.A.C. 5:80-26.1, as may be amended and supplemented. For new projects receiving nine percent low income housing tax credits, a control period of not less than a thirty (30) year compliance period plus a fifteen (15) year extended use period shall be required.
- b. Deeds of all real property that include restricted rental units shall contain deed restriction language. The deed restriction shall have priority over all mortgages on the property, and the deed restriction shall be filed by the developer or seller with the records office of the County of Somerset. The deed shall also identify each affordable unit by apartment number and/or address and whether that unit is designated as a very low, low or moderate income unit. Neither the unit nor its affordability designation

shall change throughout the term of the deed restriction. A copy of the filed document shall be provided to the administrative agent within thirty (30) calendar days of the receipt of a certificate of occupancy.

- c. A restricted rental unit shall remain subject to the affordability controls of this chapter despite the occurrence of any of the following events:
  - 1. Sublease or assignment of the lease of the unit;
  - 2. Sale or other voluntary transfer of the ownership of the unit; or,
  - 3. The entry and enforcement of any judgment of foreclosure on the property containing the unit.

**22-131.15. Rent restrictions for rental units; leases.**

- a. A written lease shall be required for all restricted rental units and tenants shall be responsible for security deposits and the full amount of the rent as stated on the lease. A copy of the current lease for each restricted rental unit shall be provided to the administrative agent.
- b. No additional fees or charges shall be added to the approved rent (except, in the case of units in an assisted living residence, to cover the customary charges for food and services) without the express written approval of the administrative agent.
- c. Application fees (including the charge for any credit check) shall not exceed five percent of the monthly rent of the applicable restricted unit and shall be payable to the administrative agent to be applied to the costs of administering the controls applicable to the unit as set forth in this chapter.
- d. No rent control ordinance or other pricing restriction shall be applicable to either the market units or the affordable units in any development in which at least fifteen (15%) percent of the total number of dwelling units are restricted rental units in compliance with this chapter.

**22-131.16. Tenant income eligibility.**

- a. Tenant income eligibility shall be in accordance with N.J.A.C. 5:80-26.13, as may be amended and supplemented, and shall be determined as follows:
  - 1. Very low-income rental units shall be reserved for households with a gross household income less than or equal to thirty (30%) percent of median income.
  - 2. Low-income rental units shall be reserved for households with a gross household income less than or equal to fifty (50%) percent of median income.
  - 3. Moderate-income rental units shall be reserved for households with a gross household income less than eighty (80%) percent of median income.

- b. The administrative agent shall certify a household as eligible for a restricted rental unit when the household is a very low-income household, low-income household or a moderate-income household, as applicable to the unit, and the rent proposed for the unit does not exceed thirty-five (35%) percent (forty (40%) percent for age-restricted units) of the household's eligible monthly income as determined pursuant to N.J.A.C. 5:80-26.16, as may be amended and supplemented; provided, however, that this limit may be exceeded if one (1) or more of the following circumstances exists:
  - 1. The household currently pays more than thirty-five (35%) percent (forty (40%) percent for households eligible for age-restricted units) of its gross household income for rent, and the proposed rent will reduce its housing costs;
  - 2. The household has consistently paid more than thirty-five (35%) percent (forty (40%) percent for households eligible for age-restricted units) of eligible monthly income for rent in the past and has proven its ability to pay;
  - 3. The household is currently in substandard or overcrowded living conditions;
  - 4. The household documents the existence of assets with which the household proposes to supplement the rent payments; or,
  - 5. The household documents reliable anticipated third-party assistance from an outside source such as a family member in a form acceptable to the administrative agent and the owner of the unit.
- c. The applicant shall file documentation sufficient to establish the existence of the circumstances in b.1 through 5 above with the administrative agent, who shall counsel the household on budgeting.

**22-131.17. Municipal housing liaison.**

- a. The Borough shall appoint a specific municipal employee to serve as a municipal housing liaison responsible for administering the affordable housing program, including affordability controls, the affirmative marketing plan, monitoring and reporting, and, where applicable, supervising any contracted administrative agent. The Borough shall adopt an ordinance creating the position of municipal housing liaison. The Borough shall adopt a resolution appointing a municipal housing liaison. The municipal housing liaison shall be appointed by the governing body and may be a full or part time municipal employee. The municipal housing liaison shall be approved by the court and shall be duly qualified through a training program sponsored by Affordable Housing Professionals of New Jersey before assuming the duties of municipal housing liaison.
- b. The municipal housing liaison shall be responsible for oversight and administration of the affordable housing program for the Borough, including the following responsibilities which may not be contracted out to the administrative agent:

