

**Borough of Magnolia  
Camden County, New Jersey**



**Housing Element and Fair Share Plan  
June 2025**

**Adopted by the Magnolia Borough Combined Planning and Zoning Board  
On June 25, 2025 (Resolution #2025-08)**

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The original of this document was signed and  
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## I. INTRODUCTION

### A. AFFORDABLE HOUSING IN NEW JERSEY

The New Jersey Supreme Court ruled in 1975, in a decision now commonly referred to as “*Mount Laurel I*,” that developing municipalities in New Jersey have a constitutional obligation to provide a realistic opportunity for the construction of low and moderate income housing. Then in 1983 in the “*Mount Laurel II*” decision, the Supreme Court went further, creating an incentive for private developers to enforce the Mount Laurel doctrine by suing municipalities that have not chosen to comply with the *Mount Laurel* principles. Needing a mechanism to implement the *Mount Laurel* doctrine, the legislature adopted the Fair Housing Act (N.J.S.A. 52:27D-310) in 1985, and created the Council on Affordable Housing as the administrative alternative to dealing with affordable housing cases through the courts. COAH was given the responsibility to establish housing regions, estimate low and moderate income housing needs, set criteria for municipalities to determine and address their fair share affordable housing numbers, and review and approve housing elements and fair share plans.

On December 20, 2004, COAH’s first version of the Third Round rules became effective. At that time the Third Round was to cover the time period from 1999 to 2014, since the First and Second Round covered the 1987 to 1999 period. The Third Round affordable housing delivery period was to run from January 1, 2004 through January 1, 2014. After much legal debate on the Third Round Rules, on March 10, 2015, the Supreme Court ruled that the New Jersey Council on Affordable Housing (COAH) failed to act, and as a result, the Courts assumed jurisdiction over municipal compliance with the Mount Laurel doctrine and the Fair Housing Act.

On March 20, 2024, Governor Murphy signed A4/S50 into law ushering in substantial amendments to the New Jersey Fair Housing Act (FHA) and significantly altering the manner in which municipalities will determine their Fourth Round “fair share” obligations, maintain immunity from Mount Laurel lawsuits, respond to objections, and secure approval of their Fourth Round Housing Element and Fair Share Plans. The new affordable housing legislation, A-4 and S-50, establishes processes for calculating municipal housing obligations, compliance filing deadlines, procedures for challenges and dispute resolution mechanisms. The legislation includes considerable amendments to the New Jersey Fair Housing Act and significantly changes the manner in which municipalities will determine their Fourth Round “fair share” obligations, maintain immunity from Mount Laurel lawsuits, respond to objections, and secure approval of their Fourth Round Housing Element and Fair Share Plans.

The amended FHA does the following:

1. Abolishes the Council on Affordable Housing (COAH);
2. Requires the DCA to calculate municipal “fair share” numbers;
3. Establishes a process for municipalities either to accept the DCA’s numbers or to determine and substantiate their own present and prospective fair share obligations based on the formulas established in the bill;
4. Creates parameters for fair share plans, such as age-restricted unit maximums, “family-rental” minimums, bonus credit maximums, etc.;

5. Identifies various compliance techniques;
6. Provides criteria for municipalities to secure and maintain Fourth Round “temporary immunity” from exclusionary zoning/builder’s remedy lawsuits during the process;
7. Permits interested parties to file formal challenges to the numbers and fair share plans, which will be addressed by the new “Affordable Housing Dispute Resolution Program;”
8. Provides a process for fair share plan approval either through the DCA or the courts via declaratory judgment actions; and
9. Delineates ongoing post-approval municipal monitoring and reporting requirements.

The amended FHA also establishes a series of deadlines for actions to be taken prior to, and after, the beginning of Fourth Round in July of 2025. These are:

*January 31, 2025: Deadline for Towns to adopt their numbers via “Binding Resolution” (with or without using the DCA’s numbers) thereby establishing temporary immunity.*

This was completed via Resolution No 2025:61 adopted by Borough Council on February 20, 2025 and filed with the Program in a Declaratory Judgment action under the caption, In the Matter of the Magnolia Borough’s Determination of Fourth Round Affordable Housing Obligations, Docket No.: CAM-L-000561-25 (“DJ Action”). (Appendix 1)

*February 28, 2025: Deadline to challenge the town’s Binding Resolution and adopted numbers.*

No challenge was made by Magnolia Borough.

*March 1, 2025: If no challenges are filed by interested parties, the Town’s numbers are established by default and immunity remains in effect.*

No challenges were filed by interested parties.

*April 1, 2025: Deadline for the Affordable Housing Dispute Resolution Program (“AHDRP”) to settle the number challenge(s).*

Not applicable to Magnolia Borough.

*June 30, 2025: Deadline to adopt and endorse a Housing Element and Fair Share Plan and file with the AHDRP to maintain temporary immunity.*

*July 1, 2025: First day of Fourth Round*

*August 31, 2025: Deadline to challenge the validity of a Town’s Housing Element and Fair Share Plan.*

*December 31, 2025: Deadline for the Town to settle the challenge or provide an explanation as to why it will not make all, or some of the requested changes, or both.*

*March 15, 2026: Deadline for the Fourth Round of affordable housing obligations, the implementing ordinances and resolutions, proposed, and incorporating any changes from the program, shall be adopted. Failure to meet the March 15 deadline shall result in the municipality losing immunity from exclusionary zoning litigation.*

## **B. HOUSING ELEMENT AND FAIR SHARE PLAN REQUIREMENTS**

The Borough must prepare and submit both a Housing Element (an element of Master Plan) and Fair Share Plan (describing how the Borough will address the obligation). The requirements of the Housing Element are outlined below (N.J.A.C. 5:97-2.1, 2.3 and N.J.S.A. 52:27D-310).

The Housing Element must review and analyze the Borough's housing stock, demographic and employment characteristics, leading into the Fair Share Plan, which will demonstrate how the Borough will endeavor to provide for its Fair Share obligation. The Housing Element must provide an analysis demonstrating that the plan will provide a realistic opportunity to meet the housing Borough's obligations and identify which ordinances must be revised to incorporate the provisions for low and moderate income housing. A municipality's housing element must be designed to achieve the goal of access to affordable housing to meet present and prospective housing needs, with particular attention to low and moderate income housing.

### **1. Housing Element Requirements under the Fair Housing Act:**

- a. An inventory of the municipality's housing stock by age, condition, purchase or rental value, occupancy characteristics, and type, including the number of units affordable to low and moderate income households and substandard housing capable of being rehabilitated, and in conducting this inventory the municipality shall have access, on a confidential basis for the sole purpose of conducting the inventory, to all necessary property tax assessment records and information in the assessor's office, including but not limited to the property record cards;
- b. A projection of the municipality's housing stock, including the probable future construction of low and moderate income housing, for the next ten years, taking into account, but not necessarily limited to, construction permits issued, approvals of applications for development and probable residential development of lands;
- c. An analysis of the municipality's demographic characteristics, including but not necessarily limited to, household size, income level and age;
- d. An analysis of the existing and probable future employment characteristics of the municipality;
- e. A determination of the municipality's present and prospective fair share for low and moderate income housing and its capacity to accommodate its present and prospective housing needs, including its fair share for low and moderate income housing; and
- f. A consideration of the lands that are most appropriate for construction of low and moderate income housing and of the existing structures most appropriate for conversion to, or rehabilitation for, low and moderate income housing, including a consideration of

lands of developers who have expressed a commitment to provide low and moderate income housing.

### **C. MUNICIPAL SUMMARY**

The land area of Magnolia Borough is 0.968 square miles or approximately 620 acres and is located in south central Camden County. Magnolia Borough is bordered by Barrington Borough and Lawnside Borough to the north, Somerdale Borough to the east, Gloucester Township to the south and Runnemede Borough to the west.

The 2023 population estimate for Magnolia is 4,360 persons based on 2023 U.S. Census Bureau data population estimate.

### **D. FAIR SHARE OBLIGATIONS**

#### **1. Prior Round (1987-1999) and Third Round (1999-2025) Obligations**

On March 8, 2018, Mercer County Assignment Judge Mary C. Jacobson issued her opinion on the affordable housing obligations under New Jersey's "Mount Laurel Doctrine" for two Mercer County municipalities, and by extension, municipalities across the state. Under the Jacobson decision, Magnolia Borough's prior round and Third Round obligations were established as:

Magnolia Borough Affordable Housing Obligations 1987-2025 (Jacobson)	
Rehabilitation (Present Need 2015)	15
Prior Round (1987 – 1999)	22
Third Round (Prospective Need 1999-2025)	45

## 2. Fourth Round Obligations (2025-2035)

Under the Affordable Housing Obligations for 2025-2035 (Fourth Round) Methodology and Background as issued by the New Jersey Department of Community Affairs (NJDCa), the Borough's Fourth Round (2025-2035) obligations are:

Magnolia Borough Affordable Housing Obligations (NJDCa)	
Rehabilitation (Present Need 2025)	0
Fourth Round (Prospective Need 2025-2035)	22

## E. AFFORDABLE HOUSING HISTORY

The Borough did not participate in the Third Round Court administered process.

## II. HOUSING ELEMENT ANALYSIS

### A. EXISTING HOUSING STOCK

An inventory of the municipality's housing stock by age, condition, purchase or rental value, occupancy characteristics, and type, including the number of units affordable to low and moderate income households and substandard housing capable of being rehabilitated, and in conducting this inventory the municipality shall have access, on a confidential basis for the sole purpose of conducting the inventory, to all necessary property tax assessment records and information in the assessor's office, including but not limited to the property record cards.

According to the Census estimate, in 2023 there were 1,910 year-round housing units in Magnolia, of which 1,778 were occupied and 132 were vacant, in 2023 the vacancy rate of was 0 for homeowners and 5.3% for rentals.

#### 1. Age of Housing Stock

The Magnolia Borough housing stock is older than the majority of the County stock and the number of persons per household is slightly less than that of the county.

