

BOROUGH OF HIGHLAND PARK
COUNTY OF MIDDLESEX
ORDINANCE NO. 18-1972

AN ORDINANCE OF THE BOROUGH OF HIGHLAND PARK, COUNTY OF MIDDLESEX AND STATE OF NEW JERSEY ADDING CHAPTER 86 "FAIR SHARE AFFORDABLE HOUSING" TO THE CODE OF THE BOROUGH OF HIGHLAND PARK TO ADDRESS THE REQUIREMENTS OF THE NJ SUPERIOR COURT AND THE MOUNT LAUREL DOCTRINE

BE IT ORDAINED by the Borough Council of the Borough of Highland Park, County of Middlesex and State of New Jersey, that the "Code of the Borough of Highland Park" ("Code") is hereby amended as follows:

Section I. Chapter 85, "Affordable Housing", Amended. That, Chapter 85, "Affordable Housing" of the Code is hereby renamed "Housing Authority", that Articles I and II of Chapter 85 are hereby repealed, and that the subsections of Chapter 85 Article III are renumbered accordingly.

Section II. Article XIX, "Growth Share Affordable Housing Provisions" in Part 5, "Additional Regulations" of Chapter 230, "Land Development", Repealed. That Article XIX, "Growth Share Affordable Housing Provisions" in Part 5, "Additional Regulations" of Chapter 230, "Land Development", is hereby repealed.

Section III. Chapter 86, entitled "Fair Share Affordable Housing Ordinance," Created. That Chapter 86, "Fair Share Affordable Housing" is hereby added to the Code to read as follows:

Chapter 86

FAIR SHARE AFFORDABLE HOUSING

ARTICLE I

General Program Purposes, Procedures

§86-1. Affordable Housing Obligation.

- A. This section of the Borough Code sets forth regulations regarding the low- and moderate-income housing units in the Borough consistent with the Borough's constitutional obligation to provide a realistic opportunity for the construction of its fair share of the regional need for affordable housing for low- and moderate-income households, the provisions known as the Substantive Rules of the New Jersey Council on Affordable Housing ("COAH rules"), *N.J.A.C. 5:93 et seq.*, and the Uniform Housing Affordability Controls ("UHAC"), *N.J.A.C. 5:80-26.1 et seq.* except that the requirements for very-low income affordable housing as established in P.L. 2008, c.46 (the "Roberts Bill", codified at *N.J.S.A. 52:27D-329.1*) shall supersede those of the UHAC.

- B. This Ordinance is intended to assure that very-low, low- and moderate-income units ("affordable units") are created with deed restrictions which preserve affordability over time and that very-low, low- and moderate-income households shall occupy these units. This Ordinance shall apply to all inclusionary developments and 100% affordable developments (including those funded with low-income housing tax credit financing) except where inconsistent with applicable law.
- C. The Highland Park Borough Planning Board shall adopt, and the Borough Council shall subsequently endorse, a Housing Element and Fair Share Plan pursuant to the Municipal Land Use Law at *N.J.S.A. 40:55D-1*, et seq. ("Fair Share Plan"), in accordance with the Settlement Agreement entered into between the Borough and Fair Share Housing Center ("FSHC") on December 22, 2017. The Fair Share Plan describes the magnitude of the Borough's fair share obligation, as determined by the Superior Court, and the ways the Borough intends to address its fair share obligation.
- D. This Ordinance implements and incorporates the Fair Share Plan and addresses the requirements of *N.J.A.C. 5:93*, as may be amended and supplemented.
- E. The Borough shall file monitoring and status reports with the Superior Court and FSHC and shall place the reports on its municipal website. Any Fair Share Plan evaluation or monitoring report prepared by the Special Master in accordance with *N.J.A.C. 5:91* shall be available to the public at the Highland Park Borough Municipal Building, 221 South Fifth Avenue, Highland Park, New Jersey 08904.
- F. On or about each anniversary of the Court's filing of the Judgment of Compliance and Repose through the end of the period of Third Round Judgment of Repose (July 1, 2025), the Borough will 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 all parties to the Borough's Court-approved Settlement Agreements, using forms previously developed for this purpose by the Council on Affordable Housing or any other forms endorsed by the Special Master and FSHC.
- G. The Fair Housing Act includes two provisions regarding action to be taken by the Borough during the ten-year period of protection provided in the Borough's agreement with FSHC. The Borough agrees to comply with those provisions as follows:
 - (1) By July 6, 2020, the Borough must prepare a midpoint realistic opportunity review, as required pursuant to *N.J.S.A. 52:27D-313*, which the Borough will post on its municipal website, with a copy provided to FSHC, 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. 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. In the event the Court determines that a site or mechanism no longer presents a realistic opportunity and should be replaced or supplemented, then the municipality shall have the first opportunity to supplement or revise its plan to correct any deficiency.

- (2) Within 30 days of the third and sixth anniversary of the Judgement of Compliance and Repose, the Borough shall prepare a review of compliance with the very-low income housing requirements required by *N.J.S.A. 52:27D-329.1* and its Settlement Agreement with Fair Share Housing Center. The Borough 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 the family very-low income requirements referenced herein and in the Borough's Settlement Agreement with FSHC. 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 housing obligation.

§86-2. Definitions. As used herein the following terms shall have the following meanings:

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

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

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

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

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

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

“Affordable” means a sales price or rent within the means of a low- or moderate-income household as defined in *N.J.A.C. 5:93-7.4*; 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 housing development incorporated in the Housing Element and Fair Share Plan, and including, but not limited to, an inclusionary development, a municipal construction project or a 100% affordable development.

