



**Asbury Park, New Jersey
ORDINANCE NO. 2020-14**

**AN ORDINANCE OF THE CITY OF ASBURY PARK, COUNTY OF MONMOUTH
AND STATE OF NEW JERSEY ADDING CHAPTER 31 "AFFORDABLE HOUSING"
TO THE CODE OF THE CITY OF ASBURY PARK TO ADDRESS THE
REQUIREMENTS OF THE NJ SUPERIOR COURT**

NOW, THEREFORE, BE IT ORDAINED, by the Mayor and Council of the City of Asbury Park as follows:

Section I. Chapter 31 of the Code of the City of Asbury Park, entitled "Fair Share Affordable Housing Ordinance," is Hereby Created. Chapter 31, "Fair Share Affordable Housing" is hereby added to the Code to read as follows:

**Chapter 31
AFFORDABLE HOUSING**

**ARTICLE I
General Program Purposes, Procedures**

§ 31-1. Affordable Housing Obligation.

- A. This section of the City Code sets forth regulations regarding the low and moderate income housing units in the City consistent with the provisions known as the "Substantive Rules of the New Jersey Council on Affordable Housing", *N.J.A.C. 5:93 et seq.*, the Uniform Housing Affordability Controls ("UHAC"), *N.J.A.C. 5:80-26.1 et seq.* except where the UHAC requirements for the creation of very-low income units are superseded by the requirements of the Fair Housing Act as established in P.L. 2008, c.46 (the "Roberts Bill", codified at *N.J.S.A. 52:27D-329.1*), and the City's constitutional obligation to provide a fair share of affordable housing for low and moderate income households.
- B. This Ordinance is intended to assure that very-low, low- and moderate-income units ("affordable units") are created with controls on affordability over time and that very-low, low- and moderate-income households shall occupy these units. This Ordinance shall apply to all inclusionary developments and 100% affordable developments (including those funded

with low-income housing tax credit financing)_except where inconsistent with applicable law.

- C. This Ordinance is also intended to create standards and mechanisms for the creation and preservation of housing units affordable to middle-income households not provided for in the Fair Housing Act or in the rules promulgated by COAH. Except where otherwise required in this chapter, units in the City reserved for middle-income households will be subject to the same controls as units reserved for very-low, low-, and moderate-income households per UHAC and COAH's substantive rules.

§ 31-2. Affordable Housing Monitoring

- A. Beginning on July 1, 2020, and on every anniversary of that date, the City shall provide annual reporting of its Affordable Housing Trust Fund activity to the New Jersey Department of Community Affairs, Council on Affordable Housing, or Local Government Services, or other entity designated by the State of New Jersey, with a copy provided to Fair Share Housing Center, Inc., and posted on the municipal website, using forms developed for this purpose by the New Jersey Department of Community Affairs, Council on Affordable Housing, or Local Government Services. The reporting shall include an accounting of all Affordable Housing Trust Fund activity, including the source and amount of funds collected and the amount and purpose for which any funds have been expended.
- B. Beginning on July 1, 2020, and on every anniversary of that date, the City shall provide annual reporting of the status of all affordable housing activity within the municipality through posting on the municipal website with a copy of such posting provided to Fair Share Housing Center, Inc., using forms previously developed for this purpose by the Council on Affordable Housing or any other forms endorsed by Fair Share Housing Center, Inc.
- C. By July 1, 2020, as required pursuant to N.J.S.A. 52:27D-313, the City shall post on its municipal website, with a copy provided to Fair Share Housing Center, Inc., a status report as to its implementation of its Housing Element and Fair Share 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 municipality, with a copy to Fair Share Housing Center, Inc., regarding whether any sites no longer present a realistic opportunity.
- D. By July 1, 2020, and every third year thereafter, as required by N.J.S.A. 52:27D-329.1, the City will post on its municipal website, with a copy provided to Fair Share Housing Center, Inc., a status report as to its satisfaction of its very low income requirements, including its family very

low income requirements. Such posting shall invite any interested party to submit comments to the municipality and Fair Share Housing Center, Inc., on the issue of whether the municipality has complied with its very low income and family very low income housing obligations.

