

**AN ORDINANCE AMENDING AND SUPPLEMENTING CHAPTER XXV LAND USE REGULATIONS
OF THE REVISED GENERAL ORDINANCES OF THE TOWNSHIP OF WEST ORANGE TO
IMPLEMENT A SETTLEMENT AGREEMENT WITH FAIR SHARE HOUSING CENTER**

BE IT ORDAINED, by the Township Council of the Township of West Orange, in the County
of Essex, State of New Jersey, as follows:

Section 1. Chapter XXV Land Use Regulations is hereby amended and supplemented
by amending the following sections:

25-18 AFFORDABLE HOUSING; LOW/MODERATE HOUSING PROVISIONS.

25-18.1 Purpose and Applicability.

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

25-18.2 Definitions.

Accessory Apartment shall mean a self-contained residential dwelling unit with a kitchen, sanitary facilities, sleeping quarters and a private entrance, which is created within an existing home, or through the conversion of an existing accessory structure on the same site, or by an addition to an existing home or accessory building, or by the construction of a new accessory structure on the same site.

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

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

Administrative agent shall mean the entity designated by the Township to administer affordable units in accordance with this chapter, the regulations of the Council on Affordable Housing set forth at N.J.A.C. 5:93 et seq., and the Uniform Housing Affordability Controls set forth at N.J.A.C. 5:80-26 et seq..

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

Affordability average shall mean an average of the percentage of median income at which restricted units in an affordable development are affordable to low- and moderate-income households.

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

Affordable development shall mean a housing development all or a portion of which consists of restricted units.

Affordable unit shall mean 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 shall mean the New Jersey Housing and Mortgage Finance Agency established by P.L. 1983, c. 530 (N.J.S.A. 55:14K-1 et seq.) and in, but not of, the DCA.

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

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

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

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

COAH or the Council shall mean the Council on Affordable Housing in, but not of, the DCA, established under the New Jersey Fair Housing Act (N.J.S.A. 52:27D-301 et seq.).

Conversion shall mean the conversion of existing commercial, industrial or residential structures for low and moderate income housing purposes.

Court shall mean the Superior Court of New Jersey, Law Division, Essex County.

DCA shall mean the State of New Jersey Department of Community Affairs.

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

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

Fair Share Round shall mean any one (1) of three (3) periods in time during which the Council established municipal obligations to provide affordable housing and the first round was from 1987-1993 and the second period was from 1993-1997 and the third is for 1999-2018.

HAS shall mean the Housing Affordability Service, formerly known as the "Affordable Housing Management Service," at the New Jersey Housing and Mortgage Finance Agency.

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

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

Low-income household shall mean a household with a total gross annual household income equal to fifty (50%) percent or less of the median income.

Low-income unit shall mean a restricted unit that is affordable to a low-income household.

Median income shall mean the median income by household size for an applicable county, as adopted annually by COAH or a successor entity approved by the Court.

Moderate-income household shall mean a household with a total gross annual household income in excess of fifty (50%) percent but less than eighty (80%) percent of the median income.

Moderate-income unit shall mean a restricted unit that is affordable to a moderate-income household.

MONI shall mean the Agency's Market Oriented Neighborhood Investment Program, as it may be authorized from time to time by the Agency.

95/5 unit shall mean 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 before October 1, 2001.

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

Random selection process shall mean a process by which currently income-eligible households are selected for placement in affordable housing units such that no preference is given to one (1) applicant over another except for purposes of matching household income and size with an appropriately priced and sized affordable unit (e.g., by lottery).

Regional asset limit shall mean the maximum housing value affordable to a four-person household with an income at or above eighty (80%) percent of the regional median as defined by the Council's annually adopted income limits.

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

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

Restricted unit shall mean a dwelling unit, whether a rental unit or ownership unit, that is subject to the affordability controls of N.J.A.C. 5:80-26.1, but does not include a market-rate unit financed under UHROP or MONI.

Township shall mean the Township of West Orange in Essex County, New Jersey.

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

UHROP shall mean the Agency's Urban Homeownership Recovery Program.

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

Very low-income unit shall mean a restricted unit that is affordable to a very low-income household.

Weatherization shall mean 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.

25-18.3 Affordable Housing Program.

The following general guidelines apply to all developments that contain low- and moderate-income units, and any future developments that may occur.

25-18.4 Rehabilitation.

a. *The Rehabilitation Program.*

1. West Orange's rehabilitation program is designed to renovate deficient housing units occupied by low-and moderate-income households and after rehabilitation, these units will comply with the New Jersey State Housing Code pursuant to N.J.A.C. 5:28.
2. West Orange has designated Community Action Services and the Essex County Home Improvement Program as the administrators of the rehabilitation program.
3. Both renter occupied and owner occupied units are eligible for rehabilitation funds.
4. Both renter occupied and owner occupied units must remain affordable to low- and moderate-income households for a period of ten (10) years. For owner occupied units this control period will be enforced with a lien and for renter occupied units the control period will be enforced with a deed restriction.
5. West Orange will dedicate a minimum of ten thousand (\$10,000.00) dollars for units rehabilitated through this program.
6. West Orange has created a rehabilitation manual for this rehabilitation program, which is available for inspection at the West Orange Planning Department.
(Ord. No. 2250-09 § V)

25-18.5 Phasing Schedule for Zoning.

West Orange has adopted redevelopment plans that include affordable housing.

If future zoning is adopted, there will be a set-aside for affordable housing. Payment in lieu of development funds will be used within West Orange for the creation of affordable housing units.

