

City of Clifton, Passaic County, New Jersey 2025 Housing Element & Fair Share Plan



**Adopted by the City of Clifton Planning Board:
June 26, 2025**

June 12, 2025

Prepared for:

**City of Clifton Planning Board
City of Clifton Mayor & City Council**

Prepared by:

A handwritten signature in blue ink, appearing to read "Nicholas A. Graviano", is written over a horizontal line.

Nicholas A. Graviano, PP, AICP, JD
New Jersey Professional Planner License # 33LI00577100

The original copy of this document was signed and sealed
in accordance with N.J.S.A. 45:14 A-1 et seq.



Graviano & Gillis Architects & Planners, LLC

P.O. Box 3341
Long Branch, NJ 07740
Tel: (732) 816-4151

I. Table of Contents

I. Table of Contents	1
II. Acknowledgements	3
III. Introduction	4
IV. Affordable Housing in Clifton & New Jersey Today	4
V. Contents of the Plan	6
VI. Demographic Information	7
Housing Data	7
Table 1: City of Clifton – Housing Units 1970 to 2020	7
Table 2: City of Clifton – Units in Structure - 2023 American Community Survey Estimate	8
Table 3: Clifton – Year Structure Built - 2023 American Community Survey (ACS) Estimate	8
Table 4: City of Clifton – Rooms in Structure - 2023 American Community Survey Estimate	9
Table 5: City of Clifton – Bedrooms in Structure - 2023 American Community Survey Estimate	9
Table 6: City of Clifton – Housing by Tenure - 2023 American Community Survey Estimate	10
Table 7: City of Clifton – Housing Cost by % Monthly of Income- 2023 ACS Estimate ...	11
Table 8: City of Clifton – Renter Housing Cost by % of Income - 2023 ACS Estimate	11
Table 9: City of Clifton – Value of Owner-Occupied Units - 2023 ACS Estimate	12
Population Data	12
Table 10: City of Clifton – Total Population – US Census Bureau	12
Table 11: City of Clifton – Total Population by Age & Sex – 2023 ACS Estimates	13
Table 12: City of Clifton – Population by Race – 2023 ACS Estimates	13
Table 13: City of Clifton – Household Income – 2023 ACS Estimates	14
Table 14: City of Clifton – Labor Force Rate – 2023 ACS Estimates	15
Table 15: City of Clifton – Means of Transportation to Work – 2023 ACS Estimates	16
Table 16: City of Clifton – Population Below Poverty Line – 2023 ACS Estimates	17
Employment Data	17
Table 17: City of Clifton – Employment Status – 2023 ACS Estimates	17
Table 18: City of Clifton – Employment by Industry – 2019-2023 ACS Estimates	18
Projection of Housing Stock	18

Table 19: City of Clifton –Certified Housing Units – NJ Dept. of Community Affairs (DCA)	19
VII. Goals of the Housing Element and Fair Share Plan.....	19
VIII. Relationship to Multigenerational Family Housing Continuity.....	19
IX. Relationship to Other Plans	20
Municipal Master Plan.....	20
State Development & Redevelopment Plan (SDRP).....	20
X. Fair Share Plan.....	21
Clifton Home Improvement Program (CHIP)	21
Clifton Affordable Housing Trust Fund	22
Table 20: City of Clifton – Affordable Housing Trust Fund Revenue – Clifton Finance Dept.....	22
XI. Clifton Development Fee Ordinance	22
XII. Draft Spending Plan.....	23
Introduction.....	23
Revenues for the 2025 to 2035 Period.....	23
Administrative Mechanism to Collect and Distribute Funds.....	24
Description of Anticipated Use of Affordable Housing Funds	25
Expenditure Schedule	26
Summary	26
XIII. Appendix.....	27

II. Acknowledgements

Planning Board Members

Chairwoman Susan Kolodziej
Vice-Chairman John Withers
Mayor Raymond Grabowski
Councilman Chris D'Amato
Commissioner Phil Binaso
Commissioner Frank Fragapane
Commissioner Zalman Gurkov
Commissioner Joe Korbanics
Commissioner Steve Lataro
Commissioner Brian Rodgers
Commissioner Ed Welsh

Planning Board Professionals

Robert A. Ferraro, Esq.
Jill Hartmanm, PP, AICP
Neglia Group

Mayor & City Council

Raymond Grabowski, Mayor
Chris D'Amato, Councilman
William Gibson, Councilman
Joseph Kolodziej, Councilman
Antonio Latona, Councilman
Rosemary Pino, Councilwoman
Mary Sadrakula, Councilwoman

III. Introduction

This Housing Element and Fair Share Plan has been prepared on behalf of the City of Clifton, Passaic County, in accordance with the New Jersey Municipal Land Use Law per N.J.S.A. 40:55D-28b(3) and the Fair Housing Act (N.J.S.A. 52:27D-301, et seq.). This document supersedes and replaces the City's 2016 Housing Element and Fair Share Housing Plan which was adopted on January 5, 2016, hereinafter referred to as the "City's 2016 Housing Plan."

The Municipal Land Use Law, N.J.S.A. 40:55D-1, et seq., requires that a municipal master plan includes Housing Element in order for the municipality to exercise the power to zone and regulate land use. The Housing Element and Fair Share Plan is adopted by the City Planning Board and endorsed by the City Council. It is intended to achieve the goal of meeting the City's obligations to plan and regulate land use to provide for a fair share of the regional need for affordable housing. This Housing Element and Fair Share Plan document outlines how the City will address its affordable housing obligations.

IV. Affordable Housing in Clifton & New Jersey Today

In 1975, the Supreme Court of New Jersey, in South Burlington County N.A.A.C.P. v. Township of Mount Laurel, 67 N.J. 151 (1975), ruled that the developing municipalities in the State of New Jersey exercising their zoning power, in general, had a constitutional obligation to provide a realistic opportunity for the construction of their fair share of the region's low- and moderate-income housing needs. In 1983, the Supreme Court refined that constitutional obligation in South Burlington County N.A.A.C.P. v. Township of Mount Laurel, 92 N.J. 158 (1983), to apply to those municipalities having any portion of their boundaries within the growth area as shown on the State Development Guide Plan.

In 1985, the New Jersey Legislature adopted, and the Governor signed, the Fair Housing Act N.J.S.A. 52:2D-301, et seq. ("FHA"), which transformed the judicial doctrine which became known as the "Mount Laurel doctrine" into a statutory one and provided an alternative administrative process in which municipalities could elect to participate in order to establish a Housing Element and Fair Share Plan ("HEFSP") that would satisfy its constitutional obligation by creating an administrative agency known as the Council on Affordable Housing ("COAH") to develop regulations to define the obligation and implement it. COAH proceeded to adopt regulations for First Round obligations applicable from 1987 to 1993 and Second Round obligations that created a cumulative obligation from 1987 to 1999. COAH first proposed Third Round substantive and procedural rules in 2003, but due to multiple legal challenges, these rules were not adopted until 2008. However, the Third Round rules adopted in 2008 were challenged in an appeal entitled In the Matter of the Adoption of N.J.A.C. 5:96 and 5:97 by the New Jersey Council on Affordable Housing, 416 N.J. Super. 462 (App. Div. 2010) (the "2010 Case").

In October 2010, the Appellate Division determined, amongst other things, that the methodology used in the rules adopted in 2008 was invalid and that COAH should adopt regulations utilizing methodologies similar to the ones utilized in the First and Second Rounds, i.e. 1987-1999. In 2013, the Supreme Court of New Jersey affirmed the Appellate Division's invalidation of the third

iteration of the Third Round regulations, sustained their determination that the growth share methodology was invalid, and directed COAH to adopt new regulations based upon the methodology utilized in the First and Second Rounds, In the Matter of the Adoption of N.J.A.C. 5:96 and 5:97 by the New Jersey Council on Affordable Housing, 215 N.J. 578 (2013) (the “2013 Case”). COAH proceeded to propose such regulations in accordance with the schedule established by the New Jersey Supreme Court in the 2013 Case. On October 20, 2014, COAH deadlocked with a 3-3 vote and failed to adopt the revised Third Round regulations.

Due to COAH’s failure to adopt the revised regulations and their subsequent inaction, Fair Share Housing Center (“FSHC”), a party in the 2010 Case and the 2013 Case, filed a motion with the New Jersey Supreme Court to enforce litigant’s rights. On March 10, 2015 the New Jersey Supreme Court issued its decision on FSHC’s motion. The Supreme Court found that the COAH administrative process had become non-functioning and, as a result, returned primary jurisdiction over affordable housing matters to the trial courts. In the Matter of the Adoption of N.J.A.C. 5:96 and 5:97 by the New Jersey Council on Affordable Housing, 221 N.J. 1 (2015) (the “2015 Case”). In doing so, the Supreme Court declined to adopt a specific methodology or formula to calculate the Third Round affordable housing obligations of the municipalities. The Court did provide some guidance by reiterating its endorsement of the previous methodologies employed in the First and Second Round Rules as the template to establish Third Round affordable housing obligations.

On March 20, 2024, Governor Phil Murphy signed a package of affordable housing bills. One of these overhauled the FHA and eliminated COAH, as well as setting forth the process of determining Fourth Round (2025 to 2035) affordable housing obligations. The New Jersey Department of Community Affairs (DCA) calculated statewide and regional affordable housing needs, including its non-binding determination of each municipality’s Fourth Round affordable housing obligations. Municipalities were able to either the accept the DCA determination of their obligation, or to provide their own municipal determination of their Fourth Round obligation.

DCA’s Fourth Round (2025-2035) fair share methodology and calculations set forth the low- and moderate-income housing obligations for New Jersey’s 564 municipalities. The calculations were prepared by the Offices of Policy and External Affairs and Local Planning Services in the Department of Community Affairs. DCA calculated the Present Need and Prospective Need obligations for the fourth round in line with the formulas and criteria outlined in P.L.2024, c.2 (the Affordable Housing Law).

Under the new law, Present Need is determined by estimating the existing deficient (substandard) housing by municipality occupied by low- and moderate-income households, using data collected, analyzed, and published by the U.S. Census Bureau. Certain qualifying municipalities, designated by DCA for additional state financial assistance and known as “urban aid municipalities,” are not allocated a Prior Round obligation or a Prospective Need obligation. Many already have significant income-restricted affordable housing built over the past several decades. They are not, however, exempted from their Present Need responsibilities.

DCA’s calculations determined that the City of Clifton has a Present Need (rehabilitation of housing units) of eight hundred eighty-four (884), and a Prospective Need of zero (0).

On January 21, 2025, City Council adopted Resolution 053-25, where the City Council determined that it was in its best interest to accept the DCA calculations of the City's fair share obligations and commits to its fair share of a Present Need (Rehabilitation) Obligation of Eight Hundred Eighty-Four (884) and a Prospective Need (New Construction) Obligation of Zero (0), subject to any vacant land, durational and/or other adjustments that the City may seek as part of its Housing Element and Fair Share Plan ("HEFSP") that it subsequently submits in accordance with the Amended FHA. This Housing Element and Fair Share Plan document outlines how the City will address its affordable housing obligations.

V. Contents of the Plan

Municipal Land Use Law (N.J.S.A. § 52:27D-310) and the Fair Housing Act (P.L. 1985, c.222) require that the Housing Element and Fair Share Plan include the following:

- 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, as established pursuant to section 3 of P.L.2024, c.2 (C.52:27D-304.1);
- 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;
- g. An analysis of the extent to which municipal ordinances and other local factors advance or detract from the goal of preserving multigenerational family continuity as

expressed in the recommendations of the Multigenerational Family Housing Continuity Commission, adopted pursuant to paragraph (1) of subsection f. of section 1 of P.L. 2021, c. 273 (C.52:27D-329.20);

- h. For a municipality located within the jurisdiction of the Highlands Water Protection and Planning Council, established pursuant to section 4 of P.L. 2004, c. 120 (C.13:20-4), an analysis of compliance of the housing element with the Highlands Regional Master Plan of lands in the Highlands Preservation Area, and lands in the Highlands Planning Area for Highlands-conforming municipalities. This analysis shall include consideration of the municipality's most recent Highlands Municipal Build Out Report, consideration of opportunities for redevelopment of existing developed lands into inclusionary or one hundred percent (100%) affordable housing, or both, and opportunities for one hundred percent (100%) affordable housing in both the Highlands Planning Area and Highlands Preservation Area that are consistent with the Highlands regional master plan; and,
- i. An analysis of consistency with the State Development and Redevelopment Plan, including water, wastewater, stormwater, and multi-modal transportation based on guidance and technical assistance from the State Planning Commission.

VI. Demographic Information

Housing Data

As per the 2020 US Census, there were 33,423 housing units in Clifton, a 4.6% increase from the 2010 Census. Of the occupied units, 58.7% were owner-occupied and 41.3% were renter occupied. See Table 1 below, for the number of housing units from the 1970 Census to present.

Table 1: City of Clifton – Housing Units 1970 to 2020 – US Census Bureau

Year	Housing Units	% Change from Previous Decade
1970	27,987	—
1980	29,983	7.10%
1990	30,244	0.90%
2000	31,060	2.70%
2010	31,946	2.90%
2020	33,423	4.60%

Data from the 2023 American Community Survey (ACS) estimate provides that the majority of dwelling units in the City are single-family detached (15,417 dwellings or 45.3%), two (2)-family dwellings (7,167 or 21%) and twenty (20) or more units (2,737 or 8%).

Table 2: City of Clifton – Units in Structure - 2023 American Community Survey Estimate

Total housing units	34,064	Percent %
1-unit, detached	15,417	45.3
1-unit, attached	2,335	6.9
2 units	7,167	21
3 or 4 units	3,072	9
5 to 9 units	1,892	5.6
10 to 19 units	1,345	3.9
20 or more units	2,737	8
Mobile home	99	0.3
Boat, RV, van, etc.	0	0

Table 3 below, breaks down the age of the City of Clifton’s housing stock. As would be expected for an older, mostly built-out municipality like Clifton, the majority of the housing stock was built before 1960. Almost 30% of dwellings were built 1939 or earlier, followed by 23.8% built between 1950-1959, and 16.5% built between 1940-1949.

Table 3: Clifton – Year Structure Built - 2023 American Community Survey Estimate

Total housing units	34,064	Percent %
Built 2020 or later	161	0.5
Built 2010 to 2019	789	2.3
Built 2000 to 2009	1,888	5.5
Built 1990 to 1999	773	2.3
Built 1980 to 1989	1,478	4.3
Built 1970 to 1979	2,149	6.3
Built 1960 to 1969	2,936	8.6
Built 1950 to 1959	8,105	23.8
Built 1940 to 1949	5,623	16.5
Built 1939 or earlier	10,162	29.8

The majority of the housing units in the City of Clifton are four (4) to six (6) rooms. Housing units with six (6) rooms are the most prevalent (20.4%), followed by five (5) rooms (18.6%) and four (4) rooms (16.3%) A full breakdown can be found in Table 4 below.

This space was intentionally left blank.

Table 4: City of Clifton – Rooms in Structure - 2023 American Community Survey Estimate

Total housing units	34064	Percent %
1 room	1,164	3.4
2 rooms	792	2.3
3 rooms	3,426	10.1
4 rooms	5,568	16.3
5 rooms	6,335	18.6
6 rooms	6,947	20.4
7 rooms	4,321	12.7
8 rooms	2,547	7.5
9 rooms or more	2,964	8.7

Table 5 below, provides the estimated number of bedrooms per housing unit. Three (3) bedroom dwellings are the most common housing type within the City, accounting for 33.1% of all dwellings. Two (2) bedroom dwellings are a close second at 32.8%. One (1) bedroom and four (4) bedroom dwellings total 13.9% and 13.2% respectively.

Table 5: City of Clifton – Bedrooms in Structure - 2023 American Community Survey Estimate

Total housing units	34,064	Percent %
No bedroom	1,230	3.6
1 bedroom	4,740	13.9
2 bedrooms	11,163	32.8
3 bedrooms	11,286	33.1
4 bedrooms	4,491	13.2
5 or more bedrooms	1,154	3.4

The 2023 American Community Survey estimates have owner-occupied housing units as the prevalent housing tenure in the City, with 19,302 dwellings or 58.7% of the occupied housing units. Renter occupied housing units account for 41.3%. Owner-occupied housing units have an average of 2.91 people per dwelling while renter-occupied units average 2.38 people per dwelling. See Table 6 below.

This space was intentionally left blank.

Table 6: City of Clifton – Housing by Tenure - 2023 American Community Survey Estimate

Occupied housing units	32,897	Percent %
Owner-occupied	19,302	58.7
Renter-occupied	13,595	41.3
Average household size of owner-occupied unit	2.91	NA
Average household size of renter-occupied unit	2.38	NA

Owner-occupied housing units are estimated at 11,713 dwellings. Approximately 34.5% of homeowners with a mortgage spend less than twenty percent (20%) of their income housing expenses. Approximately 28.4% of homeowners with a mortgage spend over thirty five (35%) of income on housing costs. Homeowners without a mortgage spend less than ten percent (10%) of their income on housing expenses (29.5%). While 20.6% of homeowners without a mortgage spend ten percent (10%) to fifteen (15%). Approximately 16.9% of homeowners without a mortgage spend over thirty five percent (35%) of their income on housing expenses. See Table 7 below for additional details.

This space was intentionally left blank.

Table 7: City of Clifton – Housing Cost by % Monthly of Income- 2023 ACS Estimate

Housing units with a mortgage (excluding units where SMOCAPI cannot be computed)	Housing Units	Percent%
Less than 20.0 percent	4,037	34.5
20.0 to 24.9 percent	2,011	17.2
25.0 to 29.9 percent	1,433	12.2
30.0 to 34.9 percent	901	7.7
35.0 percent or more	3,331	28.4
Housing unit without a mortgage (excluding units where SMOCAPI cannot be computed)	7,486	Percent %
Less than 10.0 percent	2,209	29.5
10.0 to 14.9 percent	1,543	20.6
15.0 to 19.9 percent	1,107	14.8
20.0 to 24.9 percent	502	6.7
25.0 to 29.9 percent	500	6.7
30.0 to 34.9 percent	361	4.8
35.0 percent or more	1,264	16.9

Table 8 below, reveals that over forty one percent (41%) of the City’s renters pay over thirty five percent (35%) of their income on rent. The next highest cohort, pays less than 15%, with 2,155 housing units or 19.2%. Approximately 14.8% of renters pay 15% to 19.9% of income on rent.