§ 31-3. Definitions. As used herein the following terms shall have the following meanings:

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

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

“Administrative agent” means the entity responsible for the administration of affordable units in accordance with this ordinance, *N.J.A.C. 5:91*, *N.J.A.C. 5:93* and *N.J.A.C. 5:80-26.1 et seq.*

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

“Affordability average” means the average percentage of median income at which restricted units in an affordable housing development are affordable to low-, moderate-, and middle-income households.

“Affordable” means, a sales price or rent within the means of a low- or moderate-income household as defined in *N.J.A.C. 5:93-7.4*, or within the means of a middle income household as defined in this Chapter; 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” means a housing development all or a portion of which consists of restricted units.

“Affordable housing development” means a development included in the Housing Element and Fair Share Plan, and includes, but is not limited to, an inclusionary development, a municipal construction project or a 100% affordable development.

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

“Affordable unit” means a housing unit proposed or created pursuant to the Act, this ordinance, credited pursuant to *N.J.A.C. 5:93*, and/or funded through an

affordable housing trust fund.

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

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

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

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

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

“COAH” means the Council on Affordable Housing, which is in, but not of, the Department of Community Affairs of the State of New Jersey, that was established under the New Jersey Fair Housing Act (*N.J.S.A. 52:27D-301 et seq.*).

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

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

“Developer” means any person, partnership, association, company or corporation

that is the legal or beneficial owner or owners of a lot or any land 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.

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

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

"Housing Element" means the portion of the City'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 City's fair share obligation.

“Inclusionary development” means a development containing both affordable units and market rate units. This term includes, but is not necessarily limited to: new construction, the conversion of a non-residential structure to residential and the creation of new affordable units through the reconstruction of a vacant residential structure.

“Low-income household” means a household with a total gross annual household income equal to 50% or less of the median household income. Except where otherwise specified, this shall include very-low income households.

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

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

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

“Median income” means the median income by household size for the applicable

county, as adopted annually by COAH or approved by the NJ Superior Court.

“Middle-income household” means a household with a total gross annual household income between 80% and 120% of the median household income.

“Middle-income unit” means a restricted unit that is affordable to a middle-income household.

“Moderate-income household” means a household with a total gross annual household income in excess of 50% but less than 80% of the median household income.

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

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

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

“Regional asset limit” means the maximum housing value in each housing region affordable to a four-person household with an income at 80% of the regional median (120% for middle income units) as defined by adopted/approved Regional Income Limits.

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

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

“Restricted unit” means a dwelling unit, whether a rental unit or ownership unit, that is subject to the affordability controls of *N.J.A.C. 5:80-26.1*, as may be amended and supplemented, but does not include a market-rate unit financed

under UHORP or MONI.

“Special master” means an expert appointed by a judge to make sure that judicial orders are followed. A master's function is essentially investigative, compiling evidence or documents to inform some future action by the court.

“UHAC” means the Uniform Housing Affordability Controls set forth in *N.J.A.C. 5:80-26.1 et seq.*

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

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

“Weatherization” means building insulation (for attic, exterior walls and crawl space), siding to improve energy efficiency, replacement storm windows, replacement storm doors, replacement windows and replacement doors, and is considered a major system for rehabilitation.

§ 31-4. New Construction. The following requirements shall apply to all new or planned developments that contain low-, moderate-, and middle-income housing units.

- A. A. Phasing. Final site plan or subdivision approval shall be contingent upon the affordable housing development meeting the below listed phasing schedule for low, moderate-, and middle-income units whether developed in a single-phase development, or in a multi-phase development. Middle- income units shall not be completed at a faster rate than the development’s low- and moderate- income units.

