



# Township of Hillsborough

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## ORDINANCE 2021-06

**An Ordinance of the Township of Hillsborough Amending Chapter 188 of the Hillsborough Township Code Entitled “Land Use and Development”, Article VII, Entitled “Affordable Housing” to Address the Requirements of the Fair Housing Act and the Uniform Housing Affordability Controls Regarding Compliance with the Township’s Affordable Housing Obligations. Further Consideration of this Ordinance and Public Hearing will be held on May 11, 2021.**

**WHEREAS**, the New Jersey Supreme Court issued its decision in In re Adoption of N.J.A.C. 5:96 and 5:97 by N.J. Council on Affordable Housing, 221 N.J. 1 (2015) (“Mt. Laurel IV”) providing a framework for achieving constitutional compliance with regard to creating a realistic opportunity for producing a fair share of affordable housing for the Third Round in the absence of COAH action; and,

**WHEREAS**, the Township of Hillsborough (the “Township”) filed a declaratory judgment action captioned In the Matter of the Application of the Township of Hillsborough, Superior Court of New Jersey, Law Division, Somerset County Docket No. SOM-L-000900-15, which is currently pending in the Superior Court of New Jersey, Somerset County; and,

**WHEREAS**, the Township entered into a Settlement Agreement with Fair Share Housing Center, which was subsequently approved by the Court after conducting a Fairness Hearing and the Court Order approving the Agreement requires the Township to take certain actions to implement its affordable housing strategy, including the adoption of an Affordable Housing Ordinance which incorporates COAH’s implementing regulations into the Township Code; and,

**WHEREAS**, the Township Committee believes it is in the best interest of the Township to meet its obligations under the Court Order approving the Settlement Agreement so that it may obtain a judgment of compliance and repose protecting the Township from builder’s remedy litigation through 2025.

**NOW, THEREFORE, BE IT ORDAINED** by the Township Committee of the Township of Hillsborough in the County of Somerset and State of New Jersey that Chapter 188 entitled “Development”, Article VII, entitled “Affordable Housing” and are hereby amended as follows:

**SECTION 1. Article IV entitled “Design and Performance Standards” Sections 188-59 through Section 188-62 inclusive are hereby deleted in their entirety.**

**SECTION 2. Article VII entitled “Affordable Housing” Sections 188-123 through Section 188-142.2 are hereby deleted in their entirety and replaced as follows:**

### **Article VII Affordable Housing**

#### **188-123 Monitoring and Reporting Requirements.**

The Township of Hillsborough shall comply with the following monitoring and reporting requirements regarding the status of the implementation of its Housing Element and Fair Share Plan:

- a. Beginning on July 1, 2020, and on every anniversary of that date through July 1, 2025, 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 New Jersey Division of Local Government Services, or other entity designated by the State of New Jersey, with a copy provided to Fair Share Housing Center (FSHC) and posted on the municipal website, using forms developed for this purpose by the New Jersey Department of Community Affairs (NJDC), Council on Affordable Housing (COAH), or New Jersey Division of Local Government Services (NJLGS). 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 through July 1, 2025, the Township 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, using forms previously developed for this purpose by COAH or any other forms endorsed by the Special Master and FSHC.
- c. By July 1, 2020, as required pursuant to N.J.S.A. 52:27D-313, the Township will endeavor to post on its municipal website, with a copy provided to FSHC (see below), a status report as to its implementation of its Plan and an analysis of whether any unbuilt sites or unfulfilled mechanisms continue to present a realistic opportunity and whether any mechanisms to meet unmet need should be revised or supplemented. Such posting shall invite any interested party to submit comments to the municipality, with a copy to FSHC, regarding whether any sites no longer present a realistic opportunity and should be replaced and whether any mechanisms to meet unmet need should be revised or supplemented. Any interested party may by motion request a hearing before the Court regarding these issues. However, the Settlement Agreement between the Township and FSHC shall serve as the main response to this requirement.
- d. By July 1, 2020, and every third (3<sup>rd</sup>) year thereafter, as required by N.J.S.A. 52:27D-329.1, the Township will post on its municipal website, with a copy provided to FSHC, 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 FSHC on the issue of whether the municipality has complied with its very low income and family very low-income housing obligations.

#### **188-124 Definitions.**

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

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

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

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

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

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

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

“Affordable housing development” means a development included in or approved pursuant to the Housing Element and Fair Share Plan or otherwise intended to address the Township’s fair share obligation and includes,

but is not limited to, an inclusionary development, a municipal construction project or a one hundred (100%) percent affordable housing development.

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

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

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

“Age-restricted unit” means a housing unit designed to meet the needs of, and exclusively for, the residents of an age-restricted segment of the population such that: 1) all the residents of the development wherein the unit is situated are sixty two (62) years of age or older; or, 2) at least eighty (80%) percent of the units are occupied by one (1) 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" means a structure in which households live in distinct bedrooms, yet share kitchen and plumbing facilities, central heat and common areas. Alternative living arrangements include, but are not limited to: transitional facilities for the homeless; Class A, B, C, D and E boarding homes as regulated by the State of New Jersey Department of Community Affairs; residential health care facilities as regulated by the New Jersey Department of Health; group homes for the developmentally disabled and mentally ill as licensed and/or regulated by the New Jersey Department of Human Services; and, congregate living arrangements.

“Assisted living residence” means a facility that is licensed by the New Jersey Department of Health and Senior Services to provide apartment-style housing and congregate dining and to assure that assisted living services are available when needed for four (4) 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 very low-income, low-income household or moderate-income household.

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

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

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

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

“Development” means the division of a parcel of land into two (2) or more parcels, the construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any use or change in the use of any building or other structure, or of any mining, excavation or landfill, and any use or change in the use of any building or other structure, or land or extension of use of land, for which permission may be required pursuant to N.J.S.A. 40:55D-1, et seq.

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

“Low-income household” means a household with a total gross annual household income equal to fifty (50%) percent or less of the regional median household income by household size.

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

“Major system” means the primary structural, mechanical, plumbing, electrical, fire protection, or occupant service components of a building which include but are not limited to, weatherization, roofing, plumbing

(including wells), heating, electricity, sanitary plumbing (including septic systems), lead paint abatement and load bearing structural systems.

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

“Median income” means the median income by household size for the applicable housing region, as adopted annually by COAH or a successor entity approved by the Court.

“Moderate-income household” means a household with a total gross annual household income in excess of fifty (50%) percent but less than eighty (80%) percent of the regional median household income by household size.

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

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

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

“Regional asset limit” means the maximum housing value in each housing region affordable to a four (4) person household with an income at eighty (80%) percent of the regional median as defined by duly adopted Regional Income Limits published annually by COAH or a successor entity.

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

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

“Restricted unit” means a dwelling unit, whether a rental unit or an ownership unit, that is subject to the affordability controls of N.J.A.C. 5:80-26.1 et. seq., as amended and supplemented, but does not include a market-rate unit financed under the Urban Homeownership Recovery Program or Market Oriented Neighborhood Investment Program.

“Settlement Agreement” means the settlement agreement, dated April 14, 2020, between the Township of Hillsborough and Fair Share Housing Center dated in IMO Township of Hillsborough, Docket No. SOM-L-000900-15.

“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 or less than thirty (30%) percent of the regional median household income by household size.

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

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

### **188-125 Applicability.**

- a. The provisions of this Ordinance shall apply to all affordable housing developments and affordable housing units that currently exist and that are proposed to be created within the Township of Hillsborough pursuant to the Township’s most recently adopted Housing Element and Fair Share Plan and the Settlement Agreement.
- b. The Township’s mandatory affordable housing set-aside ordinance shall be applicable to all new multi-family residential developers of five (5) or more units (whether for sale or rental) and shall be at twenty (20%) percent. The Township shall not be precluded from requiring higher set asides where the Township itself deems to be appropriate.

