

**BOROUGH OF NORTH PLAINFIELD MASTER PLAN
AMENDMENT TO THE
HOUSING ELEMENT AND FAIR SHARE PLAN**

Prepared for:

Planning Board
Borough of North Plainfield
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North Plainfield, NJ 07060

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



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I. Introduction

This Amendment to the 2025 Housing Element and Fair Share Plan has been prepared on behalf of the Borough of North Plainfield, Somerset 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 amends the Borough's 2025 Housing Element and Fair Share Housing Plan which was adopted on May 14, 2025, hereinafter referred to as the "Borough's 2025 Housing Plan."

The Municipal Land Use Law, N.J.S.A. 40:55D-1, et seq., requires that a municipal master plan include a 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 Borough Planning Board and endorsed by the governing body. It is intended to achieve the goal of meeting the Borough's obligations to plan and regulate land use to provide for a fair share of the regional need for affordable housing.

North Plainfield remains committed to meeting its constitutional obligation to provide through its land use regulations a realistic opportunity for a fair share of the region's present and prospective needs for housing for low- and moderate-income families. Fair Share Housing Center challenged the Borough's 2025 Housing Plan. Subsequently, the Borough entered into a Mediation Agreement with Fair Share Housing Center through the Affordable Housing Dispute Resolution Program. This Amendment to the Housing Element and Fair Share Plan document outlines how the Borough will satisfy its affordable housing obligations based on the Mediation Agreement with Fair Share Housing Center.

II. Fair Share Plan

Affordable Housing Obligations

Present Need

North Plainfield's Present Need is 427.

Prospective Need

North Plainfield's Fourth Round Prospective Need is 60.

Vacant Land Analysis

There is limited land in the Borough that is vacant or otherwise developable for affordable and/or inclusionary housing. North Plainfield is entitled to a Vacant Land Adjustment (VLA) to determine the Borough's Fourth Round RDP based on the amount of vacant and/or developable land that is suitable for inclusionary development. A VLA analysis was prepared for North Plainfield in order to determine the municipality's Fourth Round RDP for the creation of new affordable housing units. This analysis determined that North Plainfield has a Fourth Round RDP of four units. After subtracting this number from the Fourth Round Prospective Need of 60 units, North Plainfield has a Fourth Round Unmet Need of 56 units.

Proposed Compliance Mechanisms

Fourth Round Realistic Development Potential and Unmet Need

North Plainfield's RDP of four and Unmet Need obligation of 56 units will be addressed through the following compliance mechanisms:

Surplus Credits: North Plainfield has nine Third Round surplus credits which can be applied to the Fourth Round obligation. Four credits will address RDP, and the remaining five credits will be applied to Unmet Need.

"Old Mill" – Brook Avenue and Pearl Street: This 2.8-acre property is currently developed with older industrial buildings occupied by various commercial uses. The developable area of this property after accounting for environmentally constrained areas is 2.2 acres. The existing zoning of the property (B-1) permits apartment buildings up to four stories in height. The Borough's 2017 Housing Element and Fair Share Housing Plan proposed to create an overlay zone will be created for this property that would require the provision of low- and moderate-income units but would allow for increased density. This AHO Affordable Housing Overlay zone was created in 2017 by the adoption of Ordinance Number 2017-21, and was modified in 2020 by Ordinance Number 2020-06 to implement the Borough's 2020 Housing Plan. The maximum gross residential density for the AHO zone is 35 dwelling units per acre in exchange for the required provision of low- and moderate-income dwelling units.

The bulk regulations of this are proposed to be modified to encourage the redevelopment of this property for inclusionary residential development. Specific changes include increasing the maximum

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permitted density by 20 percent (to 42 dwelling units per acre), increasing maximum impervious coverage and reducing the minimum rear yard. A proposed draft ordinance including these changes is provided in Appendix 3.

Catholic Charities Age-Restricted Housing – 99 Westervelt Avenue: Domus Corporation and Metuchen Community Services Corporation, affiliates of Catholic Charities of the Diocese of Metuchen (collectively referred to as “Catholic Charities”), have approached the Borough of North Plainfield to express interest in replacing a former convent at 99 Westervelt Avenue with an affordable senior housing project. The Borough proposes to create an overlay zone for this 0.59-acre property to permit 49 units of age-restricted affordable housing, as well as one unit for an on-site manager, on this site. A proposed draft ordinance including these changes is provided in Appendix 3.

Proposed Inclusionary Housing Overlay Zone: In order to create additional affordable housing opportunities in locations where redevelopment would be appropriate and consistent with sound planning, a new inclusionary housing overlay zone is proposed for four locations in the Borough. The properties proposed for inclusion in the overlay zone are all located along Route 22 or contiguous with a site that is, and are currently or formerly developed with commercial land uses. The properties proposed for inclusion in this overlay zone are:

- Block 58, Lots 21, 22, and 23
- Block 59, Lots 1 and 12
- Block 159, Lot 6.01
- Block 161.01, Lot 2 and 3

A proposed draft ordinance including these changes is provided in Appendix 3.

Inclusionary Zoning Requirements: While there are no other large vacant parcels available for redevelopment at this time, it is possible that existing developed areas may be proposed for redevelopment. The Borough added Inclusionary Housing Requirements for rezoning and variances to the Land Development Chapter of the Borough’s General Ordinances in Section 22-133. It requires any residential development consisting of six or more dwelling units, at a density above six units per acre, that is permitted pursuant to a variance or rezoning, to produce low- and moderate-income housing on-site or elsewhere in the Borough. The number of affordable units to be provided shall be equal to 20% of the for-sale residential units in the development or 15% for affordable rental units.

Bonus Credits

The bonuses included in the amended FHA for the Fourth Round are as follows:

- Supportive/Special Needs: One unit of credit and one bonus credit for each unit of low- or moderate-income housing for individuals with special needs or permanent supportive housing, as those terms are defined in section 2 of P.L. 2004, c.70 (C.34:1B-21.24)

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- Ownership Units Created with Non-Profit: One unit of credit and one-half bonus credit for each low- or moderate-income ownership unit created in partnership sponsorship with a non-profit housing developer
- Transit: One unit of credit and one-half bonus credit for each unit of low- or moderate-income housing located within a one-half mile radius (or one-mile radius for projects located in a Garden State Growth Zone), surrounding a New Jersey Transit Corporation, Port Authority Transit Corporation, or Port Authority Trans-Hudson Corporation rail, bus, or ferry station, measured from the closest point on the outer perimeter of the station, including any associated park-and-ride lot, to the closest point of the housing project property
- Age-Restricted: One unit of credit and one-half bonus credit for a unit of age-restricted housing, provided that a bonus credit for age-restricted housing shall not be applied to more than 10 percent of the units of age-restricted housing constructed in compliance with the Uniform Housing Affordability Controls promulgated by the New Jersey Housing and Mortgage Finance Agency in a municipality that count towards the municipality's affordable housing obligation for any single 10-year round of affordable housing obligations
- Additional Three-Bedroom Units: One unit of credit and one-half bonus credit for each unit of low- or moderate-income family housing with at least three bedrooms above the minimum number required by the bedroom distribution
- Former Retail, Office, Commercial: One unit of credit and one-half bonus credit for a unit of low- or moderate-income housing constructed on land that is or was previously developed and utilized for retail, office, or commercial space
- Extension of Controls: One unit of credit and one-half bonus credit for each existing low- or moderate-income rental housing unit for which affordability controls are extended for a new term of affordability, in compliance with the Uniform Housing Affordability Controls, and the municipality contributes funding towards the costs necessary for this preservation
- Municipal Contribution to 100% Affordable: One unit of credit and one bonus credit for each unit of low- or moderate-income housing in a 100 percent affordable housing project for which the municipality either contributes property without which the project would not be feasible, or makes contributions from the municipal affordable housing trust fund that cover no less than 3 percent of the project cost
- Additional Very Low-Income Units: One unit of credit and one-half bonus credit for each unit of very low-income housing for families above the 13 percent of units required to be reserved for very low-income housing pursuant to section 7 of P.L.2008, c.46 (C.52:27D-329.1)
- Market to Affordable: One unit of credit and one bonus credit for each unit of low- or moderate-income housing created by transforming an existing rental or ownership unit from a market rate unit to an affordable housing unit

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For the Fourth Round and beyond, a municipality shall not receive more than one type of bonus credit for any unit, and a municipality shall not be permitted to satisfy more than 25 percent of its prospective need obligation through the use of bonus credits. Therefore a maximum of 15 bonus credits may be granted (25 percent of the Prospective Need of 60 units).

Summary of Credits and Bonuses

The Borough's Fourth Round compliance mechanisms and the credits and bonuses associated with them are summarized in Table 1.

Table 1. Fourth Round Credits

CREDITS APPLIED TOWARDS FOURTH ROUND UNMET NEED OBLIGATION (2025-2035) OF 85				
<u>Affordable Development</u>	<u>Type</u>	<u>Units/ Credits</u>	<u>Bonus Credits</u>	<u>Total Credits Plus Bonuses</u>
Surplus Credits		5	N/A	5
"Old Mill"	Inclusionary non-age-restricted	24	12	36
Proposed overlay zone – Catholic Charities	Affordable age-restricted	49	3*	52
Proposed overlay zone – Route 22 properties	Inclusionary non-age-restricted	TBD	TBD	TBD
TOTAL		78	15	93

*Limited due to the maximum of 25 percent of the Prospective Need, or 15 units.

Consideration of Lands and Buildings for Low- and Moderate-Income Housing

North Plainfield is an essentially fully developed municipality with limited vacant land. As documented by the VLA discussed above, most of the vacant land in the Borough is not developable due to environmental constraints or other factors. The one prime developable parcel of land at the time of the 2020 Housing Plan, the Villa Maria site, has been designated and approved for redevelopment.

The "Old Mill" site discussed above is potentially redevelopable. It is a property with a developable area of approximately 2.2 acres that is currently improved with older industrial buildings occupied by various commercial uses. The Borough has provided favorable zoning for this site, which has been adjusted as discussed above.

As of the date of this plan, there has been one developer who has expressed a commitment to provide low- and moderate-income housing (in addition to the Villa Maria site). As discussed above, Catholic Charities has approached the Borough of North Plainfield to express interest in replacing a former convent at 99 Westervelt Avenue with an affordable senior housing project. An overlay zone is proposed to permit the redevelopment of this property consistent with this proposal.

Spending Plan

The Borough of North Plainfield has a development fee ordinance which is intended to provide a dedicated revenue source for affordable housing. 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 for the purposes of affordable housing. These funds shall be spent for purposes including a housing rehabilitation program, costs associated with affordable housing construction, providing affordability assistance to low-income households and professional services related to the planning for affordable housing. A detailed spending plan is included in Appendix 2.

III. Consistency with the State Development and Redevelopment Plan

The New Jersey State Development and Redevelopment Plan (SDRP) was originally adopted in 1992. The purpose of the SDRP according to the State Planning Act at N.J.S.A. 52:18A-200(f) is to:

Coordinate planning activities and establish Statewide planning objectives in the following areas: land use, housing, economic development, transportation, natural resource conservation, agriculture and farmland retention, recreation, urban and suburban redevelopment, historic preservation, public facilities and services, and intergovernmental coordination.

The State Plan is not a regulation, but a policy guide, and is meant to coordinate planning activities and development throughout the state. At the municipal level, master plans are required to be evaluated and, if necessary, modified to reflect policies of the State Plan. The State Plan is also important when the State makes infrastructural and other investment decisions, i.e., in determining where available State funds should be expended.

A revised version of the plan was adopted by the State Planning Commission in 2001. While required by the State Planning Act to be revised and re-adopted every three years, the SDRP has only been readopted once during the 32 years since its original adoption. A new State Strategic Plan (SSP) was proposed in 2011 as the revision to the 2001 SDRP, but it has not been advanced in recent years. The State Office of Planning Advocacy started the process of preparing a new State Plan in 2023 and the State Planning Commission has been engaging with stakeholders. As part of the update process, the State Planning Commission approved the Preliminary State Development and Redevelopment Plan on December 4, 2024, and was undertaking the Cross-Acceptance process (i.e., review of the plan at the county level) at the time this HEFSP was first adopted. The new State Development and Redevelopment Plan was subsequently adopted in December 2025.

Spatially, the last adopted State Plan utilizes planning areas, centers, and environs as a framework for implementing Statewide goals and policies. The State Plan Map indicates that the Borough of North Plainfield is located within the Metropolitan Planning Area (PA1). For the Metropolitan Planning Area, the State Plan has four 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

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3. Ensure efficient and beneficial utilization of scarce land resources throughout the Planning Area to strengthen its existing diversified and compact nature.

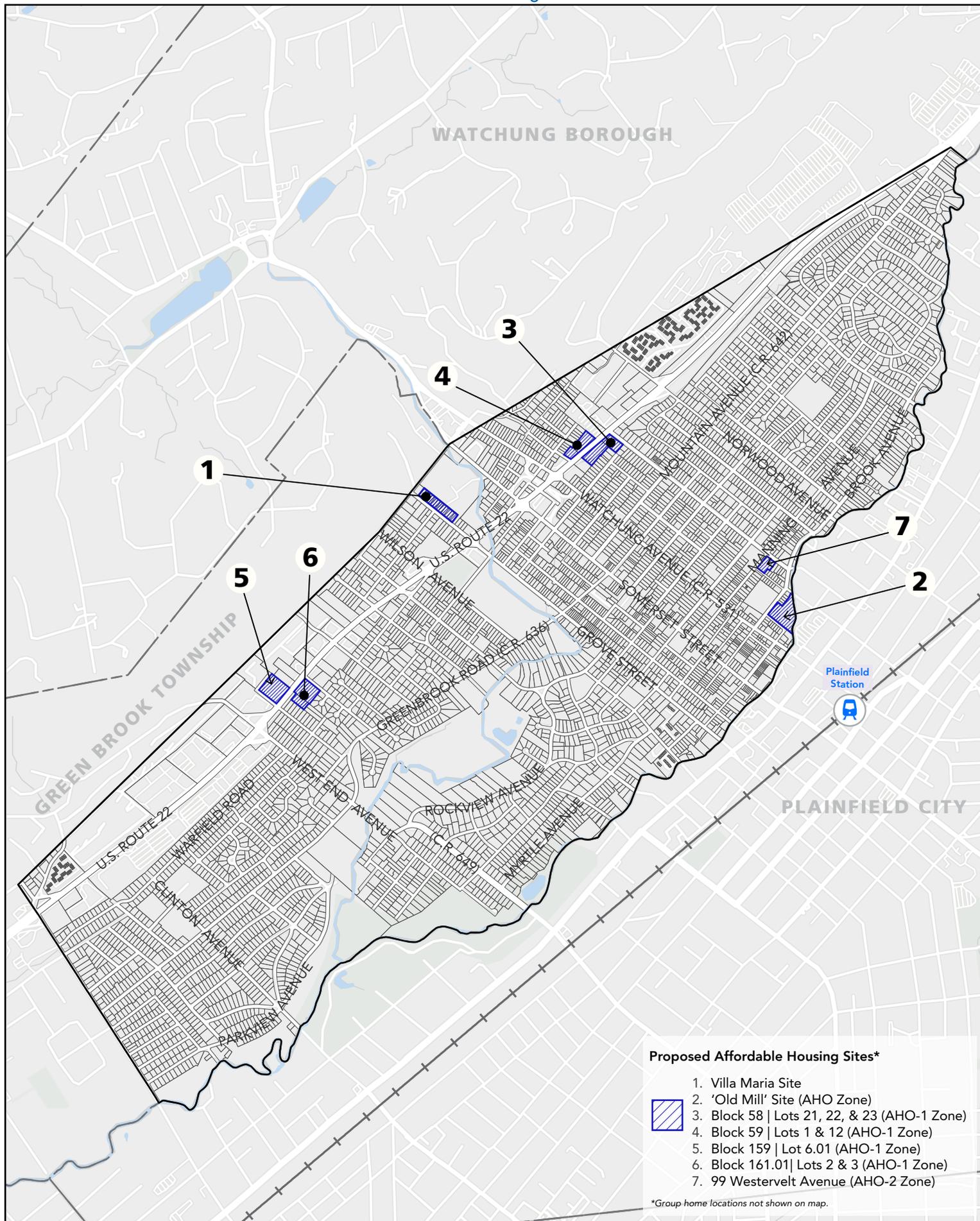
The North Plainfield Master Plan recognizes the need to encourage development and redevelopment on the limited developable land in the Borough. This Housing Plan promotes higher density compact forms of housing and mixed-use development in appropriate locations served by existing infrastructure and proximate to transit, stores and services, and is therefore consistent with the State Plan.

Appendices

Appendix 1: Affordable Housing Sites

Appendix 2: Spending Plan

Appendix 3: Draft Affordable Housing Zoning Amendments



Proposed Affordable Housing Sites*

- 1. Villa Maria Site
- 2. 'Old Mill' Site (AHO Zone)
- 3. Block 58 | Lots 21, 22, & 23 (AHO-1 Zone)
- 4. Block 59 | Lots 1 & 12 (AHO-1 Zone)
- 5. Block 159 | Lot 6.01 (AHO-1 Zone)
- 6. Block 161.01 | Lots 2 & 3 (AHO-1 Zone)
- 7. 99 Westervelt Avenue (AHO-2 Zone)

*Group home locations not shown on map.

Appendix 1: Proposed Affordable Housing Sites

Affordable Housing Trust Fund Spending Plan
Borough of North Plainfield
January 2026

INTRODUCTION

The Borough of North Plainfield, Somerset County 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 N.J.A.C. 5:99. A development fee ordinance creating a dedicated revenue source for affordable housing was approved by COAH and the Superior Court and adopted by the municipality in 2020. The ordinance establishes the North Plainfield affordable housing trust fund for which this spending plan is prepared.

As of December 31, 2024, the North Plainfield affordable housing trust fund had a balance of \$205,958. 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 Unity Bank for the purposes of affordable housing. These funds shall be spent in accordance with N.J.A.C. 5:99 as described in the sections that follow.

The Borough reserves the right and authority to further amend or modify the within spending plan to address or take into account changes which may be warranted due to new rules or rule amendments or judicial determinations, which may change standards or establish new criteria for the Borough to address its affordable housing obligation.

1. REVENUES FOR CERTIFICATION PERIOD

To calculate a projection of revenue anticipated during the Fourth Round, North Plainfield considered the following:

- (a) Development fees, in accordance with N.J.A.C. 5:99-3.1 through 3.4, including:
 - 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) Payments-in-lieu (PIL):
Actual and committed payments in lieu (PIL) of construction from developers as follows: none.

- (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 and proceeds from the sale of affordable units. 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.

No large development projects are anticipated in the coming years due to the lack of vacant and developable land in North Plainfield.