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

- B. Fractional Units. The affordable housing obligation shall be rounded down to the nearest whole number when the fraction is less than .50 and shall be rounded up to the nearest whole number when the fraction is .50 or greater.
- C. Design. In inclusionary developments, low-, moderate-, and middle-income units shall be integrated with the market units, except where otherwise permitted by the Planning Board or Zoning Board of Adjustment.
- D. Payments-in-lieu and off-site construction. The standards for the collection of payments-in-lieu of constructing affordable units or standards for constructing affordable units off-site, shall be in accordance with *N.J.A.C. 5:93-8.10(c)*.
- E. Utilities. Affordable units shall utilize the same type of heating source as market units within the affordable development.
- F. Income and Bedroom Distribution of Affordable Housing Units:
1. The fair share obligation shall be divided between low- , moderate -income units, except that where there is an odd number of affordable housing units, the extra unit shall be a low-income unit. The income distribution of units may be superseded in a district zoning standards, where applicable.
 2. In each affordable development, at least 50% of the low-and moderate units within each bedroom distribution shall be low-income units. This may be altered where specified in the applicable zoning ordinance, redevelopment plan, or resolution of approval.
 3. Within rental developments, of the total number of affordable rental units, at least 13% of units within each bedroom distribution shall be affordable to very-low income households.
 4. Affordable developments that are not age-restricted shall be structured in conjunction with realistic market demands such that:

- (a) The combined number of efficiency and one-bedroom units shall be no greater than 20% of the total affordable units;
 - (b) At least 30% of all affordable units shall be two bedroom units;
 - (c) At least 20% of all affordable units shall be three bedroom units; and
 - (d) The remaining units may be allocated among two and three bedroom units at the discretion of the developer.
5. Affordable developments that are age-restricted shall be structured such that the number of bedrooms shall equal the number of age-restricted affordable units within the inclusionary development. The standard may be met by having all one-bedroom units or by having a two-bedroom unit for each efficiency unit.

G. Accessibility Requirements:

- 1. The first floor of all new restricted townhouse dwelling units and all low, moderate-, and middle-income multistory dwelling units attached to at least one (1) other dwelling unit 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 low-, moderate-, and middle-income multistory dwelling units attached to at least one (1) other dwelling unit shall have the following features:
 - (a) An adaptable toilet and bathing facility on the first floor;
 - (b) An adaptable kitchen on the first floor;
 - (c) An interior accessible route of travel on the first floor;
 - (d) An interior accessible route of travel shall not be required between stories within an individual unit;
 - (e) 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
 - (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 City has collected funds

from the developer sufficient to make 10% of the adaptable entrances in the development accessible:

- (1) Where a unit has been constructed with an adaptable entrance, upon the request of a disabled person who is purchasing or will reside in the dwelling unit, an accessible entrance shall be installed.
- (2) To this end, the builder of restricted units shall deposit funds within the City of Asbury Park's affordable housing trust fund sufficient to install accessible entrances in 10% of the affordable units that have been constructed with adaptable entrances.
- (3) The funds deposited under paragraph (2) herein, shall be used by the City for the sole 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 restricted units shall submit a design plan and cost estimate for the conversion from adaptable to accessible entrances to the Construction Official of the City of Asbury Park.
- (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 City of Asbury Park's affordable housing trust fund in care of the Municipal Treasurer who shall ensure that the funds are deposited into the affordable housing trust fund and appropriately earmarked.
- (6) Full compliance with the foregoing provisions shall not be required where an entity can demonstrate that it is site impracticable to meet the requirements. Determinations of site impracticability shall be in compliance with the Barrier Free Subcode, *N.J.A.C. 5:23-7*.

H. 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 and by the Superior Court, utilizing the most recently published regional weighted average of the uncapped Section 8 income limits published by HUD and the Superior Court.

2. The maximum rent for low- and moderate-income restricted rental units within each affordable development shall be affordable to households earning no more than 60% of median income, and the average rent for restricted low- and moderate-income units shall be affordable to households earning no more than 52% of median income.
3. The maximum rent for middle-income restricted units within each affordable development shall be affordable to households earning no more than 100% of median income, and the average rent for restricted middle -income units shall be affordable to households earning no more than 90% of median income.
4. The developers and/or municipal sponsors of restricted rental units shall establish at least one rent for each bedroom type for units in each income category.
 - (a) At least 13% of all low- and moderate-income rental units shall be affordable to households earning no more than 30% of median income.
5. The maximum sales price of restricted low- and moderate-income ownership units within each affordable development shall be affordable to households earning no more than 70% of median income, and each affordable development must achieve an affordability average of 55% for restricted ownership units; in achieving this affordability average, moderate-income ownership units must be available for at least three different prices for each bedroom type, and low-income ownership units must be available for at least two different prices for each bedroom type.
6. The maximum sales price of middle-income restricted ownership units within each affordable development shall be affordable to households earning no more than 110% of median income, and each affordable development must achieve an affordability average of 95% for restricted ownership units; in achieving this affordability average, middle-income ownership units must be available for at least two different prices for each bedroom type.
7. In determining the initial sales prices and rents for compliance with the affordability average requirements for restricted units other than assisted living facilities, the following standards shall be met:

- (a) A studio or efficiency unit shall be affordable to a one-person household;
 - (b) A one-bedroom unit shall be affordable to a one and one-half person household;
 - (c) A two-bedroom unit shall be affordable to a three-person household;
 - (d) A three-bedroom unit shall be affordable to a four and one-half person household; and
 - (e) A four-bedroom unit shall be affordable to a six-person household.
8. In determining the initial rents for compliance with the affordability average requirements for restricted units in assisted living facilities, the following standards shall be met:
- (a) A studio or efficiency unit shall be affordable to a one-person household;
 - (b) A one-bedroom unit shall be affordable to a one and one-half person household; and
 - (c) A two-bedroom unit shall be affordable to a two-person household or to two one-person households.
9. The initial purchase price for all restricted low-, moderate-, and middle-income ownership units shall be calculated so that the monthly carrying cost of the unit, including principal and interest (based on a mortgage loan equal to 95% of the purchase price and the Federal Reserve H.15 rate of interest), taxes, homeowner and private mortgage insurance and condominium or homeowner association fees do not exceed 28% 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.
10. The initial rent for a low-, moderate-, and middle-income restricted rental unit shall be calculated so as not to exceed 30% of the

eligible monthly income of the appropriate household size 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.

11. The price of owner-occupied low-, moderate-, and middle-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.

Income limits for all units for which income limits are not already established through a federal program exempted from the Uniform Housing Affordability Controls pursuant to *N.J.A.C. 5:80-26.1* shall be updated by the City annually within 30 days of the publication of determinations of median income by HUD as follows:

- (a) Regional income limits shall be established for the Region 4 based on the median income by household size, which shall be established by a regional weighted average of the uncapped Section 8 income limits published by HUD. To compute this regional income limit, the HUD determination of median county income for a family of four is multiplied by the estimated households within the county according to the most recent decennial Census. The resulting product for each county within the housing region is summed. The sum is divided by the estimated total households from the most recent decennial Census in Region 4. This quotient represents the regional weighted average of median income for a household of four. The income limit for a middle-income unit for a household of four shall be 120 percent of the regional weighted average median income. The income limit for a moderate-income unit for a household of four shall be 80 percent of the regional weighted average median income for a family of four. The income limit for a low-income unit for a household of four shall be 50 percent of the HUD determination of the regional weighted average median income for a family of four. The income limit for a very-low income unit for a household of four shall be 30 percent of the regional weighted average median income for a family of four. These income limits shall be adjusted by household size based on multipliers used by HUD to adjust median income by household size. In no event shall the income limits be less than those for the previous year.

- (b) The income limits calculated each year shall be the result of applying the percentages set forth in paragraph (a) above to HUD's determination of median income for the relevant fiscal year, and shall be utilized until the City updates the income limits after HUD has published revised determinations of median income for the next fiscal year.
- (c) The Regional Asset Limit used in determining an applicant's eligibility for affordable housing pursuant to N.J.A.C. 5:80-26.16(b)3 shall be calculated by the City annually by taking the percentage increase of the income limits calculated pursuant to paragraph (a) above over the previous year's income limits, and applying the same percentage increase to the Regional Asset Limit from the prior year. In no event shall the Regional Asset Limit be less than that for the previous year.

- 12. The rent levels of very-low-, low-, moderate-, and middle-income units may be increased annually based on the percentage increase in the Housing Consumer Price Index for the Northeast Urban Area, upon its publication for the prior calendar year. This increase shall not exceed nine percent in any one year. Rents for units constructed pursuant to low income housing tax credit regulations shall be indexed pursuant to the regulations governing low income housing tax credits.
- 13. 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.

§ 31-5. Condominium and Homeowners Association Fees.