1. Serving as the Borough's primary point of contact for all inquiries from the State, affordable housing providers, administrative agents and interested households;
  2. Monitoring the status of all restricted units in the Borough's Fair Share Plan;
  3. Compiling, verifying and submitting annual monitoring reports as may be required by the court;
  4. Coordinating meetings with affordable housing providers and administrative agents, as needed; and
  5. Attending continuing education opportunities on affordability controls, compliance monitoring and affirmative marketing at least annually and more often as needed.
- c. Subject to the approval of the court, the Borough shall designate one or more administrative agent(s) to administer newly constructed affordable units in accordance with UHAC. An Operating Manual for each affordable housing program shall be provided by the administrative agent(s) to be adopted by resolution of the governing body and subject to approval of the court. The Operating Manual(s) shall be available for public inspection in the office of the Borough Clerk, in the office of the municipal housing liaison, and in the office(s) of the administrative agent(s). The municipal housing liaison shall supervise the contracting administrative agent(s).

**22-131.18. Administrative agent.**

The administrative agent shall be an independent entity serving under contract to and reporting to the Borough. For new sale and rental developments, all of the fees of the administrative agent shall be paid by the owners of the affordable units for which the services of the administrative agent are required. For resales, single-family homeowners and condominium homeowners shall be required to pay three percent of the sales price for services provided by the administrative agent related to the resale of their homes. That fee shall be collected at closing and paid directly to the administrative agent. The administrative agent shall perform the duties and responsibilities of an administrative agent as set forth in UHAC, including those set forth in N.J.A.C. 5:80-26.14, 16 and 18 thereof, which include:

- a. Affirmative marketing:
  1. Conducting an outreach process to affirmatively market affordable housing units in accordance with the Borough's affirmative marketing plan and the provisions of N.J.A.C. 5:80-26.15; and,
  2. Providing counseling or contracting to provide counseling services to low- and moderate-income applicants on subjects such as budgeting, credit issues, mortgage qualification, rental lease requirements, and landlord/tenant law.
- b. Household certification:

1. Soliciting, scheduling, conducting and following up on interviews with interested households;
  2. Conducting interviews and obtaining sufficient documentation of gross income and assets upon which to base a determination of income eligibility for a low- or moderate-income unit;
  3. Providing written notification to each applicant as to the determination of eligibility or non-eligibility;
  4. Requiring that all certified applicants for restricted units execute a certificate substantially in the form, as applicable, of either the ownership or rental certificates set forth in Appendices J and K of N.J.A.C. 5:80-26.1 et seq.;
  5. Creating and maintaining a referral list of eligible applicant households living in the housing region and eligible applicant households with members working in the housing region where the units are located; and,
  6. Employing a random selection process as provided in the affirmative marketing plan of the Borough when referring households for certification to affordable units.
  7. Notifying the following entities of the availability of affordable housing units in the Borough of North Plainfield: Fair Share Housing Center, the New Jersey State Conference of the NAACP, the Latino Action Network, the Supportive Housing Association, and the New Jersey Housing Resource Center.
- c. Affordability controls:
1. Furnishing to attorneys or closing agents forms of deed restrictions and mortgages for recording at the time of conveyance of title of each restricted unit;
  2. Creating and maintaining a file on each restricted unit for its control period, including the recorded deed with restrictions, recorded mortgage and note, as appropriate;
  3. Ensuring that the removal of the deed restrictions and cancellation of the mortgage note are effectuated and properly filed with the Somerset County Register of Deeds or County Clerk's office after the termination of the affordability controls for each restricted unit;
  4. Communicating with lenders regarding foreclosures; and
  5. Ensuring the issuance of continuing certificates of occupancy or certifications, pursuant to N.J.A.C. 5:80-26.10.
- d. Resales and rentals:

1. Instituting and maintaining an effective means of communicating information between owners and the administrative agent regarding the availability of restricted units for resale or rental; and,
  2. Instituting and maintaining an effective means of communicating information to low- and moderate-income households regarding the availability of restricted units for resale or re-rental.
- e. Processing requests from unit owners:
1. Reviewing and approving requests for determination from owners of restricted units who wish to take out home equity loans or refinance during the term of their ownership that the amount of indebtedness to be incurred will not violate the terms of this Chapter;
  2. Reviewing and approving requests to increase sales prices from owners of restricted units who wish to make capital improvements to the units that would affect the selling price, such authorizations to be limited to those improvements resulting in additional bedrooms or bathrooms and the depreciated cost of central air conditioning systems;
  3. Notifying the Borough of an owner's intent to sell a restricted unit; and,
  4. Making determinations on requests by owners of restricted units for hardship waivers.
- f. Enforcement:
1. Securing annually from the Borough a list of all affordable housing units for which tax bills are mailed to absentee owners, and notifying all such owners that they must either move back to their unit or sell it;
  2. Securing from all developers and sponsors of restricted units, at the earliest point of contact in the processing of the project or development, written acknowledgement of the requirement that no restricted unit can be offered, or in any other way committed, to any person, other than a household duly certified to the unit by the administrative agent;
  3. Posting annually in all rental properties, including two (2)-family homes, of a notice as to the maximum permitted rent together with the telephone number of the administrative agent where complaints of excess rent or other charges can be made;
  4. Sending annual mailings to all owners of affordable dwelling units, reminding them of the notices and requirements outlined in N.J.A.C. 5:80-26.18(d)4;
  5. Establishing a program for diverting unlawful rent payments to the Borough's affordable housing trust fund; and,
  6. Creating and publishing a written operating manual for each affordable housing program administered by the administrative agent, to be approved by

the Mayor and Borough Council and the Court, setting forth procedures for administering the affordability controls.

- g. Additional responsibilities:
  - 1. The administrative agent shall have the authority to take all actions necessary and appropriate to carry out its responsibilities hereunder.
  - 2. The administrative agent shall prepare monitoring reports for submission to the municipal housing liaison in time to meet any monitoring requirements and deadlines imposed by the court.
  - 3. The administrative agent shall attend continuing education sessions on affordability controls, compliance monitoring, and affirmative marketing at least annually and more often as needed.

**22-131.19. Affirmative marketing requirements.**

- a. The Borough shall adopt by resolution an affirmative marketing plan, subject to approval of the court, that is compliant with N.J.A.C. 5:80-26.15, as may be amended and supplemented.
- b. The affirmative marketing plan is a regional marketing strategy designed to attract buyers and/or renters of all majority and minority groups, regardless of race, creed, color, national origin, ancestry, marital or familial status, gender, affectional or sexual orientation, disability, age or number of children to housing units which are being marketed by a developer, sponsor or owner of affordable housing. The affirmative marketing plan is intended to target those potentially eligible persons who are least likely to apply for affordable units in that region. In addition, the affirmative marketing plan shall maintain certain notification requirements. It is a continuing program that directs marketing activities toward Housing Region 3 and is required to be followed throughout the period of restriction.
- c. The affirmative marketing plan shall provide a regional preference for all households that live and/or work in Housing Region 3, comprised of Hunterdon, Middlesex and Somerset Counties.
- d. The Borough has the ultimate responsibility for adopting the affirmative marketing plan and for the proper administration of the affirmative marketing program, including initial sales and rentals and resales and rerentals. The administrative agent designated by the Borough shall implement the affirmative marketing plan to assure the affirmative marketing of all affordable units.
- e. In implementing the affirmative marketing plan, the administrative agent shall provide a list of counseling services to low- and moderate-income applicants on subjects such as budgeting, credit issues, mortgage qualification, rental lease requirements, and landlord/tenant law.

- f. The affirmative marketing plan shall describe the media to be used in advertising and publicizing the availability of housing. In implementing the affirmative marketing plan, the administrative agent shall consider the use of language translations where appropriate.
- g. The affirmative marketing process for available affordable units shall begin at least four (4) months (120 calendar days) prior to the expected date of occupancy.
- h. Applications for affordable housing shall be available in several locations, including, at a minimum, the County Administration Building and/or the County Library for each county within the housing region; the municipal administration building and the municipal library in the Borough in which the units are located; and, the developer's rental office. Pre-applications shall be emailed or mailed to prospective applicants upon request.
- i. In addition to other affirmative marketing strategies, the Administrative Agent shall provide specific notice of the availability of affordable housing units in North Plainfield, and copies of the applications forms, to the following entities: Fair Share Housing Center, the New Jersey State Conference of the NAACP, the Latino Action Network, the Supportive Housing Association; and, the New Jersey Housing Resource Center.
- j. The costs of advertising and affirmative marketing of the affordable units shall be the responsibility of the developer, sponsor or owner.