	Persons Per Household 2023	% Housing Stock Built 1939 or Earlier	Median Year Structure Built
Magnolia	2.45	9.7	1962
Camden County	2.58	17.0	1967

Source: U.S. Census Bureau, 2023 ACS



Magnolia Borough Age of Housing Stock		
Year Constructed	Number of units	Percent of Total in Year 2023
2020 or later	0	0.0
2010-2019	39	2.2
2000 to 2009	83	4.7
1990 to 1999	261	14.7
1980 to 1989	563	31.7
1970 to 1979	660	37.1
1960 to 1969	172	9.7
1950 to 1959	0	0.0
1940 to 1949	39	2.2
1939 or earlier	83	4.7

According to the residential building permit data from the New Jersey Department of Community Affairs, zero (0) residential certificates of occupancy were issued in 2023 in Magnolia Borough.

## 2. Condition and Substandard Units

Of the 1,778 occupies housing units in existence estimated by the 2023 American Community Survey, zero (0) units were reported to be without complete plumbing facilities and zero (0) units were lacking complete kitchen facilities. There are 7 units within the Borough that have more than one (1) occupants per room. An assessment of the number of substandard units capable of being rehabilitated may be made by considering the number of homes without complete plumbing and kitchen facilities since this information is provided in the Census sample data, but there are other factors to consider as well. Occupied housing units with a low market value relative to the average in the area may be an indicator of potential for rehabilitation. COAH has also used “crowding” and the age of the housing units to estimate the number of units in need of rehabilitation. There are surely at least a few units that are in need of rehabilitation, within the Borough.

The table below presents a breakdown of the Borough’s housing stock by number of rooms as they relate to County averages. The Borough has a lower percentage of homes with more than six rooms than Camden County overall, with the median number of rooms in the Borough at 5.6 per housing unit.

Magnolia Borough Number of Rooms in Housing Units				
Magnolia Rooms	# of	Magnolia # of Units	Magnolia %	Camden County %
1		71	3.7	2.4
2		34	1.8	2.9
3		227	11.9	9.2
4		198	10.4	12.7
5		361	18.9	14.4
6+		1019	53.3	58.5
Median for Magnolia		5.6 rooms		6.0 rooms

### 3. Ownership and Rental Characteristics

A majority, 70.5 percent, of Magnolia's population live in owner occupied housing units, while 29.5 percent of the population lived in rented housing units according to the 2023 ACS. 73.9 percent of the total housing units in Magnolia Borough are single family dwellings (rented and owned), 0 percent are mobile homes.

Year Round Housing Units			Owner-occupied		Rental	
Occupied	Vacant	Total	No.	%	No.	%
1,778	132	1,910	1,253	70.5	525	29.5

### 4. Occupancy Characteristics and Housing Type

The vacancy rate for year round units is low in the Borough, 0% vacancy for owner-occupied units and 5.3% vacancy for rental units. The average household size in the Borough is 2.56 persons per owner occupied units and 2.19 for renter occupied units.

The number of bedrooms in a home is often reflective of the size of a home. The municipalities with a newer housing stock, have a larger percentage of units with more bedrooms. This is reflective of the trend toward larger, more sprawling homes in America over the last several decades. Magnolia has an older stock of homes and therefore lends itself to a larger percentage of homes with two to three bedrooms.

	Bedroom Distribution Percent of Housing Stock With:		
	One or less Bedrooms	2 - 3 Bedrooms	4+ Bedrooms
Magnolia Borough	22%	64%	14%
Camden County	17.3%	58.2%	24.6%

Source: U.S. Census Bureau, 2023 ACS

Percent Distribution of Housing Units by Structure Type Magnolia Borough		
	Number of units	Percentage
1 (detached)	0	73.9
1 (attached)	14	0.0
2	63	0.7
3-4	35	3.3
5-9	93	1.8
10-19	294	4.9
20+	0	15.4
Mobile	0	0.0
Other	0	0.0
Total	1,910	100

Source: U.S. Census Bureau, 2023 ACS

Selected Housing or Housing-Related Value Characteristics				
	Median Value Housing	Median Contract Rent	Median Household Income	Rental Vacancy Rate (%)
Magnolia Borough	\$221,100	\$1,204	\$89,489	5.3%

Source: U.S. Census Bureau, ACS 2023 5 Year Estimate

## B. DEMOGRAPHIC CHARACTERISTICS

According to the US Census data, the Borough's population increased from the 1940s through 1960s then decreased in the 1970s. The population estimate as of 2023 is 4,360 people, a 0.4% increase since 2010.

### 1. Historic Population Trends

Magnolia Borough's population increased from the 1940s to 1960s, with a peak population of 5,893 in 1970. Since the 1970 census the population has gradually decreased, yet was estimated to grow to 4,360 in 2023. The table below shows the population changes from 1940 through 2023.

Magnolia Borough, Camden County Population									
1940	1950	1960	1970	1980	1990	2000	2010	2020	2023*
1,552	1,883	4,199	5,893	4,881	4,861	4,403	4,341	4,003	4360

Table 6. New Jersey Resident Population by Municipality 1930-1990; \* US Census, estimate

## 2. Recent Population Change

Between 2010 and 2023, the population in Magnolia increased from 4,341 to 4,360, an increase of 19 people or 0.4%.

## 3. Population Density

In 2023, the population density in Magnolia Borough was estimated to be 4,548 people per square mile, which is significantly more than Camden County's and State's population density overall.

Magnolia Borough and Surrounding Municipalities Density Indicators			
	Square Miles	Population per sq mile	Housing units per sq mile
Magnolia	0.968	4,548	1,973
Camden County	227.42	2,304	941
New Jersey	8,722.58	1,062	432

Source: Calculated from U.S. Census Bureau, 2023 ACS

## 4. Age of Population

The table below provides a breakdown of Magnolia's population by age cohorts and gender in 2023. The largest age cohort is the 35-44 years of age bracket, with 18.1% of the total population. This is consistent with the Borough's median age of 36 years. The second largest age cohort is the 25-34 range with 16.3% of the population.

Magnolia Borough Summary Population Characteristics 2023		
	Number of People	% of Total
Male	2135	48.5
Female	2268	51.5
Total	4403	100
Under 5	306	6.9
5 - 14	578	13
15 - 24	540	12
25 - 34	717	16.3
35 - 44	798	18.1
45 - 54	546	12.4
55 - 64	397	9
65+	521	11.8
Median Age	36	N/A

Source: U.S. Census Bureau, 2023 ACS

## 5. Household Characteristics

The next table includes family and household characteristics of the Borough. In 2023, there were 1,778 households and 986 families in Magnolia with an average of 3.45 persons per household. The table below indicates that Magnolia is comprised of a majority of married/couple family households (42.5%) with the second largest household type being female householders with no spouse 25.9%.

	Number of Households	Percent
Family Households	986	55.4
Married Couple Family	755	42.5
Male Householder, no spouse	311	17.5
Female householder, no spouse	460	25.9
Non Family Households	792	44.5
Householder living alone	269	15.1
Householder not living alone	232	13
Total Households	1,778	100

Source: U.S. Census Bureau, 2023 ACS

## 6. Income Level & Poverty Status

Magnolia has lower percentages of households in higher income brackets than the County overall. The Borough had an estimated 2023 household median income of \$89,489, compared with the Camden County household median income of \$102,807. 3.9% percent of Magnolia's families had household incomes below the federal poverty level.

Regulations define low income (those earning up to 50% of the median household income for the region) and moderate income households (those earning from more than 50% to 80% of the median household income for the region). The figures are adjusted for household size and the municipality's geographic location since cost of living differs among regions.

Magnolia is located within Region Five, which includes Camden, Gloucester and Burlington Counties. The 2025 income guidelines for Region Five (based on household size) range from \$66,880 (one person household) to \$95,520 (four person household) for the upper limits of what is considered moderate income; and \$41,800 (one person household) to \$78,850 (eight person household) for the upper limit of what is considered low income. Median income for the region ranges from \$83,600 to \$157,700.

Magnolia Borough 2023 Household Income						
	Magnolia Borough		Camden County		New Jersey	
	Households	Magnolia %	Households	Camden County %	Households	State %
Less than \$10,000	85	4.8	10,890	5.4	152,154	4.3
10,000 - 14,999	23	1.3	6,655	3.3	99,077	2.8
15,000 - 24,999	44	2.5	11,697	5.8	180,461	5.1
25,000 - 34,999	98	5.5	14,117	7	184,000	5.2
35,000 - 49,999	228	12.8	19,360	9.6	279,538	7.9
50,000 - 74,999	276	15.5	27,427	13.6	467,076	13.2
75,000 - 99,999	199	11.2	26,620	13.2	410,461	11.6
100,000 - 149,999	483	27.2	37,511	18.6	640,461	18.1
50,000 - 199,999	206	11.6	21,175	10.5	403,384	11.4
200,000+	133	7.5	26,217	13	721,845	20.4

Source: U.S. Census Bureau, 2023 American Community Survey 5-year Estimates

Magnolia Borough 2023 Income Levels			
	Magnolia Borough	Camden County	New Jersey
Median Household Income	\$89,489	\$83,763	\$101,050
Median Family Income	\$107,232	\$105,859	\$123,892
Poverty Status (Percent of people)	5.3	12.5%	9.8%
Poverty Status (Percent of families)	3.9	9.4%	7.0%

Source: U.S. Census Bureau, 2012-2013 American Community Survey 5-year Estimates

## 7. Employment Status of Residents

Of the 3,402 estimated residents aged sixteen and over in 2023, 2,535 were estimated to be in the labor force (73.6%). 4.5 percent of the labor force were estimated to be unemployed in 2023 (148). The mean travel time to work for Borough residents is 28.1 minutes.

The employment data included in the US Census for the Magnolia Borough residents provides a picture of what types of work Borough residents are involved in, but does not indicate where those jobs are located. As indicated in the table below, the most significant employment activities of the employed residents are Educational, Health and Social Services with 23.3%, and Professional, Science, Management, and Administrative Services 17.7%.