In inclusionary zones, the following schedule shall be followed:

<i>Percentage of Market-Rate Units Completed</i>	<i>Minimum Percentage of Low- and Moderate-Income Units</i>
25	0
25+1	10
50	50
75	75
90	100

25-18.6 New Construction.

a. *Low/Moderate Split and Bedroom Distribution of Affordable Housing Units:*

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

b. *Accessibility Requirements.*

1. The first floor of all restricted townhouse dwelling units and all restricted units in 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 one other dwelling unit shall have the following features:
 - (a) An adaptable toilet and bathing facility on the first floor; and,
 - (b) An adaptable kitchen on the first floor; and,
 - (c) An interior accessible route of travel on the first floor; and,
 - (d) An adaptable room that can be used as a bedroom, with a door or the casing for the installation of a door, on the first floor; and
 - (e) If not all of the foregoing requirements in 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 West Orange has collected funds from the development sufficient to make ten (10%) percent of the adaptable entrances in the development accessible:
 - (1) In the case of a unit or units which are constructed with an adaptable entrance, upon the request of a disabled person who is purchasing or will reside in the dwelling unit, an accessible entrance shall be installed;
 - (2) The builder of the unit or units shall deposit funds, sufficient to adapt ten (10%) percent of the affordable units in the projects which have not been constructed with accessible entrances, with West Orange, for deposit into the municipal affordable housing trust fund;
 - (3) The funds under paragraph (f)(2) above shall be available for the use of West Orange for the purpose of making the adaptable entrance of any 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 affordable project subject to P.L. 2005, c. 350 (N.J.S.A. 52:27D-311a et seq.) shall submit the design with a cost estimate for conversion to West Orange; and
 - (5) Once West Orange has determined that the plans to adapt the entrances of the townhouse or other multistory unit meet the requirements of the Barrier Free Subcode, N.J.A.C. 5:23-7, the West Orange Chief Financial Officer shall ensure that the funds are deposited into that fund.
 - (6) Full compliance with this section shall not be required where an entity can demonstrate that it is site impracticable to meet the requirements. Determinations of site impracticability shall be in compliance with the Barrier Free Subcode, N.J.A.C. 5:23-7.

c. *Maximum Rents and Sales Prices.*

1. In establishing rents and sales prices of affordable housing units, the administrative agent shall follow the procedures set forth in UHAC utilizing the most recently published regional weighted average of the uncapped Section 8 income limits published by HUD and by the Superior Court.
2. The maximum rent for restricted rental units within each affordable development shall be affordable to households earning no more than sixty (60%) percent of median income, and the average rent for restricted rental units shall be affordable to households earning no more than fifty two (52%) percent of median income.
3. The developers and/or municipal sponsors of restricted rental units shall establish at least one (1) rent for each bedroom type for both low-income and moderate-income units, provided that at least thirteen (13%) percent of all low- and moderate-income rental units shall be affordable to very low-income households, earning thirty (30%) percent or less of the regional median household income, with such very low-income units counted toward the low-income housing requirement.
4. The maximum sales price of restricted ownership units within each affordable development shall be affordable to households earning no more than seventy (70%) percent of median income, and each affordable development must achieve an affordability average of fifty five (55%) percent for restricted ownership units; in achieving this affordability average, moderate-income ownership units must be available for at least three different sales prices for each bedroom type, and low-income ownership units must be available for at least two (2) different sales prices for each bedroom type.
5. In determining the initial sales prices and rent levels for compliance with the affordability average requirements for restricted units other than assisted living facilities and age-restricted developments, the following standards shall be used:
 - (a) A studio unit shall be affordable to a one (1)-person household;
 - (b) A one (1)-bedroom unit shall be affordable to a one and one-half (1 ½)-person household;
 - (c) A two (2)-bedroom unit shall be affordable to a three (3)-person household;
 - (d) A three-(3) bedroom unit shall be affordable to a four and one-half (4 ½)-person household; and
 - (e) A four (4)-bedroom unit shall be affordable to a six (6)-person household.
6. In determining the initial sales prices and rents for compliance with the affordability average requirements for restricted units in assisted living facilities and age-restricted developments, the following standards shall be used:
 - (a) A studio shall be affordable to a one (1)-person household;
 - (b) A one (1)-bedroom unit shall be affordable to a one and one-half (1 ½)-person household; and,
 - (c) A two (2)-bedroom unit shall be affordable to a two (2)-person household or to two (2) one (1)-person households.
7. The initial purchase price for all restricted ownership units shall be calculated so that the monthly carrying cost of the unit, including principal and interest (based on a mortgage loan equal to ninety-five (95%) percent of the purchase price and the Federal Reserve H.15 rate of interest), taxes, homeowner and private mortgage insurance and condominium or homeowner association fees do not exceed twenty-eight (28%) percent of the eligible monthly income of the appropriate size household as determined under N.J.A.C. 5:80-26.4, as may be amended and supplemented; provided, however, that the price shall be subject

to the affordability average requirement of N.J.A.C. 5:80-26.3, as may be amended and supplemented.

8. The initial rent for a restricted rental unit shall be calculated so as not to exceed thirty (30%) percent of the eligible monthly income of the appropriate size household, including an allowance for tenant paid utilities, as determined under N.J.A.C. 5:80-26.4, as may be amended and supplemented; provided, however, that the rent shall be subject to the affordability average requirement of N.J.A.C. 5:80-26.3, as may be amended and supplemented.
9. The price of owner-occupied low- and moderate-income units may increase annually based on the percentage increase in the regional median income limit for each housing region. In no event shall the maximum resale price established by the administrative agent be lower than the last recorded purchase price.
10. The rent of low- and moderate-income units may be increased annually based on the permitted percentage increase in the Regional Income Limits chart. This increase shall not exceed nine (9%) percent in any one (1) year. Rents for units constructed pursuant to low- income housing tax credit regulations shall be indexed pursuant to the regulations governing low- income housing tax credits.