- c. This Ordinance shall apply to all developments that contain very low-, low- and moderate-income housing units, including any currently unanticipated future developments that will provide very low-, low- and moderate-income housing units, and also including projects funded with Low Income Housing Tax Credits.

**188-126 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 twenty (20)-year operating contract with the Department of Human Services, Division of Developmental Disabilities, alternative living arrangements shall have at least thirty (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.

**188-126.1 Phasing Schedule for Inclusionary Zoning.**

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

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

**188-126.2 New Construction.**

- a. Low/Moderate Split and Bedroom Distribution of Affordable Housing Units:
  - 1. The fair share obligation shall be divided equally between low- and moderate-income units, except that where there is an odd number of affordable housing units, the extra unit shall be a low-income unit. At least thirteen (13%) percent of all restricted rental units within each bedroom distribution shall be very low-income units (affordable to a household earning thirty (30%) percent or less of regional median income by household size). The very low-income units shall be counted as part of the required number of low-income units within the development.
  - 2. 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.
  - 3. A maximum of twenty-five (25%) percent of the Township's obligation may be met with age restricted units. At least one half (1/2) of all affordable units in the Township's Plan shall be

available to families.

4. In each affordable development, at least fifty (50%) percent of the restricted units within each bedroom distribution shall be very low or low-income units including that thirteen (13%) percent shall be very-low income.
5. 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 (1)-bedroom units shall be 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 shall be two (2)-bedroom units;
  - c. At least twenty (20%) percent of all low- and moderate-income units shall be three (3)-bedroom units; and,
  - d. The remaining units may be allocated among two (2)- and three (3) -bedroom units at the discretion of the developer.
6. Affordable developments that are age-restricted shall be structured such that the number of bedrooms shall equal the number of age-restricted very low-, low- and moderate-income units within the inclusionary development. This standard may be met by having all one (1) - bedroom units or by having a two (2) -bedroom unit for each efficiency unit.

b. Accessibility Requirements:

1. The first (1<sup>st</sup>) floor of all restricted townhouse dwelling units and all restricted units in all other multistory buildings shall be subject to the technical design standards of the Barrier Free Subcode, N.J.A.C. 5:23-7 and the following herein:
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 (1<sup>st</sup>) floor; and,
  - b. An adaptable kitchen on the first (1<sup>st</sup>) floor; and,
  - c. An interior accessible route of travel on the first (1<sup>st</sup>) 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 (1<sup>st</sup>) floor; and,
  - e. If not all of the foregoing requirements in 2(a) through 2(d) above 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 Hillsborough Township has collected funds from the developer sufficient to make ten (10%) percent of the adaptable entrances in the development accessible:
    - i. 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.
    - ii. To this end, the builder of restricted units shall deposit funds within the Township of Hillsborough Affordable Housing Trust Fund sufficient to install accessible entrances in ten (10%) percent of the affordable units that have been constructed with adaptable entrances.

- iii. The funds deposited under paragraph (f)ii above shall be used by the Township of Hillsborough for the sole purpose of making the adaptable entrance of an affordable unit accessible when requested to do so by a person with a disability who occupies or intends to occupy the unit and requires an accessible entrance.
  - iv. The developer of the restricted units shall submit a design plan and cost estimate to the Construction Official of the Township of Hillsborough for the conversion of adaptable to accessible entrances.
  - v. 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 Township's Affordable Housing Trust Fund in care of the Township Chief Financial Officer, who shall ensure that the funds are deposited into the Affordable Housing Trust Fund and appropriately earmarked.
- g. 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.

3. Design:

- a. In inclusionary developments, to the fullest extent possible, very low-, low- and moderate-income units shall be integrated with the market units.
- b. In inclusionary developments, very low-, low- and moderate-income units shall have access to all of the same common elements and facilities as the market units.

4. Maximum Rents and Sales Prices:

- a. In establishing rents and sales prices of affordable housing units, the Administrative Agent shall follow the procedures set forth in UHAC, utilizing the most recently published regional weighted average of the uncapped Section 8 income limits published by HUD and using the calculation set forth below. Income limits for all affordable units that are created in the Township for which income limits are not already established through a Federal program exempted from the UHAC, pursuant to N.J.A.C 5:80-26.1, shall be updated by the Township annually within thirty (30) calendar days of the publication of determinations of median income by the Department of Housing and Urban Development ("HUD") as follows:
  - i. Regional income limits shall be established for the region within which the Township is located based on the median income by household size, which shall be established by a regional weighted average of 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 a housing region is summed. The sum is divided by the estimated total households from the most recent decennial Census in the Township's housing region. This quotient represents the original weighted

average of median income for a household of four (4). The income limit for a moderate-income unit for a household of four (4) shall be eighty (80%) percent of the regional weighted average median income for a family of four (4). The income limit for a low-income unit for a household of four (4) shall be fifty (50%) percent of the HUD determination of the regional weighted average median income for a family of four (4). The income limit for a very low-income unit for a household of four (4) shall be thirty (30%) percent of the regional weighted average median income for a family of four (4). 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.

- ii. The income limits are the result of applying the percentages (%) set forth in paragraph (i) above to HUD's determination of median income for the fiscal year 2019 and shall be utilized until the Township updates the income limits after HUD has published revised determinations of median income for the next fiscal year.
  - iii. 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 Township annually by taking the percentage (%) increase of the income limits calculated, pursuant to paragraph (i) 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.
  - iv. The resale prices of owner-occupied very low-, low- and moderate-income units may increase annually based on the percentage (%) increase in the regional median income limit for each housing region determined pursuant to the above methodology. In no event shall the maximum resale price established by the administrative agent be lower than the last recorded purchase price.
  - v. The rent levels of very-low-, low- and moderate-income units may be increased annually based on the percentage (%) increase in the Housing Consumer Price Index for the Northeast Urban Area (CPI-U), upon its publication for the prior calendar year. This increase shall not exceed nine (9%) 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.
- b. 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.
  - c. 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, which very low-income units shall be part of the low-income requirement.
- d. 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 (3) 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.
  - e. 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:
    - i. A studio shall be affordable to a one (1)-person household;
    - ii. A one (1)-bedroom unit shall be affordable to a one- and one-half (1 ½)-person household;
    - iii. A two (2)-bedroom unit shall be affordable to a three (3)-person household;
    - iv. A three (3) -bedroom unit shall be affordable to a four and one-half (4 ½) person household; and,
    - v. A four (4)-bedroom unit shall be affordable to a six (3)-person household.
  - f. 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:
    - i. A studio shall be affordable to a one (1)-person household;
    - ii. A one (1)-bedroom unit shall be affordable to a one- and one-half (1 ½)-person household; and,
    - iii. A two (2)-bedroom unit shall be affordable to a two (2)-person household or to two (2) one (1)-person households.
    - iv. 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.
  - g. 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.
  - h. The price of owner-occupied very low-, 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.

- i. The rents of very low-, low- and moderate-income units may be increased annually based on the permitted percentage increase in the Housing Consumer Price Index for the Northeast Urban Area. This increase shall not exceed nine (9%) percent in any one year. Rent increases for units constructed pursuant to low- income housing tax credit regulations shall be indexed pursuant to the regulations governing low- income housing tax credits.

### **188-126.3 Utilities.**

- a. Affordable units shall utilize the same type of heating source as market units within an inclusionary development.
- b. Tenant-paid utilities included in the utility allowance shall be set forth in the lease and shall be consistent with the utility allowance approved by HUD for the Section 8 program.

### **188-126.4 Occupancy Standards.**

In referring certified households to specific restricted units, the Administrative Agent shall, to the extent feasible and without causing an undue delay in the occupancy of a unit, strive to:

- a. Provide an occupant for each bedroom;
- b. Provide children of different sexes with separate bedrooms;
- c. Provide separate bedrooms for parents and children; and,
- d. Prevent more than two (2) persons from occupying a single bedroom.