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

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

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

“Age-restricted unit” means a housing unit designed to meet the needs of, and exclusively for, the residents of an age-restricted segment of the population such that: 1) all the residents of the development where the unit is situated are 62 years or older; or 2) at least 80% of the units are occupied by one person that is 55 years or older (except that persons younger than 19 may not be permanent residents); 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 New Jersey Department of Community Affairs; residential health care facilities as regulated by the New Jersey Department of Health and Senior Services; group homes for the developmentally disabled and mentally ill as licensed and/or regulated by the New Jersey Department of Human Services; and congregate living arrangements.

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

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

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

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

“Deficient housing unit” means a housing unit with health and safety code violations that require the repair or replacement of at least one 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 of a lot or any land, improved or unimproved, which is proposed to be included in a proposed development including the holder of an option to contract or purchase, or other person having an enforceable proprietary interest in such land.

“Development” means the division of a parcel of land into two or more parcels, the construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any use or change in the use of any building or other structure, 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.*

“Development Fee” means money paid by a developer for the improvement of property as permitted in *N.J.A.C. 5:93-8*.

“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 (*N.J.S.A. 54:1-35a through 54:1-35c*).

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

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

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

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

“Low-income household” means a household with a total gross annual household income equal to 50% or less of the median household income for the applicable COAH Housing Region.

“Low-income unit” means a deed-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 residential building which includes but is not limited to, weatherization, roofing, plumbing (including wells), heating, electricity, sanitary plumbing (including septic systems), lead paint abatement or load bearing structural systems.

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

“Median income” means the median income by household size for the applicable COAH Housing Region, as approved by the NJ Superior Court.

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

“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 spouses; 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 (e.g., by lottery) by which 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.

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

“Rehabilitation” means the repair, renovation, alteration or reconstruction of any building or structure, pursuant to the Rehabilitation Subcode, *N.J.A.C. 5:23-6*, which, for purposes of affordable housing credit, involves at least one major system of the building or structure.

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

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

“Special master” means an expert appointed by a Superior Court Judge to assist the Court, the municipality and any intervenors or other interested parties in applying the Mount Laurel Doctrine, including a determination of municipal fair share and an evaluation of the effectiveness of the municipality’s Fair Share Plan.

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

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

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

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

§86-3. New Construction. The following requirements shall apply to all new or planned developments that contain both market rate and low- and moderate- income housing units.

A. Phasing. Final site plan or subdivision approval shall be contingent upon the affordable housing development meeting the following phasing schedule for low- and moderate-income units whether developed in a single phase development, or in a multi-phase development:

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

B. Design. In inclusionary developments, to the extent possible, low- and moderate-income units shall be integrated with the market units and shall be no further distant, on average, from common amenities provided in the development than market-rate units.

C. Payments-in-lieu and off-site construction. The standards for the collection of payments-in-lieu of constructing affordable units or standards for constructing affordable units off-site, shall be in accordance with the requirements below:

(1) The base dollar amount of the payment in-lieu of constructing an affordable unit at the time of adoption of this Ordinance shall be pursuant to COAH’s regulations and/or the amount in a development proforma on file with the Borough Clerk. This amount shall be adjusted periodically by the Borough to reflect the most current and accurate market conditions or better cover the cost to the Borough to subsidize affordable housing construction. The payment shall be imposed as a condition of development approval by the Planning Board.

(a) During the development approval process, a developer may demonstrate to the Governing Body that the actual construction cost of an affordable unit less estimated capitalized revenue at the development in question is lower than the imposed payment in-lieu in §86-3.C(1). At its discretion, the Governing Body may impose a payment in-lieu amount equal or proximate to the amount estimated by the developer.

D. Utilities.

(1) Affordable units shall utilize the same type of heating source as market units within the affordable development.

- (2) 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.

E. 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.
 - (a) Within rental developments, of the total number of affordable rental units, at least 13% shall be affordable to very-low income households.
- (2) In each affordable development, at least 50% of the restricted units within each bedroom distribution shall be low-income units.
- (3) Affordable developments that are not age-restricted shall be structured such that:
 - (a) The combined number of efficiency and one-bedroom units shall be no greater than 20% of the total low- and moderate-income units;
 - (b) At least 30% of all low- and moderate-income units shall be two bedroom units;
 - (c) At least 20% of all low- and moderate-income units shall be three bedroom units; and
 - (d) The remaining units may be allocated among two and three bedroom units at the discretion of the developer.
- (4) Affordable developments that are age-restricted shall be structured such that the number of bedrooms shall equal the number of age-restricted low- and moderate-income units within the inclusionary development. The standard may be met by having all one-bedroom units or by having a two-bedroom unit for each efficiency unit.

F. Accessibility Requirements:

- (1) The first floor of all new restricted townhouse dwelling units and all restricted multistory dwelling units attached to at least one (1) other dwelling unit shall be subject to the technical design standards of the Barrier Free Subcode, *N.J.A.C. 5:23-7*.
- (2) All restricted townhouse dwelling units and all restricted multistory dwelling units attached to at least one (1) other dwelling unit shall have the following features:
 - (a) An adaptable toilet and bathing facility on the first floor;
 - (b) An adaptable kitchen on the first floor;
 - (c) An interior accessible route of travel on the first floor;
 - (d) An interior accessible route of travel shall not be required between stories within an individual unit;