25-18.7 Utilities.

- a. Affordable units shall utilize the same type of heating source as market units within the affordable development.
- b. Those tenant-paid utilities that are included in the utility allowance shall be so stated in the lease and shall be consistent with the utility allowance approved by DCA for its Section 8 program.

25-18.8 Occupancy Standards.

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

25-18.9 Control Periods for Restricted Ownership Units and Enforcement Mechanisms.

Control periods for restricted ownership units are pursuant to N.J.A.C. 5:80-26.5 and each restricted ownership unit shall remain subject to the requirements of this ordinance for a period of at least thirty (30) years and thereafter until West Orange takes action by ordinance to release the unit from such requirements. Prior to such action, a restricted ownership unit must remain subject to the requirements of N.J.A.C. 5:80-26.1.

- a. The affordability control period for a restricted ownership unit shall commence on the date the initial certified household takes title to the unit.
- b. Prior to the issuance of the initial certificate of occupancy for a restricted ownership unit and upon each successive sale during the period of restricted ownership, the administrative agent shall determine the restricted price for the unit and shall also determine the non-restricted, fair market value of the unit based on either an appraisal or the unit's equalized assessed value without the restrictions in place.

- a. At the time of the first sale of the unit, the initial purchaser shall execute and deliver to the administrative agent a recapture note obligating the purchaser (as well as the purchaser's heirs, successors and assigns) to repay, upon the first non-exempt sale after the unit's release from the requirements of this section, an amount equal to the difference between the unit's nonrestricted 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.
- b. All conveyances of restricted ownership units shall be made by deeds and restrictive covenants pursuant to N.J.A.C. 5:80-26.1.
- c. The affordability controls set forth in this section shall remain in effect despite the entry and enforcement of any judgment of foreclosure with respect to restricted ownership units.
- d. A restricted ownership unit shall be required to obtain a Continuing Certificate of Occupancy or a certified statement from the Municipal Building Inspector stating that the unit meets all code standards upon the first transfer of title that follows the expiration of the applicable minimum control period provided under N.J.A.C. 5:80-26.5(a).

25-18.10 Price Restrictions for Restricted Ownership Units, Homeowner Association Fees, and Resale Prices.

Price restrictions for restricted ownership units are pursuant to N.J.A.C. 5:80-26.1, including:

- a. The initial purchase price for a restricted ownership unit shall be approved by the administrative agent.
- b. The Administrative Agent shall approve all resale prices, in writing and in advance of the resale, to assure compliance with the foregoing standards.
- c. The master deeds of affordable developments shall provide no distinction between the condominium or homeowner association fees and special assessments paid by low- and moderate-income purchasers and those paid by market purchasers.
- d. The owners of restricted ownership units may apply to the administrative agent to increase the maximum sales price for the unit on the basis of capital improvements. Eligible capital improvements shall be those that render the unit suitable for a larger household or that add an additional bathroom.

25-18.11 Buyer Income Eligibility.

- a. Buyer income eligibility for ownership units is pursuant to N.J.A.C. 5:80-26.1, such that low-income ownership units shall be reserved for households with a gross household income less than or equal to fifty (50%) percent of median income and moderate-income ownership units shall be reserved for households with a gross household income less than eighty (80%) percent of median income.
- b. Notwithstanding the foregoing, however, the administrative agent may, upon approval by the Township Council, and subject to the Court's approval, permit moderate-income purchasers to buy low-income units in housing markets if the administrative agent determines that there is an insufficient number of eligible low-income purchasers to permit prompt occupancy of the units. All such low-income units to be sold to moderate-income households shall retain the required pricing and pricing restrictions for low-income units.
- c. A certified household that purchases a restricted ownership unit must occupy it as the certified household's principal residence and shall not lease the unit; provided, however, that the administrative agent may permit the owner of a restricted ownership unit, upon application and a showing of hardship, to lease the restricted unit to another certified household for a period not to exceed one (1) year.

- d. The Administrative Agent shall certify a household as eligible for a restricted ownership unit when the household is a low-income household or a moderate-income household, as applicable to the unit, and the estimated monthly housing cost for the unit (including principal, interest, taxes, homeowner and private mortgage insurance and condominium or homeowner association fees as applicable) does not exceed thirty-three (33%) percent of the household's eligible monthly income.

25-18.12 Limitations on Indebtedness Secured by Ownership Unit; Subordination.

- a. Prior to incurring any indebtedness to be secured by a restricted ownership unit, the owner shall apply to the administrative agent for a determination in writing that the proposed indebtedness complies with the provisions of this Section, and the administrative agent shall issue such determination prior to the owner incurring such indebtedness.
- b. With the exception of first purchase money mortgages, neither an owner nor a lender shall at any time cause or permit the total indebtedness secured by a restricted ownership unit to exceed ninety five (95%) percent of the maximum allowable resale price of the unit, as such price is determined by the administrative agent in accordance with N.J.A.C. 5:80-26.6(b).

25-18.13 Capital Improvements to Ownership Unit.

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

25-18.14 Control Period for Restricted Rental Units.

Control periods for restricted rental units shall be in accordance with N.J.A.C. 5:80-26.11, and each restricted rental unit shall remain subject to the requirements of this section for a period of at least thirty (30) years and thereafter until West Orange takes action by ordinance to release the unit from such requirements, however, prior to such a municipal election, a restricted rental unit must remain subject to the requirements of N.J.A.C. 5:80-26.11. 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.

- a. Deeds of all real property that include restricted rental units shall contain deed restriction language, the deed restriction shall have priority over all mortgages on the property and the deed restriction shall be filed by the developer or seller with the records office of the county and a copy of the filed document shall be provided to the administrative agent within thirty (30)

days of the receipt of a Certificate of Occupancy. Neither the unit nor its affordability designation shall change throughout the term of the deed restriction.