### **188-126.5 Control Periods for Restricted Ownership Units and Enforcement Mechanisms.**

- a. Control periods for newly constructed restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.5, except as modified by the terms of the settlement agreement between the Township of Hillsborough and Fair Share Housing Center (FSHC), as said settlement agreement may be further amended and supplemented, and each newly constructed restricted ownership unit shall remain subject to the requirements of this Ordinance for a period of at least thirty (30) years, until Hillsborough Township takes action to release the unit from such requirements; prior to such action, a restricted ownership unit must remain subject to the requirements of N.J.A.C. 5:80-26.1, except as modified by the terms of the settlement agreement between the Township of Hillsborough and Fair Share Housing Center (FSHC), as said settlement agreement may be further amended and supplemented.
- b. The affordability control period for a restricted ownership unit shall commence on the date the initial certified household takes title to the unit.
- c. Prior to the issuance of the initial certificate of occupancy for a restricted ownership unit and upon each successive sale during the period of restricted ownership, the Administrative Agent shall determine the restricted price for the unit and shall also determine the non-restricted, fair market value of the unit based on either an appraisal or the unit's equalized assessed value without the restrictions in place.
- d. At the time of the initial sale of the unit, the initial purchaser shall execute and deliver to the Administrative Agent a recapture note obligating the purchaser (as well as the purchaser's heirs, successors and assigns) to repay, upon the first non-exempt sale after the unit's release from the restrictions set forth in this Ordinance, an amount equal to the difference between the unit's non-restricted fair market value and its restricted price, and the recapture note shall be secured by a recapture lien evidenced by a duly recorded mortgage on the unit.

- e. The affordability controls set forth in this Ordinance shall remain in effect despite the entry and enforcement of any judgment of foreclosure with respect to restricted ownership units.
- f. A restricted ownership unit shall be required to obtain a Continuing Certificate of Occupancy or a certified statement from the Construction Official stating that the unit meets all Code standards upon the first transfer of title following the removal of the restrictions provided under N.J.A.C. 5:80-26.5(a), as may be amended and supplemented.

**188-126.6 Price Restrictions for Restricted Ownership Units, Homeowner Association Fees and Resale Prices.**

Price restrictions for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.6, as may be amended and supplemented, including:

- a. The initial purchase price for a restricted ownership unit shall be approved by the Administrative Agent.
- b. The Administrative Agent shall approve all resale prices, in writing and in advance of the resale, to assure compliance with the foregoing standards.
- c. The master deeds of inclusionary developments shall provide no distinction between the condominium or homeowner association fees and special assessments paid by very low-, low- and moderate-income purchasers and those paid by market purchasers.
- d. The owners of restricted ownership units may apply to the Administrative Agent to increase the maximum sales price for the unit on the basis of approved capital improvements. Eligible capital improvements shall be those that render the unit suitable for a larger household or the addition of a bathroom. See Section 26-1.13.

**188-126.7 Buyer Income Eligibility.**

- a. Buyer income eligibility for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.7, 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 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, the Administrative Agent may, upon approval by the Township Committee, and subject to the Court's approval, permit a moderate-income purchaser to buy a low-income unit if and only if the Administrative Agent can demonstrate that there is an insufficient number of eligible low-income purchasers in the housing region to permit prompt occupancy of the unit and all other reasonable efforts to attract a low income purchaser, including pricing and financing incentives, have failed. Any such low-income unit that is sold to a moderate-income household shall retain the required pricing and pricing restrictions for a low-income unit.
- c. A certified household that purchases a restricted ownership unit must occupy it as the certified household's principal residence and shall not lease the unit; provided, however, that the Administrative Agent may permit the owner of a restricted ownership unit, upon application and a showing of hardship, to lease the restricted unit to another certified household for a period not to exceed one (1) year.
- d. The Administrative Agent shall certify a household as eligible for a restricted ownership unit when the household is a low-income household or a moderate-income household, as applicable to the unit, and the estimated monthly housing cost for the particular unit (including principal, interest, taxes, homeowner and private mortgage insurance and condominium or homeowner association fees, as applicable) does not exceed thirty-three (33%) percent of the household's eligible monthly income.

**188-126.8 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).

### **188-126.9 Capital Improvements to Ownership Units.**

- a. The owners of restricted ownership units may apply to the Administrative Agent to increase the maximum sales price for the unit on the basis of capital improvements made since the purchase of the unit. Eligible capital improvements shall be those that render the unit suitable for a larger household or that add an additional bathroom. In no event shall the maximum sales price of an improved housing unit exceed the limits of affordability for the larger household.
- b. Upon the resale of a restricted ownership unit, all items of property that are permanently affixed to the unit or were included when the unit was initially restricted (for example, refrigerator, range, washer, dryer, dishwasher, wall-to-wall carpeting) shall be included in the maximum allowable resale price. Other items may be sold to the purchaser at a reasonable price that has been approved by the Administrative Agent at the time of the signing of the agreement to purchase. The purchase of central air conditioning installed subsequent to the initial sale of the unit and not included in the base price may be made a condition of the unit resale provided the price, which shall be subject to 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.

### **188-126.10 Control Periods for Restricted Rental Units.**

- a. Control periods for newly constructed restricted rental units shall be in accordance with N.J.A.C. 5:80-26.11, except as modified by the terms of the settlement agreement between the Township of Hillsborough and Fair Share Housing Center (FSHC), as such settlement agreement may be further amended and supplemented, and each newly constructed restricted rental unit shall remain subject to the requirements of this Ordinance for a period of at least thirty (30) years, until Hillsborough Township takes action to release the unit from such requirements. Prior to such action, a restricted rental unit must remain subject to the requirements of N.J.A.C. 5:80-26.11, except as modified by the terms of the settlement agreement between the Township of Hillsborough and Fair Share Housing Center (FSHC), as such settlement agreement may be further amended and supplemented.
- b. Deeds of all real property that include restricted rental units shall contain deed restriction language. The deed restriction shall have priority over all mortgages on the property, and the deed restriction shall be filed by the developer or seller with the records office of the County of Somerset. The deed shall also identify each affordable unit by apartment number and/or address and whether that unit is designated as a very low, low or moderate income unit. Neither the unit nor its affordability designation shall change throughout the term of the deed restriction. A copy of the filed document shall be provided to the Administrative Agent within thirty (30) calendar days of the receipt of a Certificate of Occupancy.
- c. A restricted rental unit shall remain subject to the affordability controls of this Ordinance despite the

occurrence of any of the following events:

1. Sublease or assignment of the lease of the unit;
2. Sale or other voluntary transfer of the ownership of the unit; or,
3. The entry and enforcement of any judgment of foreclosure on the property containing the unit.

#### **188-126.11 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 (5%) percent of the monthly rent of the applicable restricted unit and shall be payable to the Administrative Agent to be applied to the costs of administering the controls applicable to the unit as set forth in this Ordinance.
- d. No rent control ordinance or other pricing restriction shall be applicable to either the market units or the affordable units in any development in which at least fifteen (15%) percent of the total number of dwelling units are restricted rental units in compliance with this Ordinance.

#### **188-126.12 100% Affordable Projects.**

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

#### **188-126.13 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 thirty (30%) percent of the regional median household income by household size.
  2. Low-income rental units shall be reserved for households with a gross household income less than or equal to fifty (50%) percent of the regional median household income by household size.
  3. Moderate-income rental units shall be reserved for households with a gross household income less than eighty (80%) percent of the regional median household income by household size.
- b. The Administrative Agent shall certify a household as eligible for a restricted rental unit when the household is a very low-income household, low-income household or a moderate-income household, as applicable to the unit, and the rent proposed for the unit does not exceed 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, 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 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 a.1. through b.5. above with the Administrative Agent, who shall counsel the household on budgeting.