SOURCE OF FUNDS	PROJECTED REVENUE SCHEDULE JANUARY 1, 2025-JUNE 30, 2035					
	2026	2027	2028	2029	2030	
(a) Development fees:						
1. Approved Development	\$0	\$0	\$0	\$0	\$0	
2. Development Pending Approval	\$0	\$0	\$0	\$0	\$0	
3. Projected Development	\$7,500	\$7,500	\$7,500	\$7,500	\$7,500	
(b) Payments in Lieu of Construction	\$0	\$0	\$0	\$0	\$0	
(c) Other Funds (Specify source(s))	\$0	\$0	\$0	\$0	\$0	
(d) Interest	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	
Total	\$8,500	\$8,500	\$8,500	\$8,500	\$8,500	
	2031	2032	2033	2034	2035	Total
(a) Dev. fees:						
1. Appr.	\$0	\$0	\$0	\$0	\$0	\$0
2. Pending	\$0	\$0	\$0	\$0	\$0	\$0
3. Projected	\$7,500	\$7,500	\$7,500	\$7,500	\$7,500	\$75,000
(b) In Lieu	\$0	\$0	\$0	\$0	\$0	\$0
(c) Other	\$0	\$0	\$0	\$0	\$0	\$0
(d) Interest	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	\$10,000
Total	\$8,500	\$8,500	\$8,500	\$8,500	\$8,500	\$85,000

North Plainfield projects a total of \$85,000 in revenue to be collected between January 1, 2025 and June 30, 2035. All interest earned on the account shall accrue to the account to be used only for the purposes of eligible affordable housing activities included in this Spending Plan or an emergent opportunity authorized by the Division.

2. ADMINISTRATIVE MECHANISM TO COLLECT AND DISTRIBUTE FUNDS

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

(a) Collection of development fee revenues:

Collection of development fee revenues shall be consistent with North Plainfield's development fee ordinance for both residential and non-residential developments in accordance with N.J.A.C. 5:99-3.1 et seq., and monitoring of development fees shall be in accordance with N.J.A.C. 5:99-5.3 and 5:99-5.4.

(b) Distribution of development fee revenues:

The disbursement of monies in North Plainfield's affordable housing trust fund will be coordinated by its Municipal Housing Liaison. In some instances, funds will be provided to other entities, such as an entity responsible for administering a rehabilitation program, for eventual disbursement.

3. DESCRIPTION OF ANTICIPATED USE OF AFFORDABLE HOUSING FUNDS

(a) **Rehabilitation program (N.J.A.C. 5:99-2.3(a))**

North Plainfield will dedicate \$298,335 to its rehabilitation program, administered by the Friends of the Carpenter, whose purpose is to renovate deficient housing units that are occupied by low- and moderate-income households, in accordance with the New Jersey State Housing Code, N.J.A.C. 5:28, or the requirements of the Rehabilitation Subcode, N.J.A.C. 5:23-6, as applicable, and costs related to the rehabilitation of the unit.

(b) **Affordability Assistance (N.J.A.C. 5:99-2.3(a)12 and 5:99-2.5)**

The projected affordability assistance will be as follows:

Actual development fees and other income through 12/31/2024		\$205,958
Development fees projected 2025-2035	+	\$75,000
Interest projected 2025-2035	+	\$10,000
Total	=	\$290,958
30 percent	x 0.30 =	\$87,287
Less Affordability assistance expenditures through 12/31/2024	-	\$0
PROJECTED Affordability Assistance 1/1/2025 through 6/30/2035	=	\$87,287
PROJECTED Very Low-Income Affordability Assistance 1/1/2025 through 6/30/2035	÷ 3 =	\$29,096

North Plainfield will dedicate \$87,300 from the affordable housing trust fund to provide affordability assistance to render housing units more affordable to very low-, low-, and moderate-income households, pursuant to N.J.S.A. 52:27D-329.1, including \$29,100 to render units more affordable to very low-income households. Affordability assistance activities include, but are not limited to, down payment assistance, security deposit assistance, low interest loans, rental assistance, assistance with homeowner's association or condominium fees and special assessments, common maintenance expenses, and assistance with emergency repairs and rehabilitation to bring deed-restricted units up to code. For very low-income households, affordability assistance may include offering a subsidy to developers of inclusionary or 100 percent affordable housing developments or buying down the cost of low- or moderate-income units in the Borough's fair share plan to make them affordable to very low-income households, including special needs and supportive housing opportunities..

(c) **Administrative Expenses (N.J.A.C. 5:99-2.4)**

North Plainfield projects that \$50,000 will be available from the affordable housing trust fund to be used for administrative purposes. Projected administrative expenditures, subject to the 20 percent cap, are as follows:

- Costs reasonably related to the determination of the fair share obligation and the development of a municipal housing element and fair share plan, including fees necessary to develop or implement affordable housing programs, an affirmative marketing program, and/or expenses that are reasonably necessary for compliance with the processes of the Program, including, but not limited to, the costs to the municipality of resolving a challenge pursuant to the Program;
- Costs associated with functions carried out in compliance with UHAC, including activities related to the marketing program and waitlist management, administering the placement of occupants in housing units, income qualification of households, monitoring the turnover of sale and rental units, preserving existing affordable housing, and compliance with the Division's monitoring requirements; and
- Proportion of a municipal employee's salary related to the MHL or RCA administrator functions and fees for required educational programs, may be paid as an administrative expense from the municipal affordable housing trust fund.
- Administering the Borough's participation in the Bergen County Home Improvement Program.

(d) Other Expenditures (N.J.A.C. 5:99-2.8)

The Borough of North Plainfield does not anticipate collecting or expending affordable housing trust funds in accordance with the optional activities listed at N.J.A.C. 5:99-2.8, including the collection and distribution of barrier-free escrow fees; the collection of payments-in-lieu of constructing affordable units on-site; or the use of recaptured funds, proceeds from the sale of affordable units, rental income, repayments from affordable housing program loans, enforcement fines and application fees, the implementation of a market-to-affordable program, or any other funds collected by the municipality in connection with its affordable housing programs.

4. EXPENDITURE SCHEDULE

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

Program	PROJECTED EXPENDITURE SCHEDULE					
	JANUARY 1, 2025-JUNE 30, 2035					
	2026	2027	2028	2029	2030	
Rehabilitation	\$ 15,366	\$ 15,366	\$ 15,366	\$15,366	\$15,366	
Affordability Assistance	\$ 8,730	\$ 8,730	\$ 8,730	\$ 8,730	\$ 8,730	
Administration	\$ 5,000	\$ 5,000	\$ 5,000	\$ 5,000	\$ 5,000	
Total	\$ 29,096	\$ 29,096	\$ 29,096	\$29,096	\$29,096	
	2031	2032	2033	2034	2035	Total
Rehab.	\$15,366	\$15,366	\$15,366	\$15,366	\$15,366	\$153,658
Aff. Asst.	\$ 8,730	\$ 8,730	\$ 8,730	\$ 8,730	\$ 8,730	\$ 87,300
Admin.	\$ 5,000	\$ 5,000	\$ 5,000	\$ 5,000	\$ 5,000	\$ 50,000
Total	\$29,096	\$29,096	\$29,096	\$29,096	\$29,096	\$290,958

5. EXCESS OR SHORTFALL OF FUNDS

In accordance with N.J.A.C. 5:99-5.6, in the event there is a shortfall in funding for a proposed affordable housing delivery technique, then the Division may require the governing body of Wood-Ridge to enact a resolution appropriating funds from general revenue or its resolution of intent to bond.

In accordance with N.J.A.C. 5:99-4.1, in the event of excess funds, the Borough may request authorization from the Division for expenditure of excess affordable housing trust funds on emergent affordable housing opportunities not included in the municipal fair share plan. The request shall be made in the form of a resolution from the governing body of the Borough and shall include:

1. Documented proof that the excess funds are not accounted for in the Borough's spending plan approved by the Program or a court of competent jurisdiction;
2. A description of the affordable housing activity in accordance with N.J.A.C. 5:99-4.1(b) and 5:99-2.3;
3. Documentation demonstrating that the entire municipal trust fund balance will be spent and/or committed for expenditure within four years, as set forth at N.J.A.C. 5:99-5.5, shall be submitted to the Division with the request; and
4. A certification that the affordable housing opportunity is consistent with the Act and information describing the proposed affordable housing mechanism. The certification shall demonstrate that the proposal does not alter the spending plan approved by the Program or court of competent jurisdiction.

SUMMARY

North Plainfield intends to spend affordable housing trust fund revenues pursuant to N.J.A.C. 5:99-2.3 and consistent with the housing programs outlined in its housing element and fair share plan.

North Plainfield had a balance of \$205,958 as of December 31, 2024 and anticipates an additional \$85,000 in revenues from 2025 to 2035. The municipality will dedicate \$153,658 towards rehabilitation, \$87,300 to render units more affordable, and \$50,000 to administrative costs. Any shortfall of funds will be offset by funds appropriated from general revenue. The municipality will dedicate any excess funds toward emergent affordable housing opportunities not included in the municipal fair share plan

SPENDING PLAN SUMMARY	
Balance as of December 31, 2024	\$205,958
PROJECTED REVENUE 2025-2035	
Development fees	+ \$75,000
Payments in lieu of construction	+ \$0
Other funds	+ \$0
Interest	+ \$10,000
TOTAL REVENUE	= \$290,958
EXPENDITURES	
Funds used for Rehabilitation	- \$153,658
Affordability Assistance	- \$87,300
Administration	- \$50,000
TOTAL PROJECTED EXPENDITURES	= \$290,958
REMAINING BALANCE	= \$0

Deletions shown by ~~strikethrough~~; additions shown by underline.

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

ORDINANCE NO. _____

AN ORDINANCE TO AMEND, REVISE AND SUPPLEMENT CHAPTER 22 OF THE BOROUGH CODE, ENTITLED “LAND DEVELOPMENT” MOST NOTABLY SECTION 22-113B, ENTITLED “AHO AFFORDABLE HOUSING OVERLAY ZONE”, AND TO ADD NEW SECTION 22-113C, ENTITLED “AHO-1 AFFORDABLE HOUSING OVERLAY ZONE” AND NEW SECTION 22-113D ENTITLED “AHO-2 AGE-RESTRICTED AFFORDABLE HOUSING OVERLAY ZONE”

NOW, THEREFORE, BE IT ORDAINED by the Borough Council of the Borough of North Plainfield, County of Somerset, State of New Jersey that the Borough Code of the Borough of North Plainfield be amended, revised and supplemented as to Chapter 22, entitled “Land Development”, most notably Section 22-113B, entitled “AHO Affordable Housing Overlay Zone”, and to add new Section 22-113C, entitled “AHO-1 Affordable Housing Overlay Zone” and new Section 22-113D, “AHO-2 Affordable Housing Overlay Zone” as follows:

§ 22-113B AHO AFFORDABLE HOUSING OVERLAY ZONE

§ 22-113B.1 Uses.

In the AHO Affordable Housing Overlay Zone, in addition to any use permitted in the underlying zone district, multifamily residential development is permitted with development incentives for the provision of affordable housing.

§ 22-113B.2 Required Conditions.

- a. Height. No building shall exceed a height of five (5) stories or sixty (60) feet.
- b. Minimum Lot Area. There shall be a minimum lot area of forty thousand (40,000) square feet.
- c. Front Yard. There shall be a front yard of not less than ten (10) feet along any street.
- d. Rear Yard. There shall be a rear yard of not less than ten (10) ~~twenty-five (25)~~ feet.
- e. Side Yards. The minimum side yard width shall be fifteen (15) feet.

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- f. Maximum Building Coverage. The total ground floor area of all buildings shall not exceed forty (40%) percent of the total lot area.
- g. Maximum Impervious Coverage. The total area of all impervious surfaces shall not exceed ninety (90%) ~~eighty-five (85%)~~ percent of the total lot area.
- h. Maximum Gross Residential Density. The maximum gross residential density shall be forty two (42) ~~thirty five (35)~~ dwelling units/acre, which shall be considered a “compensatory benefit” in exchange for the required provision of low- and moderate-income dwelling units as required by Subsection 22-113B.3.
- i. Off-Street Parking and Loading Requirements. Off-street parking and loading shall be provided in accordance with Section 22-117 of the Borough Code, except that the minimum off-street parking requirements shall be as follows:

Bedrooms	Spaces (Parking)
0	1.00
1	1.50
2	1.75
3 or more	2.00

- i. Landscaping. All portions of the property surrounding the principal building not used for off-street parking or loading shall be landscaped with ornamental trees, shrubs and grass lawn area, subject to approval by the Approving Authority.
- j. Lighting. All on-site lighting in connection with off-street parking, pedestrian walkways and/or building lighting shall be so arranged and shielded as to reflect the light downward and away from adjoining streets or properties.
- k. Signs. Signs shall comply with the requirements of Section 22-119 of the Borough Code.

§ 22-113B.3 Affordable Housing Requirements.

Multifamily residential development shall be required to provide low- and moderate-income dwelling units in accordance with the subsection. The maximum affordable housing set-aside shall be 20% of the dwelling units in the development, ~~except that the minimum set-aside shall be 15% where affordable rental units are provided. Of these, at least 50% must be reserved for, and affordable to, low income households. A minimum of 13% of the affordable units in each bedroom distribution shall be affordable to households earning 30% or less of the area median~~

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~~income for the Council on Affordable Housing (COAH) region.~~ Low- and moderate-income housing units shall be governed by the standards set forth in the Uniform Housing Affordability Controls (UHAC), N.J.A.C. 5:80-26.1 et seq., and shall comply with ~~the applicable rules of the Council on Affordable Housing (COAH)~~ and any other relevant state statutes and regulations. All development including affordable dwelling units shall also be subject to Section 22-131, Affordable Housing Regulations, of the Land Development Regulations of the Borough of North Plainfield.

§ 22-113C AHO-1 AFFORDABLE HOUSING OVERLAY ZONE**§ 22-113C.1 Properties Included.**

The AHO-1 Affordable Housing Overlay Zone shall include the following properties:

Block 58, Lots 21, 22, and 23

Block 59, Lots 1 and 12

Block 159, Lot 6.01

Block 161.01, Lot 2 and 3

§ 22-113C.2 Uses.

In the AHO-1 Affordable Housing Overlay Zone, in addition to any use permitted in the underlying zone district, multifamily residential development is permitted with development incentives for the provision of affordable housing.

§ 22-113C.3 Required Conditions.

- a. Height. No building shall exceed a height of three (3) stories or forty-five (45) feet.
- b. Minimum Lot Area. There shall be a minimum lot area of twenty-four thousand (24,000) square feet.
- c. Front Yard. There shall be a front yard of not less than twenty-five (25) feet along any street.
- d. Rear Yard. There shall be a rear yard of not less than twenty-five (25) feet.
- e. Side Yards. The minimum side yard width shall be fifteen (15) feet.

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- f. Maximum Building Coverage. The total ground floor area of all buildings shall not exceed forty (40%) percent of the total lot area.
- g. Maximum Impervious Coverage. The total area of all impervious surfaces shall not exceed eighty-five (85%) percent of the total lot area.
- h. Maximum Gross Residential Density. The maximum gross residential density shall be twenty (20) dwelling units/acre.
- i. Off-Street Parking and Loading Requirements. Off-street parking and loading shall be provided in accordance with Section 22-117 of the Borough Code, except that the minimum off-street parking requirements shall be provided at a ratio of one parking space for every two dwelling units.
- j. Landscaping. All portions of the property surrounding the principal building not used for off-street parking or loading shall be landscaped with ornamental trees, shrubs and grass lawn area, subject to approval by the Approving Authority.
- k. Lighting. All on-site lighting in connection with off-street parking, pedestrian walkways and/or building lighting shall be so arranged and shielded as to reflect the light downward and away from adjoining streets or properties.
- l. Signs. Signs shall comply with the requirements of Section 22-119 of the Borough Code.

§ 22-113C.4 Affordable Housing Requirements.

Multifamily residential development shall be required to provide low- and moderate-income dwelling units in accordance with the subsection. The minimum affordable housing set-aside shall be 20% of the dwelling units in the development. Low- and moderate-income housing units shall be governed by the standards set forth in the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.1 et seq., and shall comply with any other relevant state statutes and regulations. All development including affordable dwelling units shall also be subject to Section 22-131, Affordable Housing Regulations, of the Land Development Regulations of the Borough of North Plainfield.

§ 22-113D AHO-2 AGE-RESTRICTED AFFORDABLE HOUSING OVERLAY ZONE

§ 22-113D.1 Properties Included.

The AHO-2 Affordable Housing Overlay Zone shall include the following property:

Block 46, Lot 1.01

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§ 22-113D.2 Uses.

In the AHO-2 Affordable Housing Overlay Zone, in addition to any use permitted in the underlying zone district, age-restricted affordable multifamily residential development is permitted.

§ 22-113D.3 Required Conditions.

- a. Height. No building shall exceed a height of four (4) stories or fifty (50) feet.
- b. Minimum Lot Area. There shall be a minimum lot area of twenty-four thousand (24,000) square feet.
- c. Front Yard. There shall be a front yard of not less than twenty (20) feet along any street.
- d. Rear Yard. There shall be a rear yard of not less than twenty (20) feet.
- e. Side Yards. The minimum side yard width shall be fifteen (15) feet.
- f. Maximum Building Coverage. The total ground floor area of all buildings shall not exceed forty (40%) percent of the total lot area.
- g. Maximum Impervious Coverage. The total area of all impervious surfaces shall not exceed eighty-five (85%) percent of the total lot area.
- h. Maximum Number of Units. The maximum number of dwelling units shall be 49 age-restricted units. One additional unit may be provided for a on-site staff.
- i. Off-Street Parking and Loading Requirements. Off-street parking and loading shall be provided in accordance with Section 22-117 of the Borough Code, except that the minimum off-street parking requirements shall be as follows:

<u>Bedrooms</u>	<u>Spaces (Parking)</u>
<u>0</u>	<u>1.0</u>
<u>1</u>	<u>1.8</u>
<u>2</u>	<u>2.0</u>
<u>3 or more</u>	<u>2.1</u>

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- j. Landscaping. All portions of the property surrounding the principal building not used for off-street parking or loading shall be landscaped with ornamental trees, shrubs and grass lawn area, subject to approval by the Approving Authority.
- k. Lighting. All on-site lighting in connection with off-street parking, pedestrian walkways and/or building lighting shall be so arranged and shielded as to reflect the light downward and away from adjoining streets or properties.
- l. Signs. Signs shall comply with the requirements of Section 22-119 of the Borough Code.

§ 22-113D.4 Affordable Housing Requirements.

Multifamily residential development shall be required to provide low- and moderate-income dwelling units in accordance with the subsection. The minimum affordable housing set-aside shall be 20% of the dwelling units in the development. Low- and moderate-income housing units shall be governed by the standards set forth in the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.1 et seq., and shall comply with any other relevant state statutes and regulations. All development including affordable dwelling units shall also be subject to Section 22-131, Affordable Housing Regulations, of the Land Development Regulations of the Borough of North Plainfield.