- (e) An adaptable room that can be used as a bedroom, with a door or the casing for the installation of a door, on the first floor; and
- (f) An accessible entranceway as set forth at P.L. 2005, c. 350 (*N.J.S.A. 52:27D-311a et seq.*) and the Barrier Free Subcode, *N.J.A.C. 5:23-7*, or evidence that the Borough has collected funds from the developer sufficient to make 10% of the adaptable entrances in the development accessible:
 - [1] Where a unit has been constructed with an adaptable entrance, upon the request of a disabled person who is purchasing or will reside in the dwelling unit, an accessible entrance shall be installed.
 - [2] To this end, the builder of restricted units shall deposit funds within the Borough of Highland Park's affordable housing trust fund sufficient to install accessible entrances in 10% of the affordable units that have been constructed with adaptable entrances.
 - [3] The funds deposited under paragraph (2) herein, shall be used by the Borough for the sole purpose of making the adaptable entrance of any affordable unit accessible when requested to do so by a person with a disability who occupies or intends to occupy the unit and requires an accessible entrance.
 - [4] The developer of the restricted units shall submit a design plan and cost estimate for the conversion from adaptable to accessible entrances to the Construction Official of the Borough of Highland Park.
 - [5] Once the Construction Official has determined that the design plan to convert the unit entrances from adaptable to accessible meets the requirements of the Barrier Free Subcode, *N.J.A.C. 5:23-7*, and that the cost estimate of such conversion is reasonable, payment shall be made to the Borough of Highland Park's affordable housing trust fund in care of the Municipal Treasurer who shall ensure that the funds are deposited into the affordable housing trust fund and appropriately earmarked for the intended purpose.
- (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 on the site. Determinations of site impracticability shall be in compliance with the Barrier Free Subcode, *N.J.A.C. 5:23-7*.

G. Maximum Rents and Sales Prices.

- (1) In establishing rents and sales prices of affordable housing units, the administrative agent shall follow the procedures set forth in UHAC and by the Superior Court, utilizing the established regional income limits.
- (2) The maximum rent for restricted rental units within each affordable development shall be affordable to households earning no more than 60% of median income, and the average rent for restricted low- and moderate-income units shall be affordable to households earning no more than 52% of median income.

- (3) The developers and/or municipal sponsors of restricted rental units shall establish at least one rent for each bedroom type for both low-income and moderate-income units.
 - (a) At least 13% of all low- and moderate-income rental units shall be affordable to households earning no more than 30% of median income.
- (4) The maximum sales price of restricted ownership units within each affordable development shall be affordable to households earning no more than 70% of median income, and each affordable development must achieve an affordability average of 55% for restricted ownership units; in achieving this affordability average, moderate-income ownership units must be available for at least three different prices for each bedroom type, and low-income ownership units must be available for at least two different prices for each bedroom type.
- (5) In determining the initial sales prices and rents for compliance with the affordability average requirements for restricted units other than assisted living facilities, the following standards shall be met:
 - (a) A studio or efficiency unit shall be affordable to a one-person household;
 - (b) A one-bedroom unit shall be affordable to a one and one-half person household;
 - (c) A two-bedroom unit shall be affordable to a three-person household;
 - (d) A three-bedroom unit shall be affordable to a four and one-half person household; and
 - (e) A four-bedroom unit shall be affordable to a six-person household.
- (6) In determining the initial rents for compliance with the affordability average requirements for restricted units in assisted living facilities, the following standards shall be met:
 - (a) A studio or efficiency unit shall be affordable to a one-person household;
 - (b) A one-bedroom unit shall be affordable to a one and one-half person household; and
 - (c) A two-bedroom unit shall be affordable to a two-person household or to two one-person households.
- (7) The initial purchase price for all restricted ownership units shall be calculated so that the monthly carrying cost of the unit, including principal and interest (based on a mortgage loan equal to 95% of the purchase price and the Federal Reserve H.15 rate of interest), taxes, homeowner and private mortgage insurance and condominium or homeowner association fees do not exceed 28% of the eligible monthly income of the appropriate size household as determined under *N.J.A.C. 5:80-26.4*, as may be amended and supplemented; provided, however, that the price shall be subject to the affordability average requirement of *N.J.A.C. 5:80-26.3*, as may be amended and supplemented.
- (8) The initial rent for a restricted rental unit shall be calculated so as not to exceed 30% of the eligible monthly income of the appropriate household size as determined under *N.J.A.C. 5:80-26.4*, as may be amended and supplemented;

provided, however, that the rent shall be subject to the affordability average requirement of *N.J.A.C. 5:80-26.3*, as may be amended and supplemented.

- (9) The price of owner-occupied low- and moderate-income units may increase annually based on the percentage increase in the regional median income limit for each housing region. In no event shall the maximum resale price established by the administrative agent be lower than the last recorded purchase price.

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

- (a) Regional income limits shall be established for the Region 3 based on the median income by household size, which shall be established by a regional weighted average of the uncapped Section 8 income limits published by HUD. To compute this regional income limit, the HUD determination of median county income for a family of four is multiplied by the estimated households within the county according to the most recent decennial Census. The resulting product for each county within the housing region is summed. The sum is divided by the estimated total households from the most recent decennial Census in Region 3. This quotient represents the regional weighted average of median income for a household of four. The income limit for a moderate-income unit for a household of four shall be 80 percent of the regional weighted average median income for a family of four. The income limit for a low-income unit for a household of four shall be 50 percent of the HUD determination of the regional weighted average median income for a family of four. The income limit for a very low income unit for a household of four shall be 30 percent of the regional weighted average median income for a family of four. These income limits shall be adjusted by household size based on multipliers used by HUD to adjust median income by household size. In no event shall the income limits be less than those for the previous year.
- (b) The income limits calculated each year shall be the result of applying the percentages set forth in paragraph (a) above to HUD's determination of median income for the relevant fiscal year, and shall be utilized until the Borough updates the income limits after HUD has published revised determinations of median income for the next fiscal year.
- (c) The Regional Asset Limit used in determining an applicant's eligibility for affordable housing pursuant to *N.J.A.C. 5:80-26.16(b)3* shall be calculated by the Borough annually by taking the percentage increase of the income limits calculated pursuant to paragraph (a) above over the previous year's income limits, and applying the same percentage increase to the Regional Asset Limit from the prior year. In no event shall the Regional Asset Limit be less than that for the previous year.
- (10) 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, upon its publication for the prior calendar year.