Industry Code	Magnolia	
	Jobs	%
1 Agriculture, Forestry, Fisheries & Mining	0	0.0
2 Construction	136	5.8
3 Manufacturing	211	9.0
4 Wholesale Trade	11	0.5
5 Retail Trade	339	14.4
6 Transportation, Warehousing, Utilities	139	5.9
7 Information	41	1.7
8 Finance, Insurance, Real Estate, Rental	89	3.8
9 Prof., Sci., Mgmt., Admin Services	417	17.7
10 Educ. Health, Social Services	547	23.3
11 Arts, Entertainment, Recreation, Food	135	5.7
12 Other Services	132	5.6
13 Public Administration	154	6.6

Source: U.S. Census Bureau, 2023 ACS

Employment of Magnolia Residents			
	# Persons	% MB	% Camden County
Management, Professional. & Related	859	36.5	42.4
Service	308	13.1	17.2
Sales and Office	646	27.5	20.8
Natural resources, Construction & Maintenance	271	11.5	7.3
Production, Transp. & Material Moving	267	11.4	12.4
Total	2,351	100	100

Source: U.S. Census Bureau, 2023 Census

## C. EMPLOYMENT

### 1. Employment Trends and Outlook

The Delaware Valley Regional Planning Commission publishes employment projections. Employment in Magnolia Borough is expected to fall through 2050, with 5.3% decrease.

Magnolia Borough, DVRPC Projected Employment								
Year	2020	2025	2030	2035	2040	2050	Change 2025-50	% change
Projected Employment	1,118	1,244	1,229	1,214	1,227	1,181	-63	-5.3

Source: DVRPC 2040 Employment Forecasts, 2020-2050

## D. PROJECTED HOUSING STOCK

Residential growth in Magnolia has been mostly stagnant since 2014 through 2023

Historic Trend of Certificates of Occupancy and Demolition Permits										
	'14	'15	'16	'17	'18	'19	'20	'21	'22	'23
COs Issued	0	0	0	1	0	1	0	0	0	0
Demolitions	0	0	6	6	0	0	0	0	0	0
Net	0	0	-6	-5	0	1	0	0	0	0

Source: New Jersey Construction Reporter

## E. FAIR SHARE CAPACITY

### 1. Availability of Land

The Borough of Magnolia is located in the PA Metropolitan State Planning Area and is considered a “built out” municipality.



When there is a lack of sufficient land to meet the new construction obligation, a municipality is entitled to rely on COAH regulations to adjust the new construction obligation downward pursuant to N.J.S.A 52:27D- 311 (m). The adjusted number is known as the realistic development potential (RDP). The RDP represents the portion of the new construction affordable housing obligation that can theoretically be addressed with inclusionary development (defined as a mix of market and affordable units) on lots identified as being suitable in the Vacant Land Analysis (“VLA”). The portion of the new construction obligation for which there is insufficient land is known as the “unmet need”. The unmet need is calculated as the difference between the total new construction obligation and the RDP.

The Borough performed a Vacant Land Analysis (VLA) which resulted in the identification of one (1) parcel containing 0.729 acres of vacant property which is projected to be suitable for development. At a density of 8 units per acre (the minimum presumptive density for Planning Area 1), a total of 5 residential units can be developed on the above delineated 0.729 acres.

This parcel is:

Block	Lot	Property Location	Lot Area (Acres)	Developable Land - Non-wetland (acres)	Dwelling Units Per Acre	Potential Dwelling Units
4.06	31	131 S KING ST	0.73	0.73	8	5

As delineated in the table above, it is projected that 5 potential residential units can be developed as for sale dwellings units. Utilizing an affordable housing set aside of 20%, it would be realistic that 1 affordable family housing unit would result. Therefore, the Borough’s Realistic Development Potential (RDP) for new construction affordable units as part of an inclusionary housing development is calculated at one (1) unit.

## **2. Availability of Existing and Planned Infrastructure**

Water and sewer infrastructure as well as other utilities such as natural gas services are readily available in the Borough.

### **III. Magnolia Borough's Fair Share Plan**

#### **A. CONTENTS OF A FAIR SHARE PLAN**

The Fair Share Plan contains the following information:

- Description of existing credits intended to satisfy the obligation;
- Description of mechanisms that will be used to meet any outstanding obligation; and
- An implementation schedule that sets forth a detailed timetable for units to be provided.

In adopting its housing element, a municipality may provide for its fair share of low and moderate income housing by means of any technique or combination of techniques that provide a realistic opportunity for the provision of the fair share. As per N.J.A.C. 5:93, these potential techniques include but are not limited to:

- Rehabilitation of existing substandard housing units;
- ECHO units (as a Rehabilitation credit);
- Municipally-sponsored and 100% affordable developments;
- Zoning for inclusionary development;
- Alternative living arrangements;
- Accessory apartment program;
- Purchase of existing homes;
- Write-down/buy-down programs; and
- Assisted living residences.

#### **B. REGIONAL INCOME LIMITS**

Dwelling units are affordable to low and moderate income households if the maximum sales price or rental cost is within their ability to pay such costs, based on a specific formula. The State provides income limits based upon the median gross household income of the affordable housing region in which the household is located. A moderate income household is one with a gross household income equal to or more than 50%, but less than 80%, of the median gross regional household income. A low income household is one with a gross household income equal to 50% or less of the median gross regional household income. Very-low income households are those with a gross household income equal to 30% or less of the median gross household income. Magnolia is located in Region 5, which contains Burlington, Camden, and Gloucester Counties.

Using the 2025 regional income limits, a four-person household moderate income is capped at \$95,520.00. Two-person households could make up to \$76,480.00 and be considered a moderate income household or earn up to \$47,800.00 and be considered a low income household. See the table on the following page for greater detail.

2025 REGIONAL INCOME LIMITS FOR REGION 5				
	1 Person	2 Person	3 Person	4 Person
Median	\$83,600.00	\$95,600.00	\$107,500.00	\$119,400.00
Moderate	\$66,880.00	\$76,480.00	\$86,000.00	\$95,520.00
Low	\$41,800.00	\$47,800.00	\$53,750.00	\$59,700.00
Very Low	\$25,080.00	\$28,680.00	\$32,250.00	\$35,820.00

Source: UHAC 2025 Affordable Housing Regional Income Limits by Household Size

### C. REHABILITATION OBLIGATION COMPLIANCE

The Opinion issued by the Supreme Court of New Jersey on March 10, 2015 states that “the Appellate Division also approved a methodology for identifying substandard housing that used fewer surrogates [or indicators] to approximate the number of deficient or dilapidated housing units”. The Order states that three indicators was not an abuse of discretion. The three indicators utilized are old and over-crowded units, homes with incomplete plumbing and housing units with incomplete kitchens.

Pursuant to the “NJDCA Affordable Housing Obligations for 2025-2035 (Fourth Round Methodology and Background)”, the Borough does not have a rehabilitation requirement. However, the Borough will continue to participate with Camden County’s rehabilitation program, which administers with the use of CDBG and HOME funds and utilizing the Borough’s Affordable Housing Trust Fund.

N.J.A.C. 5:93-5.2(g) and (h) requires \$10,000 to be spent per unit and a six-year control on affordability for owner-occupied units Rental units are required to have ten-year controls on affordability. Additionally a major system must be repaired in order for a home to qualify as a credit. Section II of this report indicates the condition of houses from the most recently available census data.

- 1 The rules specifically require a minimum of \$2,000 per unit to be spent on administration and \$8,000 per unit to be spent on the rehabilitation activity, which totals at least \$10,000.
- 2 A major system is defined by N.J.A.C. 5:93-5.2(b) as weatherization, a roof, plumbing (including wells), heating, electricity, sanitary plumbing (including septic systems) and/or a load bearing structural system.

#### **D. PRIOR, THIRD, AND FOURTH ROUND OBLIGATION COMPLIANCE (1987 - 2035)**

The Borough has an aggregate affordable housing obligation 89 units for the period of 1987 to 2035.

The Borough currently has the following credits toward this obligation:

ARC (611 Sherwood Road – Block 8.10, Lot 10). 3 bedroom group home supportive housing for persons with disabilities. 3 special needs supportive housing units and 3 bonus credits (1.0 x 3 = 3). 3 units with 3 bonus credits for a total of 6 credits.

The above provides 3 units and 3 bonus credits for a total of 6 credits.

The combined Prior Round, Third Round and Fourth Round obligation of 89 units, the RDP of 1 unit, and the 6 credits delineated above result in an unmet need of 82 units ( $89 - 1 - 6 = 82$ ).

The Borough will repeal Article II and replace it with updated Development Fee requirements in addition to a new Ordinance Establishing Affordable Housing Procedural and Eligibility Requirements of the Land Development Ordinance of The Borough to Address the Requirements of the Fair Housing Act and the Uniform Housing Affordability Controls (UHAC) Regarding Compliance with the Borough's Affordable Housing Obligations provided in Appendix 2. This Ordinance will provide the following:

"Any property in the Borough of Magnolia that is currently zoned for residential use or subsequently receives a zoning change, use variance approval, or a redevelopment plan to permit residential development shall provide an affordable housing set-aside of 15% if the affordable units will be for rent and 20% if the affordable units will be for sale. This shall apply to all residential developments of 5 units or more. Any residential development of 4 units or less units shall provide a development fee in accordance with Chapter 170, Article II. No property shall be subdivided so as to avoid compliance with this requirement. All affordable units created pursuant to this paragraph shall be governed by the provisions of this Ordinance."

##### **1. Very Low Income Housing**

In 2008, P.L. 2008, c. 46 was signed by the Governor, which made a number of changes to the affordable housing rules. In fact, it amended the Fair Housing Act (hereinafter "FHA") to include a requirement that at least 13% of affordable housing units must be made available to very-low income households. Specifically, the FHA reads:

*The council shall coordinate and review the housing elements as filed pursuant to section 11 of P.L.1985, c.222 (C.52:27D-311), and the housing activities under section 20 of P.L.1985, c.222 (C.52:27D-320), at least once every three years, to ensure that at least 13 percent of the housing units made available for occupancy by low-income and moderate income households will be reserved for occupancy by very low income households, as that term is defined pursuant to section 4 of P.L. 1985, c.222 (C.52:27D-304).*

"Very low income housing" means housing affordable according to federal Department of Housing and Urban Development or other recognized standards for home ownership and rental costs and occupied or reserved for occupancy by households with a gross household income equal to 30% or less of the median gross household income for households of the same size within the housing region in which the housing is located.