### **188-127 Municipal Housing Liaison.**

- a. There is hereby created the position of Municipal Housing Liaison. The Municipal Housing Liaison shall be responsible for oversight and administration of the affordable housing program for Hillsborough Township, including the following responsibilities which may not be contracted out to the Administrative Agent:
1. Serving as Hillsborough Township'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 Hillsborough Township's Fair Share Plan;
  3. Compiling, verifying, submitting and posting all monitoring reports as required by the Court and by this Ordinance;
  4. Coordinating meetings with affordable housing providers and Administrative Agents, as needed; and,
  5. Attending continuing education opportunities on affordability controls, compliance monitoring and affirmative marketing at least annually and more often as needed.
- b. The Township of Hillsborough shall appoint a specific municipal employee to serve as a Municipal Housing Liaison responsible for overseeing the Township's affordable housing program, including overseeing the administration of affordability controls on the affordable units and the affirmative marketing of available affordable units in accordance with the Township's Affirmative Marketing Plan; fulfilling monitoring and reporting requirements; and supervising Administrative Agent(s). Hillsborough Township shall adopt a Resolution appointing the person to fulfill the position of Municipal Housing Liaison. The Municipal Housing Liaison shall be appointed by the governing body and may be a full or part time municipal employee.
- c. Subject to the approval of the Court, the Township of Hillsborough shall designate one or more Administrative Agent(s) to administer and to affirmatively market the affordable units constructed in the Township in accordance with this Ordinance and UHAC. An Operating Manual for each affordable housing program shall be provided by the administrative agent(s) to be adopted by resolution of the governing body and subject to approval of the court. The Operating Manual(s) shall be available for public inspection in the office of the Township Clerk, in the office of the municipal housing liaison, and in the office(s) of the administrative agent(s). The Municipal Housing Liaison shall supervise the work of the Administrative Agent(s).

### **188-128 Administrative Agent.**

An Administrative Agent may either be an independent entity serving under contract to and reporting to the municipality, or the municipality itself, through a designated municipal employee, department, board, agency or committee, pursuant to N.J.A.C. 5:80-26.14(c). *The fees of the Administrative Agent shall be paid by the*

**owners of the affordable units for which the services of the Administrative Agent are required.** The Administrative Agent shall be qualified through a training program sponsored by the Affordable Housing Professionals of New Jersey before assuming the duties. The Administrative Agent shall perform the duties and responsibilities of an Administrative Agent as set forth in UHAC, including those set forth in N.J.A.C.5:80-26.14, 15, 16 and 18 thereof, which includes:

a. Affirmative Marketing:

1. Conducting an outreach process to affirmatively market affordable housing units in accordance with the Affirmative Marketing Plan of the Township of Hillsborough and the provisions of N.J.A.C. 5:80-26.15; and,
2. Providing counseling or contracting to provide counseling services to very low-, low- and moderate-income applicants on subjects such as budgeting, credit issues, mortgage qualification, rental lease requirements, and landlord/tenant law.

b. Household Certification:

1. Soliciting, scheduling, conducting and following up on interviews with interested households;
2. Conducting interviews and obtaining sufficient documentation of gross income and assets upon which to base a determination of income eligibility for a low- or moderate-income unit;
3. Providing written notification to each applicant as to the determination of eligibility or non-eligibility;
4. Requiring that all certified applicants for restricted units execute a certificate substantially in the form, as applicable, of either the ownership or rental certificates set forth in Appendices J and K of N.J.A.C. 5:80-26.1 et seq.;
5. Creating and maintaining a referral list of eligible applicant households living in the housing region and eligible applicant households with members working in the housing region where the units are located;
6. Employing a random selection process as provided in the Affirmative Marketing Plan of the Township of Hillsborough when referring households for certification to affordable units; and,
7. Notifying the following entities of the availability of affordable housing units in the Township of Hillsborough: Fair Share Housing Center, the New Jersey State Conference of the NAACP, the Latino Action Network, the Greater Red Bank, Asbury Park/Neptune, Bayshore, Greater Freehold, and Greater Long Branch Branches of the NAACP, and the Supportive Housing Association.

c. Affordability Controls:

1. Furnishing to attorneys or closing agents forms of deed restrictions and mortgages for recording at the time of conveyance of title of each restricted unit;
2. Creating and maintaining a file on each restricted unit for its control period, including the recorded deed with restrictions, recorded mortgage and note, as appropriate;
3. Ensuring that the removal of the deed restrictions and cancellation of the mortgage note are effectuated and properly filed with the Somerset County Register of Deeds or Somerset County Clerk's office after the termination of the affordability controls for each restricted unit;
4. Communicating with lenders regarding foreclosures; and,
5. Ensuring the issuance of Continuing Certificates of Occupancy or certifications, pursuant to N.J.A.C. 5:80-26.10.

d. Resales and Re-rentals:

1. Instituting and maintaining an effective means of communicating information between owners and the Administrative Agent regarding the availability of restricted units for resale or re-rental; and,
2. Instituting and maintaining an effective means of communicating information to low- (or very low-) and moderate-income households regarding the availability of restricted units for resale or re-rental.

e. Processing Requests from Unit Owners:

1. Reviewing and approving requests for determination from owners of restricted units who wish to take out home equity loans or refinance during the term of their ownership that the amount of indebtedness to be incurred will not violate the terms of this Ordinance;
2. Reviewing and approving requests to increase sales prices from owners of restricted units who wish to make capital improvements to the units that would affect the selling price, such authorizations to be limited to those improvements resulting in additional bedrooms or bathrooms and the depreciated cost of central air conditioning systems;
3. Notifying the municipality of an owner's intent to sell a restricted unit; and,
4. Making determinations on requests by owners of restricted units for hardship waivers.

f. Enforcement:

1. Securing annually from the municipality a list of all affordable housing units for which tax bills are mailed to absentee owners, and notifying all such owners that they must either move back to their unit or sell it;
2. Securing from all developers and sponsors of restricted units, at the earliest point of contact in the processing of the project or development, written acknowledgement of the requirement that no restricted unit can be offered, or in any other way committed, to any person, other than a household duly certified to the unit by the Administrative Agent;
3. Posting annually, in all rental properties (including two-family homes), a notice as to the maximum permitted rent together with the telephone number of the Administrative Agent where complaints of excess rent or other charges can be made;
4. Sending annual mailings to all owners of affordable dwelling units, reminding them of the notices and requirements outlined in N.J.A.C. 5:80-26.18(d)4;
5. Establishing a program for diverting unlawful rent payments to the municipality's Affordable Housing Trust Fund; and,
6. Creating and publishing a written operating manual for each affordable housing program administered by the Administrative Agent, to be approved by the Township Council and the Court, setting forth procedures for administering the affordability controls. The Operating Manual(s) shall be available for public inspection in the office of the Township Clerk, in the office of the Municipal Housing Liaison, and in the office(s) of the Administrative Agent(s).

g. Additional Responsibilities:

1. The Administrative Agent shall have the authority to take all actions necessary and appropriate to carry out its responsibilities hereunder.
2. The Administrative Agent shall prepare monitoring reports for submission to the Municipal Housing Liaison in time to meet the Court-approved monitoring and reporting requirements in accordance with the deadlines set forth in this Ordinance.
3. The Administrative Agent shall attend continuing education sessions on affordability controls, compliance monitoring, and affirmative marketing at least annually and more often as needed.

**188-129 Affirmative Marketing Requirements.**

- a. The Township of Hillsborough shall adopt by resolution an Affirmative Marketing Plan, subject to approval of the Court, that is compliant with N.J.A.C. 5:80-26.15, as may be amended and supplemented.
- b. The Affirmative Marketing Plan is a regional marketing strategy designed to attract buyers and/or renters of all majority and minority groups, regardless of race, creed, color, national origin, ancestry, marital or familial status, gender, affectional or sexual orientation, disability, age or number of children to housing units which are being marketed by a developer, sponsor or owner of affordable housing. The Affirmative Marketing Plan is intended to target those potentially eligible persons who are least likely to apply for affordable units in that region. It is a continuing program that directs marketing activities toward



Housing Region 3 and is required to be followed throughout the period of restriction.