This increase shall not exceed nine percent in any one year. Rents for units constructed pursuant to low income housing tax credit regulations shall be indexed pursuant to the regulations governing low income housing tax credits.

§86-4. Condominium and Homeowners Association Fees.

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

§86-5. Reserved.

§86-6. Reserved.

§86-7. Reserved.

§86-8. Reserved.

ARTICLE II

Affordable Unit Controls and Requirements

§86-9. Purpose.

- A. The requirements of this section apply to all developments that contain affordable housing units, including any currently unanticipated future developments that will provide low- and moderate- income housing units.

§86-10. Affirmative Marketing.

- A. The Borough shall adopt by resolution an Affirmative Marketing Plan, subject to approval of the Superior Court, compliant with *N.J.A.C. 5:80-26.15*, as may be amended and supplemented.
- B. The affirmative marketing plan is a regional marketing strategy designed to attract buyers and/or renters of all majority and minority groups, regardless of race, creed, color, national origin, ancestry, marital or familial status, gender, affectional or sexual orientation, disability, age or number of children to housing units which are being marketed by a developer, sponsor or owner of affordable housing. The affirmative marketing plan is also intended to target those potentially eligible persons who are least likely to apply for affordable units in that region. It is a continuing program that directs all marketing activities toward COAH Housing Region 3 and covers the period of deed restriction.
- C. The affirmative marketing plan shall provide a regional preference for all households that live and/or work in COAH Housing Region 3, comprised of Middlesex, Somerset, and Hunterdon 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 rerentals. The Administrative Agent designated by the Borough of Highland Park shall implement the Affirmative Marketing Plan to assure the affirmative marketing of all affordable units.
- E. The Administrative Agent designated by the Borough shall assure the affirmative marketing of all affordable units is consistent with the Affirmative Marketing Plan for the municipality.
- F. In implementing the Affirmative Marketing Plan, the Administrative Agent shall provide a list of counseling services to low- and moderate-income applicants on subjects such as budgeting, credit issues, mortgage qualification, rental lease requirements, and landlord/tenant law.
- G. 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.
- H. The affirmative marketing process for available affordable units shall begin at least four months (or 120 days) prior to the expected date of occupancy.
- I. 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.
- J. The costs of advertising and affirmative marketing of the affordable units shall be the responsibility of the developer, sponsor or owner, unless otherwise determined or agreed to by the Borough of Highland Park.

§86-11. Occupancy Standards.

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

§86-12. Selection of Occupants of Affordable Housing Units.

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

§86-13. Control Periods for Restricted Ownership Units and Enforcement Mechanisms.

- A. Control periods for restricted ownership units shall be in accordance with *N.J.A.C. 5:80-26.5*, and each restricted ownership unit shall remain subject to the controls on affordability for a period of at least 30 years and until the municipality takes action thereafter to release the controls on affordability.
- B. Rehabilitated owner-occupied housing units that are improved to code standards shall be subject to affordability controls for a period of 10 years.
- C. The affordability control period for a restricted ownership unit shall commence on the date the initial certified household takes title to the unit.
- D. The affordability controls set forth in this Ordinance shall remain in effect despite the entry and enforcement of any judgment of foreclosure with respect to restricted ownership units.
- E. A restricted ownership unit shall be required to obtain a Continuing Certificate of Occupancy or a certified statement from the Construction Official stating that the unit meets all code standards upon the first transfer of title that follows the expiration of the applicable minimum control period provided under *N.J.A.C. 5:80-26.5(a)*, as may be amended and supplemented.

§86-14. Price Restrictions for Restricted Ownership Units, Homeowner Association Fees and Resale Prices.

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

§86-15. Buyer Income Eligibility.

- A. Buyer income eligibility for restricted ownership units shall be in accordance with *N.J.A.C. 5:80-26.1*, as may be amended and supplemented, such that low-income ownership units shall be reserved for households with a gross household income less than or equal to 50% of median income and moderate-income ownership units shall be reserved for households with a gross household income less than 80% of median income.
- B. Notwithstanding the foregoing, the Administrative Agent may, upon approval by the Borough Council, 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 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 33% of the household's certified monthly income.

§86-16. Limitations on indebtedness secured by ownership unit; subordination.

- A. Prior to incurring any indebtedness to be secured by a restricted ownership unit, the administrative agent shall determine in writing that the proposed indebtedness complies with the provisions of this section.
- B. With the exception of original purchase money mortgages, during a control period neither an owner nor a lender shall at any time cause or permit the total indebtedness secured by a restricted ownership unit to exceed 95% of the maximum allowable resale price of that unit, as such price is determined by the administrative agent in accordance with *N.J.A.C.5:80-26.6(b)*.

§86-17. Control Periods for Restricted Rental Units.