Magnolia Borough's very-low income obligation remains at 13% of the affordable housing obligation not constructed.

## **2. Preservation of Multigenerational Family Continuity**

Pursuant to the 2024 Fair Housing Act, an analysis was conducted to evaluate the extent to which municipal ordinances and local factors promote or impede the preservation of multigenerational family continuity, as recommended by the Multigenerational Family Housing Continuity Commission (established under P.L.2021, c. 273). The Commission's primary objective is to facilitate senior citizens' ability to reside with their extended families, in so doing strengthening multigenerational family ties.

A review of the Borough's ordinances reveals no provisions that would diminish this objective.

## **3. State Development and Redevelopment Plan Consistency**

This Housing Element and Fair Share Plan is consistent with the 2001 State Development and Redevelopment Plan (SDRP) and the draft proposed SDRP as the proposed projects and zoning mechanisms will provide a meaningful opportunity for the construction of affordable housing.

## **4. Conclusion**

The Borough of Magnolia is a diverse community that will continue to grow in a planned and careful manner. The Borough has already provided affordable homes to its residents, and will continue to plan for responsible development in the future. It has always been Magnolia Borough's intent to be inclusionary in its housing policies.

## **APPENDIX 1**

**WADE, LONG, WOOD, & LONG, LLC**

**Daniel H. Long, Esquire**

**Attorney ID #019302010**

**1250 Chews Landing Road, Suite 1**

**Laurel Springs, NJ 08021**

**(856) 346-2800**

**(856) 346-1910 - Facsimile**

**Attorneys for Declaratory Plaintiff, Borough of Magnolia**

**IN THE MATTER OF THE  
APPLICATION OF THE BOROUGH  
OF MAGNOLIA, COUNTY OF  
CAMDEN**

**SUPERIOR COURT OF NEW JERSEY  
CAMDEN COUNTY  
LAW DIVISION**

**CIVIL CASE TYPE 816  
(AFFORDABLE HOUSING)**

**COMPLAINT FOR FOURTH ROUND  
DECLARATORY RELIEF**

Declaratory Plaintiff, Borough of Magnolia (hereinafter “Borough” or “Magnolia”), a municipal corporation of the State of New Jersey, with principal offices located at 438 West Evesham Avenue, Magnolia, New Jersey, 08049, in the County of Camden, by way of Complaint for Declaratory Judgment says:

**FOURTH ROUND CERTIFICATE OF COMPLIANCE**

1. On March 20, 2024, Governor Philip D. Murphy signed into law P.L. 2024, c.2, which substantially amended the Fair Housing Act (N.J.S.A. 52:27D-301 et seq.) (hereinafter “Amended FHA”).

2. The Amended FHA required the Department of Community Affairs (“DCA”) to produce non-binding estimates of Fourth Round present and prospective need on or before October 20, 2024.

3. The DCA issued a report on October 18, 2024 (“DCA Report”) wherein it reported its estimate of the obligation for all municipalities based upon its interpretation of the standards in the Amended FHA.

4. The DCA Report calculates the Borough of Magnolia’s Fourth Round (2025-2035) obligations as follows: a Present Need or Rehabilitation Obligation of 0 and a Prospective Need or New Construction Obligation of 22.

5. The Amended FHA has established a January 31, 2025 deadline for municipalities to determine and accept its Fourth Round present and prospective affordable housing fair share obligations in order to maintain immunity from exclusionary zoning litigation by timely filing a resolution, attached hereto as Exhibit A, with the Affordable Housing Dispute Resolution Program (“Program”).

6. The Borough of Magnolia, by passing the Resolution attached hereto, commits to the Fourth Round Present Need and Prospective Need numbers produced by DCA acknowledges that its fair share of affordable housing is cumulative, meaning it must also address the Prospective Need Obligations from the First, Second, Third Rounds, as well as address the Fourth Round Present and Prospective Need.

7. In addition to the Resolution required by the Amended FHA, the Acting Administrative Director of the Courts issued Administrative Directive #14-24, dated December 13, 2024, and made available on December 18, 2024, mandating that a municipality seeking a certification of compliance with the FHA shall file an action in the form of a declaratory judgment complaint in the county in which the municipality is located within 48 hours after adoption of the municipal resolution of fair share obligations.



8. The Borough reiterates its determination to voluntarily comply with the Amended FHA in order to maintain immunity from exclusionary zoning litigation and, thus, the Borough files this Declaratory Relief action, in voluntary compliance with the requirement of the Administrative Directive #14-24, seeking a Fourth Round Compliance Certification.

9. Substantial activity has occurred, and still continues to occur, surrounding the Amended FHA since the legislation was signed into law that warrants the Borough explicitly reserving certain rights to avoid any claim that it has waived them by filing this Declaratory Relief action.

10. The Amended FHA specifically provides that “[a]ll parties shall be entitled to rely upon regulations on municipal credits, adjustments, and compliance mechanisms adopted by COAH unless those regulations are contradicted by statute, including P.L. 2024, c.2., or binding court decisions” (N.J.S.A. 52:27D-311m) of which the municipality intends to utilize in the crafting of its Fourth Round Housing Element and Fair Share Plan.

11. Magnolia reserves all rights to adjust its position in the event of any rulings in the Montvale case (MER-L-1778-24) or any other such relevant action that alters the deadlines and/or requirements of the Amended FHA.

12. In the event of a third-party challenge of the calculations provided for in this Resolution, the Borough of Magnolia reserves the right to take such position as it deems appropriate.

WHEREFORE, Petitioner, Borough of Magnolia, respectfully requests that the Court enter judgment as follows:

a. Recognizing the Borough of Magnolia’s Binding Fair Share Obligation resolution, attached hereto, committing to address the Borough’s Fourth Round Present Need and Prospective

Need numbers calculate din the DCA Report, which Borough's Declaratory Judgment filing timely addressed the deadlines established by the Amended FHA and the Administrative Directive #14-24 and affords the Borough immunity from exclusionary zoning litigation.

b. Establishing the Borough of Magnolia's Fourth Round obligation as follows: 0 unit Present Need or Rehabilitation Obligation; 22 unit Prospective Need or New Construction Obligation.

c. Declaring and granting the Borough of Magnolia a Durational Adjustment of some or all of its Fourth Round obligation pending the Borough's future preparation and submission of its Fourth Round housing element and fair share plan by the Program's June 30, 2025 deadline.

d. Declaring and granting the Borough of Magnolia a Fourth Round Compliance Certification.

e. Awarding such other and further relief as the Court may deem equitable and just.

**WADE, LONG, WOOD, & LONG, LLC**  
**Attorneys for Declaratory Plaintiff, Borough of**  
**Magnolia**

*Daniel Long*  
 Daniel H. Long, Esquire

**Dated: February 21, 2025**

**CERTIFICATION PURSUANT TO R. 4:5-1**

I, Daniel H. Long, Esquire, do hereby certify that the within action is not the subject of any other action pending in any court, or a pending arbitration proceeding. This action may be the subject of a future action against a third-party customer. To my knowledge, there are no other non-parties who should be joined to this action at this time.

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

**WADE, LONG, WOOD, & LONG, LLC**  
**Attorneys for Declaratory Plaintiff, Borough of**  
**Magnolia**

*Daniel Long*  
\_\_\_\_\_  
Daniel H. Long, Esquire

**Dated: February 21, 2025**

**DESIGNATION OF TRIAL COUNSEL**

Daniel H. Long, Esquire is hereby designated as trial counsel for Declaratory Plaintiff, Borough of Magnolia.

**WADE, LONG, WOOD, & LONG, LLC**  
**Attorneys for Declaratory Plaintiff, Borough of**  
**Magnolia**

*Daniel Long*  
\_\_\_\_\_  
Daniel H. Long, Esquire

**Dated: February 21, 2025**

**RESOLUTION 2025: 61**

**RESOLUTION OF THE BOROUGH OF MAGNOLIA ADOPTING FOURTH ROUND FAIR SHARE AFFORDABLE HOUSING OBLIGATION AND OTHER ACTIONS**

**WHEREAS**, pursuant to the Fair Housing Act P.L. 2024, c.2, ("FHA") the State of New Jersey adopted legislation addressing the Fourth Round of affordable housing for the period 2025 to 2035; and

**WHEREAS**, pursuant to the FHA, the Department of Community Affairs ("DCA"), published Fourth Round preliminary obligations for each municipality in October of 2024; and

**WHEREAS**, the DCA calculated the Borough of Magnolia as having a present need or rehabilitation share of 0 units and a prospective need share of 22 units for the Fourth Round; and

**WHEREAS**, pursuant to the FHA, every municipality in the State of New Jersey has an obligation to adopt a binding resolution establishing its fair share affordable housing obligation for the Fourth Round by January 31, 2025; and

**WHEREAS**, the Borough's affordable housing professionals have reviewed the present need and prospective share published by the DCA and have recommended that the Borough adopt these amounts as its Fourth Round Fair Share obligation; and

**WHEREAS**, the Borough Commissioners have reviewed this matter and agree to accept the recommendations of the Borough's affordable housing professionals and take other necessary actions in connection with the FHA.