- c. The Affirmative Marketing Plan shall provide a regional preference for all households that live and/or work in Housing Region 3, comprised of Middlesex, Hunterdon and Somerset Counties.
- d. The municipality has the ultimate responsibility for adopting the Affirmative Marketing Plan and for the proper administration of the Affirmative Marketing Program, including initial sales and rentals and resales and re-rentals. The Administrative Agent designated by the Township of Hillsborough shall implement the Affirmative Marketing Plan to assure the affirmative marketing of all affordable units.
- e. In implementing the Affirmative Marketing Plan, the Administrative Agent shall provide a list of counseling services to very low-, low- and moderate-income applicants on subjects such as budgeting, credit issues, mortgage qualification, rental lease requirements, and landlord/tenant law.
- f. The Affirmative Marketing Plan shall describe the media to be used in advertising and publicizing the availability of housing. In implementing the Affirmative Marketing Plan, the Administrative Agent shall consider the use of language translations where appropriate.
- g. The affirmative marketing process for available affordable units shall begin at least four (4) months (120 days) prior to the expected date of occupancy.
- h. Applications for affordable housing shall be available in several locations, including, at a minimum, the County Administration Building and/or the County Library for each county within the housing region; the municipal administration building and the municipal library in the municipality in which the units are located; and the developer's rental office. Applications shall be mailed to prospective applicants upon request.
- i. In addition to other affirmative marketing strategies, the Administrative Agent shall provide specific notice of the availability of affordable housing units in Hillsborough Township, and copies of the application forms, to the following entities: Fair Share Housing Center, the New Jersey State Conference of the NAACP, the Latino Action Network, the Greater Red Bank, Asbury Park/Neptune, Bayshore, Greater Freehold, and Greater Long Branch Branches of the NAACP, and the Supportive Housing Association.
- j. The costs of advertising and affirmative marketing of the affordable units shall be the responsibility of the developer, sponsor or owner.

### **188-130 Enforcement of Affordable Housing Regulations.**

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

- considered a separate and specific violation of these provisions and not a continuation of the initial offense
- b. In the case of an Owner who has rented a very low-, low- or moderate-income unit in violation of the regulations governing affordable housing units, payment into the Township of Hillsborough Affordable Housing Trust Fund of the gross amount of rent illegally collected;
  - c. In the case of an Owner who has rented a very low-, low- or moderate-income unit in violation of the regulations governing affordable housing units, payment of an innocent tenant's reasonable relocation costs, as determined by the Court
2. The Township may file a court action in the Superior Court seeking a judgment that would result in the termination of the Owner's equity or other interest in the unit, in the nature of a mortgage foreclosure. Any such judgment shall be enforceable as if the same were a judgment of default of the First Purchase Money Mortgage and shall constitute a lien against the low- or moderate-income unit.
- a. The judgment shall be enforceable, at the option of the municipality, by means of an execution sale by the Sheriff, at which time the very low-, low- and moderate-income unit of the violating Owner shall be sold at a sale price which is not less than the amount necessary to fully satisfy and pay off any First Purchase Money Mortgage and prior liens and the costs of the enforcement proceedings incurred by the municipality, including attorney's fees. The violating Owner shall have his right to possession terminated, as well as his title conveyed pursuant to the Sheriff's sale.
  - b. The proceeds of the Sheriff's sale shall first be applied to satisfy the First Purchase Money Mortgage lien and any prior liens upon the very low-, low- and moderate-income unit. The excess, if any, shall be applied to reimburse the municipality for any and all costs and expenses incurred in connection with either the court action resulting in the judgment of violation or the Sheriff's sale. In the event that the proceeds from the Sheriff's sale are insufficient to reimburse the municipality in full as aforesaid, the violating Owner shall be personally responsible for the full extent of such deficiency, in addition to any and all costs incurred by the municipality in connection with collecting such deficiency. In the event that a surplus remains after satisfying all of the above, such surplus, if any, shall be placed in escrow by the municipality for the Owner and shall be held in such escrow for a maximum period of two (2) 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 (2)-year period shall automatically result in a forfeiture of such balance to the municipality. Any interest accrued or earned on such balance while being held in escrow shall belong to and shall be paid to the municipality, whether such balance shall be paid to the Owner or forfeited to the municipality.
  - c. Foreclosure by the municipality due to violation of the regulations governing affordable housing units shall not extinguish the restrictions of the regulations governing affordable housing units as the same apply to the very low-, low- and moderate-income unit. Title shall be conveyed to the purchaser at the Sheriff's sale, subject to the restrictions and provisions of the regulations governing the affordable housing unit. The Owner determined to be in violation of the provisions of this plan and from whom title and possession were taken by means of the Sheriff's sale shall not be entitled to any right of redemption.
  - d. If there are no bidders at the Sheriff's sale, or if insufficient amounts are bid to satisfy the First Purchase Money Mortgage and any prior liens, the municipality may acquire title to the very low-, low- and moderate-income unit by satisfying

the First Purchase Money Mortgage and any prior liens and crediting the violating owner with an amount equal to the difference between the First Purchase Money Mortgage and any prior liens and costs of the enforcement proceedings, including legal fees and the maximum resale price for which the very low-, low- and moderate-income unit could have been sold under the terms of the regulations governing affordable housing units. This excess shall be treated in the same manner as the excess which would have been realized from an actual sale as previously described.

- e. Failure of the very low-, low- and moderate-income unit to be either sold at the Sheriff's sale or acquired by the municipality shall obligate the Owner to accept an offer to 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 very low-, low- and moderate-income unit as permitted by the regulations governing affordable housing units.
- f. The Owner shall remain fully obligated, responsible and liable for complying with the terms and restrictions of governing affordable housing units until such time as title is conveyed from the Owner.

### **188-131 Appeals.**

Appeals from all decisions of an Administrative Agent appointed pursuant to this Ordinance shall be filed in writing with the Superior Court of New Jersey, Law Division, Somerset County.

### **188-132 Rehabilitation.**

**A. Owner eligibility.** Owners of houses within the Township of Hillsborough are eligible for the technical and financial assistance made available through the housing rehabilitation program, provided the following:

1. The owner must be a certified household or must agree to rent the house to be rehabilitated to either a low-income household or to a moderate-income household;
2. The unit proposed to be rehabilitated must be a substandard housing unit as determined in writing by the Township Construction Code Official upon inspection of the unit relative to the prevailing standards of the BOCA National Existing Structures Code;
3. The proposed rehabilitation activity shall be limited to the repair or replacement of a roof, plumbing (including wells), heating, electricity, sanitary plumbing (including septic systems) and/or a load bearing structural system; the rehabilitation activity shall not include luxury improvements, the purchase of appliances or improvements that are strictly cosmetic;
4. The proposed rehabilitation activity shall be deemed by the Township Construction Code Official, in writing, to be sufficient to remove the applicable existing health and safety code violation(s) and bring the unit up to the standards of the BOCA National Existing Structures Code; and
5. The owner must agree, in writing, to comply with all the applicable requirements of this Affordable Housing Ordinance.

### **B. Affordable housing document.**

1. Each owner who receives financial assistance under the provisions of the Hillsborough Township housing rehabilitation program shall prepare and be bound by an affordable housing document in accordance with this article.
2. The affordable housing document shall be the legal instrument setting forth the terms, restrictions and provisions applicable to the subject affordable unit and shall constitute the restrictive covenants (lien)

- running with the land with respect to the subject affordable unit.
3. The affordable housing document (lien) shall take effect as soon as the affordable housing administrator has approved the application and money has been made available for the rehabilitation activity. The affordable housing document shall remain in effect for six (6) years in the case of an owner-occupied unit and ten (10) years in the case of a rental unit; any sale of the unit shall not affect the lien.
  4. Each owner who rents a unit to a low-income household or to a moderate-income household shall agree to be bound by the provisions governing the maximum rental charges for all affordable units specified in this article, and by the provisions governing the maximum re-rental charges for all affordable units specified in this article, as applicable.