NOW, THEREFORE, BE IT FURTHER ORDAINED that this Ordinance shall take effect, after final passage, twenty (20) days following action or inaction by the Mayor as provided by law or an override of a mayoral veto by the Borough Council, whichever is applicable and publication in accordance with law, unless a resolution is adopted, pursuant to *N.J.S.A. 40:69A-181(b)*, declaring an emergency and providing that this Ordinance shall take effect at an earlier date.

INTRODUCED:
PASSED:
PUBLISHED:
ADOPTED:

ROLL CALL: AYES:
 NAYS:
 ABSTAIN:
 ABSENT:

APPROVED BY THE MAYOR: Yes _____ No _____

The above is a true copy of the Ordinance adopted by the Borough of North Plainfield on _____, 2026

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ATTEST:

BOROUGH OF NORTH PLAINFIELD

Michele Irby-Garry
Acting Borough Clerk
Borough of North Plainfield

Frank A. "Skip" Stabile, Jr., Council President

Date signed: _____, 2026

Date signed: _____, 2026

Lawrence LaRonde, Mayor

Date signed: _____, 2026

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

ORDINANCE NO. _____

**AN ORDINANCE TO AMEND, REVISE AND SUPPLEMENT
CHAPTER 22 OF THE BOROUGH CODE, ENTITLED “LAND
DEVELOPMENT” MOST NOTABLY SECTION 22-131, ENTITLED
“AFFORDABLE HOUSING REGULATIONS”, SECTION 22-132,
ENTITLED “DEVELOPMENT FEES” AND SECTION 22-133
ENTITLED “INCLUSIONARY HOUSING REQUIREMENTS FOR
REZONING AND VARIANCES”**

NOW, THEREFORE, BE IT ORDAINED by the Borough Council of the Borough of North Plainfield, County of Somerset, State of New Jersey that the Borough Code of the Borough of North Plainfield be amended, revised and supplemented as to Chapter 22, entitled “Land Development”, most notably Section 22-131, entitled “Affordable Housing Regulations”, Section 22-132, entitled “Development Fees” and Section 22-133, “Inclusionary Housing Requirement for Rezoning and Variances” as follows:

22-131 AFFORDABLE HOUSING REGULATIONS

22-131.1. Purpose and applicability.

The purpose of this chapter is to include provisions addressing the Borough of North Plainfield’s constitutional obligation to provide for its fair share of low- and moderate-income housing, as directed by the Administrative Office of the Courts Supreme Court and as stipulated by P.L.2024, c. 2 and N.J.S.A. 52:27D-301 et seq. (the amended Fair Housing Act). -N.J.A.C. 5:99-1 et seq., as amended and supplemented, establishes procedures to be used by municipalities in addressing and implementing the requirements set forth in the Amended Fair Housing Act consistent with N.J.A.C. 5:93-1 et seq., as amended and supplemented, N.J.A.C. 5:80-26.1 et seq., as amended and supplemented, and the New Jersey Fair Housing Act of 1985. P.L. 2024, c.2 also established the Affordable Housing Dispute Resolution Program (“Dispute Resolution Program”), which provides a new process for municipalities to come into constitutional compliance with their affordable housing obligations. This chapter is intended to assure compliance with the foregoing provisions and with the regulations of ~~the Council on Affordable Housing (“COAH”) set forth at N.J.A.C. 5:93-1 et seq., and~~ the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.1 et seq., as amended and supplemented, including provisions for unit affordability controls as well as eligibility for low- and moderate-income households. This chapter shall apply except where inconsistent with applicable law.

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The provisions of this section shall apply to all affordable housing developments and affordable housing units that currently exist and that are proposed to be created within the Borough of North Plainfield pursuant to the Borough's most recently adopted Housing Element and Fair Share Plan.

22-131.2. Intent.

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

22-131.3. Reporting requirements.

- a. Trust fund activity. North Plainfield shall comply with the reporting requirements set forth in N.J.S.A. 52:27D-329.2 and N.J.A.C. 5:99-5~~On the first (1st) anniversary of the entry of the order granting North Plainfield a final judgment of certification of compliance and repose in *In re Borough of North Plainfield Compliance with Mount Laurel Third Fourth (4th^{3rd}) Round Affordable Housing Obligation*, and every anniversary thereafter through the end of the repose period, the Borough shall provide annual reporting of its affordable housing trust fund activity to the New Jersey Department of Community Affairs, the Dispute Resolution Program, Council on Affordable Housing or Division of Local Government Services, or other entity designated by the State of New Jersey, with a copy provided to Fair Share Housing Center and posted on the municipal website, using forms developed for this purpose by the New Jersey Department of Community Affairs, Council on Affordable Housing or Division of Local Government Services. The reporting shall include an accounting of all affordable housing trust fund activity, including the source and amount of funds collected and the amount and purpose for which any funds have been expended.~~
- b. Affordable housing activity. North Plainfield shall comply with the reporting requirements set forth in N.J.S.A. 52:27D-329.4 and N.J.A.C. 5:99-5~~On the first (1st) anniversary of the entry of the order granting North Plainfield a final judgment of compliance and repose in *In re Borough of North Plainfield Compliance with Mount Laurel Third Fourth Round Affordable Housing Obligation*, and every anniversary thereafter through the end of the repose period, the Borough shall provide annual reporting of the status of all affordable housing activity within the Borough through posting on the municipal website, with copies provided to Fair Share Housing Center, using forms previously developed for this purpose by the Council on Affordable Housing or any other forms endorsed by the court appointed special master adjudicator and Fair Share Housing Center. For the midpoint realistic opportunity review due on July 1, 2020~~2035~~, as required pursuant to N.J.S.A. 52:27D-313, the Borough shall post on its municipal website, with copies provided to Fair Share Housing Center, a status report as to its implementation of its affordable housing plan and an analysis of whether any unbuilt sites or unfulfilled mechanisms continue to present a realistic opportunity. Such posting shall invite any interested party to submit comments to the Borough, with copies provided to Fair Share Housing Center, regarding whether any sites no longer~~

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~~present a realistic opportunity and should be replaced. Any interested party may by motion request a hearing before the court regarding these issues.~~

- ~~e. Very low income housing. For the review of very low income housing requirements required by N.J.S.A. 52:27D-329.1, within thirty (30) days of the third (3rd) anniversary of the entry of the order granting North Plainfield a final judgment of compliance and repose in *In re Borough of North Plainfield Compliance with Mount Laurel Third Fourth Round Affordable Housing Obligation*, and every third (3rd) year thereafter, the Borough will post on its municipal website, with copies provided to Fair Share Housing Center, a status report as to its satisfaction of its very low income requirements, including the family very low income requirements referenced herein. Such posting shall invite any interested party to submit comments to the Borough, with copies provided to Fair Share Housing Center, on the issue of whether the Borough has complied with its very low income housing obligation.~~

22-131.4. Definitions.

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

ACT

The Fair Housing Act of 1985, P.L. 1985, c. 222 (N.J.S.A. 52:27D-301 et seq.), as amended through P.L. 2024, c.2.

ADAPTABLE

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

ADMINISTRATIVE AGENT

The individual or entity designated by the Borough and approved by the Division as pursuant to N.J.A.C. 5:99-7, to administer affordable units in accordance with this chapter, as set forth within N.J.S.A. 52:27D-321, and in accordance with the regulations of the Council on Affordable Housing set forth at N.J.A.C. 5:93 et seq, and the Uniform Housing Affordability Controls set forth at N.J.A.C. 5:80-26 et seq.

AFFIRMATIVE MARKETING

A regional marketing strategy designed to attract buyers and/or renters of affordable units pursuant to N.J.A.C. 5:80-26.165.

AFFORDABILITY AVERAGE

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

AFFORDABLE

A sales price or rent level that is within the means of a low- or moderate-income household as defined within N.J.S.A. 52:27D-301 et seq. N.J.A.C. 5:93-7.4, and, in the case of an

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ownership unit, that the sales price for the unit conforms to the standards set forth in N.J.A.C. 5:80-26.76, as may be amended and supplemented, and, in the case of a rental unit, that the rent for the unit conforms to the standards set forth in N.J.A.C. 5:80-26.132, as may be amended and supplemented.

AFFORDABLE HOUSING DEVELOPMENT

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

AFFORDABLE HOUSING PROGRAM(S)

Any method of creating or preserving actual housing units available to low- and moderate-income households or creating a realistic opportunity for the construction of such units, and any mechanism in a municipal fair share plan prepared or implemented to address a municipality's fair share obligation.

AFFORDABLE HOUSING MONITORING SYSTEM or AHMS

The Department of Community Affairs (DCA) or Department's cloud-based software application, which shall be the central repository for municipalities to use for reporting detailed information regarding affordable housing developments, affordable housing unit completions, and the collection and expenditures of funds deposited into the municipal affordable housing trust fund.

AFFORDABLE UNIT

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

AGENCY

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

AGE-RESTRICTED UNIT

A housing unit designed to meet the needs of, and exclusively for, the residents of an age-restricted segment of the population where the adult member of the family who is the head of the household for the purposes of determining income eligibility and rent is a minimum age of either 62 years, or 55 years and meets the provisions of 42 U.S.C. §§ 3601 through 3619, except that due to death, a surviving spouse of less than 55 years of age is permitted to continue to reside in the unit. such that: 1) all the residents of the development wherein the unit is situated are sixty-two (62) years of age or older; or 2) at least eighty (80%) percent of the units are occupied by one person who is fifty-five (55) years of age or older; or, 3) the development has been designated by the Secretary of the U.S. Department of Housing and Urban Development as "housing for older persons," as defined in Section 807(b)(2) of the Fair Housing Act, 42 U.S.C. § 3607.

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ALTERNATIVE LIVING ARRANGEMENTS

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

ASSISTED LIVING RESIDENCE

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

BARRIER-FREE ESCROW

The holding of funds collected to adapt affordable unit entrances to be accessible in accordance with N.J.S.A. 52:27D-311a et seq. Such funds shall be held in a municipal affordable housing trust fund pursuant to N.J.A.C. 5:99-2.6.

BOROUGH

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

CERTIFIED HOUSEHOLD

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

CHOICE

The no-longer-active Choices in Homeownership Incentives for Everyone Program, as it was authorized by the Agency.

COAH or THE COUNCIL

The Council on Affordable Housing, as previously established by the New Jersey Fair Housing Act (N.J.S.A. 52:27D-301 et seq.), abolished effective March 20, 2024, pursuant to Section 3 at P.L. 2024, c. 2 (N.J.S.A. 52:27D-304.1).

COMPLIANCE CERTIFICATION

The certification issued to a municipality by a county-level housing judge pursuant to section 3 at P.L. 2024, c. 2, that protects the municipality from exclusionary zoning litigation during the current round of present and prospective need and through July 1 of the year the next affordable housing round begins, which is also known as a "judgment of compliance" resulting in an "order for repose." The term "compliance certification"

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includes a judgment of repose granted in an action filed pursuant to section 13 at P.L. 1985, c. 222 (N.J.S.A. 52:27D-313).

CONSTRUCTION

New construction and additions, but does not include alterations, reconstruction, renovations, conversion, relocation, or repairs, as those terms are defined in the State Uniform Construction Code promulgated pursuant to the State Uniform Construction Code Act, P.L. 1975, c. 217 (N.J.S.A. 52:27D-119 et seq.).

CONTINUUM OF CARE or CoC

One of the 16 local planning bodies in New Jersey that coordinate service providers and other interested parties to prevent and end homelessness, as authorized by subtitle C of Title IV of the McKinney-Vento Homeless Assistance Act of 1987, 42 U.S.C. §§ 11431 through 11435.

COUNTY-LEVEL HOUSING JUDGE

A judge appointed pursuant to section 5 at P.L. 2024, c. 2 (N.J.S.A. 52:27D-313.2), to resolve disputes over the compliance of municipal fair share affordable housing obligations and municipal fair share plans and housing elements with the Act.

DCA or DEPARTMENT

The State of New Jersey, Department of Community Affairs.

DISPUTE RESOLUTION PROGRAM

The Affordable Housing Dispute Resolution Program, established pursuant to section 5 of P.L. 2024, c.2 (N.J.S.A. 52:27D-313.2). The Dispute Resolution Program is established within the Executive Branch of the State, for the purpose of resolving disputes associated with the Fair Housing Act with respect to municipalities seeking to obtain a certification of compliance of their adopted Housing Element & Fair Share Plan.

DEFICIENT HOUSING UNIT

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

DEVELOPER

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

DEVELOPMENT

The division of a parcel of land into two or more parcels, the construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any use or change in the use

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of any building or other structure, or of any mining, excavation or landfill, and any use or change in the use of any building or other structure, or land or extension of use of land, for which permission may be required, pursuant to N.J.S.A. 40:55D-1 et seq.

DIVISION

Means the Division of Local Planning Services in DCA.

EMERGENT OPPORTUNITY

A circumstance that has arisen whereby affordable housing will be able to be produced through a delivery mechanism not originally contemplated by or included in a fair share plan that has been the subject of a compliance certification.

EQUALIZED ASSESSED VALUE OR EAV

The assessed value of a property divided by the current average ratio of assessed to true value for the municipality in which the property is situated, as determined in accordance with sections 1, 5, and 6 at P.L. 1973, c. 123 (N.J.S.A. 54:1-35a, 54:1-35b, and 54:1-35c). Estimates at the time of building permit may be obtained by the tax assessor using construction cost estimates. Final EAV shall be determined at project completion by the municipal assessor.

EXCLUSIONARY ZONING LITIGATION

Litigation challenging the fair share plan, housing element, ordinances, or resolutions that implement the fair share plan or housing element of a municipality based on alleged noncompliance with the Act or the Mount Laurel doctrine, which litigation shall include, but shall not be limited to, litigation seeking a builder's remedy.

EXTENSION OF EXPIRING CONTROLS

Extending the deed restriction period on units where the controls will expire in the current round of a housing obligation, so that the total years of a deed restriction is at least 60 years.

FAIR SHARE OBLIGATION or AFFORDABLE HOUSING OBLIGATION

The total of the present need and prospective need as determined by a court of competent jurisdiction.

FAIR SHARE PLAN

The plan that describes the mechanisms, strategies and the funding sources, if any, by which the Borough proposes to address its affordable housing obligation as established in the Housing Element, including the draft ordinances necessary to implement that plan, and addresses the requirements of P.L.1985, c.222 (N.J.S.A. 52:27D-301 et seq.)~~N.J.A.C. 5:93-5.~~

HOUSEHOLD INCOME

A household's gross annual income calculated in a manner consistent with the determination of annual income pursuant to section 8 of the United States Housing Act of

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1937 (Section 8), not in accordance with the determination of gross income for Federal income tax liability.

HOUSING ELEMENT

The portion of the Borough's Master Plan, required by the Municipal Land Use Law ("MLUL"), *N.J.S.A. 40:55D-28b(3)* and the Act, that includes the information required by *N.J.S.A. 52:27D-301 et seq.*, ~~which supersedes *N.J.A.C. 5:93-5.1*~~ and establishes the Borough's fair share obligation.

HOUSING PROJECT

A project, or distinct portion of a project, which is designed and intended to provide decent, safe, and sanitary dwellings, apartments, or other living accommodations for persons of low- and moderate-income; such work or undertaking may include buildings, land, equipment, facilities, and other real or personal property for necessary, convenient, or desirable appurtenances, streets, sewers, water service, parks, site preparation, gardening, administrative, community, health, recreational, educational, welfare, or other purposes. The term "housing project" may also be applied to the planning of the buildings and improvements, the acquisition of property, the demolition of existing structures, the construction, reconstruction, alteration, and repair of the improvements, and all other work in connection therewith.

HOUSING REGION

A geographic area established pursuant to *N.J.S.A. 52:27D-304.2b*.

INCLUSIONARY DEVELOPMENT

A development containing both affordable units and market rate units, in which a substantial percentage of the housing units are provided for a reasonable income range of low- and moderate- income households. This term includes, but is not limited to: new construction, the conversion of a non-residential structure to residential use and the creation of new affordable units through the gut rehabilitation or reconstruction of a vacant residential structure.

JUDGMENT OF COMPLIANCE OR JUDGMENT FOR REPOSE

A determination issued by the Superior Court approving a municipality's fair share plan to satisfy its affordable housing obligation for a particular 10-year round.

LOW-INCOME HOUSEHOLD

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

LOW-INCOME UNIT

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

MAJOR SYSTEM

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

MARKET-RATE UNITS

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

~~MEDIAN INCOME~~

~~The median income by household size for the applicable housing region, as adopted annually by the Affordable Housing Professionals of New Jersey or other COAH or a successor entity approved by the court.~~

MODERATE-INCOME HOUSEHOLD

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

MODERATE-INCOME UNIT

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

MONI

The no-longer-active Market Oriented Neighborhood Investment Program, as it was authorized by the Agency.

MULTIFAMILY UNIT

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

MUNICIPAL HOUSING LIAISON or MHL

An appointed municipal employee who is, pursuant to N.J.A.C. 5:99-6, responsible for oversight and/or administration of the affordable units created within the municipality, and oversight of the authorization of individuals being provided access to the AHMS.

MUNICIPAL HOUSING TRUST FUND

A separate, interest-bearing, account held by a municipality for the deposit of development fees, payments in lieu of constructing affordable units on sites zoned for affordable housing, barrier-free escrow funds, recapture funds, proceeds from the sale of affordable units, rental income, repayments from affordable housing program loans, enforcement fines, unexpended RCA funds remaining from a completed RCA project, application fees, and any other funds collected by the municipality in connection with its affordable housing programs, which shall be used to address municipal low- and moderate-income housing obligations within the time frames established by the Legislature and as governed at N.J.A.C. 5:99-2.

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The creation of a new housing unit under regulation by a code enforcement official regardless of the means by which the unit is created. Newly constructed units are evidenced by the issuance of a certificate of occupancy and may include new residences created through additions and alterations, adaptive reuse, subdivision, or conversion of existing space, and moving a structure from one location to another.

NON-EXEMPT SALE

Any sale or transfer of ownership ~~other than the transfer of ownership of a restricted unit to one's self or to another individual other than the transfer of ownership between spouses or civil union partners~~between husband and wife; the transfer of ownership between former spouses or civil union partners 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.

ORDER FOR REPOSE

The protection a municipality has from a builder's remedy lawsuit for a period of time from the entry of a judgment of compliance by the Superior Court. A judgment of compliance often results in an order for repose.

PAYMENT IN LIEU OF CONSTRUCTING AFFORDABLE UNITS

The payment of funds to the municipality by a developer when affordable units are not produced on a site zoned for an inclusionary development.

PRESENT NEED

The number of substandard existing deficient housing units in the municipality currently occupied by low- and moderate-income households, which is calculated pursuant to N.J.S.A. 52:27D-329.1 et seq. Also known as the "rehabilitation obligation."