**22-131.20. Enforcement of affordable housing regulations.**

- a. Upon the occurrence of a breach of any of the regulations governing the affordable unit by an owner, developer or tenant, the Borough shall have all remedies provided at law or equity, including but not limited to foreclosure, tenant eviction, a requirement for household recertification, acceleration of all sums due under a mortgage, recuperation of any funds from a sale in violation of the regulations, injunctive relief to prevent further violation of the regulations, entry on the premises, and specific performance.
- b. After providing written notice of a violation to an owner, developer or tenant of a low- or moderate-income unit and advising the owner, developer or tenant of the penalties for such violations, the Borough may take the following action(s) against the owner, developer or tenant for any violation that remains uncured for a period of sixty (60) calendar days after service of the written notice:
  - 1. The Borough may file a court action pursuant to N.J.S.A. 2A:58-11, alleging a violation or violations of the regulations governing the affordable housing unit. If the owner, developer or tenant is adjudged by the court to have violated any provision of the regulations governing affordable housing units the owner, developer or tenant shall be subject to one or more of the following penalties, at the discretion of the court:

- (a) A fine of not more than five-hundred (\$500.00) dollars per day or imprisonment for a period not to exceed ninety (90) days, or both, provided that each and every day that the violation continues or exists shall be considered a separate and specific violation of these provisions and not a continuation of the initial offense;
  - (b) In the case of an owner who has rented a low- or moderate-income unit in violation of the regulations governing affordable housing units, payment into the Borough affordable housing trust fund of the gross amount of rent illegally collected; and,
  - (c) In the case of an owner who has rented a low- or moderate-income unit in violation of the regulations governing affordable housing units, payment of an innocent tenant's reasonable relocation costs, as determined by the court.
2. The Borough may file a court action in the Superior Court seeking a judgment that would result in the termination of the owner's equity or other interest in the unit, in the nature of a mortgage foreclosure. Any such judgment shall be enforceable as if the same were a judgment of default of the first purchase money mortgage and shall constitute a lien against the low- or moderate-income unit.
- (a) The judgment shall be enforceable, at the option of the Borough, by means of an execution sale by the sheriff, at which time the low- and moderate-income unit of the violating owner shall be sold at a sale price which is not less than the amount necessary to fully satisfy and pay off any first purchase money mortgage and prior liens and the costs of the enforcement proceedings incurred by the Borough, including attorney's fees. The violating owner shall have his right to possession terminated as well as his title conveyed pursuant to the sheriff's sale.
  - (b) The proceeds of the sheriff's sale shall first be applied to satisfy the first purchase money mortgage lien and any prior liens upon the low- and moderate-income unit. The excess, if any, shall be applied to reimburse the Borough for any and all costs and expenses incurred in connection with either the court action resulting in the judgment of violation or the sheriff's sale. In the event that the proceeds from the sheriff's sale are insufficient to reimburse the Borough in full as aforesaid, the violating owner shall be personally responsible for the full extent of such deficiency, in addition to any and all costs incurred by the Borough in connection with collecting such deficiency. In the event that a surplus remains after satisfying all of the above, such surplus, if any, shall be placed in escrow by the Borough for the owner and shall be held in such escrow for a maximum period of two (2)

years or until such earlier time as the owner shall make a claim with the Borough for such. Failure of the owner to claim such balance within the two (2)-year period shall automatically result in a forfeiture of such balance to the Borough. Any interest accrued or earned on such balance while being held in escrow shall belong to and shall be paid to the Borough, whether such balance shall be paid to the owner or forfeited to the Borough.

- (c) Foreclosure by the Borough due to violation of the regulations governing affordable housing units shall not extinguish the restrictions of the regulations governing affordable housing units as the same apply to the low- and moderate-income unit. Title shall be conveyed to the purchaser at the Sheriff's sale, subject to the restrictions and provisions of the regulations governing the affordable housing unit. The owner determined to be in violation of the provisions of this plan and from whom title and possession were taken by means of the Sheriff's sale shall not be entitled to any right of redemption.
- (d) If there are no bidders at the Sheriff's sale, or if insufficient amounts are bid to satisfy the first purchase money mortgage and any prior liens, the Borough may acquire title to the low- and moderate-income unit by satisfying the first purchase money mortgage and any prior liens and crediting the violating owner with an amount equal to the difference between the first purchase money mortgage and any prior liens and costs of the enforcement proceedings, including legal fees and the maximum resale price for which the low- and moderate-income unit could have been sold under the terms of the regulations governing affordable housing units. This excess shall be treated in the same manner as the excess which would have been realized from an actual sale as previously described.
- (e) Failure of the low- and moderate-income unit to be either sold at the Sheriff's sale or acquired by the Borough shall obligate the owner to accept an offer to purchase from any qualified purchaser which may be referred to the owner by the Borough, with such offer to purchase being equal to the maximum resale price of the low- and moderate-income unit as permitted by the regulations governing affordable housing units.
- (f) The owner shall remain fully obligated, responsible and liable for complying with the terms and restrictions of governing affordable housing units until such time as title is conveyed from the owner.