- A. For any affordable housing unit that is part of a condominium association and/or homeowner's association, the Master Deed shall reflect that the association fee assessed for each affordable housing unit shall be established at 100% of the market rate fee.

§ 31-6. Reserved.

§ 31-7. Reserved.

§ 31-8. Reserved.

ARTICLE II
Affordable Unit Controls and Requirements

§ 31-9. Purpose.

- A. The requirements of this section apply to all developments that contain affordable housing units, including any currently unanticipated future developments that will provide affordable housing units as defined in this Chapter.

§ 31-10. Affirmative Marketing.

- A. The City shall adopt by resolution an Affirmative Marketing Plan, subject to approval of the Superior Court, compliant with *N.J.A.C. 5:80-26.15*, as may be amended and supplemented.
- B. The affirmative marketing plan is a regional marketing strategy designed to attract buyers and/or renters of all majority and minority groups, regardless of race, creed, color, national origin, ancestry, marital or familial status, gender, affectional or sexual orientation, disability, age or number of children to housing units which are being marketed by a developer, sponsor or owner of affordable housing. The affirmative marketing plan is 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 COAH Housing Region 4 and covers the period of deed restriction.
- C. The affirmative marketing plan shall provide a regional preference for all households that live and/or work in COAH Housing Region 4, comprised of Monmouth, Ocean, and Mercer Counties.
- D. The Administrative Agent designated by the City shall assure the affirmative marketing of all affordable units is consistent with the Affirmative Marketing Plan for the municipality.
- E. In implementing the affirmative marketing plan, the Administrative Agent shall provide a list of counseling services to low- and moderate-income applicants on subjects such as budgeting, credit issues, mortgage qualification, rental lease requirements, and landlord/tenant law.
- F. The affirmative marketing process for available affordable units shall begin at least four months prior to the expected date of occupancy.
- G. The costs of advertising and affirmative marketing of the affordable units shall be the responsibility of the developer, sponsor or owner, unless

otherwise determined or agreed to by the City of Asbury Park.

§ 31-11. Occupancy Standards.

- A. In referring certified households to specific restricted units, to the extent feasible, and without causing an undue delay in occupying the unit, the Administrative Agent shall strive to:
 - 1. Provide an occupant for each bedroom;
 - 2. Provide separate bedrooms for parents and children;
 - 3. Provide children of different sexes with separate bedrooms; and
 - 4. Prevent more than two persons from occupying a single bedroom.
- B. Additional provisions related to occupancy standards (if any) shall be provided in the municipal Operating Manual.

§ 31-12. Selection of Occupants of Affordable Housing Units.

- A. The administrative agent shall use a random selection process to select occupants of low-, moderate-, and middle-income housing.
- B. A waiting list of all eligible candidates will be maintained in accordance with the provisions of *N.J.A.C. 5:80-26 et seq.*

§ 31-13. Control Periods for Restricted Ownership Units and Enforcement Mechanisms.

- A. Control periods for restricted ownership units shall be in accordance with *N.J.A.C. 5:80-26.5*, and each restricted ownership unit shall remain subject to the controls on affordability for a period of at least 30 years, until the municipality takes action to release the controls on affordability.
- B. Rehabilitated owner-occupied housing units that are improved to code standards shall be subject to affordability controls for a period of 10 years.
- C. The affordability control period for a restricted ownership unit shall commence on the date the initial certified household takes title to the unit.
- D. The affordability controls set forth in this Ordinance shall remain in effect

despite the entry and enforcement of any judgment of foreclosure with respect to restricted ownership units.

- E. A restricted ownership unit shall be required to obtain a Continuing Certificate of Occupancy or a certified statement from the Construction Official stating that the unit meets all code standards upon the first transfer of title that follows the expiration of the applicable minimum control period provided under *N.J.A.C. 5:80-26.5(a)*, as may be amended and supplemented.

§ 31-14. Price Restrictions for Restricted Ownership Units, Homeowner Association Fees and Resale Prices.