PRICE DIFFERENTIAL

The difference between the controlled sale price of a restricted unit and the contract price at the exit sale of the unit, determined as of the date of a proposed contract of sale for the unit. If there is no proposed contract of sale, the price differential is the difference between the controlled sale price of a restricted unit and the appraised value of the unit as if it were not subject to UHAC, determined as of the date of the appraisal. If the controlled sale price exceeds the contract price or, in the absence of a contract price, the appraised value, the price differential is zero dollars.

PRIOR ROUND UNIT

A housing unit that addresses a municipality's fair share obligation from a round prior to the fourth round of affordable housing obligations, including any unit that: (1) received substantive certification from COAH; (2) is part of a third-round settlement agreement or judgment of compliance approved by a court of competent jurisdiction, inclusive of units created pursuant to a zoning designation adopted as part of the settlement agreement or

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judgment of compliance to create a realistic opportunity for development; (3) is subject to a grant agreement or other contract with either the State or a political subdivision thereof entered into prior to July 1, 2025, pursuant to either item (1) or (2) above; or (4) otherwise addresses a municipality's fair share obligation from a round prior to the fourth round of affordable housing obligations. A unit created after the enactment of P.L. 2024, c. 2 (N.J.S.A. 52:27D-304.1) on March 20, 2024, is not a prior round unit unless: (1) it is created pursuant to a prior round development plan or zoning designation that received COAH or court approval on or before the cutoff date of June 30, 2025, or the date that the municipality adopts the implementing ordinances and resolutions for the fourth round of affordable housing obligations, whichever occurs sooner; and (2) its siting and creation are consistent with the form of the prior round development plan or zoning designation in effect as of the cutoff date, without any amendment or variance.

RANDOM SELECTION PROCESS

A lottery process by which currently income-eligible households are selected, at random, for placement in affordable housing units such that no preference is given to one applicant over another, ~~except for purposes in the case of a veterans' preference where such an agreement exists; for purposes of~~ matching household income and size with an appropriately priced and sized affordable unit; or another purpose allowed pursuant to N.J.A.C. 5:80-26.7(k)3. This definition excludes any practices that would allow affordable housing units to be leased or sold on a first-come, first-served basis. ~~(e.g., by lottery).~~

REGIONAL ASSET LIMIT

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

REGIONAL CONTRIBUTION AGREEMENT or RCA

A contractual agreement, pursuant to the Act, into which two municipalities voluntarily entered into prior to July 18, 2008, to transfer a portion of a municipality's affordable housing obligation to another municipality within its housing region.

REGIONAL MEDIAN INCOME

The median income by household size for an applicable housing region, as calculated annually in accordance with N.J.A.C. 5:80-26.3.

REHABILITATION

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

RENT

The gross monthly cost of a rental unit to the tenant, including the rent paid to the landlord, as well as an allowance for tenant-paid utilities computed in accordance with allowances

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published by DCA for its Section 8 program. In assisted living residences, rent does not include charges for food and services.

RESTRICTED UNIT

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

UHAC

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

UHORP

The Agency's Urban Homeownership Recovery Program, as it was authorized by the Agency Board.

VERY LOW-INCOME HOUSEHOLD

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

VERY LOW-INCOME UNIT

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

VETERAN

A veteran as defined at N.J.S.A. 54:4-8.10.

VETERANS' PREFERENCE

The agreement between a municipality and a developer or residential development owner that allows for low- to moderate-income veterans to be given preference for up to fifty (50%) percent of rental units in relevant projects, as provided for at N.J.S.A. 52:27D-311j.

WEATHERIZATION

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

95/5 RESTRICTION — A deed restriction governing a restricted ownership unit that is part of a housing element that received substantive certification from COAH pursuant to N.J.A.C. 5:93, as it was in effect at the time of the receipt of substantive certification, before October 1, 2001, or any other deed restriction governing a restricted ownership unit with a seller repayment option requiring ninety-five (95%) percent of the price differential to be paid to the municipality or an instrument of the municipality at the first non-exempt sale following the expiration of the deed restriction.

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The definitions in the Uniform Housing Affordability Controls (UHAC) at N.J.A.C 5:80-26.2 shall be applicable where a term is not defined. In the event of a discrepancy between a definition in this section and UHAC, the current UHAC definition shall be applicable.

22-131.5. ~~Municipality-wide Mandatory Set-Aside~~Inclusionary zoning requirements. ~~To create realistic opportunities for the construction of affordable housing, any residential development consisting of ten six (106) or more dwelling units, at a density above six (6) units per acre, that is permitted pursuant to a variance or rezoning shall comply with the following:~~

- a. A development, other than single-family family detached, providing a minimum of five new housing units created through any municipal rezoning or Zoning Board action, use or density variance, redevelopment plan, or rehabilitation plan that provides for densities at or above six units per acre, is required to include an affordable housing set-aside of 20 percent.
- b. Any affordable units generated through such mandatory set-aside shall be subject to all other provisions of this ordinance.
- c. All such affordable units shall be governed by this ordinance the controls on affordability, including bedroom distribution, and affirmatively marketed to the housing region in conformance with UHAC at N.J.A.C. 5:80-26.1 et seq., any successor regulation, and all other applicable laws.
- d. No subdivision shall be permitted or approved for the purpose of avoiding compliance with this requirement. Developers cannot, for example, subdivide a project into two lots and then make each of them a number of units just below the threshold.
- e. The mandatory set-aside requirements of this section do not give any developer the right to any rezoning, variance or other relief, or establish any obligation on the part of the municipality to grant such rezoning, variance or other relief.
- f. This municipality-wide mandatory set-aside requirement does not apply to any sites or specific zones otherwise identified in the HEFSP, for which density and set-aside requirements shall be governed by the specific standards as set forth therein.
- g. In the event that the inclusionary set-aside of 20 percent of the total number of residential units does not result in a full integer, the developer shall choose one of two options for addressing the fractional unit:
 1. The developer may round the set-aside upward to construct a whole additional affordable unit; or
 2. If the set-aside includes a fractional unit equal to 0.49 or less, the developer may round the set-aside downward and construct the lesser whole number of affordable units and shall also contribute the fractional subsidy payment ("fractional subsidy payment") to be made to the municipality and deposited in the municipal Affordable Housing Trust Fund. The fractional subsidy payment amount shall be calculated as the fractional unit multiplied by the base subsidy payment amount currently established by the municipality as the average subsidy reflected in

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financial pro formas for 100 percent affordable housing or subsidized developments in the municipality or region on file with the municipality. For example, if seven total units are developed at an inclusionary site, a 20 percent set-aside would require 1.4 affordable units. Per the requirements above:

The developer shall round up the 0.4 unit to one whole affordable unit so as to construct a total of two (2) affordable housing units; or The developer shall round the set-aside downward so as to construct only one affordable unit AND shall pay into the municipal affordable housing trust fund a fractional subsidy payment equal to the dollar amount established by the municipality multiplied by 0.4.

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

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

~~Design:~~

- ~~1. — In inclusionary developments, to the extent possible, low and moderate-income units shall be integrated with the market units.~~
- ~~2. — The occupancy standards set forth at N.J.A.C. 5:80-26.5 shall be applicable regarding the design of proposed affordable housing developments. In inclusionary developments, low and moderate income units shall have access to all of the same common elements and facilities as the market units.~~

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Deletions shown by ~~strikethrough~~; additions shown by underline.**22-131.6. New construction**

The required income and bedroom distributions of affordable housing units, as well as additional applicable standards, shall be as set forth in UHAC, N.J.A.C. 5:80-26.1 et seq. as amended and supplemented.

- a. Low/moderate split and bedroom distribution of affordable housing units:
1. The fair share obligation shall be divided equally between low- and moderate-income units, except that where there is an odd number of affordable housing units, the extra unit shall be a low-income unit.
 2. At least thirteen (13%) percent of all restricted ~~rental~~ units within each bedroom distribution shall be very low-income units (affordable to a household earning thirty (30%) percent or less of regional median income). The very low-income units shall be counted as part of the required number of low income units within the development.
 3. At least twenty five (25%) percent of the obligation shall be met through rental units, including at least half in rental units available to families.
 4. A maximum of ~~twenty five~~thirty (~~30~~25%) percent of the Borough's obligation may be met with age restricted units. At least half of all affordable units in the Borough's Plan shall be available to families.
 - ~~5. In each affordable development, at least fifty (50%) percent of the restricted units within each bedroom distribution shall be low income units including that thirteen (13%) percent shall be very low income.~~
 - 6.5. Unless otherwise approved pursuant to 8, below, Affordable developments that are not age-restricted or supportive housing shall be structured in conjunction with realistic market demands such that:
 - (a) At a minimum, the number of bedrooms within the restricted units equals twice the number of restricted units;
 - (b) Two-bedroom and/or three-bedroom units compose at least fifty (50%) percent of all restricted units;
 - ~~(a)~~(c) The combined number of efficiency and one-bedroom units, rounded up or down to the nearest whole number in either direction, shall be no greater than twenty (20%) percent of the total low- and moderate-income units;
 - ~~(b)~~(d) At least thirty (30%) percent of all low- and moderate-income units, rounded up or down to the nearest whole number in either direction, shall be two-bedroom units;

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- ~~(e)~~(e) At least ~~thirty~~twenty (20%) percent of all low- and moderate-income units, rounded up or down to the nearest whole number in either direction, shall be three-bedroom units; and,
- ~~(d)~~(f) The remaining units may be allocated ~~among two (2) and three (3)-bedroom units~~ at the discretion of the developer in accordance with the Borough's housing element and fair share plan.
6. Unless otherwise approved pursuant to 8, below, ~~A~~affordable developments that are age-restricted or supportive housing, except those supportive housing units whose sponsoring program determines the unit arrangement, shall be structured such that, at a minimum, the number of bedrooms within the restricted units shall equal the number of ~~age-restricted low- and moderate-income~~restricted units ~~within the inclusionary development~~. This standard may be met by having ~~all one (1)-bedroom units or by having~~ a two (2)-bedroom unit for each efficiency unit. In affordable developments with 20 or more restricted units that are age-restricted or supportive housing, two-bedroom units must compose at least five (5%) percent of those restricted units.
7. Unless otherwise approved pursuant to 8, below, in each affordable development, the following income distribution requirements must be independently satisfied by the restricted units that are age-restricted, the restricted units that are supportive housing, and the restricted units that are neither age-restricted nor supportive housing, as well as by all of the restricted units in the development, considered in the aggregate:
- (a) At least fifty (50%) percent of all restricted units are low-income or very-low-income units;
- (b) At least fifty (50%) percent of all restricted efficiency or one-bedroom units, rounded up or down to the nearest whole number in either direction, are low-income units or very-low-income units;
- (c) At least fifty (50%) percent of all restricted two-bedroom units, rounded up or down to the nearest whole number in either direction, are low-income units or very-low-income units;
- (d) At least fifty (50%) percent of all restricted three-bedroom units are low-income units or very-low-income units;
- (e) At least fifty (50%) percent of all restricted units with four or more bedrooms, rounded up or down to the nearest whole number in either direction, are low-income units or very-low-income units; and
- (f) Any very-low-income units are distributed between each bedroom count as proportionally as possible, to the nearest whole unit, to the total number of restricted units within each bedroom count. For example, if half of the restricted units are two-bedroom units, then half of the very-low-income units should be two-bedroom units.

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~~7.8.~~ The requirements at 5, 6, and 7 above must be satisfied by all restricted units in the Borough, considered in the aggregate. The individual requirements at 5, 6, and 7 above may be waived or altered for a specific affordable development with written approval from the Division if such waiver or alteration would not result in a material deviation from the municipal housing element and fair share plan. Any waiver or alteration that would result in a material deviation from the municipal housing element and fair share plan must receive written approval from a county-level housing judge.

b. Accessibility requirements:

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

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- (3) The funds deposited under paragraph (f)(2) above shall be used by the Borough for the sole purpose of making the adaptable entrance of an affordable unit accessible when requested to do so by a person with a disability who occupies or intends to occupy the unit and requires an accessible entrance.
- (4) The developer of the restricted units shall submit a design plan and cost estimate to the Borough Construction Official for the conversion of adaptable to accessible entrances.
- (5) Once the Construction Official has determined that the design plan to convert the unit entrances from adaptable to accessible meet the requirements of the Barrier Free Subcode, N.J.A.C. 5:23-7, and that the cost estimate of such conversion is reasonable, payment shall be made to the Borough's affordable housing trust fund in care of the Borough's Chief Financial Officer who shall ensure that the funds are deposited into the affordable housing trust fund and appropriately earmarked.
- (6) Full compliance with the foregoing provisions shall not be required where an entity can demonstrate that it is "site impracticable" to meet the requirements. Determinations of site impracticability shall be in compliance with the Barrier Free Subcode, N.J.A.C. 5:23-7.

c. Maximum rents and sales prices:

1. In establishing rents and sales prices of affordable housing units, the administrative agent shall follow the procedures set forth in UHAC utilizing the most recently published regional weighted average of the uncapped Section 8 income limits published by HUD ~~and by the Superior Court~~.
2. The maximum rent for restricted rental units within each affordable development shall be affordable to households earning no more than sixty (60%) percent of regional median income; however, municipalities may permit a maximum rent affordable to households earning no more than seventy (70%) percent of regional median income for moderate-income units within affordable developments where very-low-income units compose at least thirteen (13%) percent of the restricted units. In such developments, the number of units with rent affordable to households earning seventy (70%) percent of regional median income may not exceed the number of very-low-income units in excess of thirteen (13%) percent of the restricted units.; ~~and~~ ~~†~~The average rent for restricted rental units shall be affordable to households earning no more than fifty two (52%) percent of regional median income.
3. The developers and/or municipal sponsors of restricted rental units shall establish at least one (1) rent for each bedroom type for ~~both very-low-income~~, low-income, and moderate-income units, provided that at least thirteen (13%) percent of all ~~low-~~

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~~and moderate-income restricted~~ rental units shall be affordable to very low-income households, ~~(earning thirty (30%) percent or less of the regional median household income), with at least half of such units made available for very-low-income families with children.~~ ~~with s~~Such very low-income units shall be counted toward the minimum fifty (50%) percent low-income housing requirement to address the Borough's prospective need obligation. Nothing in this subsection precludes the Borough from requiring affordable developments to have at least thirteen (13%) percent of restricted units be affordable to and reserved for very-low-income households.

4. The maximum sales price of restricted ownership units within each affordable development shall be affordable to households earning no more than seventy (70%) percent of regional median income, and each affordable development must achieve an affordability average of fifty five (55%) percent for restricted ownership units; in achieving this affordability average, moderate-income ownership units must be available for at least three different sales prices for each bedroom type, and low-income ownership units must be available for at least two (2) different sales prices for each bedroom type.
5. In determining the initial sales prices and rent levels for compliance with the affordability average requirements for restricted units other than assisted living facilities and age-restricted developments, the following standards shall be used:
 - (a) A studio or efficiency unit shall be affordable to a one (1)-person household;
 - (b) A one (1)-bedroom unit shall be affordable to a one and one-half (1 ½)-person household;
 - (c) A two (2)-bedroom unit shall be affordable to a three (3)-person household;
 - (d) A three-(3) bedroom unit shall be affordable to a four and one-half (4 ½)-person household; and
 - (e) A four (4)-bedroom unit shall be affordable to a six (6)-person household.
6. In determining the initial sales prices and rents for compliance with the affordability average requirements for restricted units in assisted living facilities and age-restricted developments, the following standards shall be used:
 - (a) A studio or efficiency unit shall be affordable to a one (1)-person household;
 - (b) A one (1)-bedroom unit shall be affordable to a one and one-half (1 ½)-person household; and,
 - (c) A two (2)-bedroom unit shall be affordable to a two (2)-person household or to two (2) one (1)-person households.

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7. The initial purchase price for all restricted ownership units shall be calculated so that the monthly carrying cost of the unit, including principal and interest (based on a mortgage loan equal to ninety-five (95%) percent of the purchase price and the ~~FreddieMac 30-Year Fixed Rate-Mortgage~~Federal Reserve H.15 rate of interest), taxes, homeowner and private mortgage insurance and realistic condominium or homeowner association fees do not exceed ~~twenty-eight~~thirty (30) percent of the eligible monthly income of the appropriate size household as determined under N.J.A.C. 5:80-26.4, as may be amended and supplemented; provided, however, that the price shall be subject to the affordability average requirement of N.J.A.C. 5:80-26.43, as may be amended and supplemented.
8. The administrative agent shall set ~~the~~ initial rent for a restricted rental unit. The initial rent for a restricted rental unit shall be calculated so as not to exceed thirty (30%) percent of the eligible monthly income of the appropriate size household ~~;~~ including an allowance for tenant paid utilities, as determined under N.J.A.C. 5:80-26.4, as may be amended and supplemented; provided, however, that the rent shall be subject to the affordability average requirement of N.J.A.C. 5:80-26.43, as may be amended and supplemented. For assisted living units, the combined cost of rent, food, and services may not exceed eighty (80%) percent of the eligible monthly income of the appropriate household size as determined pursuant to N.J.A.C. 5:80-26.4.
- ~~9. The price of owner-occupied low- and moderate-income units may increase annually based on the percentage increase in the regional median income limit for each housing region. In no event shall the maximum resale price established by the administrative agent be lower than the last recorded purchase price.~~
- ~~10.9. The rent of low- and moderate-income units may be increased annually based on the permitted percentage increase in the Regional Income Limits chart. This increase shall not exceed nine (9%) percent in any one (1) year. Rents for units constructed pursuant to low-income housing tax credit regulations shall be indexed pursuant to the regulations governing low-income housing tax credits. The maximum resale price for a restricted ownership unit, if the resale occurs prior to the one-year anniversary of the date on which title to the unit was first transferred to a certified household, is the initial purchase price. If the resale occurs on or after such anniversary date, the maximum resale price is the most recent non-exempt purchase price increased to reflect the cumulative annual percentage increases to the regional median income, effective as of the same date as the regional median income calculated pursuant to N.J.A.C. 5:80-26.3. At the anniversary date of the tenancy of the certified household occupying a restricted rental unit, following proper notice provided to the occupant household pursuant to N.J.S.A. 2A:18-61.1.f, the rent may be increased to an amount commensurate with the annual percentage increase in the Consumer Price Index for All Urban Consumers (CPI-U), specifically U.S. Bureau of Labor Statistics Series CUUR0100SAH, titled "Housing in Northeast urban, all urban consumers, not seasonally adjusted." The maximum allowable rent increase for the year will be effective as of the same date~~

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as the regional median income limits determined pursuant to N.J.A.C. 5:80-26.3. This rent increase may not exceed five (5%) percent in any one year and notice thereof must be filed with the administrative agent. Rents for units constructed pursuant to low- income housing tax credit regulations shall be indexed pursuant to the regulations governing low- income housing tax credits.

22-131.7. Utilities.