**22-131.21. Appeals.**

Appeals from all decisions of an administrative agent appointed pursuant to this Chapter shall be filed in writing with the court.

## **Part 2 Development Fees**

### **22-131.22. Purpose.**

- a. In Holmdel Builder's Association v. Holmdel Borough, 121 N.J. 550 (1990), the New Jersey Supreme Court determined that mandatory development fees are authorized by the Fair Housing Act of 1985, N.J.S.A. 52:27d-301 et seq., and the State Constitution, subject to the Council on Affordable Housing's (COAH's) adoption of rules.
- b. Pursuant to P.L. 2008, c. 46, § 8 (N.J.S.A. 52:27D-329.2) and the Statewide Non-Residential Development Fee Act (N.J.S.A. 40:55D-8.1 through 40:55D-8.7), COAH is authorized to adopt and promulgate regulations necessary for the establishment, implementation, review, monitoring and enforcement of municipal affordable housing trust funds and corresponding spending plans. Municipalities that are under the jurisdiction of the Council or court of competent jurisdiction and have a COAH-approved spending plan may retain fees collected from nonresidential development.
- c. In Re: Adoption of N.J.A.C. 5:96 and 5:97 by the New Jersey Council on Affordable Housing, 221 N.J. 1 (2015), also known as the Mount Laurel IV decision, the Supreme Court remanded COAH's duties to the Superior Court. As a result, affordable housing development fee collections and expenditures from the municipal affordable housing trust funds to implement municipal Third Round Fair Share Plans through July 1, 2025 are under the Court's jurisdiction and are subject to approval by the Court.
- d. This Part 2 establishes standards for the collection, maintenance, and expenditure of development fees pursuant to COAH's regulations and in accordance with P.L. 2008, c. 46, §§ 8 and 32 through 38. Fees collected pursuant to this article shall be used for the sole purpose of providing low- and moderate-income housing. This article shall be interpreted within the framework of COAH's rules on development fees, codified at N.J.A.C. § 5:93-8.

### **22-131.23. Basic requirements.**

This Part 2 shall become effective at such time that the Superior Court approves the Borough's development fee ordinance, in accordance with N.J.A.C. 5:93-8.

### **22-131.24. Definitions.**

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

AFFORDABLE HOUSING DEVELOPMENT

A development included in the Housing Element and Fair Share Plan, and includes, but is not limited to, an inclusionary development, a municipal construction project or a one-hundred-percent-affordable development.

#### COAH or THE COUNCIL

The Council on Affordable Housing, as established by the New Jersey Fair Housing Act (N.J.S.A. 52:27D-301 et seq.).

#### DEVELOPMENT FEES

Funds paid by a developer for the improvement of property as permitted in N.J.A.C. 5:93-8.

#### DEVELOPER

Any person, partnership, association, company or corporation that is the legal or beneficial owner or owners of a lot or any land proposed to be included in a proposed development including the holder of an option to contract or purchase, or other person having an enforceable proprietary interest in such land.

#### EQUALIZED ASSESSED VALUE

The assessed value of a property divided by the current average ratio of assessed to true value for the municipality in which the property is situated, as determined in accordance with §§ 1, 5, and 6 of P.L. 1973, c. 123 (N.J.S.A. 54:1-35a through 54:1-35c).

#### GREEN BUILDING STRATEGIES

Those strategies that minimize the impact of development on the environment, and enhance the health, safety and well-being of residents by producing durable, low-maintenance, resource-efficient housing while making optimum use of existing infrastructure and community services.

### **22-131.25. Residential development fees.**

- a. Imposed fees.
  1. Within all zone districts, residential developers, except for developers of the types of development specifically exempted below, shall pay a fee of one and one-half (1.5%) percent of the equalized assessed value for residential development, provided no increased density is permitted.
  2. When an increase in residential density pursuant to N.J.S.A. 40:55D-70d(5) (known as a "d" variance) has been permitted, developers shall be required to pay a development fee of six (6%) percent of the equalized assessed value for each additional unit that may be realized. However, if the zoning on a site has changed during the two (2)-year period preceding the filing of such a variance application, the base density for the purposes of calculating the bonus development fee shall be the highest density permitted by right during the two (2)-year period preceding the filing of the variance application.