**NOW, THEREFORE, BE IT RESOLVED**, the Mayor and Council of the Borough of Magnolia, County of Camden and State of New Jersey hereby establishes its Fourth Round Affordable Housing Fair Share obligation as a present need or rehabilitation share of 0 units and a prospective need share of 22 units; and

**BE IT FURTHER RESOLVED**, that the Borough of Magnolia's Fourth Round Affordable Housing Fair Share obligation is subject to vacant land adjustments and other amendments as may be provided for by law and the Borough hereby reserves its right to adjust its Fourth Round Affordable Housing Fair Share obligation accordingly; and

**BE IT FURTHER RESOLVED**, that Borough of Magnolia reserves the right to comply with any additional amendments to the FHA that the Legislature may enact; and

**BE IT FURTHER RESOLVED**, that Borough of Magnolia also reserves the right to adjust its position in the event of any rulings in the Montvale case (MER-L-1778-24) or any other such action that alters the deadlines and/or requirements of the Amended FHA; and

**BE IT FURTHER RESOLVED**, that in the event that a third party challenges the calculations provided for in this Resolution, the Borough of Magnolia reserves the right to take such position as it deems appropriate in response thereto, including that its Round 4 Present or Prospective Need Obligations should be lower than described herein; and

**BE IT FURTHER RESOLVED**, that the Borough's solicitor is hereby authorized to file an action in the form of a declaratory judgment complaint and civil case information statement within 48 hours after the adoption of this resolution; and

**BE IT FURTHER RESOLVED**, that the Borough's affordable housing professionals shall submit the Borough into the DCA affordable housing dispute program and take any other action necessary to comply with the FHA and implement its Fourth Round Affordable Housing Fair Share obligation including, but not limited to defending any challenges to the Borough's actions herein; and

**BE IT FURTHER RESOLVED**, the Borough also authorizes its affordable housing professionals to prepare the appropriate Housing Element and Fair Share Plan as a component of the Borough's Master Plan so that is filed with DCA on or before June 30, 2025; and

**BE IT FURTHER RESOLVED**, that a copy of this Resolution shall be submitted to the DCA and posted on the Borough website upon its adoption.

Dated: 2/20/25

**Borough of Magnolia**

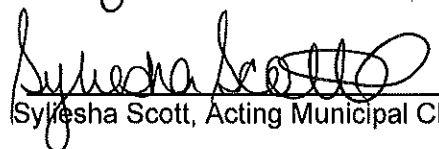
  
Mayor BettyAnn Cowling Carson

**ATTEST:**

  
Syresha Scott, Acting Municipal Clerk

**CERTIFICATION:**

I hereby certify the above to be a true copy of a resolution adopted by the Board of Council of the Borough of Magnolia at a regular meeting held on 20 day of February 2025.

  
Syresha Scott, Acting Municipal Clerk

# Civil Case Information Statement

## Case Details: CAMDEN | Civil Part Docket# L-000561-25

**Case Caption:** IN THE MATTER OF MAGNOLIA BORO

**Case Initiation Date:** 02/21/2025

**Attorney Name:** DANIEL HOWARD LONG

**Firm Name:** WADE LONG & WOOD LLC

**Address:** 1250 CHEWS LANDING RD

LAUREL SPRINGS NJ 08021

**Phone:** 8563462800

**Name of Party:** PLAINTIFF : Borough of Magnolia

**Name of Defendant's Primary Insurance Company**

(if known): None

**Case Type:** AFFORDABLE HOUSING

**Document Type:** Complaint

**Jury Demand:** NONE

**Is this a professional malpractice case?** NO

**Related cases pending:** NO

**If yes, list docket numbers:**

**Do you anticipate adding any parties (arising out of same transaction or occurrence)?** NO

**Does this case involve claims related to COVID-19?** NO

**Are sexual abuse claims alleged by:** Borough of Magnolia? NO

## THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE

CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION

**Do parties have a current, past, or recurrent relationship?** NO

**If yes, is that relationship:**

**Does the statute governing this case provide for payment of fees by the losing party?** NO

**Use this space to alert the court to any special case characteristics that may warrant individual management or accelerated disposition:**

**Do you or your client need any disability accommodations?** NO

**If yes, please identify the requested accommodation:**

**Will an interpreter be needed?** NO

**If yes, for what language:**

**Please check off each applicable category:** Putative Class Action? NO Title 59? NO Consumer Fraud? NO Medical Debt Claim? NO

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with *Rule* 1:38-7(b)

02/21/2025

Dated

/s/ DANIEL HOWARD LONG

Signed

## **APPENDIX 2**

## ORDINANCE 25-\_\_

AN ORDINANCE TO AMEND THE CODE OF THE BOROUGH OF MAGNOLIA, IN THE COUNTY OF CAMDEN, STATE OF NEW JERSEY TO AMEND THE BOROUGH CODE TO ADDRESS THE REQUIREMENTS OF THE FAIR HOUSING ACT AND THE UNIFORM HOUSING AFFORDABILITY CONTROLS (UHAC) REGARDING COMPLIANCE WITH THE BOROUGH'S AFFORDABLE HOUSING OBLIGATIONS

WHEREAS, the Borough of Magnolia ("Borough") has adopted the Housing Element and Fair Share Plan dated June 2025; and

WHEREAS, the Borough wishes to amend the Borough Code to align with the Housing Element and Fair Share Plan; and

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Council of the Borough of Magnolia, Camden County, New Jersey, that Part II General Legislation of the Code of the Borough of Magnolia is hereby amended to include **Title 16 Chapter 170 Article X Affordable Housing** provisions addressing Magnolia's constitutional obligation to provide for its fair share of low- and moderate-income housing, as directed by the Superior 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 Ordinance is intended to provide assurances that low- and moderate-income units ("affordable units") are created with controls on affordability over time and that low- and moderate-income households shall occupy those units. This Ordinance shall apply except where inconsistent with applicable law.

The Magnolia Borough Planning Board has adopted a Housing Element and Fair Share Plan pursuant to the Municipal Land Use Law at N.J.S.A. 40:55D-1, et seq. The Housing Element and Fair Share Plan has been endorsed by the Committee. 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.

**Section 1:** Add Article X Affordable Housing to Title 16 Chapter 170

**§16.170-59 Affordable Housing Monitoring and Reporting Requirements**

- A. The Borough of Magnolia shall comply with the monitoring and reporting requirements regarding the status of the implementation of its Housing Element and Fair Share Plan.

**§16.170-60 Definitions**

- A. The following terms when used in this Ordinance shall have the meanings given in this Section:

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



“Adaptable” means constructed in compliance with the technical design standards of the Barrier Free Subcode, N.J.A.C. 5:23-7.

“Administrative agent” means the entity designated by the Borough to administer affordable units in accordance with this Ordinance, N.J.A.C. 5:93, and UHAC (N.J.A.C. 5:80-26).

“Affirmative marketing” means 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” means 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” means, 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” means 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 100 percent affordable housing development.

“Affordable housing program(s)” means any mechanism in a municipal Fair Share Plan prepared or implemented to address a municipality's fair share obligation.

“Affordable unit” means a housing unit proposed or created pursuant to the Act and approved for crediting by the Court and/or funded through an affordable housing trust fund.

“Agency” means 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” means 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 62 years of age or older; or 2) at least 80 percent of the units are occupied by one person who is 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 arrangement” means 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 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” means a facility that is licensed by the 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 or more adult persons unrelated to the proprietor and that offers units containing, at a minimum, one unfurnished room, a private bathroom, a kitchenette and a lockable door on the unit entrance.

“Certified household” means a household that has been certified by an Administrative Agent as a low-income household or moderate-income household.

“COAH” means the Council on Affordable Housing, as established and then abolished by the New Jersey Fair Housing Act (N.J.S.A. 52:27D-301, et seq.).

“DCA” means the State of New Jersey Department of Community Affairs.

“Deficient housing unit” means 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” means 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” means 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.

“Inclusionary development” means 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” means a household with a total gross annual household income equal to 50 percent or less of the regional median household income by household size.

“Low-income unit” means a restricted unit that is affordable to a low-income household.

“Major system” means 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” means housing not restricted to low- and moderate-income households that may sell or rent at any price.

“Median income” means 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” means a household with a total gross annual household income in excess of 50 percent but less than 80 percent of the regional median household income by household size.

“Moderate-income unit” means a restricted unit that is affordable to a moderate-income household.

“Non-exempt sale” means 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” means 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” means the maximum housing value in each housing region affordable to a four-person household with an income at 80 percent of the regional median as defined by duly adopted Regional Income Limits published annually by COAH or a successor entity.

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

“Rent” means 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” means 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” means the Uniform Housing Affordability Controls set forth in N.J.A.C. 5:80-26, et seq.

“Very low-income household” means a household with a total gross annual household income equal to 30 percent or less of the regional median household income by household size.

“Very low-income unit” means a restricted unit that is affordable to a very low-income household.

“Weatherization” means 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.

#### **§16.170-61 Applicability**

- A. The provisions of this Ordinance shall apply to all affordable housing developments and affordable housing units that currently exist and that are proposed to be created within the Borough of Magnolia pursuant to the Borough's most recently adopted Housing Element and Fair Share Plan.
- B. Moreover, this Ordinance shall apply to all developments that contain low-and moderate-income housing units, including any currently unanticipated future developments that will provide low- and moderate-income housing units, and also including projects funded with Low Income Housing Tax Credits.
- C. Any property in the Borough of Magnolia that is currently zoned for residential use or subsequently receives a zoning change, use variance approval, or a redevelopment plan to permit residential development shall provide an affordable housing set-aside of 15% if the affordable units will be for rent and 20% if the affordable units will be for sale. This shall apply to all residential developments of 5 units or more. Any residential development of 4 units or less units shall provide a development fee in accordance with Chapter 396. No property shall be subdivided so as to avoid compliance with this requirement. All affordable units created pursuant to this paragraph shall be governed by the provisions of this Ordinance.

#### **§16.170-62 Alternative Living Arrangements**

- A. The administration of an alternative living arrangement shall be in compliance with N.J.A.C. 5:93-5.8 and UHAC, with the following exceptions:
  - (1) Affirmative marketing (N.J.A.C. 5:80-26.15), provided, however, that the units or bedrooms may be affirmatively marketed by the provider in accordance with an alternative plan approved by the Court;
  - (2) Affordability average and bedroom distribution (N.J.A.C. 5:80-26.3).

- B. With the exception of units established with capital funding through a 20-year operating contract with the Department of Human Services, Division of Developmental Disabilities, alternative living arrangements shall have at least 30 year controls on affordability in accordance with UHAC, unless an alternative commitment is approved by the Court.
- C. The service provider for the alternative living arrangement shall act as the Administrative Agent for the purposes of administering the affirmative marketing and affordability requirements for the alternative living arrangement.