- a. Affordable units shall utilize the same type of cooling and heating sources as market units within an inclusionary development.
- b. Tenant-paid utilities included in the utility allowance shall be set forth in the lease and shall be consistent with the utility allowance approved by ~~HUD-DCA~~ for its Section 8 program. For units constructed with State funding, an alternate utility allowance approved by DCA or the Agency must be used. For units that receive ENERGYSTAR certification, a utility allowance calculated according to an energy consumption model provided by an energy consultant with an active registration with the New Jersey Board of Public Utilities must be used, subject to approval by the administrative agent.

22-131.8. Occupancy Standards.

The occupancy standards set forth at N.J.A.C. 5:80-26.5 shall be applicable.

- a. In referring certified households to specific restricted units, the administrative agent shall, to the extent feasible and without causing an undue delay in the occupancy of a unit, strive to:
 1. Provide at least one (1) occupant for each bedroom, except for age-restricted units;
 2. Provide a bedroom for every two (2) adult occupants;
 3. With regard to occupants under the age of 18, accommodate the household's requested arrangement, except that such arrangement may not result in more than two occupants under the age of 18 occupying any bedroom; and
 4. Avoid placing a one-person household into a unit with more than one bedroom.
 - ~~2. Provide children of different sexes with separate bedrooms;~~
 - ~~3. Provide separate bedrooms for parents and children; and,~~
 - ~~4. Prevent more than two (2) persons from occupying a single bedroom.~~

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

- a. ~~Control~~ periods for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.6~~5~~, as may be amended and supplemented, and each restricted ownership unit shall remain subject to the requirements of this chapter for a deed-restricted control

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~~period. period of at least thirty (30) years and thereafter until the Borough takes action by ordinance to release the unit from such requirements. Prior to such action, a restricted ownership unit shall remain subject to the requirements of N.J.A.C. 5:80-26.1, as may be amended and supplemented. The minimum duration of the control period is:~~

- ~~(1) Thirty years for any ownership unit created on or after December 20, 2024.~~
- ~~(2) Thirty years for any ownership unit receiving an extension of affordability controls on or after December 20, 2024, unless the original term of affordability exceeds 30 years, in which case, the minimum control period for the extension is the number of years, not less than 20 years, that in combination with the original term results in 60 years of affordability.~~
- ~~(3) Governed by the grant of substantive certification, judgment of compliance, grant agreement, or other contract for any prior round ownership unit, including all units governed by 95/5 restrictions, sold before December 20, 2024.~~
- ~~(4) Governed by the form of UHAC in effect as of December 20, 2024, for any unit sold between December 20, 2004 and December 20, 2024, that is not the subject of a grant of substantive certification, judgment of compliance, grant agreement, or other contract.~~

- b. ~~The affordability control period for a restricted ownership unit shall commence on the date the initial certified household takes title to the unit~~ or, if existing affordability controls are being extended, on the effective date of the extension. The date of commencement must be identified in the deed restriction.
- c. ~~For each restricted ownership unit, at initial sale, Prior to the issuance of the initial certificate of occupancy for a restricted ownership unit and upon each successive sale during the period of restricted ownership,~~ the administrative agent shall determine a preliminary recapture amount equal to the price differential between the restricted price for the unit, based on the requirements at N.J.A.C. 5:80-26.7, and shall also determine the non-restricted, fair market value of the unit based on either an appraisal or the unit's equalized assessed value ~~without the restrictions in place.~~
- d. ~~At the time of the initial sale of the unit,~~ The initial purchaser and each successive purchaser during the control period shall execute and deliver to the administrative agent a recapture note, secured by a recapture lien evidenced by a duly recorded mortgage on the unit, obligating the purchaser (as well as the purchaser's heirs, successors and assigns) to repay a recapture amount at the time of the exit sale. The recapture note and lien must be determined upon exit sale and will be equal to the price differential minus the equity share amount, or another amount determined by an ordinance of the municipal governing body, which must be less than the price differential minus the equity share amount, upon the first non-exempt sale after the unit's release from the restrictions set forth in this chapter, an amount equal to the difference between the unit's non-restricted fair market value and its restricted price, and the recapture note shall be secured by a recapture lien evidenced by a duly recorded mortgage on the unit.

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- e. The affordability controls set forth in this chapter and within N.J.A.C. 5:80-26.1 et seq shall remain in effect despite the entry and enforcement of any judgment of foreclosure with respect to restricted ownership units.
- f. A restricted ownership unit shall be required to obtain a continuing certificate of occupancy or a certified statement from the municipal building inspector ~~Construction Official~~ stating that the unit meets all ~~Uniform Construction Code~~ standards upon the first transfer of title following the ~~removal of the restriction~~ expiration of the deed-restricted control period provided ~~under~~ pursuant to N.J.A.C. 5:80-26.65(a), as may be amended and supplemented.

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

- a. Price restrictions for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.74, as may be amended and supplemented, including:
 - 1. The initial purchase price for a restricted ownership unit shall be ~~approved~~ set by the administrative agent.
 - 2. The administrative agent shall approve all resale prices, in writing and in advance of the resale, to assure compliance with the foregoing standards.
 - 3. The master deeds and declarations of covenants and restrictions of ~~inclusionary affordable~~ developments shall provide no distinction between restricted units and market-rate units in the calculation of the condominium or homeowner association fees and special assessments to be paid by low- and moderate-income purchasers and those paid by market purchasers. Notwithstanding the foregoing sentence, condominium units subject to a municipal ordinance adopted before December 20, 2004, which ordinance provides for condominium or homeowner association fees and/or assessments different from those provided for in this subsection are governed by the ordinance.
 - 4. The owners of restricted ownership units may apply to the administrative agent to increase the maximum sales price for the unit to reflect eligible ~~on the basis of anticipated~~ capital improvements completed since they purchased the unit. Eligible capital improvements shall be those that render the unit suitable for a larger household, that is, -or the addition of a bedroom and/or bathroom.

22-131.11. Buyer Income Eligibility.

- a. Buyer income eligibility for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.84, as may be amended and supplemented, Very-low-income ownership units are reserved for households with a household income less than or equal to thirty (30%) percent of regional median income. ~~such that~~ Low-income ownership units shall be reserved for households with a ~~gross~~ household income less than or equal to fifty (50%) percent of regional median income and moderate-income ownership

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- units shall be reserved for households with a ~~gross~~ household income less than or equal to eighty (80%) percent of regional median income.
- b. Notwithstanding the foregoing, however, the administrative agent may, upon approval by the Mayor and Borough Council, ~~and subject to the Court's approval,~~ permit moderate-income purchasers to buy low-income units in housing markets where, as determined by the Division, units are reserved for low-income purchasers, if the administrative agent determines that but there is an insufficient number of eligible low-income purchasers to permit prompt occupancy of the units. All such low-income units to be sold to moderate-income households shall retain the required pricing and pricing restrictions for low-income units. Similarly, the administrative agent may permit low-income purchasers to buy very-low-income units in housing markets where, as determined by the Division, units are reserved for very-low-income purchasers, but there is an insufficient number of very-low-income purchasers to permit prompt occupancy of the units. Again, all such very-low-income units to be sold to low-income households shall retain the required pricing and pricing restrictions for very-low-income units.
- c. A certified household that purchases a restricted ownership unit must occupy it as the certified household's principal residence and shall not lease the unit; provided, however, that the administrative agent may permit the owner of a restricted ownership unit, upon application and a showing of hardship, to lease the restricted unit to another certified household for a period not to exceed one (1) year.
- d. The administrative agent shall certify a household as eligible for a restricted ownership unit when the household is a low-income household or a moderate-income household, as applicable to the unit, and the estimated monthly housing cost for the particular unit (including principal, interest, taxes, homeowner and private mortgage insurance and realistic condominium or homeowner association fees, as applicable) does not exceed thirty-~~three~~-five (35%) percent of the household's eligible monthly income.

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

- a. Prior to incurring any indebtedness to be secured by a restricted ownership unit, the owner shall ~~apply submit~~ to the administrative agent a notice of intent to incur such indebtedness (for example, a home equity loan or solar loan), in such form and with such documentary support as determined by the administrative agent, for a determination in writing that the proposed indebtedness complies with the provisions of this Section, and the administrative agent shall issue such determination prior to the owner incurring such indebtedness.
- b. With the exception of first-original purchase money mortgages, during a control period, neither an owner nor a lender shall at any time cause or permit the total indebtedness secured by a restricted ownership unit to exceed ninety five (95%) percent of the maximum allowable resale price of the unit, as such price is determined by the administrative agent in accordance with N.J.A.C. 5:80-26.76(~~cb~~).

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22-131.13. Capital improvements to ownership units.

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

22-131.14. Control periods for restricted rental units.

- a. Control periods for restricted rental units shall be in accordance with N.J.A.C. 5:80-26.1~~2~~, as may be amended and supplemented, and each restricted rental unit shall remain subject to the requirements of this chapter for a deed-restricted control period of at least thirty (30) years and thereafter until the Borough takes action by ordinance to release the unit from such requirements. Prior to such action, a restricted rental unit shall remain subject to the requirements of N.J.A.C. 5:80-26.1, as may be amended and supplemented. For new projects receiving nine percent low income housing tax credits, a control period of not less than a thirty (30) year compliance period plus a fifteen (15) year extended use period shall be required. The minimum duration of the control period is set forth below. LIHTC units are not governed by the provisions of this section, but rather by the provisions of the State's Qualified Allocation Plan, N.J.A.C. 5:80-33.1 through 33.40.

(1) Forty years for any rental unit created on or after December 20, 2024;

(2) Thirty years for any rental unit in a one-hundred (100%) percent affordable property that, on or after December 20, 2024, elects to extinguish its existing deed restriction to enter into a new deed restriction and commence refinancing and/or rehabilitation for the purpose of preservation;

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- (3) Thirty years for any other rental unit that, on or after December 20, 2024, extends its affordability controls for a new term of affordability, unless the original term of affordability exceeds 30 years, in which case, the minimum control period for the extension is the number of years, not less than 20, that in combination with the original term results in 60 years of affordability;
- (4) Governed by the grant of substantive certification, judgment of compliance, grant agreement, or other contract for any prior round rental unit that was issued its certificate of occupancy before December 20, 2024; and
- ~~(4)~~(5) Governed by the form of UHAC in effect as of December 20, 2004, for any prior round rental unit that was issued its certificate of occupancy between December 20, 2004 and December 20, 2024, and that is not the subject of a grant of substantive certification, judgment of compliance, grant agreement, or other contract.
- b. The control period for the restricted rental unit(s) in a development commences on the first date that a unit is issued a certificate of occupancy following the execution of the deed restriction or, if affordability controls are being extended, on the effective date of the extension. The control period for the restricted rental unit(s) in a development continues until the end date identified in the deed restriction, or until the minimum duration has elapsed if a specific end date cannot be determined according to the terms of the deed restriction. After the end of the control period, each restricted rental unit in the development remains subject to the affordability controls of this subchapter until:
- (1) The occupant household vacates the unit, at which point affordability controls terminate; or
- (2) The occupant household's household income is found to exceed eighty (80%) percent of the regional median income for the relevant household size, after which affordability controls terminate at the later of either the next scheduled lease renewal or in 60 days.
- c. Deeds of all real property that include restricted rental units ~~created or extended pursuant to the existing rules~~ shall contain deed restriction language that conforms with the requirements of this subchapter and is substantially in the form set forth at N.J.A.C. 5:80-26 Appendix E. ~~The deed restriction shall have priority over all mortgages on the property, and the deed restriction shall be filed by the developer or seller with the records office of the County of Somerset. The deed shall also identify each affordable unit by apartment number and/or address and whether that unit is designated as a very low, low or moderate income unit. Neither the unit nor its affordability designation shall change throughout the term of the deed restriction. A copy of the filed document shall be provided to the administrative agent within thirty (30) calendar days of the receipt of a certificate of occupancy. The deed restriction must meet the following requirements:~~
- (1) Is to be read in accordance with the requirements of this subchapter, such that any term that directly conflicts with or circumvents the requirements of this subchapter,

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regardless of intention, is unenforceable, of no legal effect, and contrary to the public policy of the State;

- (2) Is governed by the requirements of this subchapter regardless of the language ultimately utilized in the recorded deed restriction document;
- (3) Is severable, such that invalidation of any provision due to inconsistency with these regulations will not terminate the deed restriction, but, rather, will result in the deed restriction being read to include the provision of these regulations with which the original language was inconsistent;
- (4) Has priority over all mortgages on the property; and
- (5) Must be filed with the records office of the county in which the unit is located by the developer or owner of the restricted rental units, who then must, no later than 30 days after the commencement of the control period, provide to the administrative agent:
- (i) A copy of the filed deed restriction; and
- (ii) Certification by the preparer of the deed restriction that the deed restriction conforms with all requirements of this subchapter, and that the deed restriction language at N.J.A.C. 5:80-26 Appendix E, has been included therein.
- b.d. Failure to record a deed restriction does not, under any circumstances, excuse a property from the requirements of this subchapter. If a development is sold by a developer prior to recording the deed restriction, the buyer is not excused from adhering to the requirements of this subchapter and any recourse shall be to recover from the seller rather than seeking to extinguish any affordability controls of the development. Prior to the issuance of any building permit for the construction/rehabilitation of restricted rental units, the developer/owner and the Borough shall record a preliminary instrument in the form set forth at N.J.A.C. 5:80-26 Appendix P-2, incorporated herein by reference that specifies, at a minimum, the total number of rental units to be constructed/rehabilitated, the number of restricted rental units to be constructed/rehabilitated, the anticipated numbers of restricted rental units that will be very-low-income, low-income, and moderate-income, the address(es) and parcel(s) of the property, and the anticipated timeline for completion, including projected phasing. The preliminary instrument must provide that it will be replaced by the recording of a full deed restriction prior to the issuance of the certificate of occupancy, at which point the preliminary instrument will be extinguished. The full deed restriction must be recorded prior to receiving a certificate of occupancy.
- e.e. A restricted rental unit shall remain subject to the affordability controls of this chapter and N.J.A.C. 5:80-26.1 et seq. despite the occurrence of any of the following events:
1. Sublease or assignment of the lease of the unit;
 2. Sale or other voluntary transfer of the ownership of the unit; or,

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3. The entry and enforcement of any judgment of foreclosure or grant of a deed in lieu of foreclosure on the property containing the unit; or
- ~~3.4. The end of the control period, until the occupant household vacates the unit or is found to be income-ineligible (found to exceed eighty (80%) percent of the regional median income for the relevant household size, after which affordability controls terminate at the later of either the next scheduled lease renewal or in 60 days).-~~

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

- a. A written lease shall be required for all restricted rental units (except for units in assisted living residences), and tenants shall be responsible for security deposits and the full amount of the rent as stated on the lease. Final lease agreements are the responsibility of the landlord and the prospective tenant and all lease provisions must comply with applicable law. The landlord shall provide the administrative agent with sufficient information for preparation of a unit inventory form for entry into the centralized affordable housing unit inventory system. A copy of the current each lease entered into with a certified household for each restricted rental unit shall be provided to the administrative agent within 10 business days after the execution of each lease.
- b. No additional fees, operating costs, or charges shall be added to the approved rent (except, in the case of units in an assisted living residence, to cover the customary charges for food and services) without the express written approval of the administrative agent.
- c. Application fees (including the charge for any credit check) shall not exceed five (5%) percent of the monthly rent of the applicable restricted unit and shall be payable to the administrative agent to be applied to the costs of administering the controls applicable to the unit as set forth in this chapter and N.J.A.C. 5:80-26.1 et seq.
- ~~d. No rent control ordinance or other pricing restriction shall be applicable to either the market units or the affordable units in any development in which at least fifteen (15%) percent of the total number of dwelling units are restricted rental units in compliance with this chapter.~~

22-131.16. Tenant income eligibility.

- a. Tenant income eligibility shall be in accordance with N.J.A.C. 5:80-26.134, as may be amended and supplemented, and shall be determined as follows:
1. Very low-income rental units shall be reserved for households with a ~~gross~~ household income less than or equal to thirty (30%) percent of regional median income.
 2. Low-income rental units shall be reserved for households with a ~~gross~~ household income less than or equal to fifty (50%) percent of regional median income.

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3. Moderate-income rental units shall be reserved for households with a gross household income less than or equal to eighty (80%) percent of regional median income.
- b. The administrative agent shall certify a household as eligible for a restricted rental unit when the household is a very low-income household, low-income household or a moderate-income household, as applicable to the unit, and the rent proposed for the unit does not exceed thirty-five (35%) percent (forty (40%) percent for age-restricted units) of the household's eligible monthly income as determined pursuant to N.J.A.C. 5:80-26.167, as may be amended and supplemented; provided, however, that this limit may be exceeded if one (1) or more of the following circumstances exists:
1. The household currently pays more than thirty-five (35%) percent (forty (40%) percent for households eligible for age-restricted units) of its gross household income for rent, and the proposed rent will reduce its housing costs;
 2. The household has consistently paid more than thirty-five (35%) percent (forty (40%) percent for households eligible for age-restricted units) of eligible monthly income for rent in the past and has proven its ability to pay;
 3. The household is currently in substandard or overcrowded living conditions;
 4. The household documents the existence of assets with which the household proposes to supplement the rent payments; or,
 5. The household documents reliable anticipated third-party assistance from an outside source such as a family member in a form acceptable to the administrative agent and the owner of the unit.
- c. The applicant shall file documentation sufficient to establish the existence of the circumstances in b.1 through 5 above with the administrative agent, who shall counsel the household on budgeting.

22-131.17. Municipal housing liaison.

- a. The Borough shall adopt an ordinance creating the position of municipal housing liaison. Subject to the approval of the Division, the Borough shall appoint a municipal employee by resolution of the governing body or letter from the chief executive, and shall identify the municipal housing liaison by name and title on the municipal website. The Borough shall appoint a specific municipal employee to serve as a municipal housing liaison is responsible for the creation, preservation and administration of the affordable housing programs, affordable units, including affordability controls, the affirmative marketing plan, monitoring and reporting, and, where applicable, supervising any contracted administrative agent to ensure that they execute the practices, procedures, and standards set forth in this subchapter and within N.J.A.C. 5:80-26.1 et seq. The Borough shall adopt an ordinance creating the position of municipal housing liaison. The Borough shall adopt a resolution appointing a municipal housing liaison. The municipal housing liaison shall be appointed by the governing

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~~body and may be a full or part time municipal employee. The municipal housing liaison shall be approved by the court and shall be duly qualified through a training program sponsored by Affordable Housing Professionals of New Jersey successfully complete the Division's Education Program as described at N.J.A.C. 5:99-9 within the timeframes specified by the Division~~ before assuming the duties of municipal housing liaison.