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

25-18.15 Rent Restrictions for Rental Units; Leases.

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

25-18.16 Tenant Income Eligibility.

Pursuant to N.J.A.C. 5:80-26.13, tenant income eligibility shall be determined as follows:

- a. Low-income rental units shall be reserved for households with a gross household income less than or equal to fifty (50%) percent of median income. Moderate-income rental units shall be reserved for households with a gross household income less than eighty (80%) percent of median income. Very-low-income rental units shall be reserved for households with a gross household income of thirty (30%) percent or less of median income.
- b. The Administrative Agent shall certify a household as eligible for a restricted rental unit when the household is a low-income household or a moderate-income household, as applicable to the unit, and the rent proposed for the unit does not exceed thirty-five (35%) percent (forty (40%) percent for age-restricted units) of the household's eligible monthly income as determined pursuant to N.J.A.C. 5:80-26.16; provided, however, that this limit may be exceeded if one 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 paragraph b. above with the Administrative Agent, who shall counsel the household on budgeting.

25-18.17 Municipal Housing Liaison.

- a. The Court requires West Orange to appoint a specific municipal employee to serve as a Municipal Housing Liaison responsible for administering its affordable housing program, including affordability controls and the Affirmative Marketing Plan, and, where applicable, supervising any Administrative Agent. West Orange adopted an ordinance creating the position of Municipal Housing Liaison. West Orange adopted a resolution on May 23, 2006 appointing a Municipal Housing Liaison. The Municipal Housing Liaison shall be appointed by the Governing Body and may be a full or part time municipal employee.
- b. The Municipal Housing Liaison shall be responsible for oversight and administration of the affordable housing program for West Orange, including the following responsibilities which may not be contracted out, exclusive of paragraph 6 which may be contracted out:
 1. Serving as West Orange's primary point of contact for all inquiries from the State, affordable housing providers, Administrative Agents, and interested households;
 2. Monitoring the status of all restricted units in West Orange's Fair Share Plan;
 3. Compiling, verifying, and submitting annual reports as required;
 4. Coordinating meetings with affordable housing providers and Administrative Agents, as applicable;
 5. Attending continuing education opportunities on affordability controls, compliance monitoring, and affirmative marketing as offered;
 6. If applicable, serving as the Administrative Agent for some or all of the restricted units in West Orange.

West Orange will contract with or authorize a consultant, authority, government or any agency charged by the Governing Body, which entity shall have the responsibility of administering the affordable housing program of West Orange, except for those responsibilities which may not be contracted out as described above. If West Orange will contract with another entity to administer all or any part of the affordable housing program, including the affordability controls and Affirmative Marketing Plan, the Municipal Housing Liaison shall supervise the contracting Administrative Agent.

25-18.18 Administrative Agent for West Orange's Affordable Housing Units.

The affordability controls set forth in this section shall be administered and enforced by the Administrative Agent. The primary responsibility of the Administrative Agent shall be to ensure that the restricted units under administration are sold or rented, as applicable, only to low- and moderate-income households.

- a. The Administrative Agent shall create and shall publish in plain English, and in such other languages as may be appropriate to serving its client base, a written operating manual, setting forth procedures for administering such affordability controls, including procedures for long-term control of restricted units; for enforcing the covenants of N.J.A.C. 5:80-26.18 and for releasing restricted units promptly at the conclusion of applicable control periods. The

Administrative Agent shall have authority to take all actions necessary and appropriate to carrying out its responsibilities hereunder. 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 in N.J.A.C. 5:80-26.16.

- b. The Administrative Agent shall establish and maintain a ready database of applicant households as a referral source for certifications to restricted units, and shall establish written procedures to ensure that selection among applicant households be via the database, and in accordance with a uniformly applied random selection process and all applicable State and Federal laws relating to the confidentiality of applicant records.
- c. The municipality in which restricted units are located shall select one or more Administrative Agents for those units. A municipality itself (through a designated municipal employee, department, board, agency or committee) may elect to serve as the Administrative Agent for some or all restricted units in the municipality, or the municipality may select HAS or an experienced private entity approved by the Court to serve as Administrative Agent for some or all restricted units in the municipality. The foregoing approval by the Court is to be based on the private entity's demonstration of the ability to provide a continuing administrative responsibility for the length of the control period for the restricted units.
- d. The Administrative Agent shall have the authority to discharge and release any or all instruments, as set forth in this section, filed of record to establish affordability controls.

25-18.19 Affirmative Marketing.

The affirmative marketing plan is a regional marketing strategy designed to attract buyers and/or renters of all majority and minority groups, regardless of race, creed, color, national origin, ancestry, marital or familial status, gender, affectional or sexual orientation, disability, age or number of children to housing units which are being marketed by a developer or sponsor of affordable housing. The affirmative marketing plan is also intended to target those potentially eligible persons who are least likely to apply for affordable units in that region. It is a continuing program that directs all marketing activities toward the COAH Housing Region in which the municipality is located and covers the period of deed restriction.

- a. The Administrative Agent shall assure the affirmative marketing of affordable units.
- b. If the municipality does not designate a municipal staff person, it shall contract with other experienced Administrative Agents approved by the Court to administer the affirmative marketing plan. Where a municipality contracts with another Administrative Agent to administer the affirmative marketing plan, the municipality shall appoint a Municipal Housing Liaison who shall supervise the contracting Administrative Agent. In addition, where the contracting Administrative Agent is not responsible for the entire affirmative marketing plan, the municipality shall outline who or what municipal agent is responsible for the remaining portion of the affirmative marketing plan. The municipality has the ultimate responsibility for the proper administration of the affirmative marketing program, including initial sales and rentals and resales and rerentals.
- c. In implementing the affirmative marketing plan, Administrative Agents shall designate an experienced staff person 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.
- d. The affirmative marketing plan shall describe the media to be used in advertising and publicizing the availability of housing. In developing the plan, the Administrative Agent shall consider the use of language translations.