#### **§16.170-63 Phasing Schedule for Inclusionary Zoning**

In inclusionary developments, the following schedule for the issuance of certificates of occupancy for the required affordable housing units relative to the issuance of certificates of occupancy for the permitted market units shall be followed:

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

#### **§16.170-64 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. At least 13 percent of all restricted rental units shall be very low income units (affordable to a household earning 30 percent or less of regional median income by household size). The very low income units shall be counted as part of the required number of low income units within the development.
  - (2) In each affordable development, at least 50 percent of the restricted units within each bedroom distribution shall be very low or low-income units.
  - (3) 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 20 percent of the total low- and moderate-income units;

- (b) At least 30 percent of all low- and moderate-income units shall be two bedroom units;
  - (c) At least 20 percent of all low- and moderate-income units shall be three bedroom units; and
  - (d) The remaining units may be allocated among two and three bedroom units at the discretion of the developer.
- (4) 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-bedroom units or by having a two-bedroom unit for each efficiency unit.

B. Accessibility Requirements:

- (1) The first 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 and the following:
- (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 one other dwelling unit shall have the following features:
  - (a) An adaptable toilet and bathing facility on the first floor; and
  - (b) An adaptable kitchen on the first floor; and
  - (c) An interior accessible route of travel on the 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 floor; and
  - (e) If not all of the foregoing requirements in b.1) through b.4) 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 b.1) through b.4) 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 Magnolia has collected funds from the developer sufficient to make 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 disabled person 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 of Magnolia's Affordable Housing Trust Fund sufficient to install accessible entrances in 10 percent of the affordable units that have been constructed with adaptable entrances.

[3] The funds deposited under paragraph 6)b) above shall be used by the Borough of Magnolia 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 Construction Official of the Borough of Magnolia 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 Treasurer 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. 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.

#### D. 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 using calculation procedures approved by the Court. Income

limits for all units that are part of the Borough's Housing Element and Fair Share Plan and for which income limits are not already established through a federal program exempted from the UHAC pursuant to N.J.A.C. 5:80-26.1, shall be updated by the Borough annually within 30 days of the publication of determinations of median income by the Department of Housing and Urban Development ("HUD") as follows:

- (a) Regional income limits shall be established for the region that the Borough is located within based on the median income by household size, which shall be established by a regional weighted average of the uncapped Section 8 income limits published by HUD. To compute this regional income limit, the HUD determination of median county income for a family of four is multiplied by the estimated households within the county according to the most recent decennial Census. The resulting product for each county within the housing region is summed. The sum is divided by the estimated total households from the most recent decennial Census in the Borough's housing region. This quotient represents the regional weighted average of median income for a household of four. The income limit for a moderate-income unit for a household of four shall be 80 percent of the regional weighted average median income for a family of four. The income limit for a low-income unit for a household of four shall be 50 percent of the HUD determination of the regional weighted average median income for a family of four. The income limit for a very low income unit for a household of four shall be 30 percent of the regional weighted average median income for a family of four. These income limits shall be adjusted by household size based on multipliers used by HUD to adjust median income by household size. In no event shall the income limits be less than those for the previous year.
- (b) The income limits are the result of applying the percentages set forth in paragraph (a) above to HUD's determination of median income for the fiscal year 2025, and shall be utilized until the Borough updates the income limits after HUD has published revised determinations of median income for the next fiscal year.
- (c) The Regional Asset Limit used in determining an applicant's eligibility for affordable housing pursuant to N.J.A.C. 5:80-26.16(b)(3) shall be calculated by the Borough annually by taking the percentage increase of the income limits calculated pursuant to paragraph (a) above over the previous year's income limits, and applying the same percentage increase to the Regional Asset Limit from the prior year. In no event shall the Regional Asset Limit be less than that for the previous year. In establishing sale prices and rents of affordable housing units, the Borough's administrative agent shall follow the procedures set forth in UHAC, utilizing the regional income limits established pursuant to the process defined above:

[1] The resale prices 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 determined pursuant to the above methodology. In



no event shall the maximum resale price established by the administrative agent be lower than the last recorded purchase price.

[2] The rent levels of very-low-, low- and moderate-income units may be increased annually based on the percentage increase in the Housing Consumer Price Index for the Northeast Urban Area, upon its publication for the prior calendar year. This increase shall not exceed nine percent in any one 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.

- (2) The maximum rent for restricted rental units within each affordable development shall be affordable to households earning no more than 60 percent of median income, and the average rent for restricted rental units shall be affordable to households earning no more than 52 percent of median income.
- (3) The developers and/or municipal sponsors of restricted rental units shall establish at least one rent for each bedroom type for both low-income and moderate-income units, provided that at least 13 percent of all low- and moderate-income rental units shall be affordable to very low-income households, which very low-income units shall be part of the low-income requirement.
- (4) The maximum sales price of restricted ownership units within each affordable development shall be affordable to households earning no more than 70 percent of median income, and each affordable development must achieve an affordability average of 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 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 shall be affordable to a one-person household;
  - (b) A one-bedroom unit shall be affordable to a one and one-half person household;
  - (c) A two-bedroom unit shall be affordable to a three-person household;
  - (d) A three-bedroom unit shall be affordable to a four and one-half person household;  
and
  - (e) A four-bedroom unit shall be affordable to a six-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-person household;
  - (b) A one-bedroom unit shall be affordable to a one and one-half person household; and
  - (c) A two-bedroom unit shall be affordable to a two-person household or to two one-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 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 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 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 rents of very low-, low- and moderate-income units may be increased annually based on the permitted percentage increase in the Housing Consumer Price Index for the Northeast Urban Area. This increase shall not exceed nine percent in any one year. Rent increases for units constructed pursuant to low- income housing tax credit regulations shall be indexed pursuant to the regulations governing low-income housing tax credits.

#### **§16.170-65 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 the Section 8 program.

### **§16.170-66 Occupancy Standards**

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:

- A. Provide an occupant for each bedroom;
- B. Provide children of different sexes with separate bedrooms;
- C. Provide separate bedrooms for parents and children; and
- D. Prevent more than two persons from occupying a single bedroom.

### **§396-9. Control Periods for Restricted Ownership Units and Enforcement Mechanisms**

- A. Control periods for newly constructed restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.5, except as modified by the terms of the settlement agreement between the Borough of Magnolia and Fair Share Housing Center (FSHC), as said settlement agreement may be further amended and supplemented, and each newly constructed restricted ownership unit shall remain subject to the requirements of this Ordinance for a period of at least fifty (50) years, until Magnolia takes action to release the unit from such requirements; prior to such action, a restricted ownership unit must remain subject to the requirements of N.J.A.C. 5:80-26.1, except as modified by the terms of the settlement agreement between the Borough of Magnolia and Fair Share Housing Center (FSHC), as said settlement agreement may be further 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 Ordinance, 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 Ordinance 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 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.

**§16.170-67 Price Restrictions for Restricted Ownership Units, Homeowner Association Fees and Resale Prices**

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:

- A. The initial purchase price for a restricted ownership unit shall be approved by the Administrative Agent.
- B. The Administrative Agent shall approve all resale prices, in writing and in advance of the resale, to assure compliance with the foregoing standards.
- C. 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.
- D. 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 approved capital improvements. Eligible capital improvements shall be those that render the unit suitable for a larger household or the addition of a bathroom. See Section 13.

**§16.170-68 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 50 percent of median income and moderate-income ownership units shall be reserved for households with a gross household income less than 80 percent of median income.
- B. Notwithstanding the foregoing, the Administrative Agent may, upon approval by the Borough Committee, and subject to the Court's approval, permit a moderate-income purchaser to buy a low-income unit if and only if the Administrative Agent can demonstrate that there is an insufficient number of eligible low-income purchasers in the housing region to permit prompt occupancy of the unit and all other reasonable efforts to attract a low income purchaser, including pricing and financing incentives, have failed. Any such low-income unit that is sold to a moderate-income household shall retain the required pricing and pricing restrictions for a low-income unit.
- 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 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 33 percent of the household's eligible monthly income.

**§16.170-69 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 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).

**§16.170-70 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 add 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 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.

**§16.170-71 Control Periods for Restricted Rental Units**

- A. Control periods for newly constructed restricted rental units shall be in accordance with N.J.A.C. 5:80-26.11, except as modified by the terms of the settlement agreement between the Borough of Magnolia and Fair Share Housing Center (FSHC), as such settlement agreement may be further amended and supplemented, and each newly constructed restricted rental unit shall remain subject to the requirements of this Ordinance for a period of at least fifty (50) years, until Magnolia takes action to release the unit from such requirements. Prior to such action, a restricted rental unit must remain subject to the requirements of N.J.A.C. 5:80-26.1, except as modified by the terms of the settlement agreement between the Borough of Magnolia and Fair Share Housing Center (FSHC), as such settlement agreement may be further amended and supplemented.
- 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 Gloucester. A copy of the filed document shall be provided to the Administrative Agent within 30 days of the receipt of a Certificate of Occupancy.
- C. A restricted rental unit shall remain subject to the affordability controls of this Ordinance 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.

#### **§16.170-72 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 Ordinance.
- 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 15% of the total number of dwelling units are restricted rental units in compliance with this Ordinance.



**§16.170-73 Affordable Projects**

- A. All 100% affordable projects, including projects funded through Low Income Housing Tax Credits, shall comply with the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.1, et. seq., except as modified by the terms of the settlement agreement executed between the Borough of Magnolia and Fair Share Housing Center (FSHC), as such settlement agreement may be further amended and supplemented. All such projects shall be required to have an initial thirty (30) year affordability control period plus a fifteen (15) year extended use period.

**§16.170-74 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 30 percent of the regional median household income by household size.
  - (2) Low-income rental units shall be reserved for households with a gross household income less than or equal to 50 percent of the regional median household income by household size.
  - (3) Moderate-income rental units shall be reserved for households with a gross household income less than 80 percent of the regional median household income by household size.
- 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 35 percent (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 or more of the following circumstances exists:
- (1) The household currently pays more than 35 percent (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 35 percent (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 1.a. through 2.e. above with the Administrative Agent, who shall counsel the household on budgeting.