### **C. Funding and funding phasing.**

1. The Township of Hillsborough shall provide at least ten thousand (\$10,000) dollars per unit to be rehabilitated during the course of the rehabilitation program. No more than two thousand (\$2,000) dollars may be expended per unit for administrative expenses, and an average of eight thousand (\$8,000) dollars shall be expended for the actual rehabilitation activity.
2. The Township of Hillsborough shall provide sufficient dollars to fund one-third (1/3) of its rehabilitation component of affordable units within one (1) year of the date it receives a Judgement of Repose from the Superior Court.
3. During each subsequent year, for a period of four (4) additional years, the Township of Hillsborough shall provide sufficient dollars to fund one-sixth (1/6) of its rehabilitation component of affordable units, provided that:
  - a. No more than the dollars sufficient to fund one-sixth (1/6) of the rehabilitation component need be in the rehabilitation fund during each year subsequent to the first (1<sup>st</sup>) year's funding; and
  - b. Any unused moneys from a prior year remaining in the rehabilitation fund may be carried forth (4<sup>th</sup>) and credited towards the following year's funding requirement.

### **D. Application procedures.**

1. Interested owners will be able to secure information and application packets from the Township Clerk by visiting the Hillsborough Township Municipal Building during the Township Clerk's regularly scheduled office hours.
2. Interested owners shall submit a completed application to the Administrative Agent as established by the Township.
3. The Administrative Agent shall review the application for completeness and, once an application is complete, determine whether the owner is eligible in accordance with the criteria set forth in Subsection [A\(1\)](#) of this section hereinabove
4. Upon determination by the Administrative Agent that the owner is eligible, the Township Construction Code Official shall inspect the subject unit to determine whether it meets the definition of a substandard housing unit under the provisions of this article and whether or not the proposed description and cost of the work needed to improve the unit will meet the parameters of the housing rehabilitation program. The Construction Code Official's determination shall be submitted in writing to the Administrative Agent.
5. If the Township Construction Code Official determines that the unit meets the definition of a substandard housing unit, but recommends an amended description and cost estimate of the work necessary to rehabilitate the unit, the applicant will be asked to revise the application to satisfactorily address the comments of the Construction Code Official.

6. If the Township Construction Code Official determines that the unit meets the definition of a substandard housing unit and that the agreed upon work plan to rehabilitate the unit is satisfactory, the Construction Code Official shall notify the Administrative Agent in writing.
7. Once the Construction Code Official has notified the Administrative Agent in writing that the agreed upon work plan to rehabilitate the unit is satisfactory, Administrative Agent shall arrange for a low-interest loan in accordance with Subsection E of this section hereinbelow. The rehabilitation work may begin as soon as the applicant and the appropriate representative of the Administrative Agent have signed all necessary agreements.
8. During the course of the completion of the rehabilitation construction, the Township Construction Code Official periodically shall inspect the unit to make certain that the construction is proceeding satisfactorily in accordance with the approved work plan.
9. After completion of the rehabilitation construction, the Township Construction Code Official shall inspect the unit and, if the rehabilitation construction has been completed satisfactorily, shall certify in writing to the Administrative Agent that the rehabilitation work has been completed in accordance with the approved work plan.
10. Should the Township Construction Code Official find upon inspection that the rehabilitation work has not been completed in accordance with the approved work plan, the Construction Code Official shall so notify the Administrative Agent, which will determine a suitable remedy.

**E. Low-interest loans.** An eligible owner who has executed an affordable housing document for the subject substandard housing unit shall receive a low-interest loan from the Office of Social Services. The Administrative Agent shall work with the applicant to establish a realistic loan repayment schedule. If the applicant does not meet the established loan repayment schedule, the Administrative Agent, on behalf of the Township, shall collect the uncollected funds as well as the accumulated interest at the time of the sale of the unit, and the Township shall retain the right to increase the interest rates on delinquent loans.

1. Rental rehabilitation. The following terms shall apply to loans made for the rehabilitation of a unit that is owned by a household who does not qualify as a low- or moderate-income household, but who has agreed to rent the unit to a low-income household or to a moderate-income household:
  - a. The Administrative Agent will make a loan to the applicant for the total amount of the cost of rehabilitation. Although the loan will be made to the applicant, the proceeds of the loan will be paid to the individual(s) or business(es) that sell the material and/or labor for the project. Owners who contribute sweat equity will not receive financial remuneration for their efforts;
  - b. The interest rate will be fixed at an annual rate of two points below prime, or one point above the Township of Hillsborough's interest rate on bonds sold for such purpose, whichever is less, at the time the loan originates. The interest rate on bonds will be established and made public at the time of the sale, and all prospective borrowers will be notified in writing of the respective rates;
  - c. Payments on the loan principal will be deferred for a ten (10)-year period. Payments on interest will be made in equal monthly payments during the ten-year period, or until the loan is paid in full if paid before the end of the ten (10)-year period;
  - d. Repayment of the loan principal and any interest due will become payable in full at the end of ten (10) years, unless the owner elects to continue the affordability controls on the affordable unit for an appropriate period of time. No interest will be charged after the tenth year if the owner chooses to defer repayment of the loan principal in exchange for extending the affordability controls on the affordable unit;
  - e. Sixty (60) days prior to the end of the loan's ten-year life, the Administrative Agent shall submit a letter to the owner indicating the date on which the loan principal and any

- interest due will become payable, the specific date when the Administrative Agent expects payment, and the circumstances under which the repayment of the loan principal may continue to be deferred;
- f. Repayment of the loan principal may be extended beyond the first ten (10) year period, interest free, if and only if the owner agrees to continue renting to a low- or moderate-income household, as the case may be, and extend the affordable housing document controlling the subject affordable unit. If the owner wants to take this option, he or she shall notify the Administrative Agent in writing of his or her intentions within thirty (30) days of receipt of the notification from the Administrative Agent that the loan principal will become due; and
  - g. If an owner plans to continue affordability controls on the subject unit, he or she must sign an agreement with the Administrative Agent that the affordable housing document controlling the subject affordable unit will be renewable annually, and that the owner must demonstrate to the Administrative Agent at that time that the unit continues to be occupied by a low-income household or a moderate-income household, as the case may be.
2. Owner-occupied rehabilitation. The following terms shall apply to loans made for the rehabilitation of a unit that is owner-occupied by either a low-income household or a moderate-income household:
- a. The Administrative Agent will make a loan to the applicant for the total amount of the cost of rehabilitation. Although the loan will be made to the applicant, the proceeds of the loan will be paid to the individual(s) or business(es) that sell the material and/or labor for the project. Owners who contribute sweat equity will not receive financial remuneration for their efforts;
  - b. The interest rate will be fixed at an annual rate of two points below prime, or one point above the Township of Hillsborough's interest rate on bonds sold for such purpose, whichever is less, at the time the loan originates. The interest rate on bonds will be established and made public at the time of sale, and all prospective borrowers will be notified in writing of the respective rates. The interest on the loan shall be charged for a period of six (6) years unless the loan is repaid sooner.
  - c. Repayment of the loan will not be required until the sale of the property at fair market value. At the time of such sale, the unpaid principal plus the accrued interest shall be paid to the Township of Hillsborough, except that no interest shall be charged beyond the tenth year of the loan; and
  - d. Payment of the principal and interest may be deferred beyond the initial sale of the property only if the property is sold to a certified household at a price approved by the Administrative Agent, which has been calculated in accordance with this article. The new certified household owner shall continue the affordable housing document controlling the unit and assume the lien on the property. Any subsequent sale of the unit at fair market value shall require the repayment of the loan principal and interest in accordance with Subsection [E\(2\)\(c\)](#) of this section hereinabove.
3. Priority for financial assistance. In the event that sufficient funds are not available to provide low interest loans to every eligible owner, at least fifty (50%) percent of the available assistance shall be awarded to applications that will result in low-income units in preference to those that will result in moderate-income units.