- e. The affirmative marketing process for available affordable units shall begin at least four (4) months prior to expected occupancy.
- f. Applications for affordable housing shall be available in several locations, including, at a minimum, the county administrative building and/or the county library for each county within the housing region; the municipal administrative building(s) and the municipal library in the municipality in which the units are located; and the developer's sales office. Applications shall be mailed to prospective applicants upon request.
- g. The Court shall review and assess the effectiveness of West Orange's affirmative marketing program.

25-18.18 Household Certification and Referral; Related Project Information.

No household may be referred to a restricted unit, or may receive a commitment with respect to a restricted unit, unless that household has received a signed and dated certification and has executed a certificate.

- a. The sources of income considered by the Administrative Agent shall be the types of regular income reported to the Internal Revenue Service and which can be used for mortgage loan approval.
- b. If the applicant household owns a primary residence with no mortgage on the property valued at or above the regional asset limit as published annually, a certificate of eligibility shall be denied unless the applicant's existing monthly housing costs exceed thirty-eight (38%) percent of the household's eligible monthly income.
- c. The Administrative Agent shall employ a random selection process when referring households for certification to affordable units.

25-18.19 Enforcement of Affordable Housing Regulations.

By submitting to the jurisdiction of the Court, a municipality shall be deemed to have delegated to its Administrative Agent the day-to-day responsibility for implementing practices and procedures designed to ensure effective compliance with the controls set forth in this section. The municipality, however, shall retain the ultimate responsibility for ensuring effective compliance with this section.

- a. Administrative Agent practices and procedures shall include, but shall not necessarily be limited to, the following:
 - 1. 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.
 - 2. Requiring that all certified applicants for restricted units execute a certificate substantially in the form, as applicable, of either the ownership or rental certificates.
 - 3. The posting annually in all rental properties, including two-family homes, of a notice as to the maximum permitted rent together with the telephone number of the Administrative Agent where complaints of excess rent can be made.
 - 4. If the unit is owner-occupied, that the unit may be resold only to a household that has been approved in advance and in writing by the Administrative Agent.
 - 5. That no sale of the unit shall be lawful, unless approved in advance and in writing by the Administrative Agent, and that no sale shall be for a consideration greater than regulated maximum permitted resale price, as determined by the Administrative Agent.

6. That no refinancing, equity loan, secured letter of credit, or any other mortgage obligation or other debt secured by the unit may be incurred except as approved in advance and in writing by the Administrative Agent, and that at no time will the Administrative Agent approve any debt, if incurring the debt would make the total of all such debt exceed ninety-five (95%) percent of the then applicable maximum permitted resale price.
7. That the owner of the unit shall at all times maintain the unit as his or her principal place of residence, which shall be defined as residing at the unit at least two hundred sixty (260) days out of each calendar year.
8. That, except as set forth in N.J.A.C. 5:80-26.18(c)4vii, at no time shall the owner of the unit lease or rent the unit to any person or persons, except on a short-term hardship basis, as approved in advance and in writing by the Administrative Agent.
9. That the maximum permitted rent chargeable to affordable tenants is as stated in the notice required to be posted in accordance with N.J.A.C. 5:80-26.18(d)3, a copy of which shall be enclosed, and that copies of all leases for affordable rental units must be submitted annually to the Administrative Agent.
10. No individual or owner shall permit any bank or other lending institution from issuing any loan secured by the real property subject to the affordability controls set forth in this section, if such loan would be in excess of amounts permitted by the restriction documents recorded in the deed or mortgage book in the County in which the property is located.

25-18.20 Appeals.

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

25-18.21 Reporting Requirements.

a. *Trust Fund Activity.*

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

b. *Affordable Housing Activity.*

On the first anniversary of the entry of the order granting West Orange a final judgment of compliance and repose in In re Township of West Orange Compliance with Mount Laurel Third Round Affordable Housing Obligation, and every anniversary thereafter through the end of the repose period, the Township shall provide annual reporting of the status of all affordable housing activity within the Township through posting on the municipal website, with copies provided to Fair Share Housing Center, using forms previously developed for this purpose by

the Council on Affordable Housing or any other forms endorsed by the court-appointed special master and Fair Share Housing Center.

c. *Very Low Income Housing.*

For the review of very low income housing requirements required by N.J.S.A. 52:27D-329.1, within 30 days of the third anniversary of the entry of the order granting West Orange a final judgment of compliance and repose in *In re Township of West Orange Compliance with Mount Laurel Third Round Affordable Housing Obligation*, and every third year thereafter, the Township 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 Township, with copies provided to Fair Share Housing Center, on the issue of whether the Township has complied with its very low-income housing obligation.

25-18.22 Development Fees.

a. *Purpose.*

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

b. *Basic Requirements.*

1. This subsection shall not be effective until approved by the Court pursuant to N.J.A.C. 5:96-5.1.
2. The Township of West Orange shall not spend development fees until the Court has approved a plan for spending such fees in conformance with N.J.A.C. 5:97-8.10 and N.J.A.C. 5:96-5.3.

c. *Definitions.* The following terms, as used in this subsection, shall have the following meanings:

Affordable housing development shall mean 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.

COAH or the *Council* shall mean the New Jersey Council on Affordable Housing established under the Act which had primary jurisdiction for the administration of housing obligations in accordance with sound regional planning consideration in the State.