### **§16.170-75 Municipal Housing Liaison**

- A. Section 18 of this ordinance creates the position of Municipal Housing Liaison. The Municipal Housing Liaison shall be responsible for oversight and administration of the affordable housing program for Magnolia, including the following responsibilities which may not be contracted out to the Administrative Agent:
  - (1) Serving as Magnolia'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 Magnolia's Fair Share Plan;
  - (3) Compiling, verifying, submitting and posting all monitoring reports as required by the Court and by this Ordinance;
  - (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.
- B. The Borough of Magnolia shall appoint a specific municipal employee to serve as a Municipal Housing Liaison responsible for overseeing the Borough's affordable housing program, including overseeing the administration of affordability controls on the affordable units and the affirmative marketing of available affordable units in accordance with the Borough's Affirmative Marketing Plan; fulfilling monitoring and reporting requirements; and supervising Administrative Agent(s). Magnolia shall adopt a Resolution appointing the person to fulfill the position of 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.
- C. Subject to the approval of the Court, the Borough of Magnolia shall designate one or more Administrative Agent(s) to administer and to affirmatively market the affordable units constructed in the Borough in accordance with this Ordinance. 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 work of the Administrative Agent(s).

#### **§16.170-76 Administrative Agent**

An Administrative Agent shall be an independent entity serving under contract to and reporting to the municipality. ***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.*** The Administrative Agent shall perform the duties and responsibilities of an Administrative Agent as set forth in UHAC, including those set forth in Sections 5:80-26.14, 16 and 18 thereof, which includes:

A. Affirmative Marketing:

- (1) Conducting an outreach process to affirmatively market affordable housing units in accordance with the Affirmative Marketing Plan of the Borough of Magnolia 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;
- (6) Employing a random selection process as provided in the Affirmative Marketing Plan of the Borough of Magnolia when referring households for certification to affordable units; and
- (7) Notifying the following entities of the availability of affordable housing units in the Borough of Magnolia: Fair Share Housing Center, the New Jersey State Conference of the NAACP, the Latino Action Network, the Camden County and Gloucester County Branches of the NAACP, the Latino Action Network, and the Supportive Housing Association.

## 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 Gloucester County Register of Deeds or Gloucester 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 Rerentals:

- (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- (or very 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 Ordinance;
- (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 municipality 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 municipality 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-family homes), 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 municipality'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 Borough Committee 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 the Court-approved monitoring and reporting requirements in accordance with the deadlines set forth in this Ordinance.
- (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.

**§16.170-77 Affirmative Marketing Requirements**

- A. The Borough of Magnolia 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. It is a continuing program that directs marketing activities toward Housing Region 5 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 5, comprised of Gloucester, Burlington, and Camden Counties.
- D. The municipality 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 re-rentals. The Administrative Agent designated by the Borough of Magnolia 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 months (120 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 municipality in which the units are located; and the developer's rental office. Applications shall be 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 Magnolia, and copies of the application forms, to the following entities: Fair Share Housing Center, the New Jersey State Conference of the NAACP, the Latino Action Network, the Camden County and Gloucester County Branches of the NAACP, the Latino Action Network, and the Supportive Housing Association.
- J. The costs of advertising and affirmative marketing of the affordable units shall be the responsibility of the developer, sponsor or owner.

**§16.170-78 Enforcement of Affordable Housing Regulations**

- A. Upon the occurrence of a breach of any of the regulations governing an affordable unit by an Owner, Developer or Tenant, the municipality 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 municipality may take the following action(s) against the Owner, Developer or Tenant for any violation that remains uncured for a period of 60 days after service of the written notice:
- (1) The municipality 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 \$500.00 per day or imprisonment for a period not to exceed 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 of Magnolia Affordable Housing Trust Fund of the gross amount of rent illegally collected;
    - (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 municipality 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 municipality, 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 municipality, 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 municipality 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 municipality 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 municipality 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 municipality for the Owner and shall be held in such escrow for a maximum period of two years or until such earlier time as the Owner shall make a claim with the municipality for such. Failure of the Owner to claim such balance within the two-year period shall automatically result in a forfeiture of such balance to the municipality. Any interest accrued or earned on such balance while being held in escrow shall belong to and shall be paid to the municipality, whether such balance shall be paid to the Owner or forfeited to the municipality.
- (c) Foreclosure by the municipality 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 municipality 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 municipality shall obligate the Owner to accept an offer to



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purchase from any qualified purchaser which may be referred to the Owner by the municipality, 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.

### **§16.170-79 Appeals**

Appeals from all decisions of an Administrative Agent appointed pursuant to this Ordinance shall be filed in writing with the Court.

### **Section 2. REPEALER**

All Ordinances or parts of Ordinances 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.

### **EFFECTIVE DATE:**

This Ordinance shall take effect upon passage and publication as provided by law.

\_\_\_\_\_  
Betty Ann Cowling-Carson  
Mayor

I, Syliesha Scott, Acting Municipal Clerk of the Borough of Magnolia, do hereby certify that Ordinance # \_\_\_\_\_ was introduced by the Mayor and Council of the Borough of Magnolia, County of Camden, State of New Jersey, at its Regular Meeting held on \_\_\_\_\_ at Borough Hall located at 438 W. Evesham Avenue, Magnolia, NJ 08049.

\_\_\_\_\_  
Syliesha Scott  
Acting Municipal Clerk

Magnolia DRAFT  
June 2025

I, Syliesha Scott, Acting Municipal Clerk of the Borough of Magnolia, do hereby certify that Ordinance # \_\_\_\_\_ was adopted by the Mayor and Council of the Borough of Magnolia, County of Camden, State of New Jersey, at its Regular Meeting held on \_\_\_\_\_ at Borough Hall located at 438 W. Evesham Avenue, Magnolia, NJ 08049.

\_\_\_\_\_  
Syliesha Scott  
Acting Municipal Clerk

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## ORDINANCE \_\_\_\_\_

AN ORDINANCE REPEALING AND REPLACING TITLE 16 CHAPTER 170 ARTICLE II  
OF THE BOROUGH OF MAGNOLIA TO PROVIDE FOR THE COLLECTION OF  
DEVELOPMENT FEES IN SUPPORT OF AFFORDABLE HOUSING AS PERMITTED  
BY THE NEW JERSEY FAIR HOUSING ACT

WHEREAS, 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 adoption of Rules by the Council on Affordable Housing (COAH); and

WHEREAS, pursuant to P.L. 2008, c. 46, Section 8 (C. 52:27D-329.2) and the Statewide Non-Residential Development Fee Act (C. 40:55D-8.1 through 8.7), COAH was 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 were under the jurisdiction of COAH and that are now before a court of competent jurisdiction and have a Court-approved Spending Plan may retain and spend non-residential development fees collected in accordance with the approved Spending Plan;

BE IT ORDAINED by the Mayor and Committee of the Borough of Magnolia, Camden County, New Jersey, that Chapter 70 Section 70-4 of the Code of the Borough of Magnolia is hereby repealed and replaced to include the following provisions regulating the collection and disposition of mandatory development fees to be used in connection with the Borough's affordable housing programs, as directed by the Superior 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.

**Section 1:** Repeal And Replace Title 16 Chapter 170 Article II Affordable Housing Development Fees

### **§16.170-17.5 Purpose**

This Ordinance establishes standards for the collection, maintenance, and expenditure of development fees that are consistent with COAH's regulations developed in response to P.L. 2008, c. 46, Sections 8 and 32-38 (C. 52:27D-329.2) and the Statewide Non-Residential Development Fee Act (C. 40:55D-8.1 through 8.7). Fees collected pursuant to this Ordinance shall be used for the sole purpose of providing very low, low- and moderate-income housing in accordance with a Court-approved Spending Plan.

### **§16.170-17.5.1 Basic Requirements**

- A. This Ordinance shall not be effective until approved by the Court.

B. The Borough of Magnolia shall not spend development fees until the Court has approved a plan for spending such fees (Spending Plan).

### **§16.170-17.5.2 Definitions**

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

“Affordable housing development” means 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 100 percent affordable housing development.

“COAH” or the “Council” means the New Jersey Council on Affordable Housing established under the Fair Housing Act.

“Development fee” means money paid by a developer for the improvement of property as authorized by Holmdel Builder’s Association v. Holmdel Borough, 121 N.J. 550 (1990) and the Fair Housing Act of 1985, N.J.S.A. 52:27d-301, *et seq.*, and regulated by applicable COAH Rules.

“Developer” means the legal or beneficial owner or owners of a lot or of any land proposed to be included in a proposed development, including the holder of an option or contract to purchase, or other person having an enforceable proprietary interest in such land.

“Equalized assessed value” means 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 Sections 1, 5, and 6 of P.L. 1973, c.123 (C.54:1-35a through C.54:1-35c).

“Green building strategies” means 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.

### **§16.170-17.5.3 Residential Development Fees**

#### **A. Imposition of Fees**

- (1) Within the Borough of Magnolia, all residential developers, except for developers of the types of developments specifically exempted in Section 4.B. below and developers of developments that include affordable housing, shall pay a fee of one and one-half percent (1.5%) of the equalized assessed value for all new residential development provided no increased density is permitted. Development fees shall also be imposed and collected when an additional dwelling unit is added to an existing residential structure; in such cases, the fee shall be calculated based on the increase in the equalized assessed value of the property due to the additional dwelling unit.

- (2) When an increase in residential density is permitted pursuant to a “d” variance granted under N.J.S.A. 40:55D-70d(5), developers shall be required to pay a “bonus” development fee of six percent (6.0%) percent of the equalized assessed value for each additional unit that may be realized, except that this provision shall not be applicable to a development that will include affordable housing. If the zoning on a site has changed during the two-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-year period preceding the filing of the variance application.