Table 8: City of Clifton – Renter Housing Cost by % of Income - 2023 ACS Estimate

Occupied units paying rent (excluding units where GRAPI cannot be computed)	11,236	Percent %
Less than 15.0 percent	2,155	19.2
15.0 to 19.9 percent	1,576	14
20.0 to 24.9 percent	976	8.7
25.0 to 29.9 percent	792	7
30.0 to 34.9 percent	1,101	9.8
35.0 percent or more	4,636	41.3
Not computed	703	

As per 2023 American Community Survey estimates, 43.3% of the City’s owner-occupied housing stock is valued at \$300,000 to \$499,000. The next largest cohort, dwellings valued at \$500,000 to

\$999,999, total an estimated 32.2% of the owner-occupied dwellings. See Table 9 for additional details.

Table 9: City of Clifton – Value of Owner-Occupied Units - 2023 ACS Estimate

Value	Units	Percent%
Less than \$50,000	461	2.3
\$50,000 to \$99,999	885	4.4
\$100,000 to \$149,999	188	0.9
\$150,000 to \$199,999	252	1.3
\$200,000 to \$299,999	2,448	12.2
\$300,000 to \$499,999	8,680	43.3
\$500,000 to \$999,999	6,453	32.2
\$1,000,000 or more	662	3.3
Median (dollars)	\$445,100	

Population Data

Table 10 below, shows that the City of Clifton experienced a population growth of 6,160 people between the 2010 and 2020 US Census. The 2020 population was counted at 90,296 people. US Census estimates of the current population do not deviate greatly from the 2020 Census, with a current estimate of 90,332 people. The City has the eleventh (11th) largest population of any municipality in the State of New Jersey.

Table 10: City of Clifton – Total Population – 2024 US Census Bureau

Year	Population	Change from Previous Census	% Percent Change
1970	82,437	—	—
1980	74,388	-8,049	-9.70%
1990	71,742	-2,646	3.56%
2000	78,672	6,930	9.70%
2010	84,136	5,464	6.90%
2020	90,296	6,160	7.30%
2024 (estimate)	90,332	NA	NA

The City of Clifton is 50.8% male and 49.2% percent female as per 2023 American Community Survey estimates. The largest age cohort are the 35 to 44 year bracket with 15.2% of the population. The second largest age group is the 25 to 34 year bracket with 14.7%. Approximately 11.1% of the population is aged 65 to 74 years. See Table 11 below, for additional details.

Table 11: City of Clifton – Total Population by Age & Sex – 2023 ACS Estimates

Total population		Percent%
Male	44,953	50.8
Female	43,525	49.2
Under 5 years	5,903	6.7
5 to 9 years	5,535	6.3
10 to 14 years	4,558	5.2
15 to 19 years	3,885	4.4
20 to 24 years	3,711	4.2
25 to 34 years	13,006	14.7
35 to 44 years	13,454	15.2
45 to 54 years	8,784	9.9
55 to 59 years	4,660	5.3
60 to 64 years	8,706	9.8
65 to 74 years	9,828	11.1
75 to 84 years	5,099	5.8
85 years and over	1,349	1.5

The City of Clifton has a diverse mix of residents as is evident on 2023 American Community Service estimates (Table 12 below). 48.5% of residents are classified as white. Latinos of any race account for 44.4% percent of the population. People of two (2) or more races are estimated at 22.2% of the population.

This space was intentionally left blank

Table 12: City of Clifton – Population by Race – 2023 American Community Survey Estimates

	Number	Percent %
One race	68,813	77.8
Two or More Races	19,665	22.2
One race	68,813	77.8
White	42,884	48.5
Black or African American	3,655	4.1
American Indian and Alaska Native	738	0.8
Asian	8,308	9.4
Native Hawaiian and Other Pacific Islander	176	0.2
Some Other Race	13,052	14.8
Two or More Races	19,665	22.2
HISPANIC OR LATINO AND RACE		
Total population	88,478	
Hispanic or Latino (of any race)	39,261	44.4
Not Hispanic or Latino	49,217	55.6

Table 13 below, provides the breakdown of household income. The most predominant household income group is \$100,000 to \$149,999, at 21.3%. Households earning over \$200,000 or more are 17% of households. The \$75,000 to \$99,999 income bracket is third at 11.9%. Approximately 27.7% of all City households make under \$49,999.00 per year.

This space was intentionally left blank

Table 13: City of Clifton – Household Income – 2023 American Community Survey Estimates

Income	Percent %
Less than \$10,000	5.3
\$10,000 to \$14,999	3.1
\$15,000 to \$24,999	6.7
\$25,000 to \$34,999	5.2
\$35,000 to \$49,999	7.4
\$50,000 to \$74,999	10.9
\$75,000 to \$99,999	11.9
\$100,000 to \$149,999	21.3
\$150,000 to \$199,999	11.1
\$200,000 or more	17
Median income (dollars)	\$98,598
Mean income (dollars)	\$121,127

Table 14 below, provides the 2023 American Community Survey estimates for labor force participation by age. Approximately 92.1% of people ages 35 to 44 years are in the labor force. People aged 45 to 54 years are employed at a 87.5% rate. The third-highest employment group is the 55 to 59 year demographic with a labor force participation at 85.2%.

Table 14: City of Clifton – Labor Force Rate – 2023 American Community Survey Estimates

AGE	Total Pop.	% of Pop. In Workforce
16 to 19 years	3,248	47.1
20 to 24 years	3,711	75.2
25 to 29 years	5,324	87
30 to 34 years	7,682	84.2
35 to 44 years	13,454	92.1
45 to 54 years	8,784	87.5
55 to 59 years	4,660	85.2
60 to 64 years	8,706	66.3
65 to 74 years	9,828	30.2
75 years and over	6,448	6.5

Approximately 66.4% of employed Clifton workers drove alone to work. Users of public transportation accounted for 9.2% as a means of commute. Carpoolers are estimated to be at 7.7%. Approximately 25% of people work from home. See Table 15, below. Work from home estimates may be influenced by impacts from the COVID pandemic.

Table 15: City of Clifton – Means of Transportation to Work – 2023 ACS Estimates

MEANS OF TRANSPORTATION TO WORK	Percent %
Car, truck, or van	74.1
Drove alone	66.4
Carpooled	7.7
In 2-person carpool	4.4
In 3-person carpool	1.5
In 4-or-more person carpool	1.9
Workers per car, truck, or van	1.07
Public transportation (excluding taxicab)	9.2
Walked	2.3
Bicycle	0.1
Taxicab, motorcycle, or other means	1.4
Worked from home	12.9
PLACE OF WORK	
Worked in state of residence	87.2
Worked in county of residence	48
Worked outside county of residence	39.2
Worked outside state of residence	12.8
Living in a place	100
Worked in place of residence	25.2
Worked outside place of residence	74.8

Table 16 below, breaks down the City’s estimated population below the poverty line. According to 2023 American Community Survey estimates, 11.3% of people aged 60 years and over are below the poverty line. People in the 18 to 34 years age group have a population of 8.8% below the poverty line. People aged 5 to 17 years have a rate of 6.2% below the poverty line.

This space was intentionally left blank

Table 16: City of Clifton – Population Below Poverty Line – 2023 ACS Estimates

Population for whom poverty status is determined	Total	Number Below Poverty	Percent % Below Poverty
AGE			
Under 18 years	17,947	742	4.1
Under 5 years	5,901	0	0
5 to 17 years	12,046	742	6.2
Related children of householder under 18 years	17,894	689	3.9
18 to 64 years	53,820	4,507	8.4
18 to 34 years	18,255	1,613	8.8
35 to 64 years	35,565	2,894	8.1
60 years and over	24,791	2,807	11.3
65 years and over	16,124	1,766	11

Employment Data

The City of Clifton has an estimated 73,379 people over of the age of 16. Of which, 50,121 people, or 68.3% are in the civilian labor force. Approximately 23,258 people, or 31.7% are not in the labor force. The City has an employment rate of 93% and an unemployment rate of 7%. See Table 17 below.

Table 17: City of Clifton – Employment Status – 2023 American Community Survey Estimates

EMPLOYMENT STATUS		Percent %
Population 16 years and over	73,379	100.0
In labor force	50,121	68.3
Civilian labor force	50,121	
Employed	46,616	93.0
Unemployed	3,505	7.0
Armed Forces	0	0.0
Not in labor force	23,258	31.7

City residents have a wide-range of employment by industry. Table 18 below, shows the distribution of jobs by industry. An estimated 22.6% of employed residents work in the educational services, health care and social assistance sector. Approximately 12.8% of employed residents work in the manufacturing sector. Retail jobs account for 11.1%.

Table 18: City of Clifton – Employment by Industry – 2019-2023 ACS Estimates

INDUSTRY		
Civilian employed population 16 years and over	46,616	Percent %
Agriculture, forestry, fishing and hunting, and mining	91	0.2
Construction	2,759	5.9
Manufacturing	5,967	12.8
Wholesale trade	1,712	3.7
Retail trade	5,187	11.1
Transportation and warehousing, and utilities	3,177	6.8
Information	814	1.7
Finance and insurance, and real estate and rental and leasing	3,070	6.6
Professional, scientific, and management, and administrative and waste management services	6,044	13
Educational services, and health care and social assistance	10,542	22.6
Arts, entertainment, and recreation, and accommodation and food services	3,126	6.7
Other services, except public administration	2,480	5.3
Public administration	1,647	3.5

Projection of Housing Stock

The City of Clifton tax records indicate that there are 23,730 tax parcels within the City. Of which, 216 (0.9%) or are classified as vacant. Of those vacant parcels, thirty-six (36) parcels are owned by public utilities or railroads. A large portion of the remaining vacant parcels are part of existing developments or approved developments. There is a minimal amount of vacant land available for new housing construction.

As per the DCA, from 2013 to 2023, the City had five hundred one (501) certified housing units. Of those five hundred one (501) units, ninety two (92) were attributed to the Clifton Mews affordable housing building. As per the Building Department, the majority of new single-family dwellings were tear-downs of older single-family dwellings. See Table 19 below.

This space was intentionally left blank

Table 19: City of Clifton –Certified Housing Units – NJ Dept. of Community Affairs (DCA)

Year	1 & 2 Family	Multi-Family	Mixed-Use	Totals
2023	9	0	0	9
2022	20	0	0	20
2021	14	5	0	19
2020	3	93	0	96
2019	10	0	0	10
2018	7	11	0	18
2017	13	66	0	79
2016	3	15	0	18
2015	5	36	0	41
2014	18	76	0	94
2013	11	86	0	97
	113	388	0	501

Based on the lack of vacant land and analysis of housing unit data, it is estimated that the City will add approximately twenty (20) to thirty (30) new dwelling units per year between 2025-2035.

VII. Goals of the Housing Element and Fair Share Plan

This Fair Share Plan describes the specific ways in which Clifton will meet its Fourth Round affordable housing obligations, and is compliant with the Fair Housing Act (FHA), Fourth Round regulations ("Amended FHA"). The goals of the fair share plan are as follows:

1. The overall goal of this Fair Share Plan is to provide a framework for the City of Clifton to provide for its fair share of the Present Need of the rehabilitation of eight hundred eighty-four (884) dwelling units for low- and moderate-income housing for the period of 2025 through 2035.
2. To improve the condition of housing units within the City's existing and future affordable housing inventory.

VIII. Relationship to Multigenerational Family Housing Continuity

The 2024 FHA requires an analysis of the extent to which municipal ordinances and other local factors advance or detract from the goal of preserving multigenerational family continuity as expressed in the recommendations of the Multigenerational Family Housing Continuity Commission, adopted pursuant to paragraph (1) of subsection f. of section 1 of P.L.2021, c. 273 (C.52:27D-329.20). The Commission has the primary goal of enabling senior citizens to reside at the homes of their extended families, thereby preserving and enhancing multigenerational family continuity. A review of the City's zoning ordinance indicate that there are no ordinances that

would specifically exclude anyone from meeting the Commission's goal of enabling senior citizens to reside at the homes of their extended families.

Furthermore, the City has a housing stock that is twenty one percent (21%) two (2) family dwellings. Two (2) family dwellings are permitted in the RB-1, RB-2 and RB-3 zoning districts.

IX. Relationship to Other Plans

Municipal Master Plan

The Township's last comprehensive Master Plan was prepared in 2003 and re-examined in 2008, and 2023. Other components of the Master Plan that have been adopted over the years include a Housing Element and Fair Share Plan (2016). As affirmed in the 2023 Reexamination of the Master Plan, the following goals and objectives of the Land Use Plan highlight the consistency of this Housing Element and Fair Share Plan:

The 2023 Master Plan Reexamination provides the following;

- Goal 2: To promote the continued maintenance and rehabilitation of the City's housing stock.
- Goal 3: To affirmatively address the community's low and moderate income housing obligation in the manner established by the City of Clifton Housing Plan.
- Goal 13: To enhance community appearance and the visual environment by encouraging good design for new and rehabilitated buildings.
- Goal 17: To support the overall philosophy of the State Development and Redevelopment Plan (SDRP) as a means of providing growth management on a state-wide basis while retaining the principles of home-rule.

This plan helps advance the aforementioned goal and is consistent with the City Master Plan.

State Development & Redevelopment Plan (SDRP)

The State Plan Map indicates that the City of Clifton is located within the Metropolitan Planning Area (PA1). For the Metropolitan Planning Area, the State Plan has four (4) major aims, as follows:

- (1) to provide for much of the state's future redevelopment;
- (2) to revitalize cities and towns and promote growth in compact forms;
- (3) to stabilize older suburbs and redesign areas of sprawl; and,

(4) to protect the character of existing stable communities.

The land use policy objectives of the Metropolitan Planning Area are to:

1. Promote redevelopment and development in cores and neighborhoods through cooperative regional planning efforts;
2. Promote diversification of land uses, including housing where appropriate, in single-use developments and enhance their linkages to the rest of the community; and,
3. Ensure efficient and beneficial utilization of scarce land resources throughout the Planning Area to strengthen its existing diversified and compact nature.

The City of Clifton Master Plan recognizes the need to rehabilitate older housing stock. This Housing Plan and Fair Share Plan supports both the goals of the municipal Master Plan and the SDRP. This Housing Plan and Fair Share Plan is consistent with the SDRP.

X. Fair Share Plan

DCA's calculations determined that the City of Clifton has a Present Need (rehabilitation of housing units) of eight hundred eighty-four (884), and a Prospective Need of zero (0). Present need, also known as the rehabilitation obligation, is defined as the number of substandard existing deficient housing units in the municipality currently occupied by low- and moderate-income (LMI) households.

The City of Clifton proposes the rehabilitation of units via the following avenues:

Clifton Home Improvement Program (CHIP)

The City of Clifton administers the Clifton Home Improvement Program (CHIP) to support the rehabilitation of units occupied by low and moderate income households. CHIP is funded through a Community Development Block Grant (CDBG) Program, which is administered by the U.S. Department of Housing and Urban Development (HUD). Only low and moderate income households are eligible to participate.

The Community Development Department developed an outreach effort to maximize input from a large cross-section of stakeholders. This outreach effort included public meetings, published meeting notices, and stakeholder interviews. The City holds two (2) public hearings concerning CDBG. Residents that inquire about the program are given information and encouraged to meet with our staff at any time to discuss potential future programs and/or projects.

It is anticipated to provide funding for approximately twenty (20) units per year via the CHIP program.

Clifton Affordable Housing Trust Fund

As of June 2, 2025, the City of Clifton has \$ 2,765,880.04 in the City of Clifton Affordable Housing Trust Fund. These funds are obtained via development fees for development projects meeting the qualifying criteria. From January 1, 2020 to June 2, 2025, the City collected \$2,046,450.63 from development fees and interest. See Table 20 below.

Table 20: City of Clifton – Affordable Housing Trust Fund Revenue – Clifton Finance Dept.

Year	Amount Collected(1)
2025 (to June)	\$146,204.51
2024	\$320,997.25
2023	\$126,303.03
2022	\$371,540.73
2021	\$747,259.34
2020	\$334,145.77

2020 to 2025 Total \$2,046,450.63
(1) From COAH Fees & Interest

The City also intends to use the affordable housing funds for the rehabilitation of existing low and moderate income units on record, and/or for the rehabilitation of any existing unit where the owner is willing to rehabilitate with affordability controls.

Between the CHIP program and the affordable housing trust fund, the City anticipates it will rehabilitate eight hundred eighty-four (884) dwelling units by 2035.

XI. Clifton Development Fee Ordinance

The City has an adopted and approved a development fee ordinance, as provided by COAH's rules at N.J.A.C. 5:97-8.3, permitting the City to impose such fees on new development. The funds generated by the collection of development fees are applied directly toward implementation of the City's Fair Share Plan.

The Development Fee Ordinance requires, for residential development, a fee of one percent (1.0%) of the equalized assessed value to be collected as detailed in the existing Development Fee Ordinance. The City is considering an increase to one and one-half percent (1.5%).

A non-residential development fee of two and one-half percent (2.5%) of the equalized assessed value is collected on non-residential development. If an increase in floor area ratio is approved pursuant to N.J.S.A. 40:55D-70d(4), then the additional floor area realized (above what is permitted by right under the existing zoning) will incur a bonus development fee of six percent (6%) of the equalized assessed value for non-residential development. However, if the zoning on a site has changed during the two (2) year period preceding the filing of such a variance application,

the base floor area for the purposes of calculating the bonus development fee shall be the highest floor area permitted by right during the two (2) year period preceding the filing of the variance application.