- A. Control periods for restricted rental units shall be in accordance with *N.J.A.C. 5:80-26.11*, and each restricted rental unit shall remain subject to the controls on affordability for a period of at least 30 years, until the municipality takes action to release the controls on affordability. Prior to such action, a restricted rental unit must remain subject to the requirements of *N.J.A.C. 5:80-26.1*, as may be amended and supplemented.
 - (1) Restricted rental units created as part of developments receiving nine percent (9%) Low Income Housing Tax Credits must comply with a control period of not less than a 30-year compliance period plus a 15-year extended use period.
- B. Rehabilitated renter-occupied housing units that are improved to code standards shall be subject to affordability controls for a period of 10 years.
- C. Deeds of all real property that include restricted rental units shall contain deed restriction language. The deed restriction shall have priority over all mortgages on the property, and the deed restriction shall be filed by the developer or seller with the records office of the County of Middlesex. A copy of the filed document shall be provided to the Administrative Agent within 30 days of the receipt of a Certificate of Occupancy.
- D. A restricted rental unit shall remain subject to the affordability controls of this Ordinance, despite the occurrence of any of the following events:
 - (1) Sublease or assignment of the lease of the unit;
 - (2) Sale or other voluntary transfer of the ownership of the unit; or
 - (3) The entry and enforcement of any judgment of foreclosure.

§86-18. Price Restrictions for Rental Units; Leases.

- A. A written lease shall be required for all restricted rental units, except for units in an assisted living residence, and tenants shall be responsible for security deposits and the full amount of the rent as stated on the lease. A copy of the current lease for each restricted rental unit shall be provided to the Administrative Agent.
- B. No additional fees or charges shall be added to the approved rent (except, in the case of units in an assisted living residence, to cover the customary charges for food and services) without the express written approval of the Administrative Agent.

- C. Application fees (including the charge for any credit check) shall not exceed 5% of the monthly rent of the applicable restricted unit and shall be payable to the Administrative Agent to be applied to the costs of administering the controls applicable to the unit as set forth in this Ordinance.

§86-19. Tenant Income Eligibility.

- A. Tenant income eligibility shall be in accordance with *N.J.A.C. 5:80-26.13*, as may be amended and supplemented, and shall be determined as follows:
 - (1) Very low-income rental units shall be reserved for households with a gross household income less than or equal to 30% of median income.
 - (2) Low-income rental units shall be reserved for households with a gross household income less than or equal to 50% of median income.
 - (3) Moderate-income rental units shall be reserved for households with a gross household income less than 80% of median income.
- B. The Administrative Agent shall certify a household as eligible for a restricted rental unit when the household is a very low-income, low-income household or a moderate-income household, as applicable to the unit, and the rent proposed for the unit does not exceed 35% (40% for age-restricted units) of the household's eligible monthly income as determined pursuant to *N.J.A.C. 5:80-26.16*, as may be amended and supplemented; provided, however, that this limit may be exceeded if one or more of the following circumstances exists:
 - (1) The household currently pays more than 35% (40% for households eligible for age-restricted units) of its gross household income for rent, and the proposed rent will reduce its housing costs;
 - (2) The household has consistently paid more than 35% (40% for households eligible for age-restricted units) of eligible monthly income for rent in the past and has proven its ability to pay;
 - (3) The household is currently in substandard or overcrowded living conditions;
 - (4) The household documents the existence of assets with which the household proposes to supplement the rent payments; or
 - (5) The household documents proposed third-party assistance from an outside source such as a family member in a form acceptable to the Administrative Agent and the owner of the unit.
- C. The applicant shall file documentation sufficient to establish the existence of the circumstances in B(1) through (5) above with the Administrative Agent, who shall counsel the household on budgeting.

§86-20. Conversions.

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

§86-21. Alternative Living Arrangements.

- A. The administration of an alternative living arrangement shall be in compliance with *N.J.A.C. 5:93-5.8* and UHAC, with the following exceptions:
 - (1) Affirmative marketing (*N.J.A.C. 5:80-26.15*), provided, however, that the units or bedrooms may be affirmatively marketed by the provider in accordance with an alternative plan approved by the Court;
 - (2) Affordability average and bedroom distribution (*N.J.A.C. 5:80-26.3*).
- B. With the exception of units established with capital funding through a 20-year operating contract with the Department of Human Services, Division of Developmental Disabilities, alternative living arrangements shall have at least 30 year controls on affordability in accordance with UHAC, unless an alternative commitment is approved by the Court.
- C. The service provider for the alternative living arrangement shall act as the Administrative Agent for the purposes of administering the affirmative marketing and affordability requirements for the alternative living arrangement.

§86-22. Reserved.

§86-23. Reserved.

ARTICLE III

Administration

§86-24. Municipal Housing Liaison.

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

- (3) When applicable, supervising any contracting Administrative Agent.
- (4) Monitoring the status of all restricted units in the Borough of Highland Park's Fair Share Plan;
- (5) Compiling, verifying and submitting annual reports as required by the Superior Court;
- (6) Coordinating meetings with affordable housing providers and Administrative Agents, as applicable; and
- (7) Attending continuing education opportunities on affordability controls, compliance monitoring and affirmative marketing.

§86-25. Administrative Agent.

- A. The Borough shall designate by resolution of the Borough Council, one or more Administrative Agents to administer newly constructed affordable units in accordance with *N.J.A.C. 5:93* and UHAC.
- B. An Administrative Agent shall be an independent entity serving under contract to and reporting to the municipality. 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.
- C. An Operating Manual shall be provided by the Administrative Agent(s) to be adopted by resolution of the governing body and subject to approval of the Superior Court. The Operating Manuals shall be available for public inspection in the Office of the Municipal Clerk and in the office(s) of the Administrative Agent(s).
- D. The Administrative Agent shall perform the duties and responsibilities of an administrative agent as are set forth in UHAC and which are described in full detail in the Operating Manual, including those set forth in *N.J.A.C. 5:80-26.14, 16 and 18* thereof, which includes:
 - (1) Attending continuing education opportunities on affordability controls, compliance monitoring, and affirmative marketing;
 - (2) Affirmative Marketing;
 - (a) Conducting an outreach process to affirmatively market affordable housing units in accordance with the Affirmative Marketing Plan of the Borough of Highland Park and the provisions of *N.J.A.C. 5:80-26.15*; and
 - (b) Providing counseling or contracting to provide counseling services to low- and moderate-income applicants on subjects such as budgeting, credit issues, mortgage qualification, rental lease requirements, and landlord/tenant law.
 - (3) Household Certification;
 - (a) Soliciting, scheduling, conducting and following up on interviews with interested households;