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

Development fee shall mean money paid by a developer for the improvement of property as permitted in N.J.A.C. 5:97-8.3.

Equalized assessed value shall mean the assessed value of a property divided by the current average ratio of assessed to true value for the municipality in which the property is situated, as determined in accordance with sections 1, 5, and 6 of P.L.1973, c.123 (C.54:1-35a through C.54:1-35c).

Green building strategies shall mean 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.

d. *Residential Development Fees.*

1. *Imposed Fees.*

- (a) Within all residential district(s), residential developers, except for developers of the types of development specifically exempted below, shall pay a fee of one and one-half (1 1/2%) percent of the equalized assessed value for residential development provided no increased density is permitted.
- (b) When an increase in residential density pursuant to N.J.S.A. 40:55D-70d(5) (known as a "d" variance) has been permitted, developers may be required to pay a development fee of 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-year period preceding the filing of such a variance application, the base density for the purposes of calculating the bonus development fee shall be the highest density permitted by right during the two-year period preceding the filing of the variance application.

Example: If an approval allows four (4) units to be constructed on a site that was zoned for two (2) units, the fees could equal one and one-half (1 1/2%) percent of the equalized assessed value on the first two (2) units; and the specified higher percentage up to six (6%) percent of the equalized assessed value for the two (2) additional units, provided zoning on the site has not changed during the two-year period preceding the filing of such a variance application.

2. *Eligible Exactions, Ineligible Exactions and Exemptions for Residential Development.*

- (a) Affordable housing developments and developments where the developer has made a payment in lieu of on-site construction of affordable units shall be exempt from development fees.
- (b) Developers of low- and moderate-income units shall be exempt from paying development fees.

- (c) Developments that have received preliminary or final site plan approval prior to the adoption of a municipal development fee ordinance shall be exempt from development fees, unless the developer seeks a substantial change in the approval. Where a site plan approval does not apply, a zoning and/or building permit shall be synonymous with preliminary or final site plan approval for this purpose. The fee percentage shall be vested on the date that the building permit is issued.
 - (d) 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.
 - (e) 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.
 - (f) Homes replaced as a result of a natural disaster (such as fire or flood) shall be exempted from the payment of a development fee.
- e. *Nonresidential Development Fees.*
- 1. *Imposed Fees.*
 - (a) Within all zoning districts, nonresidential developers, except for developers of the types of development specifically exempted, shall pay a fee equal to two and one-half (2.5%) percent of the equalized assessed value of the land and improvements, for all new nonresidential construction on an unimproved lot or lots.
 - (b) 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.
 - (c) Development fees shall be imposed and collected when an existing structure is demolished and replaced. The development fee of two and one-half percent (2.5%) shall be calculated on the difference between the equalized assessed value of the pre-existing 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 non-residential development fee shall be zero.
 - 2. *Eligible Exactions, Ineligible Exactions and Exemptions for Nonresidential Development.*
 - (a) The nonresidential portion of a mixed-use inclusionary or market rate development shall be subject to the two and one-half (2.5%) percent development fee, unless otherwise exempted below.
 - (b) 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.
 - (c) Nonresidential developments shall be exempt from the payment of non-residential 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.
 - (d) A developer of a nonresidential development exempted from the nonresidential development fee pursuant to P.L. 2008, c.46 shall be subject to it at such time the basis for the exemption no longer applies, and shall make the payment of the nonresidential development fee, in that event, within three (3) years after that event

or after the issuance of the final Certificate of Occupancy of the nonresidential development, whichever is later.

- (e) 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 subsection within forty-five (45) days of the termination of the property tax exemption. Unpaid nonresidential development fees under these circumstances may be enforceable by the Township of West Orange as a lien against the real property of the owner.

f. *Collection Procedures.*

1. 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.
2. 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 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.
3. 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.
4. Within ninety (90) 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.
5. 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.
6. 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.
7. Should the Township of West Orange 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 section 37 of P.L. 2008, c.46 (C.40:55D-8.6).
8. Fifty (50%) percent of the development fee shall be collected at the time of issuance of the building permit. The remaining portion shall be collected at the issuance of the Certificate of Occupancy. The developer shall be responsible for paying the difference between the fee calculated at building permit and that determined at issuance of Certificate of Occupancy.
9. *Appeal of Development Fees.*
 - (a) A developer may challenge residential development fees imposed by filing a challenge with the County Board of Taxation. Pending a review and determination by the Board, collected fees shall be placed in an interest bearing escrow account by the Township of West Orange. Appeals from a determination of the Board may be made to the tax court in accordance with the provisions of the State Tax Uniform

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

- (b) 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 the Township of West Orange. Appeals from a determination of the Director may be made to the tax court in accordance with the provisions of the State Tax Uniform Procedure Law, R.S.54:48-1 et seq., within ninety (90) days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.

g. *Affordable Housing Trust Fund.*

1. There is hereby created a separate, interest-bearing 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.
2. The following additional funds shall be deposited in the Affordable Housing Trust Fund and shall at all times be identifiable by source and amount:
 - (a) Payments in lieu of on-site construction of affordable units;
 - (b) Developer contributed funds to make ten (10%) percent of the adaptable entrances in a townhouse or other multistory attached development accessible;
 - (c) Rental income from municipally operated units;
 - (d) Repayments from affordable housing program loans;
 - (e) Recapture funds;
 - (f) Proceeds from the sale of affordable units; and
 - (g) Any other funds collected in connection with the Township of West Orange's affordable housing program.
3. In the event of a failure by the Township of West Orange 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 Township of West Orange, 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.