The City will update the affordable housing and development fee ordinances to reference and reflect current regulations.

XII. Draft Spending Plan

Introduction

The City of Clifton, County of Passaic has prepared a Housing Element and Fair Share plan that addresses its regional fair share of the affordable housing need in accordance with the Municipal Land Use Law (N.J.S.A. 40:55D-1 et seq.), the Fair Housing Act (N.J.S.A. 52:27D-301) and the regulations of the Council on Affordable Housing (COAH) (N.J.A.C. 5:97-1 et seq. and N.J.A.C. 5:96-1 et seq.). Substantive Certification and Judgement of Compliance awarded March 8, 2017; and Housing Element and Fair Share Plan dated June 5, 2016. A development fee ordinance creating a dedicated revenue source for the City's affordable housing was approved by COAH on April 22, 1999 and adopted by the City on June 15, 1999. COAH approved an amendment to the City's development fee ordinance on August 17, 2006, which Clifton adopted on September 6, 2006. The ordinance establishes the City of Clifton affordable housing trust fund for which this spending plan is prepared.

As of June 2, 2025, Clifton has a balance of \$2,765,880.04 . All development fees, payments in lieu of constructing affordable units on site, funds from the sale of units with extinguished controls, and interest generated by the fees are deposited in a separate interest-bearing affordable housing trust fund in PNC Bank for the purposes of affordable housing. These funds shall be spent in accordance with N.J.A.C. 5:97-8.7-8.9, as described in the sections that follow.

Revenues for the 2025 to 2035 Period

To calculate a projection of revenue anticipated during the period of Third Round substantive certification, Clifton considered the following:

(a) Development fees:

1. Residential and nonresidential projects which have had development fees imposed upon them at the time of preliminary or final development approvals;
2. All projects currently before the planning and zoning boards for development approvals that may apply for building permits and certificates of occupancy; and,
3. Future development that is likely to occur based on historical rates of development.

(b) Payment in lieu (PIL):

Actual and committed payments in lieu (PIL) of construction from developers.

(c) Other funding sources:

Funds from other sources, including, but not limited to, the sale of units with extinguished controls, repayment of affordable housing program loans, rental income, proceeds from the sale of affordable units and. No other funds have been or are anticipated to be collected.

(d) Projected interest:

Interest on the projected revenue in the municipal affordable housing trust fund at the current average interest rate.

Projected Revenue Affordable Housing Trust Fund 2026 to 2035

Source of Funds	2026	2027	2028	2029	2030	
(a) Development fees:	\$225,000.00	\$225,000.00	\$225,000.00	\$225,000.00	\$225,000.00	
(b) Payments in Lieu of Construction	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	
(c) Other Funds (Specify source)	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	
(d) Interest	\$1,000.00	\$1,000.00	\$1,000.00	\$1,000.00	\$1,000.00	
Source of Funds	2031	2032	2033	2034	2035	Totals
(a) Development fees:	\$225,000.00	\$225,000.00	\$225,000.00	\$225,000.00	\$225,000.00	\$2,250,000.00
(b) Payments in Lieu of Construction	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
(c) Other Funds (Specify source)	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
(d) Interest	\$1,000.00	\$1,000.00	\$1,000.00	\$1,000.00	\$1,000.00	\$10,000.00
						\$2,260,000.00

As of June 9, 2025, the City of Clifton projects a total of \$2,260,000.00 in revenue to be collected between January 1, 2026 and December 31, 2035. All interest earned on the account shall accrue to the account to be used only for the purposes of affordable housing. This projected amount, when added to the City of Clifton's trust fund balance as of June 2, 2025, results in anticipated total revenues of \$5,025.880.04 available to fund and administer its affordable housing plan during the 2025-2035 period.

Administrative Mechanism to Collect and Distribute Funds

The following procedural sequence for the collection and distribution of development fee revenues shall be followed by Clifton:

(a) Collection of development fee revenues:

Collection of development fee revenues shall be consistent with Clifton's development fee ordinance for both residential and non-residential developments.

(b) Distribution of development fee revenues:

Distribution of development fee revenues shall be determined by the Affordable Housing Committee made up of the City Planner, Housing/CDBG Monitor, MHL, member of the Planning Board, member of the City Council and the City Attorney in accordance with the Housing Element and Fair Share Plan Element Spending Plan as approved by DCA.

Description of the Anticipated Use of Affordable Housing Funds

The City proposes to use the monies in its Affordable Housing Trust Fund for the following purposes:

(a) Rehabilitation Projects (N.J.A.C. 5:97-6.2): the City will dedicate the following funds to Rehabilitation projects in order to meet its fair share affordable unit obligation: Township Rehabilitation Program: At least \$5,000.00 per unit for a total of eight hundred eighty four (884) units for a budget of \$4,500,000.00.

(b) Administrative Expenses (N.J.A.C. 5:97-8.9) the City will dedicate no more than twenty percent (20%) of revenue from the affordable housing trust fund to be used for administrative purposes. The current budget for administrative expenses is \$500,000.00, with any additional funds subject to the twenty percent (20%) cap are as follows:

- Administration of affordable housing programs;
- Legal fees associated with affordable housing administration;
- Planning fees for any necessary updates and/ or revision to the Housing Element and Fair Share Plan; and,
- Other expenses associated with the development and implementation of the Housing and Fair Share Plan and the monitoring of current and future affordable housing programs within the City of Clifton.

Expenditure Schedule

Clifton intends to use affordable housing trust fund revenues for the rehabilitation of housing units. Where applicable, the rehabilitation funding schedule below parallels the implementation schedule set forth in the Housing Element and Fair Share Plan and is summarized as follows.

Projected Revenue Affordable Housing Trust Fund 2026 to 2035

Expenditure	2026	2027	2028	2029	2030	
(a) Present Need Rehabilitation Projects to be Determined	\$450,000.00	\$450,000.00	\$450,000.00	\$450,000.00	\$450,000.00	
(b) Administration	\$50,000.00	\$50,000.00	\$50,000.00	\$50,000.00	\$50,000.00	
Expenditure	2031	2032	2033	2034	2035	Totals
(a) Present Need Rehabilitation Projects to be Determined	\$450,000.00	\$450,000.00	\$450,000.00	\$450,000.00	\$450,000.00	\$4,500,000.00
(b) Administration	\$50,000.00	\$50,000.00	\$50,000.00	\$50,000.00	\$50,000.00	\$500,000.00
						\$5,000,000.00

Summary

Clifton intends to spend affordable housing trust fund revenues pursuant to N.J.A.C. 5:97-8.7 through 8.9 and consistent with the housing programs outlined in the Housing Element and Fair Share Plan, dated June 9, 2025.

Clifton has a balance of \$2,765,880.04 as of June 2, 2025 and anticipates an additional \$2,260,00.00 in revenues by December 31, 2035. Presently, the City anticipates spending \$500,000.00 on future administrative costs.

XIII. Appendix

City of Clifton, NJ

Chapter 7**AFFORDABLE HOUSING****ARTICLE I****Affordable Housing Agency**

- § 7-1. **Creation.**
- § 7-2. **Membership; terms; vacancies.**
- § 7-3. **Organization; Chairman; meetings.**
- § 7-4. **Powers and duties.**
- § 7-5. **Repealer.**

ARTICLE II**Affordable Housing Administration**

- § 7-6. **Purpose.**
- § 7-7. **Definitions.**
- § 7-8. **Municipal Housing Liaison; compensation; powers and duties.**

[HISTORY: Adopted by the Municipal Council of the City of Clifton as indicated in article histories. Amendments noted where applicable.]

GENERAL REFERENCES

Apartment rental businesses — See Ch. 145.

Rent control — See Ch. 363.

Heating of buildings — See Ch. 269.

Protected tenancies — See Ch. 417.

Housing standards — See Ch. 273.

Affordable housing regulations — See Ch. 461, § 461-24.2.

Illegal occupancies and conversions — See Ch. 283.

ARTICLE I
Affordable Housing Agency
[Adopted 11-6-1989 by Ord. No. 5377-89¹]

§ 7-1. Creation.

Pursuant to the provisions of the New Jersey Administrative Code, N.J.A.C. 5:92-12.1 et seq., and all other applicable rules and regulations of the Council on Affordable Housing and pursuant to the provisions of § 461-24.2 of Chapter 461 of the Code of the City of Clifton, entitled "Zoning," there is hereby created in and for the City of Clifton a Clifton Affordable Housing Agency, the members of which shall serve without compensation in matters touching on or concerning the requirements of all applicable rules and regulations of the Council on Affordable Housing and of § 461-24.2 of Chapter 461 of the Code of the City of Clifton, entitled "Zoning."

§ 7-2. Membership; terms; vacancies.

- A. The Clifton Affordable Housing Agency shall consist of three members to be appointed by the Clifton Municipal Council, one of whom shall be a member of the Municipal Council, one of whom shall be a professional experienced in planning and one of whom shall be a member of the Clifton Housing Department.
- B. The term of each member shall be three years, except that the term of the members first appointed shall be for terms as follows:
 - (1) Clifton Municipal Council: one year.
 - (2) Professional: two years.
 - (3) Clifton Housing Department: three years.
- C. In the event of a vacancy, the same shall be filled by the Municipal Council for the unexpired balance of the term.

§ 7-3. Organization; Chairman; meetings.

- A. The Clifton Affordable Housing Agency shall organize as soon as reasonably possible following appointment of its members, and annually thereafter, by the election of a Chairman from among its members.
- B. The Agency may hold regular and special meetings and, subject to the provisions of this article, may make and amend rules and regulations concerning the conduct thereof.

§ 7-4. Powers and duties.

The Clifton Affordable Housing Agency shall:

- A. Be responsible for assuring that low- and moderate-income housing units remain affordable to low- and moderate-income households, as required by § 461-24.2 of Chapter 461 of the Code of the City of Clifton and as required by the regulations of the Council on Affordable Housing as set forth in N.J.A.C. 5:92-12.1 et seq., and as required by any other statutes, rules or regulations made applicable

1. Editor's Note: This ordinance also superseded former Ch. 7, Affordable Housing Agency, adopted 10-3-1989 by resolution. See § 7-5.

City of Clifton, NJ

§ 7-4

AFFORDABLE HOUSING

§ 7-5

to the function and operation of said Agency.

- B. Make recommendations to the Municipal Council concerning any subject matter within its jurisdiction.
- C. Make a written report, at least annually, to the Municipal Council concerning the Agency's activities.
- D. Not incur any debt or obligation or make any expenditures of funds except as specifically authorized by the Municipal Council and as provided in the City budget.

§ 7-5. Repealer.

All ordinances or parts of ordinances inconsistent herewith are hereby repealed as to such inconsistency only. This article shall supersede a resolution creating the Clifton Affordable Housing Agency, adopted October 3, 1989; provided, however, that all acts or actions taken by said Agency pursuant to said resolution are hereby authorized, ratified and confirmed.

ARTICLE II
Affordable Housing Administration
[Adopted 8-6-2008 by Ord. No. 6753-08]

§ 7-6. Purpose.

The purpose of this article is to create the administrative mechanisms needed for the execution of the City of Clifton's responsibility to assist in the provision of affordable housing pursuant to the Fair Housing Act of 1985.

§ 7-7. Definitions.

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

ADMINISTRATIVE AGENT — The entity responsible for administering the affordability controls of some or all units in the affordable housing program for the City of Clifton to ensure that the restricted units under administration are affirmatively marketed and sold or rented, as applicable, only to low- and moderate-income households.

MUNICIPAL HOUSING LIAISON — The employee charged by the governing body with the responsibility for oversight and administration of the affordable housing program for the City of Clifton.

§ 7-8. Municipal Housing Liaison; compensation; powers and duties.

- A. There is hereby established the position of Municipal Housing Liaison for the City of Clifton.
- B. Subject to the approval of the Council on Affordable Housing (COAH), the Municipal Housing Liaison shall be appointed by the Municipal Council and may be a full- or part-time municipal employee.
- C. The Municipal Housing Liaison shall be responsible for oversight and administration of the affordable housing program for the City of Clifton, including the following responsibilities, which may not be contracted out, exclusive of Subsection C(6), which may be contracted out:
 - (1) Serving as the City of Clifton's primary point of contact for all inquiries from the state, affordable housing providers, administrative agents and interested households.
 - (2) Monitoring the status of all restricted units in the City of Clifton's Fair Share Plan.
 - (3) Compiling, verifying and submitting annual reports as required by COAH.
 - (4) Coordinating meetings with affordable housing providers and administrative agents, as applicable.
 - (5) Attending continuing education opportunities on affordability controls, compliance monitoring, and affirmative marketing as offered or approved by COAH.
 - (6) If applicable, serving as the administrative agent for some or all of the restricted units in the City of Clifton as described in Subsection F below.
- D. Subject to approval by COAH, the City of Clifton may contract with or authorize a consultant, authority, government or any agency charged by the governing body, which entity shall have the responsibility of administering the affordable housing program of the City of Clifton, except for those responsibilities which may not be contracted out pursuant to Subsection C above. If the City of

City of Clifton, NJ

§ 7-8

AFFORDABLE HOUSING

§ 7-8

Clifton contracts with another entity to administer all or any part of the affordable housing program, including the affordability controls and Affirmative Marketing Plan, the Municipal Housing Liaison shall supervise the contracting administrative agent.

- E. Compensation shall be fixed by the governing body at the time of the appointment of the Municipal Housing Liaison.
- F. Administrative powers and duties assigned to the Municipal Housing Liaison. The Municipal Housing Liaison shall be responsible for:

- (1) Affirmative marketing:

- (a) Conducting an outreach process to ensure affirmative marketing of affordable housing units in accordance with the Affirmative Marketing Plan of the City of Clifton and the provisions of N.J.A.C. 5:80-26.15; and
 - (b) Providing counseling or contract 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.

- (2) Household certification:

- (a) Soliciting, scheduling, conducting and following up on interviews with interested households;
 - (b) 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;
 - (c) Providing written notification to each applicant as to the determination of eligibility or noneligibility;
 - (d) 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 Appendixes J and K of N.J.A.C. 5:80-26.1 et seq.;
 - (e) Creating and maintaining a referral list of eligible applicant households living in the housing region and eligible applicant households with members working in the housing region where the units are located; and
 - (f) Employing the random selection process as provided in the Affirmative Marketing Plan of the City of Clifton when referring households for certification to affordable units.

- (3) Affordability controls:

- (a) 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;
 - (b) 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;
 - (c) Ensuring that the removal of the deed restrictions and cancellation of the mortgage note are effectuated and properly filed with the appropriate county's register of deeds or county clerk's office after the termination of the affordability controls for each restricted unit;

- (d) Communicating with lenders regarding foreclosures; and
 - (e) Ensuring the issuance of continuing certificates of occupancy or certifications pursuant to N.J.A.C. 5:80-26.10.
- (4) Resale and rental:
 - (a) 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
 - (b) Instituting and maintaining an effective means of communicating information to low- and moderate-income households regarding the availability of restricted units for resale or rental.
- (5) Processing requests from unit owners:
 - (a) Reviewing and approving requests from owners of restricted units who wish to take out home equity loans or refinance during the term of their ownership;
 - (b) 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 cost of central air-conditioning systems; and
 - (c) Processing requests and making determinations on requests by owners of restricted units for hardship waivers.
- (6) Enforcement:
 - (a) Securing, annually, lists 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;
 - (b) Securing from all developers and sponsors of restricted units, at the earliest point of contact in the processing of the project or development, written acknowledgment 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;
 - (c) The posting annually in all rental properties, including two-family homes, of a notice as to the maximum permitted rent, together with the telephone number of the administrative agent where complaints of excess rent can be made;
 - (d) 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;
 - (e) Establishing a program for diverting unlawful rent payments to the municipality's Affordable Housing Trust Fund or other appropriate municipal fund approved by the DCA;
 - (f) Creating and publishing a written operating manual, as approved by COAH, setting forth procedures for administering such affordability controls; and
 - (g) Providing annual reports to COAH as required.

City of Clifton, NJ

§ 7-8

AFFORDABLE HOUSING

§ 7-8

- (7) The administrative agent shall have authority to take all actions necessary and appropriate to carry out its responsibilities hereunder.

§ 461-24.2. Affordable housing.¹ [Added 8-16-1988 by Ord. No. 5287-88²; amended 2-15-1994 by Ord. No. 5674-94; 6-15-1999 by Ord. No. 6056-99; 5-16-2000 by Ord. No. 6135-00]

- A. Short title. This section of the City of Clifton Zoning Ordinance shall be known as the "Affordable Housing Ordinance of the City of Clifton."
- B. Purpose. The purpose of this section is to comply with the "Substantive Rules" of the New Jersey Council on Affordable Housing regarding the City of Clifton.
- C. Definitions.

(1) The definitions in this section of the Zoning Ordinance of the City of Clifton are intended to supplement other definitions within the ordinance and the definitions contained within the Municipal Land Use Law (N.J.S.A. 40:55D-1 et seq.). Moreover, any definition pertaining to affordable housing not contained in this section is intended to have the meaning as defined in the New Jersey Fair Housing Act (N.J.S.A. 52:27D-301 et seq.), or the Procedural Rules of the New Jersey Council on Affordable Housing (N.J.A.C. 5:91) or the Substantive Rules of the New Jersey Council on Affordable Housing (N.J.A.C. 5:92 or N.J.A.C. 5:93, as appropriate).

(2) As used in this section, the following terms shall have the meanings indicated:

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

AFFIRMATIVE MARKETING PLAN — A regional marketing strategy prepared by a developer of affordable units in accordance with the requirements of this section which is designed to attract buyers and/or renters of all majority and minority groups, regardless of sex, age or number of children, to housing units which are being marketed by the developer or sponsor of the affordable housing. It is a continuing program and covers the period of deed restriction.

AFFORDABLE — A sales price or rent within the means of a low- or moderate-income household as defined in N.J.A.C. 5:93-7.4.