- A. Price restrictions for restricted ownership units shall be in accordance with *N.J.A.C. 5:80-26.1*, as may be amended and supplemented, including:
 - 1. The initial purchase price for a restricted ownership unit shall be approved by the Administrative Agent.
 - 2. The Administrative Agent shall approve all resale prices, in writing and in advance of the resale, to assure compliance with the foregoing standards.
 - 3. The method used to determine the condominium association fee amounts and special assessments shall be indistinguishable between the restricted affordable unit owners and the market unit owners.
 - 4. The owners of restricted ownership units may apply to the Administrative Agent to increase the maximum sales price for the unit on the basis of capital improvements. Eligible capital improvements shall be those that render the unit suitable for a larger household or the addition of a bathroom.

§ 31-15. Buyer Income Eligibility.

- A. Buyer income eligibility for restricted ownership units shall be in accordance with *N.J.A.C. 5:80-26.1*, as may be amended and supplemented, such that low-income ownership units shall be reserved for households with a gross household income less than or equal to 50% of median income and moderate-income ownership units shall be reserved for households with a gross household income less than 80% of median income. Additionally, middle-income ownership units shall be reserved

for households with a gross income less than 120% of median income.

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

§ 31-16. Limitations on indebtedness secured by ownership unit; subordination.

- A. **Prior** to incurring any indebtedness to be secured by a restricted ownership unit, the administrative agent shall determine in writing that the proposed indebtedness complies with the provisions of this section.
- B. With the exception of 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 95% of the maximum allowable resale price of that unit, as such price is determined by the administrative agent in accordance with *N.J.A.C. 5:80-26.6(b)*.

§ 31-17. Control Periods for Restricted Rental Units.

- A. Control periods for restricted rental units shall be in accordance with *N.J.A.C. 5:80-26.11*, and each restricted rental unit shall remain subject to the controls on affordability for a period of at least 30 years, until the municipality takes action to release the controls on affordability.
 - 1. Restricted rental units created as part of developments receiving nine percent (9%) Low Income Housing Tax Credits must comply with a control period of not less than a 30-year compliance period plus a 15-year extended use period.
- B. Rehabilitated renter-occupied housing units that are improved to code standards shall be subject to affordability controls for a period of 10 years.
- C. Deeds of all real property that include restricted rental units shall contain deed restriction language. The deed restriction shall have priority over all mortgages on the property, and the deed restriction shall be filed by the developer or seller with the records office of the County of Monmouth. A copy of the filed document shall be provided to the Administrative Agent within 30 days of the receipt of a Certificate of Occupancy.

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

§ 31-18. Price Restrictions for Rental Units; Leases.

- A. A written lease shall be required for all restricted rental units, except for units in an assisted living residence, 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 5% of the monthly rent of the applicable restricted unit and shall be payable to the Administrative Agent to be applied to the costs of administering the controls applicable to the unit as set forth in this Ordinance.

§ 31-19. Tenant Income Eligibility.

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

gross household income between 80% and 120% of median income.

- B. The Administrative Agent shall certify a household as eligible for a restricted rental unit when the household is a very-low income, low-income household, moderate-income household, or a middle-income household as applicable to the unit, and the rent proposed for the unit does not exceed 35% (40% for age-restricted units) of the household's eligible monthly income as determined pursuant to *N.J.A.C. 5:80-26.16*, as may be amended and supplemented; provided, however, that this limit may be exceeded if one or more of the following circumstances exists:
1. The household currently pays more than 35% (40% for households eligible for age-restricted units) of its gross household income for rent, and the proposed rent will reduce its housing costs;
 2. The household has consistently paid more than 35% (40% 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 proposed 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.

§ 31-20. Conversions.

- A. Each housing unit created through the conversion of a non-residential structure shall be considered a new housing unit and shall be subject to the affordability controls for a new housing unit.

§ 31-21. Alternative Living Arrangements.

- A. The administration of an alternative living arrangement shall be in compliance with *N.J.A.C. 5:93-5.8* and UHAC, with the following exceptions:
1. Affirmative marketing (*N.J.A.C. 5:80-26.15*), provided, however,

that the units or bedrooms may be affirmatively marketed by the provider in accordance with an alternative plan approved by the Court;

2. Affordability average and bedroom distribution (N.J.A.C. 5:80-26.3).
- B. With the exception of units established with capital funding through a 20-year operating contract with the Department of Human Services, Division of Developmental Disabilities, alternative living arrangements shall have at least 30 year controls on affordability in accordance with UHAC, unless an alternative commitment is approved by the Court.
 - C. The service provider for the alternative living arrangement shall act as the Administrative Agent for the purposes of administering the affirmative marketing and affordability requirements for the alternative living arrangement.