4. All interest accrued in the housing trust fund shall only be used on eligible affordable housing activities approved by the Court.
- h. *Use of Funds.*
1. 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 Township of West Orange's fair share obligation and may be set up as a grant or revolving loan program. Such activities include, but are not limited to: preservation or purchase of housing for the purpose of maintaining or implementing affordability controls, rehabilitation, new construction of affordable housing units and related costs, accessory apartment, 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. 5:97-8.7 through 8.9 and specified in the approved spending plan.
 2. Funds shall not be expended to reimburse the Township of West Orange for past housing activities.
 3. At least thirty (30%) percent of all development fees collected and interest earned shall be used to provide affordability assistance to low- and moderate-income households in affordable units included in the municipal Fair Share Plan. One-third (1/3) 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.
 - (a) Affordability assistance programs may include down payment assistance, security deposit assistance, low interest loans, rental assistance, assistance with homeowners association or condominium fees and special assessments, and assistance with emergency repairs.
 - (b) Affordability assistance to households earning thirty (30%) percent or less of median income may include buying down the cost of low- or moderate-income units in the municipal Fair Share Plan to make them affordable to households earning thirty (30%) percent or less of median income.
 - (c) 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.
 4. Township of West Orange may contract with a private or public entity to administer any part of its Housing Element and Fair Share Plan, including the requirement for affordability assistance, in accordance with N.J.A.C. 5:96-18.
 5. No more than twenty (20%) percent of all revenues collected from development fees, may be expended on administration, including, but not limited to, salaries and benefits for municipal employees or consultant fees necessary to develop or implement a new construction program, a Housing Element and Fair Share Plan, and/or an affirmative marketing program. In the case of a rehabilitation program, no more than twenty (20%) percent of the revenues collected from development fees shall be expended for such administrative expenses. Administrative funds may be used for income qualification of households, monitoring the turnover of sale and rental units, and compliance with monitoring requirements.

- i. *Monitoring.* The Township of West Orange shall complete all monitoring forms included in monitoring requirements related to 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 Township of West Orange's housing program, as well as to the expenditure of revenues and implementation of the plan approved by the Court. All monitoring reports shall be completed on designated forms.
- j. *Ongoing Collection of Fees.* The ability for the Township of West Orange to impose, collect and expend development fees shall expire with its judgment of compliance and repose unless the Township of West Orange 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 Township of West Orange 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 (C.52:27D-320). The Township of West Orange 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 Township of West Orange retroactively impose a development fee on such a development. The Township of West Orange shall not expend development fees after the expiration of its judgment of compliance and repose.

25-18.23 Inclusionary Housing Requirements for Multifamily Residential Developments

Any multifamily residential development consisting of five or more dwelling units shall produce low- and moderate-income housing on-site or elsewhere in the Township. The number of affordable units to be provided shall be 20 percent of the residential units in the development. The provisions of this section shall not apply to residential expansions, additions, renovations, replacement, or any other type of residential development that does not result in a net increase in the number of dwellings of five or more.

Section 2. Chapter XXV Land Use Regulations is hereby amended and supplemented

by adding the following sections:

25-20 IHO-1 (INCLUSIONARY HOUSING OVERLAY) DISTRICT

a. Purpose

The purpose of the IHO-1 District is to provide for inclusionary development that contributes to the region's fair share of affordable housing, in accordance with a court settlement agreement which outlines provisions for same.

b. Description of Zone Boundary

The zone boundary of the IHO-1 District shall encompass the entirety of the properties identified as Block 152.01, Lots 1445, 1445.01 and 1445.05. The municipal zone map is hereby amended to reflect same.

c. Use Regulations

1. **Permitted Principal Uses.** In addition to any principal or conditional use permitted in the underlying zone district, mixed-use development shall be permitted. Permitted uses on the first story of a mixed-use development shall include the following: retail store,

personal service store or studio, office, business or vocational school, restaurant, and bar. Dwelling units in a mixed-use development shall only be permitted above the first story. Multiple principal buildings and/or uses shall be permitted on a single lot.

2. Permitted Accessory Uses. In addition to any accessory use permitted in the underlying zone district, any use that is customarily incidental to a mixed-use development shall be permitted. Examples include, but are not limited to, residential amenities and accessory uses such as leasing and management offices.

d. Bulk Regulations

1. The bulk regulations for any principal or conditional use permitted in the underlying zone district shall be the applicable bulk regulations for the underlying zone district.
2. The bulk regulations for mixed-use development shall be as follows:

- (a) Minimum Lot Area: 60,000 square feet
- (b) Minimum Lot Frontage: 200 feet
- (c) Minimum Front Yard Setback: 50 feet
- (d) Minimum Side Yard Setback: 75 feet
- (e) Minimum Rear Yard Setback: 100 feet
- (f) Maximum Building Coverage: 40%
- (g) Maximum Impervious Coverage: 65%
- (e) Maximum Building Height: 4 stories/48 feet
- (f) Maximum Gross Residential Density: 16 dwelling units/acre

3. Building Height and Stories

The standards set forth below shall supersede any regulation to the contrary in the West Orange Land Use Regulations Ordinance:

- (a) The building height shall be the vertical distance measured from the mean elevation of the finished grade adjacent to the building foundation to the roof line elevation of a flat roof, or the midpoint elevation of a pitched roof.
- (b) Rooftop amenities and rooftop features shall not be considered a story or fractional portion thereof.
- (c) Architectural roof design features such as attics, mansards, parapets, cupolas, and other similar architectural design features and/or appurtenances shall not be considered a story or fractional portion thereof.

e. Parking Regulations

1. Residential portion of a mixed-use development. Off-street parking for residential uses shall be provided in accordance with the requirements of Parking Schedule I in Subsection 25-12.2a.1.
2. Nonresidential uses. Off-street parking for nonresidential uses shall be provided in accordance with the requirements of Parking Schedule II in Subsection 25-12.2b.1.

f. Affordable Housing Requirements

1. Low- and moderate-income dwelling units shall be provided in accordance with this subsection. The minimum affordable housing set-aside shall be 20 percent of the dwelling units in the development. Of these, at least half must be reserved for, and affordable to, low-income households. A minimum of 13 percent of the affordable units

shall be affordable to households earning 30 percent or less of the area median income for the Council on Affordable Housing region. 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 the applicable rules of the Council on Affordable Housing and any other relevant state regulations. All development including affordable dwelling units shall also be subject to Section 25-18 Affordable Housing; Low/Moderate Housing Provisions of the Township of West Orange Land Use Regulations Ordinance.