AFFORDABLE HOUSING AGENCY — The entity designated by the City of Clifton to monitor the construction and/or rehabilitation of low- and moderate-income housing units. The Affordable Housing Agency may be the Mayor and Council itself, a group of people appointed by the Mayor and Council, a member or members of the City staff, an independent consultant or other entity under contract to the City of Clifton or any combination of the preceding.

AFFORDABLE HOUSING DOCUMENT — A legal instrument which sets forth the terms, restrictions and provisions of the Affordable Housing Ordinance which are applicable to the subject affordable unit(s) and which constitute the restrictive covenants running with the land with respect to the subject affordable units.

1. Editor's Note: See also Ch. 7, Affordable Housing Agency.

2. Editor's Note: This ordinance, as amended 10-4-1988 by Ord. No. 5298-88, also provided as follows: "Any ordinance or parts of ordinances inconsistent herewith are repealed as to such inconsistencies, only except, however, for Ordinance No. 5220-88, passed February 16, 1988, which is hereby excluded from the provisions of this ordinance." See § 461-13M, Planned Commercial and Residential District.

AFFORDABLE UNIT — A housing unit in the City, the sale or rental of which is established in accordance with this section and which shall be sold or rented to a low- or moderate-income household in accordance with this section.

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

ALTERNATIVE LIVING ARRANGEMENT — A structure in which households live in distinct bedrooms, yet share kitchen and plumbing facilities, central heat and common areas.

ASSESSMENTS — Levies, charges or assessments, both public and private, including those imposed by a homeowners' association upon the unit which is part of the homeowners' association.

CERTIFIED HOUSEHOLD — A household determined to be eligible for low- or moderate income housing by the Affordable Housing Agency after the Affordable Housing Agency has verified the applicant's gross household income. Moreover, once certified, any increase or decrease in the gross household income of the household shall not affect the rights and obligations of the household as specified in this section. However, any household which submits false information in support of an application for certification as a qualified household and which subsequently receives such certification and either a title to an affordable unit as owner or possession of an affordable unit as tenant shall be deemed to have committed a substantial breach of provisions of this section, and the applicable affordable housing document and any rights of ownership or occupancy of such unit shall be subject to forfeiture pursuant to the provisions of this section.

CONVERSION — The conversion of existing commercial, industrial or residential structures for low- and moderate-income housing purposes.

COUNCIL — The New Jersey Council on Affordable Housing established under the Act and which has primary jurisdiction for the administration of housing obligations in accordance with sound regional planning considerations in the state.

DEVELOPMENT FEES — Money paid by an individual, person, partnership, association, company or corporation for the improvement of property as permitted in N.J.A.C. 5:93-8 and in accordance with the applicable provisions of this section.

EXEMPT SALES — 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.

FAIR MARKET VALUE — The unrestricted price of a low- or moderate-income housing unit if sold at a current real estate market rate.

FIRST MORTGAGE — The most senior mortgage securing a loan for the purchase or refinancing of a unit.

FIRST MORTGAGEE — The most senior mortgage holder who has loaned funds for the purchase or refinancing of a unit or the assigns of such most senior mortgage holder.

Such mortgagee must be an institutional lender or investor, licensed or regulated by a state or federal government, or an agency thereof.

FORECLOSURE — A termination of all rights of the mortgagor or the mortgagor's assigns or grantees in a unit covered by a recorded mortgage through legal processes, or through a deed in lieu of foreclosure which has been executed prior to a judicially regulated sale.

GROSS HOUSEHOLD INCOME — The total annual income for every household member 18 years of age or over who will live in the affordable unit and receives income, including income received by adults on behalf of minor children for their benefit, and subject to the following:

- (a) Generally, sources of annual income shall be based on regular income reported to the Internal Revenue Service (IRS) and which can be utilized for mortgage approval. Household annual gross income shall be calculated by projecting current gross income over a twelve-month period.
- (b) Income includes, but is not limited to, wages, salaries, tips, commissions, alimony, regular scheduled overtime, pensions, social security, unemployment compensation, AFDC, verified child support, disability, net income from business or real estate and income from assets such as savings, certificates of deposit (CD's), money market mutual funds, stocks and bonds and imputed income from non-income-producing assets such as equity in real estate.
- (c) Income from assets that have delayed earnings, such as individual retirement accounts (IRA's) or annuity programs, shall not be included in current income until such payments have been received. However, these assets must be reported and verified.
- (d) Net rent from real estate is considered income after the monthly mortgage payment, including real estate taxes and insurance, is deducted. Other expenses are not deductible. In addition, the equity in the rental real estate is considered an asset and will have the imputed interest income on the calculated value of equity added to income.
- (e) Income does not include payments, rebates or credits received under federal or state low-income home energy assistance programs. Food stamps, payments received for care of foster children, relocation assistance benefits, income of live-in attendants, scholarships, student loans, personal property such as automobiles, lump-sum additions to family assets such as inheritance, one-time lottery winnings and insurance settlements, except for additional income earned from these additions, and casual, sporadic or irregular gifts and bonuses.

HOUSING REGION — The northeastern region as designed by the New Jersey Council on Affordable Housing, including the counties of Bergen, Hudson, Passaic and Sussex in the State of New Jersey.

IMPROVEMENTS — Additions within a unit, including materials, supplies, appliances or fixtures, which become a permanent part of the unit or are affixed to the unit.

INCLUSIONARY DEVELOPMENT — A development containing low- and moderate-income units.

INDIGENOUS NEED — Substandard (deficient) housing units within the City of Clifton which are occupied by low- and moderate-income households.

LOW-INCOME HOUSEHOLD — A household whose gross household income is no greater than 50% of the median regional income for households of the same size within the housing region.

LOW-INCOME PURCHASER — A low-income household purchasing an affordable unit.

LOW-INCOME RENTER — A low-income household renting an affordable unit.

LOW-INCOME UNIT — A housing unit which is affordable to a low-income household in accordance with the requirements of this section and the Substantive Rules and Regulations of the New Jersey Council on Affordable Housing.

MARKET RATE UNIT — A housing unit, within an inclusionary development, not restricted to low- and moderate-income households, that may sell at any price determined by a willing seller and a willing buyer.

MASTER DEED — The master deed and the declaration of restrictive and protective covenants for a housing development, including any by-laws and rules and regulations, and any amendments thereto, which are to be recorded in the Office of the Register of Passaic County.

MEDIAN REGIONAL INCOME — The most recent "uncapped" schedule of United States Department of Housing and Urban Development Section 8 income limits for Passaic County, with adjustments for household size, as published by the New Jersey Council on Affordable Housing.

MODERATE-INCOME HOUSEHOLD — A household whose gross household income is in excess of 50%, but less than 80%, of the median regional income for households of the same size within the housing region.

MODERATE-INCOME PURCHASER — A moderate-income household purchasing an affordable unit.

MODERATE-INCOME RENTER — A moderate-income household renting an affordable unit.

OWNER — The current titleholder of record of a dwelling unit as indicated on the most recently dated and recorded deed for the unit. For purposes of the initial sale of a unit, the owner may be the developer. Ownership of a unit shall be deemed to be acceptable upon ratification of all the provisions of any affordable housing plans for the development in which the unit is located.

REHABILITATED UNIT — A previously substandard housing unit which has undergone significant renovation to meet the housing code standards of the City of

Clifton and the applicable provisions of this section.

REHABILITATION MARKETING PLAN — The marketing plan prepared in accordance with the requirements of this section by the Affordable Housing Agency for the purpose of advertising the City of Clifton Rehabilitation Program.

REPAYMENT CLAUSE — The obligation of a seller exercising a repayment option to pay 95% of the price differential to the City of Clifton at closing for one unit of affordable housing in the municipal housing plan.

REPAYMENT OPTION — The option of a seller of a low- or moderate-income unit to sell a unit at fair market value, subject to compliance with the terms of the repayment clause and other applicable provisions of this section.

SENIOR CITIZEN HOUSEHOLD — A household in which the primary wage earner is over 62 years of age, or a household in which there is no primary wage earner and in which at least one member of the principal household unit is over 62 years of age.

SET ASIDE — The percentage of housing units devoted to low- and moderate-income households within an inclusionary development.

STATEMENT OF EXEMPTION — A certification by the Affordable Housing Agency declaring that, in accordance with the applicable provisions of this section, the resale of an affordable unit is exempt from the requirement that the resale of the unit must be to a certified low- or moderate-income household.

SUBSTANDARD HOUSING UNIT — A housing unit with health and safety code violations that requires the repair or replacement of a major system. A major system includes a roof, plumbing (including wells), heating, electricity, sanitary plumbing (including septic systems) and/or a load-bearing structural system.

TOTAL MONTHLY HOUSING COST — The total of the following monthly payments associated with the cost of the housing: mortgage payment (principal, interest, private mortgage insurance); applicable assessments by a homeowners' association; real estate taxes; and fire, theft and liability insurance. For rental units, total monthly housing costs also shall include utility costs consistent with the utility allowance approved by the Department of Housing and Urban Development (HUD) for New Jersey.

D. Clifton Affordable Housing Agency.

(1) Establishment of the Affordable Housing Agency.

- (a) The Mayor and Council of the City of Clifton shall designate an Affordable Housing Agency (also referred to as the Agency) to administer the provisions of this Affordable Housing Ordinance and monitor the rehabilitation, occupancy, sale, resale, rental and rerelease restrictions of low- and moderate-income units.
- (b) The Affordable Housing Agency may be the Mayor and Council itself, a group of people appointed by the Mayor and Council, a member or members of the City staff, an independent consultant or other entity under contract to the City or any combination of the preceding.

(2) Powers and duties of the Affordable Housing Agency.

- (a) To establish selection procedures and criteria for determining a certified household.
- (b) To qualify prospective owners and renters of affordable units as certified households in accordance with the provisions of § 461-24.2E of this section, income limits and housing eligibility.
- (c) To determine the maximum sale, resale, rental and rerental charges for low- and moderate-income units in accordance with the provisions specified in § 461-24.2F of this section, Maximum sales price and rental charges, and to update the maximum charges annually to reflect changes to the median regional income and in consideration of other factors specified in § 461-24.2F.
- (d) To maintain a waiting list of certified households in accordance with Subsection M(1) of this section, entitled Affordable unit occupancy preference, and to make the list available to developers, sponsors and owners of affordable units within the City of Clifton.
- (e) To determine, in accordance with Subsection F(3) of this section, entitled Maximum resale prices for all affordable units, whether or not the cost or value of improvements to an affordable unit should be approved for inclusion in the resale price of the unit. Additionally, the Affordable Housing Agency shall establish regulations and procedures whereby an owner of an affordable unit may apply for such approval prior to undertaking the improvements.
- (f) To issue statements of exemption in accordance with Subsection I of this section.
- (g) To review and approve or disapprove the affordable housing document for each affordable unit required by § 461-24.2G of this section, and, once approved, to enforce the provisions of the affordable housing document.
- (h) To verify that the affordable housing document has been recorded with the Office of the Register, Passaic County, New Jersey, and that the deed of each affordable unit references the appropriate affordable housing document.
- (i) To assist the developer, prospective owner or prospective renter of an affordable unit to apply to the New Jersey Housing and Mortgage Finance Agency or other public agency for financing subsidy funds in order to facilitate the purchase or rental of an affordable unit by a certified household.
- (j) To assist an owner of a substandard housing unit occupied by a low- or moderate-income household to apply for a grant or loan from the Affordable Housing Agency for the purpose of rehabilitating the unit in accordance with Subsection N of this section, entitled "The Housing Rehabilitation Program."
- (k) To assure that the master deeds of any inclusionary development prescribe that the homeowners' association fees for an affordable unit not be less than 1/2 of the fee charge for a market rate unit of the same number of bedrooms.

City of Clifton, NJ

§ 461-24.2

§ 461-24.2

- (l) To review and approve or disapprove the affirmative marketing plan in accordance with the provisions in Subsection M of this section, and, once approved, to assure that the affirmative marketing plan has been advertised and publicized as indicated in § 461-24.2M.
- (m) To develop the necessary application and financial statement forms as approved by COAH to be used by a low- or moderate-income household applying to purchase or rent an affordable unit.
- (n) To administer the Housing Rehabilitation Program in accordance with the provisions of Subsection N of this section.
- (o) To prepare the rehabilitation marketing plan and advertise the City of Clifton Housing Rehabilitation Program in accordance with the applicable provisions of Subsection N of this section.
- (p) To develop the necessary application and financial statement forms as approved by COAH to be used by an owner of a substandard housing unit applying for a grant or loan from the Affordable Housing Agency for the purpose of rehabilitating the unit.
- (q) To maintain a file on each applicant of the City of Clifton Housing Rehabilitation Program, including the following information:
 - [1] The name of the applicant.
 - [2] If the applicant is not approved, the reasons for disapproval.
 - [3] If the applicant is approved, the following shall be noted:
 - [a] Proof of income eligibility (federal tax return).
 - [b] The initial inspection report of the City Construction Official.
 - [c] The bids submitted by interested contractors.
 - [d] The final contracts(s) to do the required work.
 - [e] Periodic reports as to the progress of the required work.
 - [f] A copy of the final inspection report of the City Construction Official.
 - [g] A copy of the affordable housing document (lien) on the subject property.
- (r) To develop a rehabilitation manual that complies with the rules of COAH and summarizes the administration of the City of Clifton Housing Rehabilitation Program, pursuant to Subsection N of this section. The rehabilitation manual shall include a copy of the affordable housing document (lien) to be used and shall describe the following:
 - [1] The Housing Rehabilitation Program's staff and their responsibilities.

- [2] The procedures for the marketing of the Housing Rehabilitation Program.
 - [3] Eligible repairs and improvements.
 - [4] The amount of money available for rehabilitation.
 - [5] Financing terms.
 - [6] Income qualification criteria.
 - [7] The procedures for filing applications.
 - [8] The procedures for review and approval of the rehabilitation work, including interim inspections.
 - [9] The length of the affordability controls on the affordable unit.
- (s) To submit annual monitoring reports to COAH no later than February 15 of each calendar year on the monitoring forms provided by COAH.
 - (t) To receive, advance and pay monetary sums as authorized by the Mayor and Council, which monetary sums are necessary to protect, preserve and retain an affordable unit as an affordable unit in accordance with the provisions in Subsection J of this section, entitled Recapture of affordable sales units, and with other applicable provisions of this section.
 - (u) To report bimonthly to the Mayor and Council on the status of affordable units in the City of Clifton, including, but not limited to, the following regarding inclusionary developments, the housing rehabilitation program and development fees:
 - [1] Regarding inclusionary developments:
 - [a] Any statement of exemptions which have been issued by the Affordable Housing Agency.
 - [b] Any foreclosure upon an affordable unit which has occurred.
 - [c] Any proposed development which is subject to this section and for which an application has been filed with the Planning Board, including the following information:
 - [i] Site location.
 - [ii] The number of affordable units.
 - [iii] number of market rate units.
 - [iv] The calculations of the maximum sale and rental charges in accordance with the applicable provisions of this section.
 - [v] The distribution of the affordable units by bedroom number.

[vi] The phasing schedule for construction of the affordable units in relation to the construction of the market rate units.

[vii] name of the developer.

[viii] date(s) that Planning Board actions(s) was/were taken or are expected to be taken.

[d] A summary comparison of the affordable units constructed and occupied versus the total number of affordable units required to be constructed and occupied.

[2] Regarding the Housing Rehabilitation Program:

[a] The number of applications filed for participation in the Rehabilitation Program.

[b] The number of units found to be substandard housing units which are occupied by low- or moderate-income households.

[c] A financial statement for each rehabilitated unit and each unit to be rehabilitated, including the amount of money expended or to be expended for actual rehabilitation activities versus administrative costs.

[d] A summary comparison of the status of the substandard housing rehabilitated units which are included in the rehabilitation program.

[3] Regarding development fees:

[a] The amount of development fees collected and their sources.

[b] A breakdown as to how the development fees collected have been expended.

E. Income limits and housing eligibility.

- (1) Gross household income. The gross household income of any household shall be the total annual income from every household member 18 years of age or over who lives in the affordable unit and receives income, including income received by adults on behalf of minor children, and subject to the additional criteria included in the definition of the gross household income within Subsection C of this section.
- (2) Income ceilings for low- and moderate-income households. The income ceiling for low- and moderate-income households of four members shall be 50% and 80%, respectively, of the median regional income, with adjustments for household size in accordance with the guidelines of COAH.
- (3) Relationship between household size and unit size. The income of the following household sizes shall be used to determine the maximum sales price and rental charges for each of the corresponding unit sizes. No alteration of an affordable unit to increase the number bedrooms shall be undertaken after initial occupancy unless the alteration was previously approved by the Affordable Housing Committee.

City of Clifton, NJ

§ 461-24.2

§ 461-24.2

- (a) All efficiency units shall be affordable to one-person households, and only one-person households may occupy an efficiency.
 - (b) One-bedroom units shall be affordable to one-and-five-tenths-person households.
 - (c) Two-bedroom units shall be affordable to three-person households.
 - (d) Three-bedroom units shall be affordable to four-and-five-tenths-person households.
- (4) Household certification by Affordable Housing Agency.
- (a) A prospective purchaser or renter of an affordable unit must be determined to be a certified household by the Affordable Housing Agency prior to the purchase or rental of the subject unit, and the Affordable Housing Agency shall issue a signed form indicating that the household has been certified.
 - (b) A certified household that rejects an opportunity for an affordable unit may be replaced on the waiting list upon request and may be reinterviewed for recertification when their name next appears for a subsequent affordable unit.
 - (c) A certification of a household by the Affordable Housing Agency shall be valid for 120 days and shall thereafter expire unless a valid sales contract or lease has been executed, provided that the following are met:
 - [1] If a valid sales contract or lease has been executed within the one-hundred-twenty-day time period, the certification shall be valid unless the sales contract or lease is ruled invalid and no occupancy of the affordable unit has occurred.
 - [2] Upon the written request of a certified household, the certification may be renewed in writing by the Affordable Housing Agency, at its discretion, for no more than an additional 120 days.
 - (d) Households that are denied certification by the Affordable Housing Agency may make a written request to the Affordable Housing Agency for redetermination, in accordance with the following:
 - [1] The household shall be required to produce additional information to support its request, and the Affordable Housing Agency shall make a redetermination and notify the household of its decision.
 - [2] A household which is denied certification a second time may request a hearing by forwarding a written request to the Affordable Housing Agency within 30 days following the household's receipt of the second denial notification, in accordance with the following:
 - [a] If a written request is not received within the thirty-day time period, the determination by the Affordable Housing Agency that the household is ineligible shall be considered a final decision.