- b. The municipal housing liaison shall be responsible for oversight and administration of the affordable housing program for the Borough, including the following responsibilities which may not be contracted out to the administrative agent:
1. Serving as the Borough's primary point of contact for all inquiries from the State, affordable housing providers, administrative agents and interested households;
 2. Overseeing the ~~M~~monitoring of and reporting on the status of all proposed and completed affordable housing programs and affordable units ~~restricted units~~ in the Borough's Fair Share Plan and ensuring compliance with the requirements of the Amended Fair Housing Act;
 3. Overseeing and monitoring administrative agents within the Borough's jurisdiction to ensure compliance with the UHAC;
 4. Ensuring that an administrative agent is assigned to administer the sales, rentals, re-sales, and re-rentals of all deed-restricted affordable units in the Borough at all times. For units at the end of their deed-restricted control period, an administrative agent shall be available to administer the sale of all properties until such time of the first authorized non-exempt sale after controls on affordability have been in effect on the unit;
 5. Compiling, ~~v~~Verifying, certifying, and submitting providing annual monitoring and reporting information within reports as may be required by the court; the AHMS at such time and in such form as the Division requires. Access to AHMS shall be authorized only by the municipal housing liaison, or their designee, which shall be a municipal employee. Information regarding specific characteristics of municipal affordable housing projects or programs and the resulting unit completions may be entered into AHMS by a contracted entity other than the municipal housing liaison with the written approval of the Borough and pursuant to the oversight of the municipal housing liaison. Monitoring reports shall include the information described at N.J.A.C. 5:99-5.2 and N.J.A.C 5:99-5.3. Monitoring reports for each calendar year shall be in the form of a certification specifying that all information provided in the AHMS is complete, accurate, and current through the most recent calendar year and shall be accompanied by a year-end bank or other financial institution statement that will be used to reconcile municipal reporting. Municipal monitoring information certifications shall be submitted by the municipal housing liaison, or their designee, which shall be a municipal employee, through the AHMS, by February 15 of each year for trust fund activity through December 31 of the previous year;

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- ~~4.6. Listing, on the municipal website, contact information for the administrative agent for each completed project with an affordable component within the Borough;~~
- ~~5.7. Overseeing the Coordinationg of meetings with affordable housing providers, developers, municipal officials, and administrative agents, as needed; and~~
- ~~6.8. Where applicable, providing to an administrative agent a copy of the adopted municipal operating manual(s), housing element and fair share plan, and ordinances relating to the creation and administration of the Borough's affordable housing programs and/or affordable units. Attending continuing education opportunities on affordability controls, compliance monitoring and affirmative marketing at least annually and more often as needed.~~
- ~~7.—~~
- c. ~~The municipal housing liaison may also serve as the administrative agent pursuant to N.J.A.C. 5:99-7 for some or all of the affordable units in the Borough, subject to the submission of qualifications to the Division, successful completion of the Division's Education Program as described at N.J.A.C. 5:99-9, and approval by the Division. These duties of the municipal housing liaison shall be outlined in the municipal ordinance establishing the position of the municipal housing liaison. All applicable tasks not performed by the municipal housing liaison, shall be contracted to an administrative agent pursuant to N.J.A.C. 5:99-7. Subject to the approval of the court, the Borough shall designate one or more administrative agent(s) to administer newly constructed affordable units in accordance with UHAC. An Operating Manual for each affordable housing program shall be provided by the administrative agent(s) to be adopted by resolution of the governing body and subject to approval of the court. The Operating Manual(s) shall be available for public inspection in the office of the Borough Clerk, in the office of the municipal housing liaison, and in the office(s) of the administrative agent(s). The municipal housing liaison shall supervise the contracting administrative agent(s).~~
- e.d. ~~The Division shall monitor the performance of any approved municipal housing liaison and may revoke said approval, should the Division find that the municipal housing liaison has failed to administer the Borough's affordable housing programs and/or affordable units in accordance with the rules of the Division pursuant to N.J.A.C. 5:99-5.6.~~

22-131.18. Administrative agent.

- a. ~~The Borough shall designate or approve, for each affordable housing project or program within its fair share plan, an administrative agent to administer the affordable housing program and/or affordable units in accordance with the requirements of the Amended Fair Housing Act, the Program, this chapter, and the UHAC. The administrative agent shall may be the municipal housing liaison, the RCA administrator, other municipal employee, or a person or entity selected pursuant to the UHAC. ~~an independent entity serving under contract to and reporting to the Borough.~~~~

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~~For new sale and rental developments, all of the fees of the administrative agent shall be paid by the owners of the affordable units for which the services of the administrative agent are required. For resales, single family homeowners and condominium homeowners shall be required to pay three percent of the sales price for services provided by the administrative agent related to the resale of their homes. That fee shall be collected at closing and paid directly to the administrative agent. The administrative agent shall perform the duties and responsibilities of an administrative agent as set forth in UHAC, including those set forth in N.J.A.C. 5:80-26.14, 16 and 18 thereof, which include: Administrative agents shall be approved through the municipal housing liaison (if the prospective administrative agent is an individual other than the current municipal housing liaison), and designation of administrative agents is also subject to approval by the Division.~~

- b. Qualified administrative agents shall have been certified as required pursuant to N.J.S.A. 52:27D-321, shall have evidence of satisfactory completion of the Division's Education Program as described at N.J.A.C. 5:99-9; and shall have submitted all other required information to the Division.
- c. The administrative agent shall perform the duties and responsibilities of an administrative agent as set forth at N.J.A.C. 5:99-7 and set forth in UHAC, and in accordance with the requirements of the Amended Fair Housing Act and the Dispute Resolution Program. The Division and the municipal housing liaison shall monitor the performance of all approved administrative agents for compliance with this chapter. In the event the administrative agent does not administer the Borough's affordable housing program and/or affordable units in accordance with the certificate of compliance, municipal ordinance, or the Division's rules, the Division may revoke its approval and/or require the Borough to retain a different administrative agent. The Division reserves the right to revoke approval of an administrative agent for other compelling circumstances.
- d. The primary responsibility of the administrative agent is to ensure that the restricted units under administration are sold or rented, as applicable, only to very-low, low-, and moderate-income households in accordance with the provisions of the UHAC. The administrative agent is also responsible for the following:
1. Affirmative marketing:
 - a) Conducting an outreach process to affirmatively market affordable housing units in accordance with the Borough's affirmative marketing plan and the provisions of N.J.A.C. 5:80-26.16~~5~~; and,
 - b) Designate an experienced staff person to provide~~ing~~ counseling or contracting to provide counseling services to low- and moderate-income applicants on subjects such as budgeting, credit issues, mortgage qualification, rental lease requirements, and landlord/tenant law.
 2. Household certification:

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- a) Soliciting, scheduling, conducting and following up on applications and/or 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~~household;
 - c) Providing written notification to each applicant as to the determination of eligibility or non-eligibility;
 - 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 Appendices 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 a random selection process as provided in the affirmative marketing plan of the Borough when referring households for certification to affordable units. It is noted that supportive housing units, including group homes, must also comply with the selection processes of their respective sponsoring programs, where applicable.
 - g) Notifying the following entities of the availability of affordable housing units in the Borough of North Plainfield: Fair Share Housing Center, the New Jersey State Conference of the NAACP, the Latino Action Network, the Supportive Housing Association, and the New Jersey Housing Resource Center.
 - g)h) Subject to the approval of the municipal housing liaison, administrative agents may grant a waiver of the income qualification requirement for units where a buyer has not been identified for an extended period of time and where the administrative agent has developed a set of criteria to determine that a waiver is necessary due to a lack of qualified applicants. This waiver shall not change the deed restriction in any way on the unit and the next sale shall be conducted according to the applicable rules.
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 recapture mortgage and note, as appropriate;
 - c) Subject to prior written approval from the municipal housing liaison, ~~E~~nsuring that the removal of the deed restrictions and cancellation of the mortgages ~~note~~ are effectuated and properly filed with the Somerset County Register of Deeds

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or County Clerk's office after the termination of the affordability controls for each restricted unit as set forth in N.J.A.C. 5:80-26.1 et seq;

d) Communicating with lenders regarding foreclosures; and

e) Ensuring the issuance of continuing certificates of occupancy or certifications from municipal building inspectors, pursuant to N.J.A.C. 5:80-26.110.

e)f) Exercising appropriate authority to discharge and release any or all instruments, as set forth in the UHAC appendices establishing affordability controls;

4. Resales and rentals:

a) Instituting and maintaining an effective means of communicating information between owners of affordable units and the administrative agent regarding the availability of their restricted units for resale or rental; and,

b) Instituting, ~~and~~ maintaining, and documenting an effective means of communicating information to low- and moderate-income households regarding the availability of restricted units for resale or re-rental, inclusive of listings on the New Jersey Housing Resource Center pursuant to N.J.S.A. 52:27D-321.6;-

b)c) Sending annual mailings to owners as prescribed for in the UHAC at N.J.A.C. 5:80-26.19;

5. Processing requests from unit owners:

a) Reviewing and approving requests for determination from owners of restricted units who wish to take out home equity loans or refinance during the term of their ownership that the amount of indebtedness to be incurred will not violate the terms of this Chapter;

b) Reviewing and approving requests to increase the maximum sales prices from owners of restricted units who wish to make capital improvements to the units that would affect the selling price, such authorizations to be limited to those improvements resulting in additional bedrooms or bathrooms and the depreciated cost of central air conditioning systems installed subsequent to the initial sale of the unit;

c) Notifying the Borough of an owner's intent to sell a restricted 95/5 unit, as defined in the UHAC at N.J.A.C. 5:80-26.2; and,

d) Making determinations on requests by owners of restricted units for hardship waivers.

6. Enforcement:

a) Securing annually from the Borough a list of all affordable housing units for which tax bills are mailed to absentee owners, and notifying all such owners that they must either move back to their unit or sell it;

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- 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 acknowledgement of the requirement that no restricted unit can be offered, or in any other way committed, to any person, other than a household duly certified to the unit by the administrative agent;
- ~~e) Posting annually in all rental properties, including two (2) family homes, of a notice as to the maximum permitted rent together with the telephone number of the administrative agent where complaints of excess rent or other charges can be made;~~
- ~~d)c) Sending annual mailings to all owners of affordable dwelling units, reminding them of the notices and requirements outlined in N.J.A.C. 5:80-26.198(d)4;~~
- ~~e)d) Establishing a program for diverting unlawful rent payments to the Borough's affordable housing trust fund; and,~~
- ~~f)e) Creating and publishing a written operating manual as set forth at N.J.A.C. 5:99-7.2 in plain English and in such other languages as may be appropriate to serving the respective client base for each affordable housing program ~~administered by the administrative agent, to be approved by the municipal housing liaison. The operating manual, administered by the administrative agent and to be approved by the Mayor and Borough Council~~ and the Court, setting shall set forth procedures for administering the affordability controls, including procedures for long-term control of restricted units; for enforcing the covenants set forth in the UHAC appendices, consistent with the provisions at N.J.A.C. 5:80-26.19; and for releasing restricted units promptly at the conclusion of applicable control periods. The operating manual shall have a separate and distinct chapter or section setting forth the process for identifying applicant households seeking certification to restricted units, for reviewing applicant household eligibility, and for certifying applicant households in accordance with the household certification and referral requirements set forth at N.J.A.C. 5:80-26.17. -~~
7. Additional responsibilities:
- a) The administrative agent shall have the authority to take all actions necessary and appropriate, as permitted by law, to carry out its responsibilities as set forth in this chapter, N.J.A.C. 5:99-7, and N.J.A.C. 5:80-26.1 et seq hereunder.
- b) The administrative agent shall prepare annual monitoring ~~reports~~ for submission to the municipal housing liaison and the Division by February 15 of each calendar year, including a detailed description of completed units and any other information necessary for the Borough to produce its status report as required pursuant to N.J.S.A. 52:27D-329.4 ~~in time to meet any monitoring requirements and deadlines imposed by the court.~~

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- c) The administrative agent shall attend continuing education sessions on affordability controls, compliance monitoring, and affirmative marketing at least annually and more often as needed.

22-131.19. Affirmative marketing requirements.

- a. The Borough shall adopt by resolution an affirmative marketing plan, subject to ~~approval review by the Division of the court~~, that is compliant with N.J.A.C. 5:80-26.165, as may be amended and supplemented.
- b. The affirmative marketing ~~plan process~~ is a regional marketing strategy designed to attract buyers and/or renters of all majority and minority groups, regardless of race, creed, color, national origin, English-speaking ability, ancestry, marital or familial status, gender, affectional or sexual orientation, disability, age (except for "housing for older persons" as defined at N.J.S.A. 10:5.1 et seq. and age-restricted units as permitted by 42 U.S.C. § 3601 et seq.), ~~or~~ number of children, source of lawful income, or any other characteristic described in the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 through 5.50, to housing units which are being marketed by a developer, sponsor or owner of affordable housing. The affirmative marketing ~~plan process~~ is intended to target those potentially eligible persons who are least likely to apply for affordable units in that region. In addition, the affirmative marketing plan shall maintain certain notification requirements. It is a continuing program that directs marketing activities toward Housing Region 3 and is required to be followed throughout the period of restriction.
- c. The affirmative marketing plan shall provide a regional preference for all households that live and/or work in Housing Region 3, comprised of Hunterdon, Middlesex and Somerset Counties.
- d. The Borough has the ultimate responsibility for adopting the affirmative marketing plan and for the proper administration of the affirmative marketing program, including initial sales and rentals and resales and re-rentals. The administrative agent designated by the Borough shall implement the affirmative marketing plan to assure the affirmative marketing of all affordable units, including accepting applications and maintaining a list of applicants for each affordable development. The administrative agent shall document and report the affirmative marketing plan for the Borough and the affirmative marketing activities undertaken for each of the units within their purview to the municipal housing liaison, who shall ensure that developers and administrative agents are marketing units in accordance with the provisions in this section. The marketing of restricted units must be consistent with the affirmative marketing plan adopted by the Borough. Unless stated otherwise, supportive housing units, including group homes, must comply with the affirmative marketing requirements of their respective sponsoring programs, where applicable.
- e. In implementing the affirmative marketing plan, the administrative agent shall designate an experienced staff person to provide a list of counseling services to low-

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- and moderate-income applicants on subjects such as budgeting, credit issues, mortgage qualification, rental lease requirements, and landlord/tenant law. Implementation of the affirmative marketing plan by the administrative agent shall also include all other required provisions set forth at N.J.A.C. 5:80-26.16(f).
- f. The affirmative marketing plan shall contain all the components (i.e. housing project information, eligibility/selection criteria, strategies and mediums of advertising, timelines) required as set forth within N.J.A.C. 5:80-26.16, subsections (d) and (e) in particular~~describe the media to be used in advertising and publicizing the availability of housing~~. In implementing the affirmative marketing plan, the administrative agent shall consider the use of language translations where appropriate.
- g. The affirmative marketing process for available affordable units shall begin at least four (4) months (120 calendar days) prior to the expected date of occupancy and may begin before construction commences. All affirmative marketing advertising and outreach activities utilized must be employed at the start of the marketing program.
- h. Applications for affordable housing shall be available in several locations, including, at a minimum, the County Administration Building and/or the County Library for each county within the housing region; the municipal administration building and the municipal library in the Borough ~~in which the units are located~~; and, the developer's ~~rental~~ office. The Borough shall post the application links and/or notices of affordable housing either directly on the home page of the Borough's official website or on a landing page directly, clearly, and conspicuously linked to from the home page of the Borough's official website. Pre-applications shall be emailed or mailed to prospective applicants upon request.
- i. In addition to other affirmative marketing strategies, the Administrative Agent shall provide specific notice of the availability of affordable housing units in North Plainfield, and copies of the applications forms, to the following entities: Fair Share Housing Center, the New Jersey State Conference of the NAACP, the Latino Action Network, the Supportive Housing Association; and, the New Jersey Housing Resource Center.
- j. The costs of advertising and affirmative marketing of the affordable units shall be the responsibility of the developer, sponsor or owner, which shall be a condition of approval for any such affordable housing application before the Borough's Planning/Zoning Boards.

22-131.20. Enforcement of affordable housing regulations.

- a. Upon the occurrence of a breach of any of the regulations governing the affordable unit by an owner, developer or tenant~~s~~; the Borough, administrative agent, and the State shall have all remedies provided at law or equity, including but not limited to forfeiture, foreclosure, tenant eviction, a requirement for household recertification, acceleration of all sums due under a mortgage, recuperation of any funds from a sale in violation of the regulations, divestment of rent proceeds from illegal rentals, injunctive relief to

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prevent further violation of the regulations, entry on the premises, and specific performance.