- (b) Conducting interviews and obtaining sufficient documentation of gross income and assets upon which to base a determination of income eligibility for a low- or moderate-income unit;
 - (c) Providing written notification to each applicant as to the determination of eligibility or non-eligibility;
 - (d) Requiring that all certified applicants for restricted units execute a certificate substantially in the form, as applicable, of either the ownership or rental certificates set forth in Appendices J and K of *N.J.A.C. 5:80-26.1 et seq.*;
 - (e) Creating and maintaining a referral list of eligible applicant households living in the housing region and eligible applicant households with members working in the housing region where the units are located;
 - (f) Employing a random selection process as provided in the Affirmative Marketing Plan of the Borough of Highland Park when referring households for certification to affordable units; and
 - (g) Notifying the following entities of the availability of affordable housing units in the Borough of Highland Park: Fair Share Housing Center, the New Jersey State Conference of the NAACP, the Latino Action Network, the Middlesex County NAACP, the Middlesex Urban League, and the Middlesex County Housing Coalition.
- (4) Affordability Controls;
- (a) Furnishing to attorneys or closing agent's forms of deed restrictions and mortgages for recording at the time of conveyance of title of each restricted unit;
 - (b) Creating and maintaining a file on each restricted unit for its control period, including the recorded deed with restrictions, recorded mortgage and note, as appropriate;
 - (c) Ensuring that the removal of the deed restrictions and cancellation of the mortgage note are effectuated and properly filed with the Middlesex County Register of Deeds or Middlesex County Clerk's office after the termination of the affordability controls for each restricted unit;
 - (d) Communicating with lenders regarding foreclosures; and
 - (e) Ensuring the issuance of Continuing Certificates of Occupancy or certifications pursuant to *N.J.A.C. 5:80-26.10*.
- (5) Records retention;
- (6) Resale and re-rental;

- (a) Instituting and maintaining an effective means of communicating information between owners and the Administrative Agent regarding the availability of restricted units for resale or rental; and
 - (b) Instituting and maintaining an effective means of communicating information to low- (or very-low) and moderate-income households regarding the availability of restricted units for resale or re-rental.
- (7) Processing requests from unit owners; and
- (a) Reviewing and approving requests for determination from owners of restricted units who wish to take out home equity loans or refinance during the term of their ownership that the amount of indebtedness to be incurred will not violate the terms of this Ordinance;
 - (b) Reviewing and approving requests to increase sales prices from owners of restricted units who wish to make capital improvements to the units that would affect the selling price, such authorizations to be limited to those improvements resulting in additional bedrooms or bathrooms and the depreciated cost of central air conditioning systems;
 - (c) Notifying the municipality of an owner's intent to sell a restricted unit; and
 - (d) Making determinations on requests by owners of restricted units for hardship waivers.
- (8) Enforcement, although the ultimate responsibility for retaining controls on the units rests with the municipality.
- (a) 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;
 - (b) Securing from all developers and sponsors of restricted units, at the earliest point of contact in the processing of the project or development, written acknowledgement of the requirement that no restricted unit can be offered, or in any other way committed, to any person, other than a household duly certified to the unit by the Administrative Agent;
 - (c) 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;
 - (d) Sending annual mailings to all owners of affordable dwelling units, reminding them of the notices and requirements outlined in *N.J.A.C. 5:80-26.18(d)4*;
 - (e) Establishing a program for diverting unlawful rent payments to the municipality's Affordable Housing Trust Fund; and
 - (f) Creating and publishing a written operating manual for each affordable housing program administered by the Administrative Agent, to be approved by the Borough Council and the Court, setting forth procedures for administering the affordability controls.

- (9) The Administrative Agent shall, as delegated by the Borough Council, have the authority to take all actions necessary and appropriate to carry out its responsibilities, hereunder.

§86-26. Enforcement of Affordable Housing Regulations.

- A. Upon the occurrence of a breach of any of the regulations governing the affordable unit by an Owner, Developer or Tenant, the municipality shall have all remedies provided at law or equity, including but not limited to foreclosure, tenant eviction, municipal fines, a requirement for household recertification, acceleration of all sums due under a mortgage, recoupment of any funds from a sale in the violation of the regulations, injunctive relief to prevent further violation of the regulations, entry on the premises, and specific performance.
- B. After providing written notice of a violation to an Owner, Developer or Tenant of a low- or moderate-income unit and advising the Owner, Developer or Tenant of the penalties for such violations, the municipality may take the following action against the Owner, Developer or Tenant for any violation that remains uncured for a period of 60 days after service of the written notice:
- (1) The municipality may file a court action pursuant to *N.J.S.A. 2A:58-11* alleging a violation, or violations, of the regulations governing the affordable housing unit. If the Owner, Developer or Tenant is found by the court to have violated any provision of the regulations governing affordable housing units the Owner, Developer or Tenant shall be subject to one or more of the following penalties, at the discretion of the court:
- (a) A fine of not more than \$500.00 or imprisonment for a period not to exceed 90 days, or both. Each and every day that the violation continues or exists shall be considered a separate and specific violation of these provisions and not as a continuing offense;
- (b) In the case of an Owner who has rented his or her low- or moderate-income unit in violation of the regulations governing affordable housing units, payment into the Borough of Highland Park Affordable Housing Trust Fund of the gross amount of rent illegally collected;
- (c) In the case of an Owner who has rented his or her low- 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 municipality may file a court action in the Superior Court seeking a judgment, which would result in the termination of the Owner's equity or other interest in the unit, in the nature of a mortgage foreclosure. Any judgment shall be enforceable as if the same were a judgment of default of the First Purchase Money Mortgage and shall constitute a lien against the low- and moderate-income unit.
- C. Such judgment shall be enforceable, at the option of the municipality, by means of an execution sale by the Sheriff, at which time the low- 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 the right to possession terminated as well as the title conveyed pursuant to the Sheriff's sale.