- [b] If a written request is received within the thirty-day time period, a hearing shall be scheduled by the Affordable Housing Agency, and its decision resulting from the hearing shall be its final decision regarding the subject household.

(5) Reference of certified households to affordable units.

- (a) Certified households whose gross household income is measured at 50% or below 50% of the established regional median income shall be referred to affordable units designated for low-income households.
- (b) Certified households whose gross household income is measured above 50% but below 80% of the established regional median income shall be referred to affordable units designated for moderate-income households.
- (c) Certified households shall be referred to affordable units where the predetermined total monthly costs correspond to the household's calculated ability to pay, using 28% of gross monthly income as the standard for home ownership and 30% of gross monthly income as a standard for rental units.
- (d) Certified households shall be referred to available affordable units using the following occupancy standards, except that households may be referred to other units, provided that no more than one additional bedroom may be contained in the unit compared to the following schedule:
 - [1] A maximum of two persons per bedroom;
 - [2] Children of the same sex in the same bedroom;
 - [3] Unrelated adults or persons of the opposite sex (other than husband and wife) in separate bedrooms; and
 - [4] Children not in the same bedroom as their parents.

F. Maximum sales prices and rental charges. Prior to the sale, resale, rental or rerental of a low- or moderate-income unit, the Affordable Housing Agency shall determine the maximum sales price or rental charge that may be charged for that size unit in each income category in accordance with the following:

(1) Estimated maximum initial sales prices for inclusionary units.

- (a) As part of the final site plan application submitted to the Planning Board by a developer for an inclusionary development containing affordable units, the developer shall also submit to the Affordable Housing Agency information demonstrating the mortgage financing generally available to low- and moderate-income home buyers and the developer's calculations of the estimated maximum initial sales price in accordance with § 461-24.2F(2) hereinbelow.
- (b) The Affordable Housing Agency shall review the developer's calculations and shall approve or recommend modifications to the estimated maximum initial sales prices for applicable sized units in each income category and shall notify the Planning

Board and the developer of its action within 30 days of its receipt of the developer's calculations as part of its action on the final site plan submitted for approval. Any delay of the Affordable Housing Agency in reviewing and approving the estimated maximum initial sales prices shall not postpone or delay the Planning Board's action on the proposed development pursuant to the Municipal Land Use Law (N.J.S.A. 40:55D-1 et seq.).

(2) Actual maximum initial sales prices for all affordable units.

- (a) A base sales price shall be calculated such that, after a down payment of 5% the sum of the monthly payments for principal, interest, taxes, fire, theft and liability insurance, and homeowners' association fees, if any, shall not exceed 28% of the low- or moderate-income ceilings determined in accordance with Subsection E(2) of this section. Any homeowners' association fees for affordable units shall not be less than 1/2 the fee charged for market rate units of the same number of bedrooms.
- (b) The Affordable Housing Agency shall use the information to determine the maximum initial sales price for the different sized units in each income category. The Affordable Housing Agency shall certify the actual maximum initial sales price to the Mayor and Council, the Building and the Construction Official in charge of issuing certificates of occupancy, within 60 days of its receipt of the pricing information described hereinabove.
 - [1] No certificate of occupancy for the affordable units shall be issued until the maximum initial sales prices have been certified by the Affordable Housing Agency the expiration of the aforesaid sixty-day time period, whichever is earlier.
 - [2] The certified sales prices shall remain in effect for a period of one year. However, the builder may request a modification of maximum sales prices at any time by applying to the Affordable Housing Agency for recalculation of the base prices on changes in any of the factors used to calculate the prices, provided that in the case of an inclusionary development, the affordable range in Subsection F(2)(c) hereinbelow is maintained.
- (c) In order to assure that low- and moderate-income units within inclusionary developments are affordable by households whose income is less than the low- and moderate-income ceilings, a range of sales prices shall be offered for each such unit based on a range of income. The overall range of sales prices for all low- and moderate-income units combined shall be affordable to household with an average income of 57.5% of the median regional income.
 - [1] Establishing a range of affordability, units shall be offered, as best as practical, in accordance with the following distribution of prices for every six low- and moderate-income units:
 - [a] One at 43.0% of median.
 - [b] Two at 48.0% of median.

- [c] One at 59.5% of median.
 - [d] One at 71.50% of median.
 - [e] One at 75.0 % of median.
- [2] At least a minimum of 60 days prior to the developer's anticipated need of certificates of occupancy for the affordable units, the developer shall provide the Affordable Housing Agency with information demonstrating the financing and insurance rates generally available locally to low- and moderate-income home buyers and the developer's calculations of the maximum sales prices. The interest rate used by the developer in calculating the maximum initial sales prices shall be the rate that the Affordable Housing Agency determines to be generally available locally for a thirty-year fixed-rate mortgage with a down payment of 5% of the purchase price, in accordance with the following:
- [a] In the event that the developer obtains for the low- and moderate-income purchaser a commitment for a thirty-year fixed-rate mortgage, or in the event that the developer obtains a commitment for thirty-year fixed-rate mortgages in sufficient quantity to provide mortgage financing for all the affordable units included within the project remaining to be sold, the payment rate of the committed thirty-year fixed-rate mortgage(s) shall be used for calculating the maximum sales price.
 - [b] In the event that the developer or another entity shall provide other thirty-year fixed-rate mortgage financing for the affordable units, such as in a mortgage buy-down program or for an adjustable rate mortgage (ARM), the sales price of affordable units is calculated using the fixed-rate mortgage.
- (3) Maximum resale prices for all affordable units.
- (a) Prior to the resale of any low- or moderate-income units, the Affordable Housing Agency shall determine the maximum resale price for the unit in accordance with regulations adopted by the Affordable Housing Agency, which take into account:
 - [1] The changes in the median regional income; and
 - [2] The cost or value of improvements to the property made by the owner, as determined in accordance with the rules and regulations established by the Affordable Housing Agency pursuant to Subsection F(3)(c) hereinbelow.
 - (b) The base resale price, before adding the costs of improvements, shall be the previous purchase price adjusted by the percentage increase in median regional income between the year of the previous title closing and the current year, provided that in no event shall the maximum resale price established by the Affordable Housing Agency be lower than the last recorded purchase price.
 - (c) Improvement costs may be included in the resale price only if the owner has obtained prior approval from the Affordable Housing Agency. Allowable

improvements for which costs may be approved shall be limited to permanent structural improvements which shall increase the occupancy potential of a unit under Subsection E(3) of this section and central air conditioning installed subsequent to the initial sale of the unit, subject to the following:

- [1] No portion of the cost or value of the improvement not specifically approved by the Affordable Housing Agency shall be included for purposes of the price calculation.
 - [2] At resale, all items of property which are permanently affixed to the units and/or were included when the unit was initially restricted (e.g., refrigerator, range, washer, dryer, dishwasher, wall-to-wall carpeting) shall be included in the maximum allowable resale price.
 - [3] 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 that the price has been approved by the Affordable Housing Agency. Unless otherwise permitted by COAH, the purchase of any property other than air conditioning shall not be made a condition of resale.
 - [4] Other items of property may be sold by the owner to the purchaser at a reasonable price that has been agreed upon between the parties and has been approved by the Affordable Housing Agency at the time of the signing of the agreement and purchase.
 - [5] If the owner receives approval from the Affordable Housing Agency for an improvement, a portion of the cost or value of which is to be included within the resale price of affordable unit, and such owner is in need of a second mortgage in order to pay for such improvement, then the Affordable Housing Agency shall execute and deliver to the owner, for recording by the owner, a document by which the Affordable Housing Agency's rights, claims and liens under this Affordable Housing Ordinance and the affordable housing document are subordinated to such second mortgage. The Affordable Housing Agency's rights, claims and liens shall not be subordinated to any second mortgage unless the Affordable Housing Agency has executed and delivered such instrument to an owner in connection with an improvement approved by the Affordable Housing Agency.
 - [6] 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 resale.
- (d) The owner (seller) shall not include in the resale price either closing costs, real estate commissions or other costs associated with the selling of the unit.
- (4) Maximum rental charges for all affordable units.
- (a) A base rent shall be calculated such that the sum of the monthly rental payment, including utilities, does not exceed 30% of the low- or moderate-income ceilings determined in accordance with Subsection E(2) of this section.

- (b) If the cost of utilities is not included in the monthly rental charge, the Affordable Housing Agency shall calculate for each unit size an estimated average monthly charge for those utilities not included in the rent, including the estimated cost for the operation of air-conditioning equipment and clothes-washing and -drying equipment, whether or not such equipment is provided by the developer or the owner. These charges shall be estimated utilizing the personal benefit allowance for utilities as defined by the Department of Housing and Urban Development and shall be subtracted from the maximum gross rent to determine the maximum rental charge that may be charged for each low- and moderate-income unit.
- (c) The owner shall calculate the maximum rental charge for each size unit in the low- and moderate-income category and shall submit said calculations to the Affordable Housing Agency for review. The Affordable Housing Agency shall determine, based upon its review, the maximum rental charges.
 - [1] These rental charges shall remain in effect for a period of at least one year, or until the median regional income levels are revised. Upon a revision to the median regional income levels, the owner may request a modification of the rental charges by applying to the Affordable Housing Agency for a recalculation of the rental charges based upon the income level changes.
 - [2] To the extent feasible, these criteria and procedures should ensure that the rental charges are consistent with the affordability standards as set forth in this section. In all cases, the Affordable Housing Agency shall reserve the right to require the owner to seek a modification to the permitted rental charges.
- (d) In order to assure that low- and moderate-income units within the inclusionary developments are affordable by households whose income is less than the low- and moderate-income ceilings, a range of rents shall be offered for each such unit based on a range of income. The maximum average rent and price of low- and moderate-income units within each inclusionary development shall be affordable to households earning 57.5% of the median regional income. In averaging 57.5%, developers and/or municipal sponsors of rental units may establish one rent for a low-income unit and one rent for a moderate-income unit for each bedroom distribution.
- (5) Maximum rental charges for all affordable units. Except for rental housing contracted pursuant to low-income tax credit regulations, the Affordable Housing Agency shall establish appropriate criteria and procedures for allowing annual rental charge increases, taking into account:
 - (a) The increase in the median regional income;
 - (b) The increase in the housing Consumer Price Index for the United States, provided that no rent increase shall exceed 9% in any one year; and
 - (c) The costs to the owner of any capital improvements deemed necessary by the City Construction official.

G. Affordable Housing documents for all affordable housing units.

- (1) Required preparation of an affordable housing document. Each owner of a low- or moderate-income unit shall prepare an affordable housing document which shall be a legal instrument setting forth the terms, restrictions and provisions applicable to the subject affordable unit(s), and which shall constitute the restrictive covenants running with the land with respect to the subject affordable unit(s).
 - (a) The affordable housing document shall be an instrument to be recorded with the Office of the Register, Passaic County, New Jersey.
 - (b) The affordable housing document shall be in the form adopted by COAH, which is delineated in Appendix E of the Substantive Rules of COAH (N.J.A.C. 5:93), unless amendments have been specifically approved by COAH.
 - (c) The affordable housing document shall be executed by the Affordable Housing Agency prior to the recording of the instrument, and the Affordable Housing Agency shall certify that the affordable housing document is consistent with the then-current Affordable Housing Ordinance.
 - (d) The affordable housing document also shall be executed by the developer and/or the then-current titleholder of record of the property upon which the affordable unit(s) is/are constructed.
 - (e) The affordable housing document shall have priority over all mortgages on the subject property except for a first mortgage placed on the property by the mortgagee prior to the expiration of the affordable housing document.
 - (f) The affordable housing document shall be a condition of any applicable approval of a site plan and/or subdivision plat by the Planning Board or the Zoning Board of Adjustment, as the case may be.
- (2) Contents of an affordable housing document.
 - (a) The affordable housing document shall set forth terms, restrictions and provisions applicable to the affordable units(s) and shall be consistent with this Affordable Housing Ordinance, including but not limited to, those provisions of this section covering income limits, housing eligibility and the determination of certified households, maximum sales prices and rental charges, the duration of restrictions, procedures for the sale and rental of an affordable unit when no eligible household is found, exempt sales, the provisions for the recapture of affordable units, the obligations of owners and renters, violations and penalties, foreclosures, the legal description of the specific affordable unit(s) governed by the document and the creation of the terms, restrictions and provisions applicable to the affordable units; all as such provisions of this section exist at the time that the document is executed by the Affordable Housing Agency.
 - (b) The affordable housing document specifically shall bind all purchasers, owners and renters of an affordable unit, their heirs, assigns and all persons claiming by, through or under their heirs, assigns and administrators, and shall stipulate that the ownership or rental of an affordable unit shall be deemed to be an acceptance and ratification of all the applicable provisions of the affordable housing document.

- (c) If a single affordable housing document is used to govern more than one affordable unit, then the document must contain the legal description of each affordable unit governed by the document. The deed of each and every individual affordable unit so governed must contain the recording information of the document applicable to such affordable unit.
 - (d) Changes, amendments or revisions to the Affordable Housing Ordinance shall not affect, amend or alter the affordable housing document and such affordable housing document shall continue to be interpreted and applied in accordance with the Affordable Housing Ordinance as it existed on the date of the execution of the particular affordable housing document by the Affordable Housing Agency.
- (3) Certificates of occupancy for sale units.
 - (a) No certificate of occupancy shall be issued for the initial occupancy of any low- or moderate-income sales unit unless there is a written determination by the Affordable Housing Agency that the affordable unit is to be controlled by an affordable housing document in the form approved by COAH.
 - [1] The Affordable Housing Agency shall make its determination within 10 days of its receipt of a proposed affordable housing document.
 - [2] No initial occupancy of a low- or moderate income-sales unit shall be permitted prior to the issuance of the certificate of occupancy.
 - [3] A request for an amendment to the affordable housing document may be made by the developer or owner, the Affordable Housing Agency or the Mayor and Council.
 - (b) A new certificate of occupancy shall be required for the reoccupancy of any low- or moderate-income unit resulting from the resale of the unit, and the same procedures shall be followed as indicated in Subsection G(3)(a) hereinabove for the issuance of the initial certificate of occupancy.
- (4) Expiration of the affordable housing document. The terms, restrictions and covenants of an affordable housing document shall expire and terminate in accordance with the following schedule of years from the date of the first purchase or rental of the affordable unit by either a low-income household or by a moderate-income household and in accordance with the recapture provisions specified in Subsection J of this section.
 - (a) Newly constructed low- and moderate-income sales units shall remain affordable to low- and moderate-income households for not less than 30 years.
 - (b) Newly constructed low- and moderate-income rental units shall remain affordable to low- and moderate-income households for not less than 30 years.
 - (c) Rehabilitated owner-occupied single-family housing units that are improved to code standard shall be subject to affordability controls for at least six years.
 - (d) Rehabilitated renter-occupied housing units that are improved to code standards shall be subject to affordability controls for at least 10 years.

- (e) Accessory apartments shall be subject to affordability controls for at least 10 years.
 - (f) Alternative living arrangements shall be controlled in a manner, suitable to COAH, that provides assurances that such a facility will house low- and moderate-income households for at least 15 years.
- (5) Deeds conveyance and leases.
- (a) The deed of conveyance from the owner to the purchaser of an affordable unit, as well as the lease from the owner to the renter of an affordable unit, shall include the following clause:

"The owner's/tenant's right, title and interest in this unit and the use, sale, resale, rental or rental of this property are subject to the terms, conditions, restrictions, limitations and provisions as set forth in the "Affordable Housing Document" which was filed in the office of the Register of Passaic county in Misc. Book _____ at Page ____ on _____ and is on file with the City of Clifton Municipal Clerk.

- (b) The above clause shall be in addition to any clause stating that the unit is subject to the master deed, which clause also shall appear in the deeds or leases of all units in an inclusionary development.
- H. Provisions applicable to inclusionary developments only.
- (1) Disclosure statement by developers.
 - (a) The developer, of inclusionary affordable units shall provide a disclosure statement to all initial purchasers and renters of affordable units prior to the execution of any contract for sale or lease, and such disclosure statement shall be included in the public offering statement, a sample copy of which is attached as an addendum to this section.³
 - (b) All owners or renters of affordable units shall provide copies of the disclosure statement to subsequent buyers or renters prior to the execution of contracts of sale or leases with such buyers or renters.
 - (2) Phasing of market rate versus affordable units. In order to ensure that construction of affordable units takes place simultaneously with the construction of market rate units in any inclusionary development with affordable units, such development shall be subject to the following phasing schedule:

3. Editor's Note: A copy of the sample disclosure statement is on file in the City Clerk's office.

City of Clifton, NJ

§ 461-24.2

§ 461-24.2

Market Rate Housing Percentage Receiving Certificate of Occupancy (Maximum)	Low- and Moderate-Income Housing Percentage Receiving Certificate of Occupancy (Maximum)
Up to 25%	0% (none required)
25% + 1 unit	At least 10%
Up to 50%	At least 50%
Up to 75%	At least 75%
Up to 90%	100%

(3) Unit sizes and bedroom distribution.