2. The minimum unit sizes for the affordable units shall be as follows, except if the square footage of the market rate units is smaller than the minimum square footage of the affordable units, then the affordable units shall be the same size as the market rate units:
 - (a) One-bedroom 650 square feet
 - (b) Two-bedroom 875 square feet
 - (c) Three-bedroom 1,150 square feet

25-21 IHO-2 (INCLUSIONARY HOUSING OVERLAY) DISTRICT

a. Purpose

The purpose of the IHO-2 District is to provide for inclusionary development that contributes to the region's fair share of affordable housing, in accordance with a court settlement agreement which outlines provisions for same.

b. Description of Zone Boundary

The zone boundary of the IHO-2 District shall encompass the entirety of the property identified as Block 151, Lot 33. The municipal zone map is hereby amended to reflect same.

c. Use Regulations

1. Permitted Principal Uses. In addition to any principal or conditional use permitted in the underlying zone district, multifamily residential development shall be permitted.
2. Permitted Accessory Uses. In addition to any accessory use permitted in the underlying zone district, any use that is customarily incidental to a multifamily residential development shall be permitted. Examples include, but are not limited to, residential amenities and accessory uses such as leasing and management offices.

d. Bulk Regulations

1. The bulk regulations for any principal or conditional use permitted in the underlying zone district shall be the applicable bulk regulations for the underlying zone district.
2. The bulk regulations for multifamily residential development shall be as follows:
 - (a) Minimum Lot Area: five acres
 - (b) Minimum Building Setback from Any Property Line: 50 feet, plus one additional foot for each foot of building height above 50 feet
 - (c) Maximum Building Coverage: 35%
 - (d) Maximum Impervious Coverage: 75%
 - (e) Maximum Building Height: 5 ½ stories/65 feet

- (f) Maximum Gross Residential Density: 24 dwelling units/acre, rounded up to a maximum of 142 dwelling units with (a) 28 on-site affordable housing units and a payment in lieu of \$59,473.20 or (b) 29 on-site affordable housing units.
- 3. Building Height and Stories

The standards set forth below shall supersede any regulation to the contrary in the West Orange Land Use Regulations Ordinance:

 - (a) The building height shall be the vertical distance measured from the mean elevation of the finished grade adjacent to the building foundation to the roof line elevation of a flat roof, or the midpoint elevation of a pitched roof.
 - (b) Rooftop amenities and rooftop features shall not be considered a story or fractional portion thereof.
 - (c) Architectural roof design features such as attics, mansards, parapets, cupolas, and other similar architectural design features and/or appurtenances shall not be considered a story or fractional portion thereof.
- e. Other Regulations
 - 1. Tree removal on slopes of 15% or greater shall only be permitted to allow for pedestrian access.
 - 2. A maximum of two development identification signs shall be permitted as follows:
 - At development entrance, with maximum area of 75 square feet (per side)
 - At parking lot, with maximum area of 55 square feet (one side only)
- f. Parking Regulations. Off-street parking for residential uses shall be provided in accordance with the requirements of Parking Schedule I in Subsection 25-12.2a.1.
- g. Affordable Housing Requirements
 - 1. Low- and moderate-income dwelling units shall be provided in accordance with this subsection. The minimum affordable housing set-aside shall be 20 percent of the dwelling units in the development. Of these, at least half must be reserved for, and affordable to, low-income households. A minimum of 13 percent of the affordable units shall be affordable to households earning 30 percent or less of the area median income for the Council on Affordable Housing region. 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 the applicable rules of the Council on Affordable Housing and any other relevant state regulations. All development including affordable dwelling units shall also be subject to Section 25-18 Affordable Housing; Low/Moderate Housing Provisions of the Township of West Orange Land Use Regulations Ordinance.
 - 2. The minimum unit sizes for the affordable units shall be as follows, except if the square footage of the market rate units is smaller than the minimum square footage of the affordable units, then the affordable units shall be the same size as the market rate units:
 - (a) One-bedroom 650 square feet
 - (b) Two-bedroom 875 square feet
 - (c) Three-bedroom 1,150 square feet

Section 3. If any provision of this Ordinance or application thereof, under any circumstances, is held invalid, the invalidity shall not affect any other provisions or applications of this Ordinance that can be given effect without the invalid provision(s) or application(s) and to this end the provisions of this Ordinance are severable.

Section 4. All other Ordinances or parts of Ordinances inconsistent with this Ordinance are hereby repealed.

Section 5. This Ordinance shall take effect upon final passage and publication in accordance with law.

Karen J. Carnevale, R.M.C.
Municipal Clerk

Michelle Casalino
Council President

Robert D. Parisi, Mayor

Introduced:

Adopted:

LEGISLATIVE HISTORY

This Ordinance is presented pursuant to the Affordable Housing Settlement Agreement with Fair Share Housing Center approved by the Township Council on April 14, 2020. The Superior Court of New Jersey confirmed the Settlement Agreement on July 10, 2020.