- b. It is the responsibility of the municipal housing liaison and the administrative agent(s) to ensure that affordable housing units are administered properly. All affordable units must be occupied within a reasonable amount of time and be re-leased within a reasonable amount of time upon the vacating of the unit by a tenant. If an administrative agent or municipal housing liaison becomes aware of or suspects that a developer, landlord, or property manager has not complied with these regulations, it shall report this activity to the Division. The Division must notify the developer, landlord, or property manager, in writing, of any violation of these regulations and provide a 30-day cure period. If, after the 30-day cure period, the developer, landlord, or property manager remains in violation of any terms of this subchapter, including by keeping a unit vacant, the developer, landlord, or property manager may be fined up to the amount required to construct a comparable affordable unit of the same size and the deed-restricted control period will be extended for the length of the time the unit was out of compliance, in addition to the remedies provided for in this section. For the purposes of this subsection, a reasonable amount of time shall presumptively be 60 days, unless a longer period of time is required due to demonstrable market conditions and/or failure of the municipal housing liaison or the administrative agent to refer a certified tenant. After providing written notice of a violation to an owner, developer or tenant of a low or moderate income unit and advising the owner, developer or tenant of the penalties for such violations, the Borough may take the following action(s) against the owner, developer or tenant for any violation that remains uncured for a period of sixty (60) calendar days after service of the written notice:

- ~~b. _____~~
- ~~c. The Borough may file a court action pursuant to N.J.S.A. 2A:58-11, alleging a violation or violations of the regulations governing the affordable housing unit. If the owner, developer or tenant is adjudged by the court to have violated any provision of the regulations governing affordable housing units the owner, developer or tenant shall be subject to one or more of the following penalties, at the discretion of the court:~~
- ~~d. A fine of not more than five hundred (\$500.00) dollars per day or imprisonment for a period not to exceed ninety (90) days, or both, provided that each and every day that the violation continues or exists shall be considered a separate and specific violation of these provisions and not a continuation of the initial offense;~~
- ~~e. In the case of an owner who has rented a low or moderate income unit in violation of the regulations governing affordable housing units, payment into the Borough affordable housing trust fund of the gross amount of rent illegally collected; and,~~
- ~~f. In the case of an owner who has rented a low or moderate income unit in violation of the regulations governing affordable housing units, payment of an innocent tenant's reasonable relocation costs, as determined by the court.~~
- ~~g. The Borough may file a court action in the Superior Court seeking a judgment that would result in the termination of the owner's equity or other interest in the unit, in the nature of a mortgage~~

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~~foreclosure. Any such judgment shall be enforceable as if the same were a judgment of default of the first purchase money mortgage and shall constitute a lien against the low- or moderate- income unit.~~

~~h. The judgment shall be enforceable, at the option of the Borough, by means of an execution sale by the sheriff, at which time the low- and moderate- income unit of the violating owner shall be sold at a sale price which is not less than the amount necessary to fully satisfy and pay off any first purchase money mortgage and prior liens and the costs of the enforcement proceedings incurred by the Borough, including attorney's fees. The violating owner shall have his right to possession terminated as well as his title conveyed pursuant to the sheriff's sale.~~

~~i. The proceeds of the sheriff's sale shall first be applied to satisfy the first purchase money mortgage lien and any prior liens upon the low- and moderate- income unit. The excess, if any, shall be applied to reimburse the Borough for any and all costs and expenses incurred in connection with either the court action resulting in the judgment of violation or the sheriff's sale. In the event that the proceeds from the sheriff's sale are insufficient to reimburse the Borough in full as aforesaid, the violating owner shall be personally responsible for the full extent of such deficiency, in addition to any and all costs incurred by the Borough in connection with collecting such deficiency. In the event that a surplus remains after satisfying all of the above, such surplus, if any, shall be placed in escrow by the Borough for the owner and shall be held in such escrow for a maximum period of two (2) years or until such earlier time as the owner shall make a claim with the Borough for such. Failure of the owner to claim such balance within the two (2)- year period shall automatically result in a forfeiture of such balance to the Borough. Any interest accrued or earned on such balance while being held in escrow shall belong to and shall be paid to the Borough, whether such balance shall be paid to the owner or forfeited to the Borough.~~

~~j. Foreclosure by the Borough due to violation of the regulations governing affordable housing units shall not extinguish the restrictions of the regulations governing affordable housing units as the same apply to the low- and moderate- income unit. Title shall be conveyed to the purchaser at the Sheriff's sale, subject to the restrictions and provisions of the regulations governing the affordable housing unit. The owner determined to be in violation of the provisions of this plan and from whom title and possession were taken by means of the Sheriff's sale shall not be entitled to any right of redemption.~~

~~k. If there are no bidders at the Sheriff's sale, or if insufficient amounts are bid to satisfy the first purchase money mortgage and any prior liens, the Borough may acquire title to the low- and moderate- income unit by satisfying the first purchase money mortgage and any prior liens and crediting the violating owner with an amount equal to the difference between the first purchase money mortgage and any prior liens and costs of the enforcement proceedings, including legal fees and the maximum resale price for which the low- and moderate- income unit could have been sold under the terms of the regulations governing affordable housing units. This excess shall be treated in the same manner as the excess which would have been realized from an actual sale as previously described.~~

~~l. Failure of the low- and moderate- income unit to be either sold at the Sheriff's sale or acquired by the Borough shall obligate the owner to accept an offer to purchase from any qualified purchaser which may be referred to the owner by the Borough, with such offer to purchase being equal to~~

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~~the maximum resale price of the low- and moderate-income unit as permitted by the regulations governing affordable housing units.~~

~~m. The owner shall remain fully obligated, responsible and liable for complying with the terms and restrictions of governing affordable housing units until such time as title is conveyed from the owner.~~

22-131.21. Appeals.

Appeals from all decisions of an administrative agent appointed pursuant to this Chapter and N.J.A.C. 5:80-26.1 et seq. shall be filed in writing with the municipal housing liaison~~court~~. A decision by the municipal housing liaison may be appealed to the Division. A written decision of the Division Director upholding, modifying, or reversing an administrative agent's decision is a final administrative action.

22-132 DEVELOPMENT FEES.**22-132.1 Purpose.**

- a. In Holmdel Builder's Association v. Holmdel Borough 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 then functioning Council on Affordable Housing's (COAH's) adoption of rules.
- b. Pursuant to P.L. 2008, c. 46, § 8 (N.J.S.A. 52:27D-329.2)~~and the Statewide Non-Residential Development Fee Act (N.J.S.A. 40:55D-8.1 through 40:55D-8.7)~~, COAH ~~is was~~ authorized to adopt and promulgate regulations necessary for the establishment, implementation, review, monitoring and enforcement of municipal affordable housing trust funds and corresponding spending plans. Municipalities that ~~are were~~ under the jurisdiction of the Council or court of competent jurisdiction and ~~have had~~ a COAH-approved spending plan ~~may were able to~~ retain fees collected from nonresidential development.
- c. In Re: Adoption of N.J.A.C. 5:96 and 5:97 by the New Jersey Council on Affordable Housing, 221 N.J. 1 (2015), also known as the Mount Laurel IV decision, the Supreme Court remanded COAH's duties to the Superior Court. As a result, affordable housing development fee collections and expenditures from the municipal affordable housing trust funds to implement municipal Third Round Fair Share Plans through July 1, 2025 ~~are were~~ under the Court's jurisdiction and ~~are were~~ subject to approval by the Court.
- e-d. Pursuant to P.L.2024, c. 2, the authority relating to rulemaking on the collection of residential and non-residential development fees is appropriately delegated to the Department of Community Affairs, following the abolition of COAH, effective March 20, 2024. As such, municipalities which have obtained or are in the process of seeking compliance certification may retain and expend these development fees.

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~~d.e.~~ This Part 2 establishes standards for the collection, maintenance, and expenditure of development fees pursuant to the regulations set forth in P.L.2024, c. 2, N.J.S.A. 52:27D-301 et seq., N.J.A.C. 5:99-1 et seq., and as previously established COAH's regulations and in accordance with P.L. 2008, c. 46, §§ 8 and 32 through 38. Fees collected pursuant to this article shall be used for the sole purpose of providing low- and moderate-income housing. ~~This article shall be interpreted within the framework of COAH's rules on development fees, codified at N.J.A.C. § 5:93-8.~~

22-132.2 Basic requirements.

This §22-132 shall become effective at such time that the ~~Superior Court~~Dispute Resolution Program approves the Borough's development fee ordinance, as enforced by the Division of Local Planning Services, in accordance with P.L.2024, c. 2, N.J.S.A. 52:27D-301 et seq, and N.J.A.C. 5:93-899-1 et seq.

22-132.3 Definitions.

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

ACT

The Fair Housing Act of 1985, P.L. 1985, c. 222 (N.J.S.A. 52:27D-301 et seq.), as amended through P.L. 2024, c.2.

ADMINISTRATIVE AGENT

The individual or entity designated by the Borough and approved by the Division to administer affordable units in accordance with this chapter, the regulations of the amended Fair Housing Act (P.L.1985, c. (N.J.S.A. 52:27D-301 et seq.)), as designated pursuant to N.J.A.C. 5:99-7, and the Uniform Housing Affordability Controls set forth at N.J.A.C. 5:80-26 et seq.

AFFORDABLE

A sales price or rent level that is within the means of a low- or moderate-income household as defined within N.J.S.A. 52:27D-301 et seq., and, in the case of an ownership unit, that the sales price for the unit conforms to the standards set forth in N.J.A.C. 5:80-26.7, as may be amended and supplemented, and, in the case of a rental unit, that the rent for the unit conforms to the standards set forth in N.J.A.C. 5:80-26.13, as may be amended and supplemented.

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-~~(100%)~~ percent-affordable development.

AFFORDABLE HOUSING PROGRAM(S)

Any method of creating or preserving actual housing units available to low- and moderate-income households or creating a realistic opportunity for the construction of such units,

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

AFFORDABLE HOUSING MONITORING SYSTEM or AHMS

The Department of Community Affairs (DCA) or Department's cloud-based software application, which shall be the central repository for municipalities to use for reporting detailed information regarding affordable housing developments, affordable housing unit completions, and the collection and expenditures of funds deposited into the municipal affordable housing trust fund.

AFFORDABLE UNIT

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

BOROUGH

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

COAH or THE COUNCIL

The New Jersey Council on Affordable Housing, as ~~previously~~ established by the New Jersey Fair Housing Act (N.J.S.A. 52:27D-301 *et seq.*), ~~prior to its abolition effective March 20, 2024 through P.L.2024, c.2.~~

COMPLIANCE CERTIFICATION

The certification issued to a municipality by a county-level housing judge pursuant to section 3 at P.L. 2024, c. 2, that protects the municipality from exclusionary zoning litigation during the current round of present and prospective need and through July 1 of the year the next affordable housing round begins, which is also known as a "judgment of compliance" resulting in an "order for repose." The term "compliance certification" includes a judgment of repose granted in an action filed pursuant to section 13 at P.L. 1985, c. 222 (N.J.S.A. 52:27D-313).

CONSTRUCTION

New construction and additions, but does not include alterations, reconstruction, renovations, conversion, relocation, or repairs, as those terms are defined in the State Uniform Construction Code promulgated pursuant to the State Uniform Construction Code Act, P.L. 1975, c. 217 (N.J.S.A. 52:27D-119 *et seq.*).

DCA or DEPARTMENT

The State of New Jersey, Department of Community Affairs.

DEVELOPMENT FEES

Funds paid by a developer for the improvement of residential and non-residential property as permitted pursuant to N.J.S.A. 52:27D-329.2 and 40:55D-8.1 through 40:55D-8.7 and N.J.A.C. 5:99-3, property as permitted in N.J.A.C. 5:93-8.

DEVELOPER

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

DISPUTE RESOLUTION PROGRAM

The Affordable Housing Dispute Resolution Program, established pursuant to section 5 of P.L. 2024, c.2 (N.J.S.A. 52:27D-313.2). The Dispute Resolution Program is established within the Executive Branch of the State, for the purpose of resolving disputes associated with the Fair Housing Act with respect to municipalities seeking to obtain a certification of compliance of their adopted Housing Element & Fair Share Plan.

DIVISION

The Division of Local Planning Services within the Department of Community Affairs.

EMERGENT OPPORTUNITY

A circumstance that has arisen whereby affordable housing will be able to be produced through a delivery mechanism not originally contemplated by or included in a fair share plan that has been the subject of a compliance certification.

EQUALIZED ASSESSED VALUE or EAV

The assessed value of a property divided by the current average ratio of assessed to true value for the municipality in which the property is situated, as determined in accordance with §§ 1, 5, and 6 of P.L. 1973, c. 123 (N.J.S.A. 54:1-35a through 54:1-35c). Estimates at the time of issuance of a building permit may be obtained by the Tax Assessor utilizing estimates for construction cost. Final equalized assessed value will be determined at project completion by the Municipal Tax Assessor.

FAIR SHARE OBLIGATION

The total of the present need and prospective need as determined by a court of competent jurisdiction.

GREEN BUILDING STRATEGIES

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

HOUSING PROJECT

A project, or distinct portion of a project, which is designed and intended to provide decent, safe, and sanitary dwellings, apartments, or other living accommodations for persons of low- and moderate-income; such work or undertaking may include buildings, land, equipment, facilities, and other real or personal property for necessary, convenient, or desirable appurtenances, streets, sewers, water service, parks, site preparation, gardening, administrative, community, health, recreational, educational, welfare, or other purposes.

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The term "housing project" may also be applied to the planning of the buildings and improvements, the acquisition of property, the demolition of existing structures, the construction, reconstruction, alteration, and repair of the improvements, and all other work in connection therewith.

MIXED USE DEVELOPMENT

Any development that includes both a non-residential development component and a residential development component, and shall include developments for which: (1) there is a common developer for both the residential development component and the non-residential development component, provided that for purposes of this definition, multiple persons and entities may be considered a common developer if there is a contractual relationship among them obligating each entity to develop at least a portion of the residential or non-residential development, or both, or otherwise to contribute resources to the development; and (2) the residential and non-residential developments are located on the same lot or adjoining lots, including, but not limited to, lots separated by a street, a river, or another geographical feature.

MUNICIPAL AFFORDABLE HOUSING TRUST FUND

A separate, interest-bearing account held by a municipality for the deposit of development fees, payments in lieu of constructing affordable units on sites zoned for affordable housing, barrier-free escrow funds, recapture funds, proceeds from the sale of affordable units, rental income, repayments from affordable housing program loans, enforcement fines, unexpended RCA funds remaining from a completed RCA project, application fees, and any other funds collected by the municipality in connection with its affordable housing programs, which shall be used to address municipal low- and moderate-income housing obligations within the time frames established by the Legislature and this chapter.

NEW JERSEY AFFORDABLE HOUSING TRUST FUND

An account established pursuant to N.J.S.A. 52:27D-320.

NON-RESIDENTIAL DEVELOPMENT

1. Any building or structure, or portion thereof, including, but not limited to, any appurtenant improvements, which is designated to a use group other than a residential use group according to the State Uniform Construction Code, N.J.A.C. 5:23, promulgated to effectuate the State Uniform Construction Code Act, N.J.S.A. 52:27D-119 et seq., including any subsequent amendments or revisions thereto;
2. Hotels, motels, vacation timeshares, and child-care facilities; and
3. The entirety of all continuing care facilities within a continuing care retirement community which is subject to the Continuing Care Retirement Community Regulation and Financial Disclosure Act, N.J.S.A. 52:27D-330 et seq.

NON-RESIDENTIAL DEVELOPMENT FEE

The fee authorized to be imposed pursuant to the Statewide Non-Residential Development Fee Act (N.J.S.A. 40:55D-8.1 through 40:55D-8.7.)

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PAYMENT IN LIEU OF CONSTRUCTING AFFORDABLE UNITS — The payment of funds to the municipality by a developer when affordable units are not produced on a site zoned for an inclusionary development.

REHABILITATION

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

RESIDENTIAL DEVELOPMENT FEE

Money paid by a developer for the improvement of residential property as permitted pursuant to N.J.S.A. 52:27D-329.2 and N.J.A.C. 5:99-3.2.

SPENDING PLAN

A plan to predict funds that will be paid into a municipality's affordable housing trust fund and to allocate how those funds will be spent to advance the interest of low and moderate income households subject to limitations required by law.

The definitions in the Uniform Housing Affordability Controls (UHAC) at N.J.A.C 5:80-26.2 and N.J.A.C. 5:99 shall be applicable where a term is not defined. In the event of a discrepancy between a definition in this section and UHAC and N.J.A.C. 5:99, the current UHAC or N.J.A.C. 5:99 definition shall be applicable.

22-132.4 Residential development fees.

Development fees assessed on new construction shall be based on the equalized assessed value of land and improvements. Development fees assessed on additions and alterations shall be based only on the increase in equalized assessed value that results from the addition or alteration, the expansion, change to a more intense use, or replacement.

- a. Imposed fees.
 1. Within all zone districts, residential developers, except for developers of the types of development specifically exempted below at §22-131.25b, shall pay a fee of one and one-half (1.5%) percent of the equalized assessed value for residential development, provided no increased density is permitted.
 2. When an increase in residential density pursuant to N.J.S.A. 40:55D-70d(5) (known as a "d" variance) has been permitted, developers shall be required to pay a development fee of six (6%) percent of the equalized assessed value for each additional unit that may be realized. However, if the zoning on a site has changed during the two (2)-year period preceding the filing of such a variance application, the base density for the purposes of calculating the bonus development fee shall be the highest density permitted by right during the two (2)-year period preceding the filing of the variance application.

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- b. Eligible exactions, ineligible exactions and exemptions for residential development.
1. Affordable housing developments, affordable housing developments where the affordable units are being provided elsewhere in the Borough, and developments where the developer has made a payment in lieu of on-site construction for all the units in the project shall be exempt from residential development fees. All other forms of new construction shall be subject to development fees unless exempted below.
 - ~~2. Developers of low and moderate income units shall be exempt from paying development fees.~~
 - ~~3.2.~~ 2. Developments that have received preliminary or final approval prior to the effective date of the Borough's amended development fee ordinance shall be subject to the law in effect at the time of such approval, unless the developer seeks a substantial change in the approval.
 - ~~4.3.~~ 3. All single-family residential additions, renovations and accessory structures shall be exempt; however, all new residential dwelling units shall be subject to a development fee.
 - ~~5.4.~~ 4. All multi-family additions, renovations and accessory structures not requiring site plan approval shall be exempt; however, all new residential dwelling units shall be subject to a development fee.
 - ~~5.~~ 5. ~~Homes Residential structures demolished and~~ replaced as a result of a natural disaster (such as fire or flood) or catastrophe shall be exempted from the payment of a residential development fee, even if the new structure has an increased EAV as compared to the previous structure.
 - ~~6.~~ 6. Non-profit organizations that have received tax exempt status pursuant to the Internal Revenue Code, providing current evidence of that status is submitted to the municipal clerk, together with a certification that services of the organization are provided at reduced rates to those who establish an inability to pay existing charges, shall be exempted from paying a development fee; and
 - ~~6.7.~~ 7. Federal, State, county, and local governments shall be exempt from paying a development fee.

22-132.5 Nonresidential development fees.

The Borough shall impose, collect, retain, and expend fees collected from non-residential development in accordance with the Statewide Non-Residential Development Fee Act, N.J.S.A. 40:55D-8.1 through 40:55D-8.7 and this chapter.

- a. Imposed fees.
1. Within all zoning districts, nonresidential developers, except for developers of the types of development specifically exempted, shall pay a fee equal to two

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- and one-half (2.5%) percent of the equalized assessed value of the land and improvements, for all new nonresidential construction on an unimproved lot or lots.
2. Nonresidential developers, except for developers of the types of development specifically exempted, shall also pay a fee equal to two and one-half (2.5%) percent of the increase in equalized assessed value resulting from any additions to existing structures to be used for nonresidential purposes.
 3. Development fees shall be imposed and collected when an existing structure is demolished and replaced. The development fee of two and one-half (2.5%) percent shall be calculated on the difference between the equalized assessed value of the preexisting land and improvement and the equalized assessed value of the newly improved structure, i.e., land and improvement at the time final certificate of occupancy is issued. If the calculation required under this section results in a negative number, the nonresidential development fee shall be zero (0).
 4. Non-residential construction connected with the relocation of the facilities of a for-profit hospital shall be subject to the fee authorized to be imposed pursuant to this section to the extent of the increase in equalized assessed valuation.
 5. In the event of any conflict between this ordinance and the Statewide Non-Residential Development Fee Act (SNDFA), the SNDFA shall apply.
- b. Eligible exactions, ineligible exactions and exemptions for nonresidential development.
1. The nonresidential portion of a mixed-use inclusionary or market rate development shall be subject to the two and one-half (2.5%) percent development fee, subject to the provisions at N.J.S.A. 52:27D-329.1 et seq., unless otherwise exempted below.
 2. The two and one-half (2.5%) percent fee shall not apply to an increase in equalized assessed value resulting from alterations, change in use within existing footprint, reconstruction, renovations and repairs.
 3. ~~The two and one-half (2.5%) percent fee shall not apply to developers of any not for profit use; federal, state and municipal government uses; churches and other places of worship; and public schools.~~ All non-residential construction of buildings or structures on property used by churches, synagogues, mosques, and other houses of worship, and property used for educational purposes, that are tax-exempt pursuant to N.J.S.A. 54:4-3.6, shall be exempt from the imposition of a non-residential development fee pursuant to this section, provided that the property continues to maintain its tax exempt status pursuant to that statute for a period of at least three years from the date of issuance of the certificate of occupancy.