- (a) Each apartment or townhouse low- and moderate-income dwelling unit shall have the following minimum net habitable floor area:

Apartments

Number of Bedrooms	Floor Area (square feet)
Efficiency	500
1	600
2	725
3	875

Townhouses

Number of Bedrooms	Floor Area (square feet)
1	700
2	850
3	1,000

- (b) The bedroom mix of non-senior, low- and moderate-income units shall contain the following distribution of unit types:
- [1] Efficiencies and 1-bedroom: 10% minimum and 20% maximum.
 - [2] Two-bedroom: 30% minimum.
 - [3] Three-bedroom: 20% minimum.
- (c) The number of bedrooms restricted to senior citizens shall, at a minimum, equal the number of senior citizen low- and moderate-income units within the inclusionary development. This standard can be met by creating all one-bedroom units or by creating a two-bedroom unit for each efficiency unit.

- [1] Efficiencies: 25% maximum.
 - [2] One-bedroom: 75% maximum.
 - [3] Two-bedroom: 25% minimum.
- (4) Distribution of affordable units within inclusionary developments. With the exception of inclusionary developments constructed pursuant to low-income tax credit regulations, the following distribution of low- and moderate-income units shall occur within any inclusionary development:
- (a) At least 1/2 of all affordable units within each inclusionary development shall be affordable to low-income households.
 - (b) As many as 1/2 of all affordable units within each inclusionary development shall be affordable to moderate-income households.
 - (c) At least 1/3 of all units in each bedroom distribution category pursuant to N.J.A.C. 5:93-7.3 and Subsection H(3)(b) and (3)(c) hereinabove shall be affordable to low-income households.
- I. Procedures for the sale and rental of an affordable unit when no certified household is found; exempt sales.
- (1) Initial sales of affordable units.
 - (a) Low- and moderate-income sales units shall not be offered to non-income-eligible households at initial sales without approval from COAH.
 - (b) Parties may petition COAH for such approval in accordance with the procedures outlined in N.J.A.C. 5:93-12 and shall document efforts to sell the unit(s) to income-eligible households.
 - (2) Resale of affordable units.
 - (a) Persons wishing to sell an affordable unit shall notify the Affordable Housing Agency of their intent to sell.
 - [1] If no eligible buyer enters into a contract of sale for the affordable unit within 90 days of the notice to the Affordable Housing Agency, the Affordable Housing Agency shall have the option to purchase the subject unit for a negotiated price that shall not exceed the maximum price permitted in accordance with Subsection F(3) of this section.
 - [2] The Affordable Housing Agency shall consider the specific reasons for any delay in selling the affordable unit and the hardship to the seller in continuing to offer the affordable unit to an income-eligible applicant.
 - [3] The inability to sell the unit for the maximum permitted resale price shall, not unto itself, be considered an appropriate reason for allowing the subject affordable unit to be sold to a non-income-eligible household.

- [4] If the application is approved, the Affordable Housing Agency shall issue a statement of exemption indicating that the subject affordable unit is exempt from the requirement that the sale of the unit must be to a low- or moderate-income household, as the case may be.
- (b) If a statement of exemption is issued by the Affordable Housing Agency, the seller may offer a low-income unit to a moderate-income household at the maximum resale price in accordance with Subsection F(3) of this section, and a moderate-income unit may be offered to a household earning in excess of 80% of the median regional income, in accordance with the following:
 - [1] The statement of exemption shall apply only to the specific resale transaction for which the seller has applied; permission for the exemption of any other transaction shall require application to, and approval by, the Affordable Housing Agency as in the original instance.
 - [2] Any sale pursuant to the issuance of a statement of exemption shall not eliminate the resale controls on the subject affordable unit or permit any subsequent seller to convey the affordable unit except in full compliance with the restrictions and other applicable provisions of this section.
 - [3] Notwithstanding the issuance of a statement of exemption for a particular transaction, all other terms, provisions and restrictions of this Affordable Housing Ordinance shall remain in full force and effect. Therefore, a purchaser of an affordable unit which is subject to a statement of exemption shall take title to the affordable unit subject to the terms, restrictions, conditions and provisions of this section applicable to the affordable unit, including but not limited to those addressing use, occupancy and resale, just as though the purchaser was in fact a certified household.
- (3) Rentals of affordable units.
 - (a) Owners of low- and moderate-income rental units shall not offer rental units to non-income-eligible households without prior approval from COAH.
 - (b) Parties may petition COAH for such approval in accordance with the procedures outlined in N.J.A.C. 5:93-12 and shall document all efforts to rent the unit(s) to income-eligible households and shall demonstrate to the satisfaction of COAH that alternatives, such as a reduction of the rent, are not feasible.
- (4) Exempt sales.
 - (a) The following transfers of ownership shall deemed to be "non-sales" for purposes of this section, and the Affordable Housing Agency shall issue a statement of exemption to the owner receiving title by virtue of the following transactions:
 - [1] Transfer of ownership between husband and wife.
 - [2] Transfer of ownership between former spouses ordered as a result of a judicial decree of divorce or separation, but not including sales to third parties.

- [3] Transfer of ownership between family members as a result of inheritance.
- [4] Transfer of ownership through an executor's deed to third parties.
- [5] Transfer of ownership through a court order.

- (b) Such transfers of ownership shall neither extinguish the restrictions and applicability of this section to the subject affordable unit nor terminate any liens incurred under this section. Liens must be satisfied in full prior to the subsequent resale of the affordable unit, and all such subsequent resales are fully subject to the terms and provisions of this section.

J. Recapture of affordable sales units.

(1) Options to buy sales units.

- (a) The terms, restrictions and covenants of an affordable housing document shall include an option permitting options for the purchase of an affordable unit at the maximum allowable restricted sales price at the time of the first nonexempt sale after the controls on affordability have been in effect on the unit for the applicable time period specified in Subsection G(4) of this section.
- (b) The options to buy shall be available to the City of Clifton, the New Jersey Department of Community Affairs (NJDCOA), the New Jersey Housing and Mortgage Finance Agency (NJHMFA) or a qualified nonprofit as determined by COAH.
- (c) The terms, restrictions and covenants of an affordable housing document shall require the owner to notify the Affordable Housing Agency in writing by certified mail of any intent to sell the unit at least 90 days prior to entering into an agreement for the first nonexempt sale after controls have been in effect for the applicable time period specified in Subsection G(4) of this section.
- (d) Within five days of receipt of such notice, the Affordable Housing Agency shall notify the City, the NJDCOA, the NJHMFA and COAH that the unit is for sale at the maximum allowable resale price. Any option to buy the housing unit shall be exercised in writing to the owner by certified mail and shall be deemed exercised upon mailing. A copy of the written notification to the owner shall be mailed to the Affordable Housing Agency.
- (e) If the City of Clifton exercises its option to purchase the unit, it may enter into a contract to purchase the unit, subject to the following:
 - [1] The contract shall require the owner to convey good and marketable title, insurable by a title company doing business in the State of New Jersey, at regular rates and free and clear of any and all liens.
 - [2] The deed from the owner shall be a bargain and sale deed with covenants against grantor's acts.
 - [3] The contract shall call for a closing date within 60 days of the exercise of the

option, unless the owner and the Affordable Housing Agency agree to an extension thereof.

- (f) If the City of Clifton fails to exercise its option to purchase the unit within 90 days its receipt of the owner's notice of an intent to sell the unit, the first of the other entities giving notice to the owner of its intent to purchase the unit during the ninety-day period shall be entitled to purchase the unit.
- (g) If the option to purchase that unit at the maximum allowable resale price is not exercised by written intent to purchase by either the City of Clifton the NJDCA, NJHMFA or a qualified nonprofit entity, the owner may proceed to sell the housing unit to another party in accordance with Subsection J(5) of this section hereinbelow. However, if the owner has not conveyed title to the unit within one year of the date of delivery of the initial notice of intent to sell, the option to buy the unit shall be restored and the owner shall be required to submit a new notice of intent to sell the unit at least 90 days prior to any future proposed date of sale, as in the first instance.
- (h) As referred to in this section, the term "principal differential" shall mean the difference between the controlled unit sale price and the fair market value as determined at the date of the proposed contract of sale after reasonable real estate broker fees have been paid as well as the payment of the following additional costs as be applicable and approved by COAH:
 - [1] Outstanding taxes and governmental assessments.
 - [2] The first purchase money mortgage.
 - [3] The attorney's fees and costs of sale of the first money mortgagee.
 - [4] Outstanding assessments.
 - [5] The attorney's fees and costs of sale of the Affordable Housing Agency.
 - [6] Subordinate lien holders.
 - [7] The attorney's fees and costs of sale of any subordinate lien holders.
- (2) City of Clifton option to buy. If the City of Clifton elects to purchase a low- or moderate-income unit, it may:
 - (a) Sell or rent the unit to a low- or moderate-income purchaser or tenant at a price or rent not to exceed the applicable maximum allowable restricted resale price or rental charge in accordance with Subsection F(3), F(4) and F(5) of this section for the applicable time period specified in Subsection G(4) of this section, provided that the unit is controlled by an affordable housing document in accordance with the applicable provisions of Subsection G of this section.
 - (b) Sell the unit at fair market value subject to the following:
 - [1] Notice to COAH of the proposed sale and the proposed sales price at least 90

days before closing.

[2] Notice to COAH of the price differential.

[3] Deposit of the price differential in a trust account devoted solely to the creation, rehabilitation or maintenance of low- and moderate-income housing, provided that the money shall not be expended until the City of Clifton submits, and COAH approves, a spending plan which is in accordance with N.J.A.C. 5:93-5.1(c) and which is subject to the restrictions, monitoring requirements and penalties outlined in N.J.A.C. 5:93-8.15 through 5:93-8.17.

(3) State of New Jersey option to buy. When the New Jersey Department of Community Affairs or the New Jersey Housing and Mortgage Finance Agency elects to purchase a low- or moderate-income unit, it may:

- (a) Sell or rent the housing unit to a low- or moderate-income purchaser or tenant at a price of rent not to exceed the maximum allowable restricted resale price or rerental charge in accordance with Subsection F(3), F(4) and F(5) of this section.
- (b) Sell the unit at fair market value and utilize the price differential to subsidize the construction, rehabilitation or maintenance of low- and moderate-income housing within the housing region.

(4) Qualified nonprofit option to buy. Nonprofit agencies that have been designated by COAH shall be eligible to purchase low- and moderate-income units for the sole purpose of selling or renting the housing units to a low- or moderate-income purchaser or tenant, subject to the following:

- (a) The sale price or rent shall not exceed the maximum allowable restricted resale price or rerental charge in accordance with Subsection F(3) and F(5) of this section for the applicable time period specified in Subsection G(4) of this section.
- (b) Low-income units shall be made available to low-income purchasers or low-income renters.
- (c) The unit shall be controlled by an affordable housing document in accordance with the applicable provisions of Subsection G of this section.

(5) Owner options to sell. An eligible seller of a low- or moderate-income unit which has been controlled for the applicable time period specified in Subsection G(4) of this section, and who has provided notice of an intent to sell in accordance with this section, may proceed with the sale of the affordable unit in accordance with either of the following two options if neither the City of Clifton, the NJDCA, NJHMFA or a qualified nonprofit entity has exercised its option to purchase the unit within 90 days of the seller's notice:

- (a) Option #1 is for the seller to sell to a qualified low- or moderate-income household at the controlled unit sales price, in accordance with the following:

[1] The sales price shall not exceed the maximum allowable restricted resale price in accordance with Subsection F(3) of this section.

City of Clifton, NJ

§ 461-24.2

§ 461-24.2

- [2] The Affordable Housing Agency shall certify the income qualifications of the purchaser.
 - [3] The Affordable Housing Agency has ensured that the subject affordable unit is controlled by an affordable housing document in accordance with the applicable provisions of Subsection G.
- (b) Option #2 is for the seller to exercise a repayment option and sell the unit to any purchaser at fair market value, provided that the following are met and subject to the rejection of the repayment option by the City of Clifton in accordance with Subsection J(6) of this section hereinbelow:
- [1] Ninety-five percent of the price differential shall be paid to the Affordable Housing Agency, as an instrument of the City of Clifton, at the date of closing and transfer of title.
 - [2] The Affordable Housing Agency shall examine the contract of sale containing the repayment option to determine if the proposed sales price bears a reasonable relationship to the housing unit's fair market value.
 - [a] In making this determination, the Affordable Housing Agency may rely on comparable sales data or an appraisal.
 - [b] The affordable housing agency shall not approve any contract of sale where there is a determination that the sales price does not bear a reasonable relationship to fair market value.
 - [c] The Affordable Housing Agency shall make a determination within 20 days of receipt of the contract of sale and shall calculate the repayment option payment.
 - [3] The Affordable Housing Agency also shall adopt an appeal procedure by which a seller may submit written documentation requesting the Affordable Housing Agency to do the following, provided that the determination made by the Affordable Housing Agency as a result of an owner's appeal shall be a final administrative determination by the Affordable Housing Agency:
 - [a] Recompute the repayment obligation if the seller believes an error has been made; or
 - [b] Reconsider a determination that a sales price does not bear a reasonable relationship to fair market value.
 - [4] The repayment proceeds to the Affordable Housing Agency shall be deposited in a trust account devoted solely to the creation, rehabilitation or maintenance of low- and moderate-income housing, provided that money may not be expended until the City of Clifton submits, and COAH approves, a spending plan which is in accordance with N.J.A.C. 5:93-5.1(c) and which is subject to the restrictions, monitoring requirements and penalties outlined in N.J.A.C. 5:93-8.15a through 5:93-8.17.

City of Clifton, NJ

§ 461-24.2

§ 461-24.2

[5] The proceeds to the owner shall, except in the event of foreclosure, be forwarded to the owner, in accordance with the following:

[a] If the former affordable unit owner cannot be located or is unavailable for purposes of payment of the owner's proceeds of the sale of the affordable unit, the Affordable Housing Agency shall deposit and hold such proceeds for a period of two years in an account in the name of the former affordable unit owner, and shall issue written notice by mail to the last known address or forwarding address provided by the former affordable unit owner. The notice shall inform the owner of the following:

[i] The amount of proceeds to which the former owner is entitled.

[ii] The circumstances under which the Affordable Housing Agency holds the proceeds in trust for the benefit the former owner.

[iii] the Affordable Housing Agency will continue to hold the proceeds until it receives a clam from the former owner in writing indicating an address to which payment shall be made, or for a period of two successive years, whichever occurs first.

[b] If the period of two successive years should elapse during which the proceeds remain unclaimed and the whereabouts of the former affordable unit owner remains unknown to the Affordable Housing Agency, such funds shall be deemed irrevocably contributed to the Affordable Housing Agency by that former affordable unit owner.

(6) City of Clifton right to reject repayment option. The City of Clifton shall have the right to determine that the most desirable means of promoting an adequate supply of low- and moderate-income housing is to prohibit the exercise of the repayment option referred to in Subsection J(5)(b) of this section and maintain the controls on affordable units beyond the expiration dates of the affordable housing documents controlling the units:

(a) Such a determination by the City of Clifton shall be made by resolution of the Mayor and Council, and the resolution shall specify the time period for which the recapture option shall not be applicable.

(b) During such time period specified by the Mayor and Council, no seller of an affordable unit in the City of Clifton may utilize the repayment option referred to in Subsection J(b) of this section, provided that the City of Clifton:

[1] Provides public notice in an official newspaper of the City;

[2] Notifies the Affordable Housing Agency; and

[3] Directs the Affordable Housing Agency to ensure that the deed restriction on all affected affordable units reflects the appropriately extended time period on the affordability controls.

K. Obligations of occupants and notices of violations.

(1) Obligation of owners and renters.

- (a) In all cases, a certified household shall be the only occupant of a low- or moderate-income unit, and in no case shall an affordable unit be sold, rented or otherwise occupied without the prior approval of the Affordable Housing Agency.
- (b) The owner of an affordable unit shall pay any and all assessments by a homeowners' association, if applicable, and all taxes and public assessments levied upon or against the unit, and shall pay the assessments and taxes at the time they are due and before penalties occur.
- (c) The owner and renter, if applicable, of an affordable unit shall fully comply with all of the terms, restrictions and provisions of any master deed, this Affordable Housing Ordinance, the affordable housing document and the rules and regulations of the Affordable Housing Agency.
- (d) The proprietary interest of any owner of an affordable unit shall be subject to forfeiture in the event of substantial violation of any of the terms, restrictions and provisions of the master deed, this Affordable Housing Ordinance, the affordable housing document and the rules and regulations of the Affordable Housing Agency.
- (e) Regarding any renter of an affordable unit, the terms, restrictions and provisions of the master deed, this Affordable Housing Ordinance, the affordable housing document and/or the rules and regulations of the Affordable Housing Agency shall be considered a material element of the renter's lease and the landlord's rules, and any violation of such terms, restrictions and provisions shall be cause for eviction pursuant to N.J.S.A. 2A:18-61.1d and/or 2A:18-16.1e.
- (f) The owner and renter, if applicable, of an affordable unit shall keep the unit in good repair, and the City Construction Official, at the request and on behalf of the Affordable Housing Agency, shall enter and inspect an affordable unit in order to assess its condition relative to the applicable laws of the City of Clifton, and shall report his/her findings to the Affordable Housing Agency in writing.

(2) Notice of violations.