- b. Eligible exactions, ineligible exactions and exemptions for residential development.
  - 1. Affordable housing developments shall be exempt from development fees. All other forms of new construction shall be subject to development fees unless exempted below.
  - 2. Developers of low- and moderate-income units shall be exempt from paying development fees.
  - 3. Developments that have received preliminary or final approval prior to the effective date of the Borough's amended development fee ordinance shall be subject to the law in effect at the time of such approval, unless the developer seeks a substantial change in the approval.
  - 4. All single-family residential additions, renovations and accessory structures shall be exempt; however, all new residential dwelling units shall be subject to a development fee.
  - 5. All multi-family additions, renovations and accessory structures not requiring site plan approval shall be exempt; however, all new residential dwelling units shall be subject to a development fee.
  - 6. Homes replaced as a result of a natural disaster (such as fire or flood) shall be exempted from the payment of a development fee.

**22-131.26. Nonresidential development fees.**

- a. Imposed fees.
  - 1. Within all zoning districts, nonresidential developers, except for developers of the types of development specifically exempted, shall pay a fee equal to two and one-half (2.5%) percent of the equalized assessed value of the land and improvements, for all new nonresidential construction on an unimproved lot or lots.
  - 2. Nonresidential developers, except for developers of the types of development specifically exempted, shall also pay a fee equal to two and one-half (2.5%) percent of the increase in equalized assessed value resulting from any additions to existing structures to be used for nonresidential purposes.
  - 3. Development fees shall be imposed and collected when an existing structure is demolished and replaced. The development fee of two and one-half (2.5%) percent shall be calculated on the difference between the equalized assessed value of the preexisting land and improvement and the equalized assessed value of the newly improved structure, i.e., land and improvement at the time final certificate of occupancy is issued. If the calculation required under this section results in a negative number, the nonresidential development fee shall be zero (0).

- b. Eligible exactions, ineligible exactions and exemptions for nonresidential development.
1. The nonresidential portion of a mixed-use inclusionary or market rate development shall be subject to the two and one-half (2.5%) percent development fee, unless otherwise exempted below.
  2. The two and one-half (2.5%) percent fee shall not apply to an increase in equalized assessed value resulting from alterations, change in use within existing footprint, reconstruction, renovations and repairs.
  3. The two and one-half (2.5%) percent fee shall not apply to developers of any not-for-profit use; federal, state and municipal government uses; churches and other places of worship; and public schools.
  4. Nonresidential developments shall be exempt from the payment of nonresidential development fees in accordance with the exemptions required pursuant to P.L. 2008, c. 46, as specified in the Form N-RDF "State of New Jersey Non-Residential Development Certification/Exemption" form. Any exemption claimed by a developer shall be substantiated by that developer.
  5. A developer of a nonresidential development exempted from the nonresidential development fee pursuant to P.L. 2008, c. 46 shall be subject to it at such time the basis for the exemption no longer applies, and shall make the payment of the nonresidential development fee, in that event, within three (3) years after that event or after the issuance of the final certificate of occupancy of the nonresidential development, whichever is later.
  6. If a property which was exempted from the collection of a nonresidential development fee thereafter ceases to be exempt from property taxation, the owner of the property shall remit the fees required pursuant to this section within forty five (45) calendar days of the termination of the property tax exemption. Unpaid nonresidential development fees under these circumstances may be enforceable by the Borough as a lien against the real property of the owner.

**22-131.27. Collection of fees.**

- a. Upon the granting of a preliminary, final or other applicable approval for a development, the applicable approving authority shall direct its staff to notify the Construction Official responsible for the issuance of a building permit.
- b. For nonresidential developments only, the developer shall also be provided with a copy of Form N-RDF "State of New Jersey Non-Residential Development Certification/Exemption," to be completed as per the instructions provided. The Developer of a nonresidential development shall complete Form N-RDF as per the instructions provided. The Construction Official shall verify the information submitted by the nonresidential developer as per the instructions provided in the Form

N-RDF. The Tax Assessor shall verify exemptions and prepare estimated and final assessments as per the instructions provided in Form N-RDF.