§ 31-22. Reserved.

§ 31-23. Reserved.

ARTICLE III **Administration**

§ 31-24. Municipal Housing Liaison.

- A. The position of Municipal Housing Liaison for the City of Asbury Park is hereby established. The Municipal Housing Liaison shall be appointed by duly adopted resolution of the City Council and be subject to the approval by the Superior Court.
- B. The Municipal Housing Liaison must be either a full-time or part-time employee of the City of Asbury Park.
- C. The Municipal Housing Liaison must meet the requirements for qualifications, including initial and periodic training found in *N.J.A.C. 5:93*.
- D. The Municipal Housing Liaison shall be responsible for oversight and administration of the affordable housing program for the City of Asbury Park, including the following responsibilities which may not be contracted out to the Administrative Agent:
 1. Serving as the municipality's primary point of contact for all inquiries from the State, affordable housing providers, Administrative Agents and interested households;

2. The implementation of the Affirmative Marketing Plan and affordability controls.
3. When applicable, supervising any contracting Administrative Agent.
4. Monitoring the status of all restricted units in the City of Asbury Park's Fair Share Plan;
5. Compiling, verifying and submitting annual reports as required by the Superior Court;
6. Coordinating meetings with affordable housing providers and Administrative Agents, as applicable; and
7. Attending continuing education opportunities on affordability controls, compliance monitoring and affirmative marketing as offered or approved by the Superior Court.

§ 31-25. Administrative Agent.

- A. The City shall designate by resolution of the City Council, subject to the approval of the Superior Court, one or more Administrative Agents to administer newly constructed affordable units in accordance with *N.J.A.C. 5:93* and UHAC.
- B. An Operating Manual shall be provided by the Administrative Agent(s) to be adopted by resolution of the governing body and subject to approval of the Superior Court. The Operating Manuals shall be available for public inspection in the Office of the Municipal Clerk and in the office(s) of the Administrative Agent(s).
- C. The Administrative Agent shall perform the duties and responsibilities of an administrative agent as are set forth in UHAC and which are described in full detail in the Operating Manual, including those set forth in *N.J.A.C. 5:80-26.14, 16 and 18* thereof, which includes:
 1. Attending continuing education opportunities on affordability controls, compliance monitoring, and affirmative marketing as offered or approved by the Superior Court;
 2. Affirmative Marketing;
 3. Household Certification;

4. Affordability Controls;
5. Records retention;
6. Resale and re-rental;
7. Processing requests from unit owners; and
8. Enforcement, although the ultimate responsibility for retaining controls on the units rests with the municipality.
9. The Administrative Agent shall, as delegated by the City Council, have the authority to take all actions necessary and appropriate to carry out its responsibilities, hereunder.

§ 31-26. Enforcement of Affordable Housing Regulations.

- A. Upon the occurrence of a breach of any of the regulations governing the affordable unit by an Owner, Developer or Tenant, the municipality shall have all remedies provided at law or equity, including but not limited to foreclosure, tenant eviction, municipal fines, a requirement for household recertification, acceleration of all sums due under a mortgage, recoupment of any funds from a sale in the violation of the regulations, injunctive relief to prevent further violation of the regulations, entry on the premises, and specific performance.
- B. After providing written notice of a violation to an Owner, Developer or Tenant of a low-, moderate-, or middle-income unit and advising the Owner, Developer or Tenant of the penalties for such violations, the municipality may take the following action against the Owner, Developer or Tenant for any violation that remains uncured for a period of 60 days after service of the written notice:
 1. The municipality may file a court action pursuant to *N.J.S.A. 2A:58-11* alleging a violation, or violations, of the regulations governing the affordable housing unit. If the Owner, Developer or Tenant is found by the court to have violated any provision of the regulations governing affordable housing units the Owner, Developer or Tenant shall be subject to one or more of the following penalties, at the discretion of the court:
 - (a) A fine of not more than \$500.00 or imprisonment for a period not to exceed 90 days, or both. Each and every day that the violation continues or exists shall be considered a separate and specific violation of these provisions and not as a continuing offense;

(b) In the case of an Owner who has rented his or her low-, moderate-, or middle-income unit in violation of the regulations governing affordable housing units, payment into the City of Asbury Park Affordable Housing Trust Fund of the gross amount of rent illegally collected;

(c) In the case of an Owner who has rented his or her low-, moderate-, or middle-income unit in violation of the regulations governing affordable housing units, payment of an innocent tenant's reasonable relocation costs, as determined by the court.