**B. Eligible Exactions, Ineligible Exactions and Exemptions for Residential Developments**

- (1) Affordable housing developments and/or developments where the developer has made a payment in lieu of on-site construction of affordable units, if permitted by Ordinance and approved by the Court as part of its approval of the settlement of litigation, shall be exempt from the payment of development fees.
- (2) Developments that have received preliminary or final site plan approval prior to the adoption of this Ordinance shall be exempt from the payment of development fees, unless the developer seeks a substantial change in the original approval. Where site plan approval is not applicable, the issuance of a Zoning Permit and/or Construction Permit shall be synonymous with preliminary or final site plan approval for the purpose of determining the right to an exemption. In all cases, the applicable fee percentage shall be determined based upon the Development Fee Ordinance in effect on the date that the Construction Permit is issued.
- (3) Improvements or additions to existing one and two-family dwellings on individual lots shall not be required to pay a development fee, but a development fee shall be charged for any new dwelling constructed as a replacement for a previously existing dwelling on the same lot that was or will be demolished, unless the owner resided in the previous dwelling for a period of one year or more prior to obtaining a demolition permit. Where a development fee is charged for a replacement dwelling, the development fee shall be calculated on the increase in the equalized assessed value of the new structure as compared to the previous structure.
- (4) Homes replaced as a result of a natural disaster (such as a fire or flood) shall be exempt from the payment of a development fee.

**§16.170-17.5.4 Non-Residential Development Fees**

## A. Imposition of Fees

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

## B. Eligible Exactions, Ineligible Exactions and Exemptions for Non-residential Development

- (1) The non-residential portion of a mixed-use inclusionary or market rate development shall be subject to a two and a half percent (2.5%) development fee, unless otherwise exempted below.
- (2) The two and a half percent (2.5%) development fee shall not apply to an increase in equalized assessed value resulting from alterations, change in use within the existing footprint, reconstruction, renovations and repairs.
- (3) Non-residential developments shall be exempt from the payment of non-residential development fees in accordance with the exemptions required pursuant to the Statewide Non-Residential Development Fee Act (N.J.S.A. 40:55D-8.1 through 8.7), as specified in Form N-RDF "State of New Jersey Non-Residential Development Certification/Exemption". Any exemption claimed by a developer shall be substantiated by that developer.
- (4) A developer of a non-residential development exempted from the non-residential development fee pursuant to the Statewide Non-Residential Development Fee Act shall be subject to the fee at such time as the basis for the exemption no longer applies, and shall make the payment of the non-residential development fee, in that event, within three years after that event or

after the issuance of the final Certificate of Occupancy for the non-residential development, whichever is later.

- (5) If a property which was exempted from the collection of a non-residential 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 45 days of the termination of the property tax exemption. Unpaid non-residential development fees under these circumstances may be enforceable by the Borough of Magnolia as a lien against the real property of the owner.

#### **§16.170-17.5.5 Collection Procedures**

A. Upon the granting of a preliminary, final or other applicable approval for a development, the approving authority or entity shall notify or direct its staff to notify the Construction Official responsible for the issuance of a Construction Permit.

B. For non-residential 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 non-residential development shall complete Form N-RDF as per the instructions provided. The Construction Official shall verify the information submitted by the non-residential 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 Construction Permit shall notify the Borough Tax Assessor of the issuance of the first Construction Permit for a development which is subject to a development fee.

D. Within 90 days of receipt of such notification, the Borough Tax Assessor shall prepare an estimate of the equalized assessed value of the development based on the plans filed.

E. The Construction Official responsible for the issuance of a final Certificate of Occupancy shall notify the Borough Tax Assessor of any and all requests for the scheduling of a final inspection on a property which is subject to a development fee.

F. Within 10 business days of a request for the scheduling of a final inspection, the Borough Tax Assessor shall confirm or modify the previously estimated equalized assessed value of the improvements associated with the development; calculate the development fee; and thereafter notify the developer of the amount of the fee.

G. Should the Borough of Magnolia fail to determine or notify the developer of the amount of the development fee within 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 Section 37 of P.L. 2008, c.46 (C.40:55D-8.6).

H. Except as provided in Section 5.A.3) hereinabove, fifty percent (50%) of the initially calculated development fee shall be collected at the time of issuance of the Construction Permit. The remaining portion shall be collected at the time of 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 Construction Permit and that determined at the time of 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 of Magnolia. 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, R.S. 54:48-1, *et seq.*, within 90 days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.
- (2) A developer may challenge non-residential 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 45 days of receipt of the challenge, collected fees shall be placed in an interest bearing escrow account by the Borough of Magnolia. 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, R.S. 54:48-1, *et seq.*, within 90 days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.

**§16.170-17.5.6 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 of the Borough of Magnolia for the purpose of depositing development fees collected from residential and non-residential 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 a fraction of an affordable unit, where permitted by Ordinance or by Agreement with the Borough of Magnolia;
- (2) Funds contributed by developers to make ten percent (10%) of the adaptable entrances in a townhouse or other multistory attached dwelling unit 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 Magnolia's affordable housing program.

C. In the event of a failure by the Borough of Magnolia 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 Magnolia, 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.

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

#### **§16.170-17.5.7 Use of Funds**

A. The expenditure of all funds shall conform to a Spending Plan approved by the Court. Funds deposited in the Affordable Housing Trust Fund may be used for any activity approved by the Court to address the Borough of Magnolia'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; housing rehabilitation; new construction of affordable housing units and related costs; accessory apartments; a market to affordable program; Regional Housing Partnership programs; conversion of existing non-residential 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; and/or any other activity permitted by the Court and specified in the approved Spending Plan.

B. Funds shall not be expended to reimburse the Borough of Magnolia for past housing activities.

C. At least 30 percent of all development fees collected and interest earned on such fees 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 30 percent or less of the median income for Housing Region 5, in which Magnolia is located.

- (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. The specific programs to be used for affordability assistance shall be identified and described within the Spending Plan.
- (2) Affordability assistance to households earning 30 percent or less of median income may include buying down the cost of low or moderate income units in the municipal Fair Share Plan to make them affordable to households earning 30 percent or less of median income. The specific programs to be used for very low income affordability assistance shall be identified and described within the Spending Plan.
- (3) Payments in lieu of constructing affordable housing units on site, if permitted by Ordinance or by Agreement with the Borough of Magnolia, and funds from the sale of units with extinguished controls shall be exempt from the affordability assistance requirement.

D. The Borough of Magnolia may contract with a private or public entity to administer any part of its Housing Element and Fair Share Plan, including its programs for affordability assistance.

E. No more than 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 consultants' fees necessary to develop or implement a new construction program, prepare a Housing Element and Fair Share Plan, and/or administer an affirmative marketing program or a rehabilitation program.

- (1) In the case of a rehabilitation program, the administrative costs of the rehabilitation program shall be included as part of the 20 percent of collected development fees that may be expended on administration.



- (2) Administrative funds may be used for income qualification of households, monitoring the turnover of sale and rental units, and compliance with COAH's monitoring requirements. Legal or other fees related to litigation opposing affordable housing sites or related to securing or appealing a judgment from the Court are not eligible uses of the Affordable Housing Trust Fund.

### **§16.170-17.5.8 Monitoring**

The Borough of Magnolia shall provide annual reporting of Affordable Housing Trust Fund activity to the State of New Jersey, Department of Community Affairs, Council on Affordable Housing or 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 Local Government Services. The reporting shall include an accounting of all Affordable Housing Trust Fund activity, including the sources and amounts of funds collected and the amounts and purposes for which any funds have been expended. Such reporting shall include an accounting of development fees collected from residential and non-residential developers, payments in lieu of constructing affordable units on site (if permitted by Ordinance or by Agreement with the Borough), funds from the sale of units with extinguished controls, barrier free escrow funds, rental income from Borough owned affordable housing units, repayments from affordable housing program loans, and any other funds collected in connection with Magnolia's affordable housing programs, as well as an accounting of the expenditures of revenues and implementation of the Spending Plan approved by the Court.

### **§16.170-17.5.9 Ongoing Collection of Fees**

A. The ability for the Borough of Magnolia to impose, collect and expend development fees shall expire with the expiration of the repose period covered by its Judgment of Compliance unless the Borough of Magnolia has first filed an adopted Housing Element and Fair Share Plan with the Court or with a designated State administrative agency, has petitioned for a Judgment of Compliance from the Court or for Substantive Certification or its equivalent from a State administrative agency authorized to approve and administer municipal affordable housing compliance and has received approval of its Development Fee Ordinance from the entity that will be reviewing and approving the Housing Element and Fair Share Plan.

B. If the Borough of Magnolia fails to renew its ability to impose and collect development fees prior to the expiration of its Judgment of Compliance, it may be subject to forfeiture of any or all funds remaining within its Affordable Housing 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 (C. 52:27D-320).

C. The Borough of Magnolia 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, nor shall the Borough of Magnolia retroactively impose a development

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fee on such a development. The Borough of Magnolia also shall not expend any of its collected development fees after the expiration of its Judgment of Compliance.

## **Section 2. REPEALER**

All Ordinances or parts of Ordinances 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.

## **EFFECTIVE DATE:**

This Ordinance shall take effect upon passage and publication as provided by law.

\_\_\_\_\_  
Betty Ann Cowling-Carson  
Mayor

I, Syliesha Scott, Acting Municipal Clerk of the Borough of Magnolia, do hereby certify that Ordinance # \_\_\_\_\_ was introduced by the Mayor and Council of the Borough of Magnolia, County of Camden, State of New Jersey, at its Regular Meeting held on \_\_\_\_\_ at Borough Hall located at 438 W. Evesham Avenue, Magnolia, NJ 08049.

\_\_\_\_\_  
Syliesha Scott  
Acting Municipal Clerk

I, Syliesha Scott, Acting Municipal Clerk of the Borough of Magnolia, do hereby certify that Ordinance # \_\_\_\_\_ was adopted by the Mayor and Council of the Borough of Magnolia, County of Camden, State of New Jersey, at its Regular Meeting held on \_\_\_\_\_ at Borough Hall located at 438 W. Evesham Avenue, Magnolia, NJ 08049.

\_\_\_\_\_  
Syliesha Scott  
Acting Municipal Clerk

## **APPENDIX 3**

(Additional Appendices to be Included by March 15, 2026)