- c. The Construction Official responsible for the issuance of a building permit shall notify the local Tax Assessor of the issuance of the first building permit for a development which is subject to a development fee.
- d. Within ninety (90) calendar days of receipt of that notice, the Municipal Tax Assessor, based on the plans filed, shall provide an estimate of the equalized assessed value of the development.
- e. The Construction Official responsible for the issuance of a final certificate of occupancy notifies the local Assessor of any and all requests for the scheduling of a final inspection on property which is subject to a development fee.
- f. Within ten (10) business days of a request for the scheduling of a final inspection, the Municipal Assessor shall confirm or modify the previously estimated equalized assessed value of the improvements of the development; calculate the development fee; and thereafter notify the developer of the amount of the fee.
- g. Should the Borough fail to determine or notify the developer of the amount of the development fee within ten (10) business days of the request for final inspection, the developer may estimate the amount due and pay that estimated amount consistent with the dispute process set forth in Subsection b of § 37 of P.L. 2008, c. 46 (N.J.S.A. 40:55D-8.6).
- h. Fifty percent (50%) of the development fee shall be collected at the time of issuance of the building permit. The remaining portion shall be collected at the issuance of the certificate of occupancy. The developer shall be responsible for paying the difference between the fee calculated at the time of issuance of the building permit and that determined at issuance of the certificate of occupancy.
- i. Appeal of development fees.
  1. A developer may challenge residential development fees imposed by filing a challenge with the County Board of Taxation. Pending a review and determination by the Board, collected fees shall be placed in an interest-bearing escrow account by the Borough. Appeals from a determination of the Board may be made to the tax court in accordance with the provisions of the State Tax Uniform Procedure Law, N.J.S.A. 54:48-1 et seq., within ninety (90) calendar days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.
  2. A developer may challenge nonresidential development fees imposed by filing a challenge with the Director of the Division of Taxation. Pending a review and determination by the Director, which shall be made within forty-five (45) days of receipt of the challenge, collected fees shall be placed in an interest-bearing escrow account by Borough. Appeals from a determination of the Director may be made to the tax court in accordance with the provisions of the

State Tax Uniform Procedure Law, N.J.S.A. 54:48-1 et seq., within ninety (90) calendar days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.

**22-131.28. Affordable Housing Trust Fund.**

- a. There is hereby created a separate, interest-bearing affordable housing trust fund to be maintained by the Chief Financial Officer for the purpose of depositing development fees collected from residential and nonresidential developers and proceeds from the sale of units with extinguished controls.
- b. The following additional funds shall be deposited in the affordable housing trust fund and shall at all times be identifiable by source and amount:
  1. Payments in lieu of on-site construction of affordable units;
  2. Developer-contributed funds to make ten (10%) percent of the adaptable entrances in a townhouse or other multistory attached development accessible;
  3. Rental income from municipally operated units;
  4. Repayments from affordable housing program loans;
  5. Recapture funds;
  6. Proceeds from the sale of affordable units; and,
  7. Any other funds collected in connection with the Borough's affordable housing program.
- a. In the event of a failure by the Borough of North Plainfield to comply with trust fund monitoring and reporting requirements or to submit accurate monitoring reports; or a failure to comply with the conditions of the judgment of compliance or a revocation of the judgment of compliance; or a failure to implement the approved Spending Plan and to expend funds within the applicable required time period as set forth in In re Tp. of Monroe, 442 N.J. Super. 565 (Law Div. 2015) (aff'd 442 N.J. Super. 563); or the expenditure of funds on activities not approved by the Court; or for other good cause demonstrating the unapproved use(s) of funds, the Court may authorize the State of New Jersey, Department of Community Affairs, Division of Local Government Services (LGS), to direct the manner in which the funds in the Affordable Housing Trust Fund shall be expended, provided that all such funds shall, to the extent practicable, be utilized for affordable housing programs within the Borough of North Plainfield, or, if not practicable, then within the County or the Housing Region.

Any party may bring a motion before the Superior Court presenting evidence of such condition(s), and the Court may, after considering the evidence and providing the municipality a reasonable opportunity to respond and/or to remedy the non-compliant condition(s), and upon a finding of continuing and deliberate non-compliance,

determine to authorize LGS to direct the expenditure of funds in the Trust Fund. The Court may also impose such other remedies as may be reasonable and appropriate to the circumstances.

- b. Interest accrued in the Affordable Housing Trust Fund shall only be used to fund eligible affordable housing activities approved by the Court.