**F. Rehabilitation marketing plan.** The Administrative Agent shall be responsible to prepare and execute a rehabilitation-marketing plan which shall be approved by the Superior Court:

**BE IT FURTHER ORDANED** that Article VII entitled “Affordable Housing Trust Fund” Sections **188-139 through 188-142** are hereby deleted and replaced as follows:

## **188-139 Development Fees**

### **188-139.1 Purpose**

- a. In Holmdel Builder's Association v. Holmdel Township, 121 N.J. 550 (1990), the New Jersey Supreme Court determined that mandatory development fees are authorized by the Fair Housing Act of 1985, N.J.S.A. 52:27d-301 et seq., and the State Constitution, subject to the adoption of Rules by the Council on Affordable Housing (COAH)
- b. Pursuant to P.L. 2008, c. 46, Section 8 (C. 52:27D-329.2) and the Statewide Non-Residential Development Fee Act (C. 40:55D-8.1 through 8.7), COAH was authorized to adopt and promulgate regulations necessary for the establishment, implementation, review, monitoring and enforcement of municipal affordable housing trust funds and corresponding spending plans. Municipalities that were under the jurisdiction of COAH and that are now before a court of competent jurisdiction and have a Court-approved Spending Plan may retain fees collected from non-residential development
- c. This section establishes standards for the collection, maintenance, and expenditure of development fees that are consistent with COAH's regulations developed in response to P.L. 2008, c. 46, Sections 8 and 32-38 (C. 52:27D-329.2) and the Statewide Non-Residential Development Fee Act (C. 40:55D-8.1 through 8.7). Fees collected pursuant to this section shall be used for the sole purpose of providing low- and moderate-income housing in accordance with a Court-approved Spending Plan.

### **188-139.2 Basic Requirements**

- a. This Ordinance shall not be effective until approved by the Court.
- b. The Township of Hillsborough shall not spend development fees until the Court has approved a plan for spending such fees (Spending Plan).

### **188-139.3 Definitions**

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

"Affordable housing development" means a development included in the Housing Element and Fair Share Plan, and includes, but is not limited to, an inclusionary development, a municipal construction project or a one hundred (100%) percent affordable housing development.

"Township" means the Township of Hillsborough.

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

"Construction Official" means the construction office or his/her designee.

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

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

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

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

### **188-139.4 Residential Development Fees**



a. Imposition of Fees

1. Within the Township of Hillsborough, all residential developers, except for developers of the types of developments specifically exempted below and developers of developments that include affordable housing, shall pay a fee of one and a half percent (1.5%) of the equalized assessed value for all new residential development provided no increased density is permitted. Development fees shall also be imposed and collected when an additional dwelling unit is added to an existing residential structure; in such cases, the fee shall be calculated based on the increase in the equalized assessed value of the property due to the additional dwelling unit.
2. When an increase in residential density is permitted pursuant to a “d” variance granted under N.J.S.A. 40:55D-70(d)(5), developers shall be required to pay a “bonus” development fee of six percent (6%) percent of the equalized assessed value for each additional unit that may be realized, except that this provision shall not be applicable to a development that will include affordable housing. If the zoning on a site has changed during the two (2)-year period preceding the filing of such a variance application, the base density for the purposes of calculating the bonus development fee shall be the highest density permitted by right during the two (2)-year period preceding the filing of the variance application.
3. Development fees shall be imposed and collected when an existing structure undergoes a change to a more intense use, is demolished and replaced, or is expanded, if the expansion is not otherwise exempt from the development fee requirement. The development fee shall be calculated on the increase in the equalized assessed value of the improved structure.

b. Eligible Exactions, Ineligible Exactions and Exemptions for Residential Developments

1. Affordable housing developments, developments where the developer is providing for the construction of affordable units elsewhere in the municipality, and developments where the developer has made a payment in lieu of on-site construction of affordable units shall be exempt from development fees.
2. 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.
3. Developers of educational facilities shall be exempt from paying a development fee.
4. Developers of houses of worship and other uses that are entitled to exemption from New Jersey real property tax shall be exempt from the payment of a development fee, provided that such development does not result in the construction of any additional housing or residential units, including assisted living and continuing care retirement communities.
5. A development shall be exempt from an increase in the percentage of the development fee, provided the building permit was issued prior to the effective date of this article, or prior to any subsequent ordinance increasing the fee percentage. The developer shall have the right to pay the fee based on the percentage (%) in effect on the date the building permit was issued.
6. Any development or improvement to structures of owner-occupied property in which there is located an affordable accessory residence. This exemption shall only apply to development or improvements to the property during the period of affordability controls.
7. The construction of a new accessory building or other structure on the same lot as the principal building shall be exempt from the imposition of development fees if the assessed value of the structure is determined to be less than \$100,000.

**188-139.5 Non-Residential Development Fees**

a. Imposition of Fees



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

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

1. The two and a half percent (2.5%) development fee shall not apply to an increase in equalized assessed value resulting from alterations, change in use within the existing footprint, reconstruction, renovations and repairs.
2. Non-residential developments shall be exempt from the payment of non-residential development fees in accordance with the exemptions required pursuant to the Statewide Non-Residential Development Fee Act (N.J.S.A. 40:55D-8.1 through 8.7), as specified in Form-N-RDF-"State-of-New-Jersey-Non-Residential-Development Certification/Exemption". Any exemption claimed by a developer shall be substantiated by that developer.
3. A developer of a non-residential development exempted from the non-residential development fee pursuant to the Statewide Non-Residential Development Fee Act shall be subject to the fee at such time as the basis for the exemption no longer applies, and shall make the payment of the non-residential development fee, in that event, within three (3) years after that event or after the issuance of the final Certificate of Occupancy for the non-residential development, whichever is later.
4. If a property which was exempted from the collection of a non-residential development fee thereafter ceases to be exempt from property taxation, the owner of the property shall remit the fees required pursuant to this Section within forty (45) calendar days of the termination of the property tax exemption. Unpaid non-residential development fees under these circumstances may be enforceable by the Township of Hillsborough as a lien against the real property of the owner.
5. Pursuant to P.L. 2009, c. 90 and P.L. 2011, c. 122, the non-residential statewide development fee of two and one-half (2.5%) percent for non-residential development is suspended for all non-residential projects that received preliminary or final site plan approval subsequent to July 17, 2008 until July 1, 2013, provided that a permit for the construction of the building has been issued prior to January 1, 2015.

**188-139.6 Collection Procedures**

- a. Upon the granting of a preliminary, final or other applicable approval for a development, the approving

authority or entity shall notify or direct its staff to notify the Construction Official responsible for the issuance of a Construction Permit.

- b. For non-residential developments only, the developer shall also be provided with a copy of Form N-RDF “State of New Jersey Non-Residential Development Certification/ Exemption” to be completed as per the instructions provided. The developer of a non-residential development shall complete Form N-RDF as per the instructions provided. The Construction Official shall verify the information submitted by the non-residential developer as per the instructions provided in the Form N-RDF. The Tax Assessor shall verify exemptions and prepare estimated and final assessments as per the instructions provided in Form N-RDF.
- c. The Construction Official responsible for the issuance of a Construction Permit shall notify the Township Tax Assessor of the issuance of the first Construction Permit for a development which is subject to a development fee.
- d. Within ninety (90) calendar days of receipt of such notification, the Township Tax Assessor shall prepare an estimate of the equalized assessed value of the development based on the plans filed.
- e. The Construction Official responsible for the issuance of a final Certificate of Occupancy shall notify the Township Tax Assessor of any and all requests for the scheduling of a final inspection on a property which is subject to a development fee.
- f. Within ten (10) business days of a request for the scheduling of a final inspection, the Township’s Tax Assessor shall confirm or modify the previously estimated equalized assessed value of the improvements associated with the development; calculate the development fee; and, thereafter notify the developer of the amount of the fee.
- g. Should the Township of Hillsborough 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).
- h. Except as provided in hereinabove, fifty percent (50%) of the initially calculated development fee shall be collected at the time of issuance of the Construction Permit. The remaining portion shall be collected at the time of issuance of the Certificate of Occupancy. The developer shall be responsible for paying the difference between the fee calculated at the time of issuance of the Construction Permit and that determined at the time of issuance of the Certificate of Occupancy.
- i. Appeal of Development Fees
  1. A developer may challenge residential development fees imposed by filing a challenge with the County Board of Taxation. Pending a review and determination by the Board, collected fees shall be placed in an interest-bearing escrow account by the Township of Hillsborough. 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) calendar days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.
  2. A developer may challenge non-residential development fees imposed by filing a challenge with the Director of the Division of Taxation. Pending a review and determination by the Director, which shall be made within forty-five (45) calendar days of receipt of the challenge, collected fees shall be placed in an interest-bearing escrow account by the Township of Hillsborough. 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) calendar days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.