- D. The proceeds of the Sheriff's sale shall first be applied to satisfy the First Purchase Money Mortgage lien and any prior liens upon the low- 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 and to the extent of such deficiency, in addition to any and all costs incurred by the municipality in connection with collecting such deficiency. In the event that a surplus remains after satisfying all of the above, such surplus, if any, shall be placed in escrow by the municipality for the Owner and shall be held in such escrow for a maximum period of two years or until such earlier time as the Owner shall make a claim with the municipality for such. Failure of the Owner to claim such balance within the two-year period shall automatically result in a forfeiture of such balance to the municipality. Any interest accrued or earned on such balance while being held in escrow shall belong to and shall be paid to the municipality, whether such balance shall be paid to the Owner or forfeited to the municipality.
- E. Foreclosure by the municipality due to violation of the regulations governing affordable housing units shall not extinguish the restrictions of the regulations governing affordable housing units as the same apply to the low- 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.
- F. If there are no bidders at the Sheriff's sale, or if insufficient amounts are bid to satisfy the First Purchase Money Mortgage and any prior liens, the municipality may acquire title to the low- and moderate-income unit by satisfying the First Purchase Money Mortgage and any prior liens and crediting the violating owner with an amount equal to the difference between the First Purchase Money Mortgage and any prior liens and costs of the enforcement proceedings, including legal fees and the maximum resale price for which the low- and moderate-income unit could have been sold under the terms of the regulations governing affordable housing units. This excess shall be treated in the same manner as the excess which would have been realized from an actual sale as previously described.
- G. Failure of the 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 low- and moderate-income unit as permitted by the regulations governing affordable housing units.

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

§86-27. Appeals. Appeals from all decisions of an Administrative Agent designated pursuant to this Ordinance shall be filed in writing with the Borough.

Article IV

Development Fees

§86-28. 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 (the Act), *N.J.S.A. 52:27d-301 et seq.*, and the State Constitution, subject to the Council on Affordable Housing's (COAH's) adoption of rules.
- B. COAH was authorized by P.L. 2008, c. 46, Section 8 (*N.J.S.A. 52:27D-329.2*), and the Statewide Nonresidential Development Fee Act (*N.J.S.A. 40:55D-8.1 through 40:55D-8.7*) to adopt and promulgate regulations necessary for the establishment, implementation, review, monitoring and enforcement of municipal affordable housing trust funds and corresponding spending plans. Municipalities that are under the jurisdiction of COAH or a court of competent jurisdiction and have a COAH- or court-approved Spending Plan shall retain fees collected from nonresidential development.
- C. In Re: Adoption of *N.J.A.C. 5:96 and 5:97* by the New Jersey Council on Affordable Housing, 221 N.J. 1 (2015), also known as the Mount Laurel IV decision, the Supreme Court remanded COAH's duties to the Superior Court. As a result, affordable housing development fee collections and expenditures from the municipal affordable housing trust funds to implement municipal Third Round Fair Share Plans through July 1, 2025 are under the Court's jurisdiction and are subject to approval by the Court.
- D. This chapter establishes standards for the collection, maintenance, and expenditure of development fees pursuant to COAH's regulations and in accordance with P.L. 2008, c. 46, Sections 8 and 32 through 38.¹ Fees collected pursuant to this chapter shall be used for the sole purpose of providing low- and moderate-income housing. This chapter shall be interpreted within the framework of COAH's rules on development fees, codified at *N.J.A.C. 5:93-8*.

¹ Editor's Note: See *N.J.S.A. 52:27D-329.2* and *N.J.S.A. 40:55D-8.1 through 40:55D-8.7*, respectively.

§86-29. Basic requirements.

- A. This section shall become effective at such time that the Superior Court approves the Borough's development fee ordinance in accordance with *N.J.A.C. 5:93.8*.
- B. The Borough shall adopt and obtain Court approval of a Spending Plan that shall be part of the Borough's Amended Third Round Spending Plan. Highland Park shall not spend development fees until this Fair Share Plan is approved by the Court, in conformance with *N.J.A.C. 5:93-8*.

§86-30. Nonresidential development fees.

- A. Imposed fees.
 - (1) Within all zoning districts, nonresidential developers, except for developers of the types of development specifically exempted, shall pay a fee equal to 2.5% of the equalized assessed value of the land and improvements for all new nonresidential construction on an unimproved lot or lots.
 - (2) Nonresidential developers, except for developers of the types of development specifically exempted, shall also pay a fee equal to 2.5% of the increase in equalized assessed value resulting from any additions to existing structures to be used for nonresidential purposes.
 - (3) Development fees shall also be imposed and collected when an existing structure is demolished and replaced. The development fee of 2.5% shall be calculated on the difference between the equalized assessed value of the preexisting land and improvement and the equalized assessed value of the newly improved structure, i.e., land and improvement, at the time the final certificate of occupancy is issued. If the calculation required under this section results in a negative number, the nonresidential development fee shall be zero.
- B. Eligible exactions, ineligible exactions and exemptions for nonresidential development.
 - (1) The nonresidential portion of a mixed-use inclusionary or market rate development shall be subject to the two-and-one-half-percent development fee, unless otherwise exempted below.
 - (2) Nonresidential developments shall be exempt from the payment of nonresidential development fees in accordance with the exemptions required pursuant to P.L. 2008, c. 46, as specified in the Form N-RDF, "State of New Jersey Nonresidential Development Certification/Exemption" form. Any exemption claimed by a developer shall be substantiated by that developer.
 - (a) A developer of a nonresidential development exempted from the nonresidential development fee pursuant to P.L. 2008, c. 46, shall be subject to it at such time the basis for the exemption no longer applies and shall make the payment of the nonresidential development fee, in that event, within three years after that event or after the issuance of the final certificate of occupancy of the nonresidential development, whichever is later.