**22-131.29. Use of funds.**

- a. The expenditure of all funds shall conform to a spending plan approved by the court. Funds deposited in the housing trust fund may be used for any activity approved by the court to address the Borough's fair share obligation and may be set up as a grant or revolving loan program. Such activities include, but are not limited to, preservation or purchase of housing for the purpose of maintaining or implementing affordability controls, rehabilitation, new construction of affordable housing units and related costs, market to affordable, or regional housing partnership programs, conversion of existing nonresidential buildings to create new affordable units, green building strategies designed to be cost saving and in accordance with accepted national or state standards, purchase of land for affordable housing, improvement of land to be used for affordable housing, extensions or improvements of roads and infrastructure to affordable housing sites, financial assistance designed to increase affordability, administration necessary for implementation of the Housing Element and Fair Share Plan, or any other activity as permitted pursuant to N.J.A.C. 5:93-8 and specified in the approved spending plan.
- b. Development fee revenues shall not be expended to reimburse the Borough for past housing activities.
- c. At least thirty (30%) percent of all development fees collected and interest earned shall be used to provide affordability assistance to low- and moderate-income households in affordable units included in the municipal Fair Share Plan. One-third of the affordability assistance portion of development fees collected shall be used to provide affordability assistance to those households earning thirty (30%) percent or less of median income by region.
  - 1. Affordability assistance programs may include down payment assistance, security deposit assistance, low-interest loans, rental assistance, assistance with homeowners' association or condominium fees and special assessments, and assistance with emergency repairs.
  - 2. Affordability assistance to households earning thirty (30%) percent or less of median income may include buying down the cost of low- or moderate-income units in the third-round Municipal Fair Share Plan to make them affordable to households earning thirty (30%) percent or less of median income. The use of development fees in this manner shall entitle the Borough to bonus credits pursuant to N.J.A.C. 5:94-4.22.

3. Payments in lieu of constructing affordable units on site and funds from the sale of units with extinguished controls shall be exempt from the affordability assistance requirement.
- d. The Borough may contract with a private or public entity to administer any part of its Housing Element and Fair Share Plan, including the requirement for affordability assistance, in accordance with N.J.A.C. 5:94-7.
- e. No more than twenty (20%) percent of all revenues collected from development fees may be expended on administration, including, but not limited to, salaries and benefits for municipal employees or consultant fees necessary to develop or implement a new construction program, a Housing Element and Fair Share Plan, and/or an affirmative marketing program. In the case of a rehabilitation program, no more than twenty (20%) percent of the revenues collected from development fees shall be expended for such administrative expenses. Administrative funds may be used for income qualification of households, monitoring the turnover of sale and rental units, and compliance with the monitoring requirements for the affordable housing in in compliance with the Housing Element and Fair Share Plan. Legal or other fees related to litigation opposing affordable housing sites or objecting to the Council's regulations and/or action are not eligible uses of the affordable housing trust fund.

#### **22-131.30. Monitoring.**

On or about December 15<sup>th</sup> of each year through 2025, the Borough shall provide annual reporting of trust fund activity to the New Jersey State Department of Community Affairs (“DCA”), COAH, or Local Government Services (“LGS”), or other entity designated by the State of New Jersey, with a copy provided to Fair Share Housing Center and posted on the municipal website, using forms developed for this purpose by the DCA, COAH, or LGS. This reporting shall include an accounting of all housing trust fund activity, including the collection of development fees from residential and nonresidential developers, payments in lieu of constructing affordable units on site, funds from the sale of units with extinguished controls, barrier-free escrow funds, rental income, repayments from affordable housing program loans, and any other funds collected in connection with the Borough’s housing program, as well as to the expenditure of revenues and implementation of the plan approved by the court.

#### **22-131.31. Ongoing collection of fees.**

The ability for the Borough to impose, collect and expend development fees shall expire with its judgment of compliance unless the Borough has filed an adopted Housing Element and Fair Share Plan with the court or other appropriate jurisdiction, has filed a Declaratory Judgment action and has received court approval of its development fee ordinance. If the Borough fails to renew its ability to impose and collect development fees prior to the expiration of its Judgment of Compliance and Repose, it may be subject to forfeiture of any or all funds remaining within its municipal trust fund. Any funds so forfeited shall be deposited into the "New Jersey Affordable Housing Trust Fund" established pursuant to Section 20 of P.L. 1985, c. 222 (N.J.S.A. 52:27D-

320). The Borough shall not impose a residential development fee on a development that receives preliminary or final site plan approval after the expiration of its Judgment of Compliance and Repose nor shall the Borough retroactively impose a development fee on such a development. The Borough shall not expend development fees after the expiration of its substantive certification or Judgment of Compliance and Repose.

**Section 2. Repealer.** All ordinances or parts thereof inconsistent herewith are repealed as to such inconsistencies.

**Section 3. Severability.** If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

**Section 4. Effective Date.** This Ordinance shall take effect upon its passage, publication, filing with the County of Somerset, and entry of final judgment of compliance and repose.

Copies of the full Ordinance are on file with the Borough Clerk of the Borough of North Plainfield in the Municipal Building, 263 Somerset Street, North Plainfield, New Jersey. Copies may be obtained upon request and a copy is posted on the Bulletin Board in the Municipal Building reserved for such purpose.

Richard K. Phoenix, RMC  
Borough Clerk