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4. ~~Nonresidential developments shall be exempt from the payment of nonresidential development fees in accordance with the exemptions required pursuant to P.L. 2008, c. 46, as specified in the Form N-RDF "State of New Jersey Non-Residential Development Certification/Exemption" form. Any exemption claimed by a developer shall be substantiated by that developer.~~ Parking lots and parking structures, regardless of whether the parking lot or parking structure is constructed in conjunction with a non-residential development, or whether the parking lot is developed as an independent non-residential development;
5. Any non-residential development that is an amenity to be made available to the public, including, but not limited to, recreational facilities, community centers, and senior centers that are developed in conjunction with, or funded by, a non-residential developer;
6. Non-residential construction resulting from a relocation of, or an on-site improvement to, a nonprofit hospital or a nursing home facility;
7. Projects that are located within a specifically delineated urban transit hub, as defined pursuant to N.J.S.A. 34:1B-208;
8. Projects that are located within an eligible municipality, as defined pursuant to N.J.S.A. 34:1B-208, the Urban Transit Hub Tax Credit Act, when a majority of the project is located within a one-half mile radius of the midpoint of a platform area for a light rail system; and
9. Projects determined by the New Jersey Transit Corporation to be consistent with a transit village plan developed by a transit village designated by the New Jersey Department of Transportation.
105. A developer of a nonresidential development exempted from the nonresidential development fee pursuant to P.L. 2024, c. 2 and P.L. 2008, c. 46, as amended and supplemented, shall be subject to it at such time the basis for the exemption no longer applies, and shall make the payment of the nonresidential development fee, in that event, within three (3) years after that event or after the issuance of the final certificate of occupancy of the nonresidential development, whichever is later.
611. If a property which was exempted from the collection of a nonresidential development fee thereafter ceases to be exempt from property taxation, the owner of the property shall remit the fees required pursuant to this section within forty five (45) calendar days of the termination of the property tax exemption. Unpaid nonresidential development fees under these circumstances may be enforceable by the Borough as a lien against the real property of the owner.

22-132.6 Collection of fees.**Deletions shown by ~~strikethrough~~; additions shown by underline**

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- a. Upon the granting of a preliminary, final or other applicable approval for a development, the applicable approving authority shall direct its staff to notify the Construction Official responsible for the issuance of a building permit.
- b. For nonresidential developments only, the developer shall also be provided with a copy of Form N-RDF "State of New Jersey Non-Residential Development Certification/Exemption," to be completed as per the instructions provided. The Developer of a nonresidential development shall complete Form N-RDF as per the instructions provided. The Construction Official shall verify the information submitted by the nonresidential developer as per the instructions provided in the Form N-RDF. The Tax Assessor shall verify exemptions and prepare estimated and final assessments as per the instructions provided in Form N-RDF.
- c. The Construction Official responsible for the issuance of a building permit shall notify the local Tax Assessor of the issuance of the first building permit for a development which is subject to a development fee.
- d. Within ninety (90) calendar days of receipt of that notice, the Municipal Tax Assessor, based on the plans filed, shall provide an estimate of the equalized assessed value of the development.
- e. The Construction Official responsible for the issuance of a final certificate of occupancy notifies the local Assessor of any and all requests for the scheduling of a final inspection on property which is subject to a development fee.
- f. Within ten (10) business days of a request for the scheduling of a final inspection, the Municipal Assessor shall confirm or modify the previously estimated equalized assessed value of the improvements of the development; calculate the development fee; and thereafter notify the developer of the amount of the fee.
- g. Should the Borough fail to determine or notify the developer of the amount of the development fee within ten (10) business days of the request for final inspection, the developer may estimate the amount due and pay that estimated amount consistent with the dispute process set forth in Subsection b of § 37 of P.L. 2008, c. 46 (N.J.S.A. 40:55D-8.6), as amended and supplemented.
- h. The Borough shall collect one-hundred (100%) percent of the development fee for residential and non-residential development at or prior to the issuance of the certificate of occupancy. Fifty percent (50%) of the development fee shall be collected at the time of issuance of the building permit. The remaining portion shall be collected at, or prior to, the issuance of the certificate of occupancy. The developer shall be responsible for paying the difference between the fee calculated at the time of issuance of the building permit and that determined at issuance of the certificate of occupancy. Developers shall be notified of the fee by the Borough, including when payment is required to be made, at the time of land use board approval or application for a construction permit.
- i. Appeal of development fees.
 1. A developer may challenge residential development fees imposed by filing a challenge with the County Board of Taxation. Pending a review and

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determination by the Board, collected fees shall be placed in an interest-bearing escrow account by the Borough. Appeals from a determination of the Board may be made to the tax court in accordance with the provisions of the State Tax Uniform Procedure Law, N.J.S.A. 54:48-1 et seq., within ninety (90) calendar days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.

2. A developer may challenge nonresidential development fees imposed by filing a challenge with the Director of the Division of Taxation. Pending a review and determination by the Director, which shall be made within forty-five (45) days of receipt of the challenge, collected fees shall be placed in an interest-bearing escrow account by Borough. The local code enforcement official shall thereafter issue the certificate of occupancy provided that the construction is otherwise eligible for a certificate of occupancy. Appeals from a determination of the Director may be made to the tax court in accordance with the provisions of the State Tax Uniform Procedure Law, N.J.S.A. 54:48-1 et seq., within ninety (90) calendar days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.

22-132.7 Affordable Housing Trust Fund.

- a. There is hereby created a separate, interest-bearing affordable housing trust fund to be maintained by the Chief Financial Officer for the purpose of depositing development fees collected from residential and nonresidential developers and proceeds from the sale of units with extinguished controls. The Borough shall provide written authorization, in the form of a three-party escrow agreement between the Borough, the bank or other financial institution, and the Division, to permit the Division to direct the disbursement of the funds, as provided for at N.J.A.C. 5:99-5.6, shall be maintained at all times. This authorization shall be submitted to the Division within 21 days from the opening of the trust fund account and/or within 21 days of any change in banks or other financial institutions in which trust funds are deposited. The Borough's affordable housing trust fund shall be used to address municipal low- and moderate-income housing obligations within the time frames established by the Act and N.J.A.C 5:99-1 et seq. All development fees paid by developers pursuant to this chapter shall be deposited into this fund. The Borough shall identify the funds on its monitoring report pursuant to N.J.A.C. 5:99-5 and include a plan for the use of the funds in its spending plan.
- b. The following additional funds shall be deposited in the affordable housing trust fund and shall at all times be identifiable by source and amount:
 1. Payments in lieu of on-site construction of affordable units;
 2. Developer-contributed funds to make ten (10%) percent of the adaptable entrances in a townhouse or other multistory attached development accessible (barrier-free escrow funds);

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3. Rental income from municipally operated units;
 4. Repayments from affordable housing program loans;
 5. Recapture funds;
 6. Proceeds from the sale of affordable units; and,
 7. Enforcement fines
 8. Unexpended RCA funds remaining from a completed RCA project
 97. Any other funds collected in connection with the Borough's affordable housing program.
- a. ~~In the event of a failure by the Borough of North Plainfield to comply with trust fund monitoring and reporting requirements or to submit accurate monitoring reports; or a failure to comply with the conditions of the judgment of compliance or a revocation of the judgment of compliance; or a failure to implement the approved Spending Plan and to expend funds within the applicable required time period as set forth in In re Tp. of Monroe, 442 N.J. Super. 565 (Law Div. 2015) (aff'd 442 N.J. Super. 563); or the expenditure of funds on activities not approved by the Court; or for other good cause demonstrating the unapproved use(s) of funds, the Court may authorize the State of New Jersey, Department of Community Affairs, Division of Local Government Services (LGS), to direct the manner in which the funds in the Affordable Housing Trust Fund shall be expended, provided that all such funds shall, to the extent practicable, be utilized for affordable housing programs within the Borough of North Plainfield, or, if not practicable, then within the County or the Housing Region.~~
- ~~Any party may bring a motion before the Superior Court presenting evidence of such condition(s), and the Court may, after considering the evidence and providing the municipality a reasonable opportunity to respond and/or to remedy the non-compliant condition(s), and upon a finding of continuing and deliberate non-compliance, determine to authorize LGS to direct the expenditure of funds in the Trust Fund. The Court may also impose such other remedies as may be reasonable and appropriate to the circumstances.~~
- b. ~~Interest accrued in the Affordable Housing Trust Fund shall only be used to fund eligible affordable housing activities approved by the Court.~~

22-132.8 Use of funds.

- a. Funds deposited in the housing trust fund may be used for any eligible activity as set forth in the amended Fair Housing Act. (N.J.S.A. 52:27D-301 et seq.), N.J.A.C. 5:99-2, and for any housing activity as approved by Dispute Resolution Program pursuant to N.J.S.A. 52:27D-329.2.a(4) to address the municipal fair share, or by the Division pursuant to N.J.A.C. 5:99-4. The expenditure of all funds shall conform to a spending plan approved by the court. Funds deposited in the housing trust fund may be used for any activity approved by the court to address the Borough's fair share obligation and

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~~may be set up as a grant or revolving loan program. Such activities include, but are not limited to:; preservation or purchase of housing for the purpose of maintaining or implementing affordability controls, rehabilitation, new construction of affordable housing units and related costs, market to affordable, or regional housing partnership programs, conversion of existing nonresidential buildings to create new affordable units, green building strategies designed to be cost saving and in accordance with accepted national or state standards, purchase of land for affordable housing, improvement of land to be used for affordable housing, extensions or improvements of roads and infrastructure to affordable housing sites, financial assistance designed to increase affordability, administration necessary for implementation of the Housing Element and Fair Share Plan, or any other activity as permitted pursuant to N.J.A.C. 5:93-8 and specified in the approved spending plan.~~

1. A rehabilitation program whose purpose is to renovate deficient housing units that are occupied by low- and moderate-income households, in accordance with the New Jersey State Housing Code, N.J.A.C. 5:28, or the requirements of the Rehabilitation Subcode, N.J.A.C. 5:23-6, as applicable, and costs related to the rehabilitation of the unit. Any recaptured funds from a rehabilitation program shall be deposited into the Borough's affordable housing trust fund and subject to the provisions thereof;
2. New construction of affordable housing units and related development costs; in the case of inclusionary developments, eligible costs shall be prorated based on the proportion of affordable housing units included in the development;
3. Creation of a market to affordable program to pay down the cost of unrestricted units and offer them in sound condition, for sale or rent, at affordable prices to low- and moderate-income households to address all or a portion of the affordable housing obligation;
4. Extensions or improvements of roads and infrastructure directly serving affordable housing development sites; in the case of inclusionary developments, costs shall be prorated based on the proportion of affordable housing units included in the development;
5. RCA's, approved prior to July 17, 2008;
6. Acquisition and/or improvement of land to be used for affordable housing;
7. Accessory dwelling units;
8. The extension of expiring controls;
9. The construction of group homes and supportive and special needs housing;
10. Maintenance and repair of affordable housing units;

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11. To defray the costs of structured parking; in the case of inclusionary developments, eligible costs shall be prorated based on the proportion of affordable housing units included in the development;
12. Affordability assistance in accordance with N.J.A.C. 5:99-2.5;
13. Repayment of municipal bonds issued to finance low- and moderate-income housing activity;
14. Any other activity as specified in the approved spending plan or as approved by the Division as an emergent affordable housing opportunity; or
- ~~15.~~ Any other activity approved by the Division.

- b. Until a new spending plan is approved pursuant to the declaratory judgement action filed in accordance with the amended Fair Housing Act, the Borough shall be entitled to expend funds from the housing trust fund in accordance with the approved spending plan dated August 2020 in conjunction with the Borough's application for approval for Round 3 or in accordance with the Fair Housing Act as amended in March 2024. Thereafter, funds shall not be expended to reimburse the Borough for activities that occurred prior to the authorization of the Borough to collect development fees; on attorney fees or court costs to obtain a judgment of compliance or order of repose, including any associated administration costs; on any costs in connection with a challenge to a determination of the Borough's fair share obligation; on any costs in connection with a challenge to the Borough's obligation, housing element, or fair share plan.

~~Development fee revenues shall not be expended to reimburse the Borough for past housing activities.~~

- b.c. At least ~~thirty-twenty~~ (320%) percent of all development fees collected and interest earned shall be used to provide affordability assistance to very-low, low- and moderate-income households in affordable units included in the municipal Fair Share Plan pursuant to N.J.S.A. 52:27D-329.1 and in accordance with N.J.A.C. 5:99-2.5. One-third of the affordability assistance portion of development fees collected shall be used to provide affordability assistance to those households earning thirty (30%) percent or less of median income by region.
 1. Affordability assistance programs may include down payment assistance, security deposit assistance, low-interest loans, rental assistance, assistance with homeowners' association or condominium fees and special assessments, common maintenance expenses, and assistance with emergency repairs and rehabilitation to bring deed-restricted units up to code.
 2. Affordability assistance to households earning thirty (30%) percent or less of regional median income may include offering a subsidy to developers of inclusionary or one-hundred (100%) percent affordable housing developments or buying down the cost of low- or moderate-income units in the ~~third round~~ Municipal Fair Share Plan to make them affordable to households earning thirty

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(30%) percent or less of regional median income, including special needs and supportive housing opportunities. The use of development fees in this manner shall not entitle the Borough to bonus credits except as may otherwise be allowed by applicable precedent~~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.

~~e.d.~~ The Borough may contract with a private or public entity to administer any part of its Housing Element and Fair Share Plan, including the requirement for affordability assistance or any program or activity for which the Borough expends development fee proceeds, in accordance with N.J.S.A. 52:27D-301 et seq. and N.J.A.C. 5:99-1 et seq.~~4-7.~~

~~d.e.~~ No more than twenty (20%) percent of all revenues collected from development fees may shall be expended on administration, in accordance with N.J.A.C. 5:99-2.4, including, but not limited to, salaries and benefits for municipal employees or consultant fees necessary to develop or implement a new construction program, a Housing Element and Fair Share Plan, and/or an affirmative marketing program. In the case of a rehabilitation program, no more than twenty (20%) percent of the revenues collected from development fees shall be expended for such administrative expenses. Administrative funds may be used for income qualification of households, monitoring the turnover of sale and rental units, and compliance with the monitoring requirements for the affordable housing in in compliance with the Housing Element and Fair Share Plan. Legal or other fees related to litigation opposing affordable housing sites or objecting to the Council's regulations and/or action are not eligible uses of the affordable housing trust fund. Administrative expenses may include costs reasonably related to the determination of the fair share obligation and the development of a municipal housing element and fair share plan and may include fees necessary to develop or implement affordable housing programs, an affirmative marketing program, and/or expenses that are reasonably necessary for compliance with the processes of the Program, including, but not limited to, the costs to the Borough of resolving a challenge pursuant to the Program. Administrative expenses may also include costs associated with functions carried out in compliance with UHAC, including activities related to the marketing program and waitlist management, administering the placement of occupants in housing units, income qualification of households, monitoring the turnover of sale and rental units, preserving existing affordable housing, and compliance with the Division's monitoring requirements. The proportion of a municipal employee's salary related to the MHL or RCA administrator functions and fees for required educational programs, may be paid as an administrative expense from the municipal affordable housing trust fund.

22-132.9 Monitoring.**Deletions shown by ~~strikethrough~~; additions shown by underline**

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~~North Plainfield shall comply with the reporting requirements set forth in N.J.S.A. 52:27D-329.2, N.J.S.A. 52:27D-329.4. and as set forth at N.J.A.C. 5:99-5. On or about December 15th of each year through 2025~~2035~~, the Borough shall provide annual reporting of trust fund activity to the New Jersey State Department of Community Affairs (“DCA”), COAH, or Local Government Services (“LGS”), or other entity designated by the State of New Jersey, with a copy provided to Fair Share Housing Center and posted on the municipal website, using forms developed for this purpose by the DCA, COAH, or LGS. This reporting shall include an accounting of all housing trust fund activity, including the collection of development fees from residential and nonresidential developers, payments in lieu of constructing affordable units on site, funds from the sale of units with extinguished controls, barrier free escrow funds, rental income, repayments from affordable housing program loans, and any other funds collected in connection with the Borough’s housing program, as well as to the expenditure of revenues and implementation of the plan approved by the court.~~

22-132.10 Ongoing collection of fees.

~~The ability for the Borough to impose, collect and expend development fees shall expire with its judgment of compliance unless the Borough has filed an adopted Housing Element and Fair Share Plan with the court or other appropriate jurisdiction, has filed a Declaratory Judgment action and has received court approval of its development fee ordinance. If the Borough fails to renew its ability to impose and collect development fees prior to the expiration of its Judgment of Compliance and Repose, it may be subject to forfeiture of any or all funds remaining within its municipal trust fund. Any funds so forfeited shall be deposited into the "New Jersey Affordable Housing Trust Fund" established pursuant to Section 20 of P.L. 1985, c. 222 (N.J.S.A. 52:27D-320). The Borough shall not impose a residential development fee on a development that receives preliminary or final site plan approval after the expiration of its Judgment of Compliance and Repose nor shall the Borough retroactively impose a development fee on such a development. The Borough shall not expend development fees after the expiration of its substantive certification or Judgment of Compliance and Repose.~~

~~§ 22-133 — INCLUSIONARY HOUSING REQUIREMENTS FOR REZONING AND VARIANCES.~~

~~Any residential development consisting of six or more dwelling units, at a density above six units per acre, that is permitted pursuant to a variance or rezoning, shall produce low- and moderate-income housing on-site or elsewhere in the Borough. The number of affordable units to be provided shall be equal to 20% of the for sale residential units in the development or 15% for affordable rental units.~~

NOW, THEREFORE, BE IT FURTHER ORDAINED that this Ordinance shall take effect, after final passage, twenty (20) days following action or inaction by the Mayor as provided by law or an override of a mayoral veto by the Borough Council, whichever is applicable and publication in accordance with law, unless a resolution is adopted, pursuant to *N.J.S.A. 40:69A-*

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181(b), declaring an emergency and providing that this Ordinance shall take effect at an earlier date.

INTRODUCED:

PASSED:

PUBLISHED:

ADOPTED:

ROLL CALL:

AYES:

NAYS:

ABSTAIN:

ABSENT:

APPROVED BY THE MAYOR: Yes _____ No _____

The above is a true copy of the Ordinance adopted by the Borough of North Plainfield on _____, 2026

ATTEST:

BOROUGH OF NORTH PLAINFIELD

Michele Irby-Garry
Acting Borough Clerk
Borough of North Plainfield

Frank A. "Skip" Stabile, Jr., Council President

Date signed: _____, 2026

Date signed: _____, 2026

Lawrence LaRonde, Mayor

Date signed: _____, 2026

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