- (a) The Affordable Housing Agency shall issue a notice of violation to an owner or renter of an affordable unit when an evident violation has occurred regarding any of the terms, restrictions and/or provisions of any master deed, this affordable housing ordinance, the affordable housing document or the rules and regulations of the Affordable Housing Agency.
- (b) The notice of violation shall be in writing and shall be sent to the owner or renter, as the case may be, by certified mail and shall be deemed to have been received three days after mailing. The notice of violation shall indicate:

[1] The term(s), restriction(s), provision(s), rule(s) and/or regulation(s) violated by the owner or renter;

- [2] The particular manner in which the owner or renter violated the term(s), restriction(s), provision(s), rule(s) and/or regulation(s); and
 - [3] The step(s) considered necessary by the Affordable Housing Agency for the owner or renter to cure the violation(s).
- (c) An owner or renter shall have 45 days from the date of receipt of the notice of violation in which to correct the violation(s) in accordance with the steps set forth by the Affordable Housing Agency in the notice of violation, in accordance with the following:
- [1] If the violation(s) represents an imminent threat to the health, safety or welfare of the residents or the environment, the Affordable Housing Agency shall establish a reasonable time period to cure the violation(s), which may be a time period other than 45 days, and shall indicate the time period within the notice of violation.
 - [2] The Affordable Housing Agency shall have complete discretion to grant or deny a request for an extension of the specified time period to cure the violation(s), and shall not unreasonably deny such a request.
 - [3] Upon expiration of the time period to cure the violation(s), the Affordable Housing Agency shall decide whether or not an owner or renter has adequately corrected the violation(s), and the decision of the Affordable Housing Agency shall be final.
- (d) Failure by the owner or renter of an affordable unit to cure the violation(s) within the established time period to cure the violation(s) shall be considered a notice of intent to sell the affordable unit, and the recapture provisions specified in Subsection J of this section may be declared operative. In addition to or as an alternative to declaring the recapture provisions specified in Subsection J of this section operative, the Affordable Housing Agency shall have the right to pursue any other legal and equitable remedies to which it may be entitled upon failure by an owner or renter of an affordable unit to cure the violation(s).
- (e) Failure of the Affordable Housing Agency to issue a notice of violation to an owner or renter of an affordable unit for any violation(s) shall not constitute a waiver or forfeiture by the Affordable Housing Agency of its rights to enforce the terms, restrictions and/or provisions of any master deed, this Affordable Housing Ordinance, the affordable housing document or the rules and regulations of the Affordable Housing Agency with respect to the subject affordable unit or to any other affordable unit.

L. Foreclosure.

- (1) Effect of foreclosure. An affordable unit which is acquired by the first mortgagee by a judgment of foreclosure, or by a deed in lieu of foreclosure or by any purchaser (other than the defaulting mortgagor) of the affordable unit at a foreclosure sale conducted by the holder of the first mortgage shall be permanently released from the terms, restrictions and provisions of any master deed, this Affordable Housing Ordinance, the

affordable housing document and the rules and regulations of the Affordable Housing Agency, in accordance with the following:

- (a) While the aforementioned terms, restrictions and provisions shall cease to be effective upon the first mortgagee and all subsequent purchasers and mortgagees of the particular unit, said, terms, restrictions and provisions shall continue upon the owner of the subject affordable unit at the time of the default.
 - (b) The foreclosure upon the affordable unit by another class of creditor other than the first mortgagee shall not result in the cessation of said terms, restrictions and provisions.
- (2) Notice of foreclosure.
 - (a) The first mortgagee and/or the mortgage holder shall serve written notice upon the Affordable Housing Agency within 10 days after the first mortgage is three months in arrears, and within 10 calendar days of the filing of the complaint seeking foreclosure of the first mortgage held on the affordable unit.
 - (b) Failure of the first mortgagee or mortgage holder to provide notice of a foreclosure action to the Affordable Housing Agency shall not impair any of the financial institution's rights to recoup loan proceeds, shall neither negate the extinguishment of the controls on the subject affordable unit nor the validity of the foreclosure and shall not create a cause of action against the financial institution.
- (3) Continuance of the affordable unit.
 - (a) If an affordable unit owner defaults under the terms of a first mortgage, and if a foreclosure action is brought by the first mortgagee to foreclose its lien against the affordable unit owner, the recapture provisions of Subsection J of this section shall be operative and the City of Clifton, the State of New Jersey or a qualified nonprofit agency may purchase the subject affordable unit.
 - (b) In addition to the possibilities of the affordable unit being purchased by the City of Clifton, the State of New Jersey or by a qualified nonprofit agency in accordance with the recapture provisions of Subsection J of this section, the City of Clifton may advance and pay sums necessary to continue the subject unit as an affordable unit under the terms of this section, subject to the following:
 - [1] The sum paid by the City of Clifton shall be approved by COAH and may include, but not be limited to, payment for insurance premiums, taxes, public or private assessments, second mortgages authorized by the Affordable Housing Agency and/or liens which may be or become prior and senior to any first mortgage lien on the subject affordable unit.
 - [2] All sums paid by the City of Clifton shall become a lien against the subject affordable unit and shall have a higher priority than any lien except the first mortgage lien and other liens by duly authorized governmental agencies.
- (4) Surplus funds. In the event of a foreclosure sale by the first mortgagee, the owner of the

affordable unit at the time of the default shall be personally obligated to pay to the Affordable Housing Agency any surplus funds resulting from the foreclosure sale, but only to the extent that such surplus exceeds the difference between the maximum resale price permitted at the time of the foreclosure in accordance with Subsection F(3) of this section and the amount necessary to redeem the first mortgage, including the costs of foreclosure, and subject to the following:

- (a) The term "surplus funds" is the total dollar amount paid to the sheriff in excess of the amount required to pay and satisfy the first mortgage, including the costs of foreclosure, even if junior creditors actually receive payment from said surplus funds to the exclusion of the owner.
- (b) The Affordable Housing Agency shall have a first priority lien to the full amount of the surplus funds, second only to the first mortgage of the subject unit and to any taxes or public assessments owed to a duly authorized governmental body, provided that the following:
 - [1] The obligation of the owner to pay any moneys owed to the Affordable Housing Agency is considered to be a personal contractual obligation of the owner of the affordable unit at the time of the foreclosure sale, and the Affordable Housing Agency is hereby empowered to enforce the obligation of the owner in any appropriate court of law or equity.
 - [2] Neither the first mortgagee nor the purchaser of the foreclosure sale shall be responsible or liable to the Affordable Housing Agency for any portion of the surplus funds.
- (c) The distribution and payment of moneys resulting from a foreclosure sale shall be subject to any and all applicable laws of the State of New Jersey.

M. Affirmative marketing plans for new affordable units.

- (1) Affordable unit occupancy preference.
 - (a) All affordable units shall be available to appropriately sized low- and moderate-income certified households, irrespective of sex, age, race, color, religion, national origin or number of children.
 - (b) The screening and interview process by the Affordable Housing Agency for income-eligible households that apply for low- and moderate-income units within Clifton shall be conducted in accordance with the procedures outlined in N.J.A.C. 5:93-11.4 of the Substantive Rules of COAH.
 - (c) The following priority categories for certified households for all affordable units shall prevail in the City of Clifton and, within each priority category during each round of application selection, a random selection of the eligible certified households shall prevail:
 - [1] First priority shall be given to certified households now living in substandard housing units in the City of Clifton.

- [2] Second priority shall be residents of Bergen, Hudson, Passaic and Sussex Counties.
 - [3] Third priority shall be residents of the State of New Jersey.
 - [4] Fourth priority shall be to anyone else.
- (2) Contents of the affirmative marketing plan. The affirmative marketing plan shall be a regional marketing strategy designed to attract buyers and/or renters of the affordable units being marketed by a developer or sponsor of the units, and the affirmative marketing plan shall continue during the period of time that any of the affordable units is controlled by an affordable housing document.
- (a) The affirmative marketing plan for new affordable units shall provide the following information:
- [1] The name and address of the housing project.
 - [2] The total number of units and the total number of affordable units, including the number of sales and rental affordable units.
 - [3] The price of the sales affordable units and/or rents of the rental affordable units.
 - [4] A documentation of the potential realistic availability of mortgages for prospective low-income purchasers and moderate-income purchasers at or below the mortgage rate used to determine the sales prices of the affordable units.
 - [5] A documentation of the availability of private mortgage insurance in conjunction with low down payment mortgages.
 - [6] A statement of the projected closing costs for each unit type and price level, and the efforts to be made prior to sale to reduce the closing costs to the extent feasible.
 - [7] The name, address and telephone number of the sales agent and/or rental agent.
 - [8] A description of the random selection method that will be used to select certified households for the affordable units.
 - [9] A marketing program in accordance with Subsection M hereinbelow.
- (b) The marketing program portion of the affirmative marketing plan shall be designed to advertise and publicize to all segments of the income-eligible population throughout the housing region that the affordable units are available, and shall include the following:
- [1] The names of the specific newspapers with circulation throughout the housing region that will be used, including the frequency of the advertisements and the general text of advertisements.

- [2] The names of the specific radio and television stations broadcasting in the housing region that will be used, including the frequency of the advertisements and the general text of the advertisements.
 - [3] The names of other specific publications circulating within the housing region that will be used and are likely to be read by income-eligible low- and moderate-income households, such as neighborhood-oriented weekly newspapers, religious publications and organizational newsletters.
 - [4] The names of the specific employers throughout the housing region that will be contacted to post advertisements and distribute flyers regarding the available affordable units.
 - [5] The names of the specific community and regional organizations that will be used to aid in soliciting income-eligible low- and moderate-income households to apply for the available affordable units including nonprofit, religious, governmental, fraternal, civic and other organizations.
- (3) Compliance with state and federal law. All advertisements shall conform with applicable affirmative action, equal opportunity and nondiscrimination laws of the State of New Jersey and federal government.
- (4) Commencement of the affirmative marketing plan.
- (a) The affirmative marketing plan shall begin at least four months prior to the expected occupancy of the subject affordable units, and there shall be at least one paid advertisement including at least the following information published in a newspaper of general circulation within the housing region during the first week of the marketing program:
 - [1] The location of the affordable units.
 - [2] Directions to the affordable units.
 - [3] The range of sales prices and/or rents for the affordable units.
 - [4] The number of bedrooms in the affordable units.
 - [5] The maximum income permitted in order to qualify for the affordable units.
 - [6] The location of the application forms for the affordable units.
 - [7] The business hours when interested households may obtain an application for an affordable unit.
 - (b) The application forms for affordable units shall be made available at several locations, including, at the very least, the City of Clifton Municipal Building, the City libraries and the offices of the developer or sponsor of the affordable units; moreover, the application forms shall be mailed to prospective applicants upon request.
- (5) Review and approval of the affirmative marketing plan. The developer or sponsor of

affordable units shall prepare and submit to the Affordable Housing Agency, for its review and approval, an affirmative marketing plan, prepared in accordance with the requirements hereinabove in Subsection M(1) through (3) of this section.

- (a) In its review of any site plan and/or subdivision submission which will contain any affordable units, the Planning Board or Zoning Board of Adjustment, as the case may be, shall condition any site plan and/or subdivision approval upon the approval by the Affordable Housing Agency of an affirmative marketing plan.
- (b) The Planning Board or Zoning Board of Adjustment, as the case may be, also shall condition the approval of any site plan and/or subdivision submission which will contain any affordable units upon the requirement that the cost of the marketing program to advertise the affordable units is to be the responsibility of the developer or sponsor.
- (6) Monitoring of the affirmative marketing plan(s). The Affordable Housing Agency, on behalf of the City of Clifton, shall evaluate the results of the affirmative marketing plan(s) operative within the City of Clifton and shall file an annual report with COAH by February of each calendar year, including the following information:
 - (a) The monitoring forms provided by COAH.
 - (b) An evaluation of the income and demographic characteristics of each applicant for an affordable unit, as well as the income and demographic characteristics of each occupant of the unit.
 - (c) An evaluation of any necessary adjustments in the affirmative marketing plan(s) and, if deemed not effective, the affirmative marketing plan(s) shall be required to be amended.

N. Housing Rehabilitation Program.

- (1) Owner eligibility. Owners of houses within the City of Clifton are eligible for the technical and financial assistance made available through the Housing Rehabilitation Program, provided that the following are met:
 - (a) The owner must be a certified household or must agree to rent the house to be rehabilitated to either a low-income household or a moderate-income household.
 - (b) The unit proposed to be rehabilitated must be a substandard housing unit as determined in writing by the City Construction Code Official upon inspection of the unit relative to the prevailing standards of the BOCA National Existing Structures Code.
 - (c) The proposed rehabilitation activity shall be limited to the repair or replacement of a plumbing (including wells), heating, electricity, sanitary roof, plumbing (including septic systems) and/or a load-bearing structural system; the rehabilitation activity shall not include luxury improvements, the purchase of appliances or improvements that are strictly cosmetic.
 - (d) The proposed rehabilitation activity shall be deemed by the City Construction

Code Official, in writing, to be sufficient to remove the applicable existing health and safety code violation(s) and bring the unit up to the standards of the BOCA National Existing Structures Code.

- (e) The owner must agree, in writing, to comply with all of the applicable requirements of this Affordable Housing Ordinance.
- (2) Affordable housing document.
- (a) Each owner who receives financial assistance under the provisions of the City of Clifton Housing Rehabilitation Program shall prepare and be bound by an affordable housing document in accordance with Subsection G of this section.
 - (b) The affordable housing document shall be the legal instrument setting forth the terms, restrictions and provisions applicable to the subject affordable unit and which shall constitute the restrictive covenants running with the land with respect to the subject affordable unit.
 - (c) The affordable housing document (lien) shall take effect as soon as the Affordable Housing Agency has approved the application and money has been made available for the rehabilitation activity. The affordable housing document shall remain in effect for six years in the case of an owner-occupied unit and 10 years in the case of a rental unit; and any sale of the unit shall not affect the lien.
 - (d) Each owner who rents a unit to a low- or moderate-income household shall agree to be bound by the provisions governing the maximum rental charges for all affordable units specified in Subsection F(4) of this section, and by the provisions governing the maximum rerental charges for all affordable units specified in Subsection F(5) of this section, as applicable.
- (3) Funding and funding phasing.
- (a) The City of Clifton shall provide \$10,000 per unit to be rehabilitated during the course of the Rehabilitation Program. No more than \$2,000 may be expended per unit for administrative expenses, and an average of \$8,000 shall be expended for the actual rehabilitation activity.
 - (b) The City of Clifton shall provide sufficient dollars to fund 1/3 of its rehabilitation component of affordable units within one year of the date it received substantive certification from COAH.
 - (c) During each subsequent year, for a period of four additional years, the City of Clifton shall provide sufficient dollars to fund 1/6 of its rehabilitation component of affordable units, provided that:
 - [1] No more than the dollars sufficient to fund 1/6 of the rehabilitation component need be in the rehabilitation funding during each year subsequent to the first year's funding; and
 - [2] Any unused moneys from a prior year remaining in the rehabilitation fund may be carried forth and credited towards the following year's funding

requirement.

(4) Application procedures.

- (a) Interested owners will be able to secure information and application packets from the Affordable Housing Agency via the City Clerk by visiting the Clifton Municipal Building during the City Clerk's regularly scheduled office hours.
- (b) Interested owners shall submit a completed application to the Affordable Housing Agency via the City Clerk.
- (c) The Affordable Housing Agency shall review the application for completeness and, once an application is complete, determine whether the owner is eligible in accordance with the criteria set forth in Subsection N(1)(a) of this section.
- (d) Upon determination by the Affordable Housing Agency that the owner is eligible, the City Construction Code official shall inspect the subject unit to determine whether it meets the definition of a substandard housing unit under the provisions of this section, and whether or not the proposed description and cost of the work needed to improve the unit will meet the parameters of the Housing Rehabilitation Program. The Construction Code Official's determination shall be submitted in writing to the Affordable Housing Agency.
- (e) If the City Construction Code Official determines that the unit meets the definition of a substandard housing unit but recommends an amended description and cost estimate of the work necessary to rehabilitate the unit, the applicant will be asked to revise the application to satisfactorily address the comments the Construction Code Official.
- (f) If the City Construction Code Official determines that the unit meets the definition of a substandard housing unit and that the agreed-upon work plan to rehabilitate the unit is satisfactory, the Construction Code Official shall notify the Affordable Housing Agency in writing.
- (g) Once the Construction Code Official has notified the Affordable Housing Agency in writing that the agreed-upon work plan to rehabilitate the unit is satisfactory, the Affordable Housing Agency shall arrange for a low-interest loan in accordance with Subsection N(5) of this section hereinbelow. The rehabilitation work may begin as soon as the applicant and the appropriate representative of the Affordable Housing Agency have signed all necessary agreements.
- (h) During the course of the completion of the rehabilitation construction, the City Construction Code Official periodically shall inspect the unit to make certain that the construction is proceeding satisfactorily in accordance with the approved work plan.
- (i) After completion of the rehabilitation construction, the City Construction Code Official shall inspect the unit and, if the rehabilitation construction has been completed satisfactorily, shall certify in writing to the Affordable Housing Agency that the rehabilitation work has been completed in accordance with the approved

work plan.

- (j) Should the City Construction Code Official find upon inspection that the rehabilitation work has not been completed in accordance with the approved work plan, the Construction Code Official shall so notify the Affordable Housing Agency, which will determine a suitable remedy.
- (5) Low-interest loans. An eligible owner who has executed an affordable housing document for the subject substandard housing unit shall receive a low-interest loan from the Affordable Housing Agency. The Affordable Housing Agency shall work with the applicant to establish a realistic loan repayment schedule. If the applicant does not meet the established loan repayment schedule, the Affordable Housing Agency shall collect the uncollected funds as well as the accumulated interest at the time of the sale of the unit, and the Affordable Housing Agency shall retain the right to increase the interest rates on delinquent loans.
 - (a) Rental rehabilitation. The following terms shall apply to loans made for the rehabilitation of a unit that is owned by a household who does not qualify as a low- or moderate-income household, but who has agreed to rent the unit to a low- or moderate-income household:
 - [1] The Affordable Housing Agency will make a loan to the applicant for the total amount of the cost of rehabilitation. Although the loan will be made to the applicant, the proceeds of the loan will be paid to the individual(s) or business(es) who sell the material and/or labor for the project. Owners who contribute sweat equity will not receive financial remuneration for their efforts.
 - [2] The interest rate will be fixed at an annual rate of two points below prime, or one point above the City of Clifton interest rate on bonds sold for such purpose, whichever is less, at the time the loan originates. The interest rate on bonds will be established and made public at the time of the sale, and all prospective borrowers will be notified in writing of the respective rates.
 - [3] Payments on loan principal will be deferred for a ten-year period. Payments on interest will be made in equal monthly payments during the ten-year period, or until the loan is paid before the end of the ten-year period.
 - [4] Repayment of the loan principal and any interest due will become payable in full at the end of 10 years, unless the owner elects to continue the affordability controls on the affordable unit for an appropriate period of time. No interest will be charged after the 10th year if the owner chooses to defer repayment of the loan principal in exchange for extending controls on the affordable unit.
 - [5] Sixty days prior to the end of the loan's ten-year life, the Affordable Housing Agency shall submit a letter to the owner indicating the date on which the loan principal and any interest due will become payable, the specific date when the Affordable Housing Agency expects payment and the circumstances under which the repayment of the loan principal may continue to be deferred.