2. The municipality may file a court action in the Superior Court seeking a judgment, which would result in the termination of the Owner's equity or other interest in the unit, in the nature of a mortgage foreclosure. Any 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-, or middle-income unit.

C. Such judgment shall be enforceable, at the option of the municipality, by means of an execution sale by the Sheriff, at which time the low-, or moderate-, or middle-income unit of the violating Owner shall be sold at a sale price which is not less than the amount necessary to fully satisfy and pay off any First Purchase Money Mortgage and prior liens and the costs of the enforcement proceedings incurred by the municipality, including attorney's fees. The violating Owner shall have the right to possession terminated as well as the title conveyed pursuant to the Sheriff's sale.

D. 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-, moderate-, or middle-income unit. The excess, if any, shall be applied to reimburse the municipality for any and all costs and expenses incurred in connection with either the court action resulting in the judgment of violation or the Sheriff's sale. In the event that the proceeds from the Sheriff's sale are insufficient to reimburse the municipality in full as aforesaid, the violating Owner shall be personally responsible for and to the extent of such deficiency, in addition to any and all costs incurred by the municipality in connection with collecting such deficiency. In the event that a surplus remains after satisfying all of the above, such surplus, if any, shall be placed in escrow by the municipality for the Owner and shall be held in such escrow for a maximum period of two years or until such earlier time as the Owner shall make a claim with the municipality for such. Failure of the Owner to claim such balance within the two-year period shall automatically result in a forfeiture of such balance to the

municipality. Any interest accrued or earned on such balance while being held in escrow shall belong to and shall be paid to the municipality, whether such balance shall be paid to the Owner or forfeited to the municipality.

- E. Foreclosure by the municipality due to violation of the regulations governing affordable housing units shall not extinguish the restrictions of the regulations governing affordable housing units as the same apply to the low- or moderate-, or middle-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.
- F. If there are no bidders at the Sheriff's sale, or if insufficient amounts are bid to satisfy the First Purchase Money Mortgage and any prior liens, the municipality may acquire title to the low-, moderate-, or middle-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- or moderate-, or middle-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.
- G. Failure of the low-, moderate-, or middle-income unit to be either sold at the Sheriff's sale or acquired by the municipality shall obligate the Owner to accept an offer to purchase from any qualified purchaser which may be referred to the Owner by the municipality, with such offer to purchase being equal to the maximum resale price of the low-, moderate-, or middle-income unit as permitted by the regulations governing affordable housing units.
- H. 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.

§ 31-27. Appeals. Appeals from all decisions of an Administrative Agent designated pursuant to this Ordinance shall be filed in writing with the City.

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Section II. Repealer. All ordinances or Code provisions or parts thereof inconsistent with this Ordinance are hereby repealed to the extent of such inconsistency.

Section III. Severability. If any section, subsection, paragraph, sentence or any other part of this ordinance is adjudged unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remainder of this ordinance.

Section IV. Effective Date. This ordinance shall take effect upon its passage and publication, as required by law.

I, MELODY HARTSGROVE, City Clerk of the City of Asbury Park, Monmouth County, New Jersey, DO HEREBY CERTIFY the foregoing to be a true and exact copy of ORDINANCE NO. 2020-14 which was finally adopted by the City Council at a meeting held on the 30th day of April, 2020

 MELODY HARTSGROVE
 CITY CLERK

✓ Vote Record - Ordinance 2020-14				
<input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Adopted as Amended <input type="checkbox"/> Defeated <input type="checkbox"/> Tabled <input type="checkbox"/> Withdrawn <input type="checkbox"/> Introduced				
		Yes/Aye	No/Nay	Abstain
			Absent	