- a. There is hereby created a separate, interest-bearing Affordable Housing Trust Fund to be maintained by the Chief Financial Officer of the Township of Hillsborough for the purpose of depositing development fees collected from residential and non-residential developers and proceeds from the sale of units with extinguished controls.
- b. The following additional funds shall be deposited in the Affordable Housing Trust Fund and shall at all times be identifiable by source and amount:
  1. Payments in lieu of on-site construction of a fraction of an affordable unit, where permitted by Ordinance or by Agreement with the Township of Hillsborough;
  2. Funds contributed by developers to make ten percent (10%) of the adaptable entrances in a townhouse or other multistory attached dwelling unit development accessible;
  3. Rental income from municipally operated units;
  4. Repayments from affordable housing program loans;
  5. Recapture funds;
  6. Proceeds from the sale of affordable units; and,
  7. Any other funds collected in connection with Highland Township's affordable housing program.
- c. In the event of a failure by the Township of Hillsborough 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); 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 Hillsborough, or, if not practicable, then within the County or the Housing Region.

Any party may bring a motion before the Superior Court presenting evidence of such condition(s), and the Court may, after considering the evidence and providing the municipality a reasonable opportunity to respond and/or to remedy the non-compliant condition(s), and upon a finding of continuing and deliberate non-compliance, determine to authorize LGS to direct the expenditure of funds in the Trust Fund. The Court may also impose such other remedies as may be reasonable and appropriate to the circumstances.

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

### **188-139.8 Use of Funds**

- a. The expenditure of all funds shall conform to a Spending Plan approved by the Court. Funds deposited in the Affordable Housing Trust Fund may be used for any activity approved by the Court to address the Township of Hillsborough' fair share obligation and may be set up as a grant or revolving loan program. Such activities include, but are not limited to: preservation or purchase of housing for the purpose of maintaining or implementing affordability controls; housing rehabilitation; new construction of affordable housing units and related costs; accessory apartments; a market to affordable program; Regional Housing Partnership programs; conversion of existing non-residential buildings to create new affordable units; green building strategies designed to be cost saving and in accordance with accepted national or State standards; purchase of land for affordable housing; improvement of land to be used for affordable housing; extensions or improvements of roads and infrastructure to affordable housing sites;

financial assistance designed to increase affordability; administration necessary for implementation of the Housing Element and Fair Share Plan; and/or, any other activity permitted by the Court and specified in the approved Spending Plan.

- b. Funds shall not be expended to reimburse the Township of Hillsborough for past housing activities.
- c. At least thirty (30%) percent of all development fees collected and interest earned on such fees shall be used to provide affordability assistance to low- and moderate-income households in affordable units included in the municipal Fair Share Plan. One-third of the affordability assistance portion of development fees collected shall be used to provide affordability assistance to those households earning thirty (30%) percent or less of the median income for Housing Region 3, in which Hillsborough Township is located.
  1. Affordability assistance programs may include down payment assistance, security deposit assistance, low interest loans, rental assistance, assistance with homeowners association or condominium fees and special assessments, and assistance with emergency repairs. The specific programs to be used for affordability assistance shall be identified and described within the Spending Plan.
  2. Affordability assistance to households earning 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. The specific programs to be used for very low income affordability assistance shall be identified and described within the Spending Plan.
  3. Payments in lieu of constructing affordable housing units on site, if permitted by Ordinance or by Agreement with the Township of Hillsborough, and funds from the sale of units with extinguished controls shall be exempt from the affordability assistance requirement.
- d. The Township of Hillsborough may contract with a private or public entity to administer any part of its Housing Element and Fair Share Plan, including its programs for affordability assistance.
- e. No more than 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 consultants' fees necessary to develop or implement a new construction program, prepare a Housing Element and Fair Share Plan, and/or administer an affirmative marketing program or a rehabilitation program.
  1. In the case of a rehabilitation program, the administrative costs of the rehabilitation program shall be included as part of the twenty (20%) percent of collected development fees that may be expended on administration.
  2. Administrative funds may be used for income qualification of households, monitoring the turnover of sale and rental units, and compliance with COAH's monitoring requirements. Legal or other fees related to litigation opposing affordable housing sites or related to securing or appealing a judgment from the Court are not eligible uses of the Affordable Housing Trust Fund.

### **188-139.9 Monitoring**

The Township of Hillsborough shall provide annual reporting of Affordable Housing Trust Fund activity to the State of New Jersey, Department of Community Affairs, Council on Affordable Housing or Local Government Services or other entity designated by the State of New Jersey, with a copy provided to Fair Share Housing Center and posted on the municipal website, using forms developed for this purpose by the New Jersey Department of Community Affairs, Council on Affordable Housing or Local Government Services. The reporting shall include an accounting of all Affordable Housing Trust Fund activity, including the sources and amounts of funds collected and the amounts and purposes for which any funds have been expended. Such reporting shall include an accounting of development fees collected from residential and non-residential developers, payments in lieu of constructing affordable units on site (if permitted by Ordinance or by Agreement

with the Township), funds from the sale of units with extinguished controls, barrier free escrow funds, rental income from Township owned affordable housing units, repayments from affordable housing program loans, and any other funds collected in connection with Hillsborough Township's affordable housing programs, as well as an accounting of the expenditures of revenues and implementation of the Spending Plan approved by the Court.

### **188-139.10 Ongoing Collection of Fees**

- a. The ability for the Township of Hillsborough to impose, collect and expend development fees shall expire with the expiration of the repose period covered by its Judgment of Compliance unless the Township of Hillsborough has first filed an adopted Housing Element and Fair Share Plan with the Court or with a designated State administrative agency, has petitioned for a Judgment of Compliance from the Court or for Substantive Certification or its equivalent from a State administrative agency authorized to approve and administer municipal affordable housing compliance and has received approval of its Development Fee Ordinance from the entity that will be reviewing and approving the Housing Element and Fair Share Plan.
- b. If the Township of Hillsborough fails to renew its ability to impose and collect development fees prior to the expiration of its Judgment of Compliance, it may be subject to forfeiture of any or all funds remaining within its Affordable Housing Trust Fund. Any funds so forfeited shall be deposited into the "New Jersey Affordable Housing Trust Fund" established pursuant to Section 20 of P.L. 1985, c. 222 (C. 52:27D-320).
- c. The Township of Hillsborough shall not impose a residential development fee on a development that receives preliminary or final site plan approval after the expiration of its Judgment of Compliance, nor shall the Township of Hillsborough retroactively impose a development fee on such a development. The Township of Hillsborough also shall not expend any of its collected development fees after the expiration of its Judgment of Compliance.

**SECTION 3.** This Ordinance shall take effect upon final passage and publication according to law.

**SECTION 4.** All ordinances or parts of ordinances inconsistent with this Ordinance are hereby repealed as to the inconsistencies only.

**SECTION 5.** If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by a court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions of this Ordinance.

**ATTEST:**

**TOWNSHIP OF HILLSBOROUGH:**

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**Sarah Brake, Deputy Clerk**

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**Shawn Lipani, Mayor**

*Introduced: 04/13/2021*

*Published:*

*Public Hearing:*

*Adopted:*

*Published:*