- [6] Repayment of the loan may be extended beyond the ten-year period, interest free, if and only if the owner agrees to continue renting to a low- or moderate-income household, as the case may be, and extends the affordable housing document controlling the subject affordable unit. If the owner wants to take this option, he or she shall notify the Affordable Housing Agency in writing of his or her intentions within 30 days of receipt of the notification from the Affordable Housing Agency that the loan principal will become due.
 - [7] If an owner plans to continue affordability controls on the subject unit, he or she must sign an agreement with the Affordable Housing Agency that the affordable housing document controlling the subject affordable unit will be renewable annually, and that the owner must demonstrate to the Affordable Housing Agency at the time that the unit continues to be occupied by a low-income household or a moderate-income household, as the case may be.
- (b) Owner-occupied rehabilitation. The following terms shall apply to loans made for the rehabilitation of a unit that is owner-occupied by either a low-income household or a moderate-income household:
- [1] The Affordable Housing Agency will make a loan to the applicant for the total amount of the cost of rehabilitation. Although the loan will be made to the applicant, the proceeds of the loan will be paid to the individual(s) or business(es) who sell the material and/or labor for the project. Owners who contribute sweat equity will not receive financial remuneration for their efforts.
 - [2] The interest rate will be fixed at an annual rate of two points below prime, or one point above the City of Clifton's interest rate on bonds sold for such purpose, whichever is less, at the time the loan originates. The interest rate on bonds will be established and made public at the time of the sale, and all prospective borrowers will be notified in writing of the respective rates. The interest on the loan shall be charged for a period of 10 years, unless the loan is repaid sooner.
 - [3] Repayment of the loan will not be required until the sale of the property at fair market value. At the time of the sale, the unpaid principal plus the accrued interest shall be paid to the Affordable Housing Agency, except that no interest shall be charged beyond the 10th year of the loan.
- (c) Priority for financial assistance. In the event that sufficient funds are not available to provide low-interest loans to every eligible owner, at least 50% of the available assistance shall be awarded to applications that will result in low-income units in preference to those that will result in moderate-income units.
- (6) Rehabilitation marketing plan. The Affordable Housing Agency shall be responsible to prepare and execute a rehabilitation marketing plan, which shall consist of the following:
- (a) At least one well-publicized public meeting to be held in the City of Clifton

Municipal Building to discuss and explain the Housing Rehabilitation Program.

- (b) A large poster highlighting the main features of the Housing Rehabilitation Program, to be prepared and hung in the City of Clifton Municipal Building at all times.
- (c) The issuance of periodic press releases to the official newspapers of the City of Clifton regarding the Housing Rehabilitation Program in order to promote interest in the Housing Rehabilitation Program.
- (d) A Rehabilitation Manual summarizing the administration of the Housing Rehabilitation Program, which shall be mailed to all residents of the City of Clifton prior to March 31 of each calendar year included in the substantive certification of the City of Clifton by COAH. The Rehabilitation Manual shall comply with the rules of COAH, shall contain a sample copy of an affordable housing document (lien) and shall describe:
 - [1] The Affordable Housing Agency and its responsibilities regarding the Housing Rehabilitation Program;
 - [2] The eligible repairs and improvements to a substandard housing unit;
 - [3] The amount of money available for the repairs and improvements;
 - [4] The financing terms;
 - [5] The criteria for owner eligibility;
 - [6] The application procedures;
 - [7] The procedures for review and approval of the repairs and improvements by the City of Clifton Construction Code Official, including periodic inspections of the work in progress; and
 - [8] The duration of the affordability controls to be contained within the affordable housing document.

O. Development fees. **[Amended 12-20-2005 by Ord. No. 6538-05]**

- (1) Purpose. In *Holmdel Builder's Association v. Holmdel Township*, 121 N.J. 550 (1990), the New Jersey Supreme Court determined that mandatory development fees are authorized by the Fair Housing Act of 1985, N.J.S.A. 52:27d-301 et seq., and the State Constitution, subject to the Council on Affordable Housing's (COAH's) adoption of rules. This subsection establishes standards for the collection, maintenance and expenditure of development fees pursuant to COAH's rules. Fees collected pursuant to this subsection shall be used for the sole purpose of providing low- and moderate-income housing. This subsection shall be interpreted within the framework of COAH's rules on development fees.
- (2) Basic requirements. The City of Clifton shall not spend development fees until COAH has approved a plan for spending such fees and the City of Clifton has received third-

round substantive certification from COAH or a judgment of compliance.

- (3) Definitions. The following terms, as used in this subsection, shall have the following meanings:

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

COAH — The New Jersey Council on Affordable Housing.

DEVELOPMENT FEE — Funds paid by an individual, person, partnership, association, company or corporation for the improvement of property as permitted in COAH's rules.

EQUALIZED ASSESSED VALUE — The value of a property determined by the Municipal Tax Assessor through a process designed to ensure that all property in the municipality is assessed at the same assessment ratio or ratios required by law. Estimates at the time of issuance of a building permit may be obtained utilizing estimates for construction cost. Final equalized value will be determined at project completion by the Municipal Tax Assessor.

- (4) Residential development fees.

- (a) Within all districts, including: R-A1 Residential, One-Family, 9,375 square feet; R-A2 Residential, One-Family, 6,600 square feet; R-A3 Residential, One-Family, 5,000 square feet; R-B1 Residential, One- and Two-Family; R-B2 Residential, One- and Two-Family and Garden Apartments; R-B3 Residential, One- and Two-Family and Multifamily Apartments; R-TH Residential, Townhouses; R-HR Residential, High-Rise Suburban Apartments; B-A Business and Professional Offices; B-A1 Business and Professional Offices and Existing Residential; B-B Neighborhood Retail Business; B-C General Business; B-D Intensive Business; PCD Planned Commercial Development; PCRD Planned Commercial and Residential District; M-1 Restricted Industrial and Research Laboratories; M-2 General Industrial; M-3 Special Industrial; PD-1 Planned Development No. 1; PD-2 Planned Development No. 2; PD-3 Planned Development No. 3; PDO-1 Planned Development Option No. 1; PDO-2 Planned Development Option No. 2; P-MU Planned Mixed Use Zone; PRC Planned Residential Community Cemeteries; PD-1(A) Planned Development No. 1(A); and PSRC Planned Senior Housing and Municipal Recreation Complex, together with such new districts as may be created from time to time, which do not have a set affordable housing obligation, residential developers shall pay a fee of 1% of the equalized assessed value for residential development, provided no increased density is permitted.
- (b) When an increase in residential density pursuant to N.J.S.A. 40:55D-70d(5) (known as a "d" variance) has been permitted, developers may be required to pay a development fee of 6% of the equalized assessed value for each additional unit that may be realized.

Example: If an approval allows four units to be constructed on a site that was zoned for two units, the fees could equal 1% of the equalized assessed value on the first two units, and 6% of the equalized assessed value for the two additional units. However, if the zoning on a site has changed during the two-year period preceding the filing of such a variance application, the 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.

(5) Nonresidential development fees.

- (a) Within all districts, including: R-A1 Residential, One-Family, 9,375 square feet; R-A2 Residential, One-Family, 6,600 square feet; R-A3 Residential, One-Family, 5,000 square feet; R-B1 Residential, One- and Two-Family; R-B2 Residential, One- and Two-Family and Garden Apartments; R-B3 Residential, One- and Two-Family and Multifamily Apartments; R-TH Residential, Townhouses; R-HR Residential, High-Rise Suburban Apartments; B-A Business and Professional Offices; B-A1 Business and Professional Offices and Existing Residential; B-B Neighborhood Retail Business; B-C General Business; B-D Intensive Business; PCD Planned Commercial Development; PCRD Planned Commercial and Residential District; M-1 Restricted Industrial and Research Laboratories; M-2 General Industrial; M-3 Special Industrial; PD-1 Planned Development No. 1; PD-2 Planned Development No. 2; PD-3 Planned Development No. 3; PDO-1 Planned Development Option No. 1; PDO-2 Planned Development Option No. 2; P-MU Planned Mixed Use Zone; PRC Planned Residential Community Cemeteries; PD-1(A) Planned Development No. 1(A); and PSRC Planned Senior Housing and Municipal Recreation Complex, together with such new districts as may be created from time to time, which do not have a set affordable housing obligation, nonresidential developers shall pay a fee of 2% of the equalized assessed value for nonresidential development.
 - (b) If an increase in floor area ratio is approved pursuant to N.J.S.A. 40:55D-70d(4), then the additional floor area realized (above what is permitted by right under the existing zoning) will incur a bonus development fee of 6% of the equalized assessed value for nonresidential development. However, if the zoning on a site has changed during the two-year period preceding the filing of such a variance application, the base floor area for the purposes of calculating the bonus development fee shall be the highest floor area permitted by right during the two-year period preceding the filing of the variance application. **[Amended 9-05-2006 by Ord. No. 6613-06]**
- (6) Eligible exactions, ineligible exactions and exemptions.
- (a) Affordable housing developments shall be exempt from development fees. All other forms of new construction shall be subject to development fees unless exempted below.

- (b) Developments that have received preliminary or final approval prior to the imposition of a municipal development fee shall be exempt from development fees unless the developer seeks a substantial change in the approval.
 - (c) Development fees shall be imposed and collected when an existing structure is expanded or undergoes a change to a more intense use. The development fee shall be calculated on the increase in the equalized assessed value of the improved structure.
- (7) Collection of fees. Fifty percent of the development fee will be collected at the time of issuance of the building permit. The remaining portion will be collected at the issuance of the certificate of occupancy. The developer shall be responsible for paying the difference between the fee calculated at building permit and that determined at issuance of certificate of occupancy. **[Amended 9-05-2006 by Ord. No. 6613-06]**
- (8) Contested fees. Imposed and collected development fees that are challenged shall be placed in an interest-bearing escrow account by the City of Clifton. If all or a portion of the contested fees are returned to the developer, the accrued interest on the returned amount shall also be returned.
- (9) Affordable Housing Trust Fund.
 - (a) There is hereby created a separate, interest-bearing Housing Trust Fund in Valley National Bank for the purpose of depositing development fees collected from residential and nonresidential developers and proceeds from the sale of units with extinguished controls. All development fees paid by developers pursuant to this subsection shall be deposited into this fund.
 - (b) Within seven days from the opening of the trust fund account, the City of Clifton shall provide COAH with written authorization, in the form of a three-party escrow agreement between the municipality, Valley National Bank and COAH, to permit COAH to direct the disbursement of the funds as provided for in N.J.A.C. 5:94-6.16(b).
 - (c) No funds shall be expended from the affordable Housing Trust Fund unless the expenditure conforms to a spending plan approved by COAH. All interest accrued in the Housing Trust Fund shall only be used on eligible affordable housing activities approved by COAH.
- (10) Use of funds.
 - (a) Funds deposited in the Housing Trust Fund may be used for any activity approved by COAH to address the municipal fair share. Such activities include, but are not limited to, rehabilitation, new construction, RCAs subject to the provisions of N.J.A.C. 5:94-4.4(d), ECHO housing, purchase of land for affordable housing, improvement of land to be used for affordable housing, purchase of housing, extensions or improvements of roads and infrastructure to affordable housing sites, financial assistance designed to increase affordability, or administration necessary for implementation of the Housing Element and Fair Share Plan. The expenditure of all funds shall conform to a spending plan approved by COAH.

City of Clifton, NJ

§ 461-24.2

§ 461-24.2

- (b) Funds shall not be expended to reimburse the City of Clifton for past housing activities.
 - (c) After subtracting development fees collected to finance an RCA, a rehabilitation program or a new construction project that are necessary to address the City of Clifton's affordable housing obligation, at least 30% of the balance remaining 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% or less of median income by region.
 - [1] Affordability assistance programs may include down payment assistance, security deposit assistance, low-interest loans and rental assistance.
 - [2] Affordability assistance to households earning 30% or less of median income may include buying down the cost of low- or moderate-income units in the third-round municipal Fair Share Plan to make them affordable to households earning 30% or less of median income. The use of development fees in this matter shall entitle the City of Clifton to bonus credits pursuant to N.J.A.C. 5:94-4.22.
 - [3] Payments in lieu of constructing affordable units on site and funds from the sale of units with extinguished controls shall be exempt from the affordability assistance requirement.
 - (d) The City of Clifton may contract with a private or public entity to administer any part of its Housing Element and Fair Share Plan, including the requirement for affordability assistance, in accordance with N.J.A.C. 5:94-7. **[Amended 9-05-2006 by Ord. No. 6613-06]**
 - (e) No more than 20% of the revenues collected from development fees each year, exclusive of the fees used to fund an RCA, shall be expended on administration, including, but not limited to, salaries and benefits for municipal employees or consultant fees necessary to develop or implement a new construction program, a Housing Element and Fair Share Plan and/or an affirmative marketing program. In the case of a rehabilitation program, no more than 20% of the revenues collected from development fees shall be expended for such administrative expenses. Administrative funds may be used for income qualification of households, monitoring the turnover of sale and rental units and compliance with COAH's monitoring requirements. Development fee administrative costs are calculated and may be expended at the end of each year or upon receipt of the fees.
- (11) Monitoring. The City of Clifton shall complete and return to COAH all monitoring forms included in the annual monitoring report related to the collection of development fees from residential and nonresidential developers, payments in lieu of constructing affordable units on site and funds from the sale of units with extinguished controls and the expenditure of revenues and implementation of the plan certified by COAH. All monitoring reports shall be completed on forms designed by COAH.

- (12) Ongoing collection of fees. The ability of the City of Clifton to impose, collect and expend development fees shall expire with its substantive certification on April 5, 2006, unless the City of Clifton has filed an adopted Housing Element and Fair Share Plan with COAH, has petitioned for substantive certification and has received COAH's approval of its Development Fee Ordinance. If the City of Clifton fails to renew its ability to impose and collect development fees prior to April 5, 2006, it may resume the imposition and collection of development fees only by complying with the requirements of N.J.A.C. 5:94-6. The City of Clifton shall not impose a development fee on a development that receives preliminary or final approval after the expiration of its substantive certification on April 5, 2006, nor will the City of Clifton retroactively impose a development fee on such a development. The City of Clifton will not expend development fees after the expiration of its substantive certification on April 5, 2006.

P. Power of attorney.

- (1) Grant of power. Each owner of an affordable unit, by the initial purchase of an affordable unit and in consideration of the intent and purpose of this Affordable Housing Ordinance, shall grant to the Affordable Housing Agency an irrevocable power of attorney which shall name, appoint, constitute and affirm the Affordable Housing Agency as the attorney-in-fact for such owner for the purpose of executing a deed and other instruments required to purchase or resell the affordable unit, which right of purchase shall include, but not be limited to, the right to purchase an affordable unit where the owner is in default of the terms, covenants or conditions of any mortgage or obligation which it secures upon the affordable unit.
- (2) Execution of form. The owner of an affordable unit shall execute a power of attorney form in favor of the Affordable Housing Agency as part of the documentation necessary to complete a resale of an affordable unit.
 - (a) Said power of attorney shall be coupled with an interest in the subject matter thereof and shall run with an interest in the affordable unit and be binding upon the heirs, executors, personal representatives, administrators, successors and assigns of the owner of the affordable unit.
 - (b) Said power of attorney is intended to deliver all the rights, title and interest of the owner of the affordable unit in and to said power; provided, however, that such power of attorney may only be exercised in accordance with the terms and intent of this Affordable Housing Ordinance and the rules and regulations of the Affordable Housing Agency, if any, provided that such rules and regulations also are consistent with the terms and intent of this section.

- Q. Penalties. Any person who violates this Affordable Housing Ordinance or fails to comply with any of its requirements shall be penalized no more than \$1,000 and shall make restitution of any or all funds paid by the City of Clifton under the provisions of this section. Nothing herein contained shall prevent the City of Clifton from taking such other lawful action as necessary to prevent or remedy any violation.

- R. Service upon Affordable Housing Agency. Wherever, within this Affordable Housing Ordinance or within an affordable housing document, the City of Clifton or the Affordable

City of Clifton, NJ

§ 461-24.2

§ 461-24.2

Housing Agency is authorized to receive letters, contracts or other documents, the City Clerk of the City of Clifton shall be the person to whom same are delivered.

- S. Right to waive. The Affordable Housing Agency shall have the right to waive any of the restrictions or provisions of this Affordable Housing Ordinance in order to provide and preserve the affordable units governed by this section. Any such waiver of any restriction or provision of this section or the rules and regulations of the Affordable Housing Agency shall not operate as a waiver of any other restriction or provision of this section or the rules or regulations of the Affordable Housing Agency. Moreover, failure by the Affordable Housing Agency to enforce any restriction or provision of this section or its rules and regulations shall not operate as a waiver of such restriction, provision, rule or regulation of the Affordable Housing Agency, except as expressly acknowledged in writing by the Affordable Housing Agency.
- T. Severability. If any portion of this Affordable Housing Ordinance shall be held to be invalid, the holding shall not affect the validity of the remaining portions of this section. Moreover, it is not the City of Clifton's intent herein that there be a violation of the rule against perpetuities, or any related rule. If any such violation should occur, this section shall be construed and, if necessary, may be reformed by the Superior Court of New Jersey in such a way as to approximate most closely the intent of the City within the time limits permissible under such rule or related rule.