- (b) If a property which was exempted from the collection of a nonresidential development fee thereafter ceases to be exempt from property taxation, the owner of the property shall remit the fees required pursuant to this section within 45 days of the termination of the property tax exemption. Unpaid nonresidential development fees under these circumstances may be enforceable by Highland Park as a lien against the real property of the owner.

§86-31. Collection procedures.

- A. Upon the granting of a preliminary, final or other applicable approval for a development, the applicable approving authority shall direct its staff to notify the Construction Official responsible for the issuance of a building permit.
- B. For nonresidential developments only, the developer shall also be provided with a copy of Form N-RDF, "State of New Jersey Nonresidential Development Certification/Exemption," to be completed as per the instructions provided. The developer of a nonresidential development shall complete Form N-RDF as per the instructions provided. The Construction Official shall verify the information submitted by the nonresidential developer as per the instructions provided in the Form N-RDF. The Tax Assessor shall verify exemptions and prepare estimated and final assessments as per the instructions provided in Form N-RDF.
- C. The Construction Official responsible for the issuance of a building permit shall notify the local Tax Assessor of the issuance of the first building permit for a non-residential development which is subject to a development fee.
- D. Within 90 days of receipt of that notice, the Municipal Tax Assessor, based on the plans filed, shall provide an estimate of the equalized assessed value of the development.
- E. The Construction Official responsible for the issuance of a final certificate of occupancy notifies the local Assessor of any and all requests for the scheduling of a final inspection on property which is subject to a development fee.
- F. Within 10 business days of a request for the scheduling of a final inspection, the Municipal Assessor shall confirm or modify the previously estimated equalized assessed value of the improvements of the development; calculate the development fee; and thereafter notify the developer of the amount of the fee.
- G. Should Highland Park fail to determine or notify the developer of the amount of the development fee within 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 (*N.J.S.A. 40:55D-8.6*).
- H. Fifty percent (50%) of the development fee shall be collected at the time of issuance of the building permit. The remaining portion shall be collected at the issuance of the certificate of occupancy. The developer shall be responsible for paying the difference between the fee calculated at building permit and that determined at issuance of certificate of occupancy.

I. Appeal of development fees.

- (1) A developer may challenge nonresidential development fees imposed by filing a challenge with the Director of the Division of Taxation. Pending a review and determination by the Director, which shall be made within 45 days of receipt of the challenge, collected fees shall be placed in an interest-bearing escrow account by Highland Park. Appeals from a determination of the Director may be made to the Tax Court in accordance with the provisions of the State Uniform Tax Procedure Law, *N.J.S.A. 54:48-1 et seq.*, within 90 days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.

§86-32. Affordable housing trust fund.

- A. There is hereby created a separate, interest-bearing housing trust fund to be maintained by the Chief Financial Officer for the purpose of depositing development fees collected from nonresidential 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 affordable units;
 - (2) Developer-contributed funds to make 10% of the adaptable entrances in a townhouse or other multistory attached 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 Park's affordable housing program.
- C. Within seven days from the opening of the trust fund account, Highland Park will provide the Court with written authorization, in the form of a three-party escrow agreement between the municipality, a bank of the municipality's choosing, and a Court-approved entity, to permit that Court-approved entity to direct the disbursement of the funds as provided for in *N.J.A.C. 5:93-8*. The Superior Court shall now have such jurisdiction to direct the disbursement of the Borough's trust funds per *N.J.A.C. 5:93-8*.
- D. All interest accrued in the housing trust fund shall only be used on eligible affordable housing activities approved by the Court.

§86-33. Use of funds.

- A. The expenditure of all funds shall conform to a spending plan approved by the Court. Funds deposited in the housing trust fund may be used for any activity approved by the Court to address the Borough's fair share obligation and may be set up as a grant or revolving loan program. Such activities include, but are not limited to, preservation or purchase of housing for the purpose of maintaining or implementing affordability

controls, rehabilitation, new construction of affordable housing units and related costs, accessory apartment, market to affordable, or regional housing partnership programs, conversion of existing nonresidential buildings to create new affordable units, green building strategies designed to be cost saving and in accordance with accepted national or state standards, purchase of land for affordable housing, improvement of land to be used for affordable housing, extensions or improvements of roads and infrastructure to affordable housing sites, financial assistance designed to increase affordability, administration necessary for implementation of the Housing Element and Fair Share Plan, or any other activity as permitted pursuant to *N.J.A.C. 5:93-8* and specified in the approved spending plan.

- B. Funds shall not be expended to reimburse Highland Park for past housing activities.
- C. At least 30% of all development fees collected and interest earned shall be used to provide affordability assistance to low- and moderate-income households in affordable units included in the municipal Fair Share Plan. One-third of the affordability assistance portion of development fees collected shall be used to provide affordability assistance to those households earning 30% or less of median income by region.
 - (1) Affordability assistance programs may include down payment assistance, security deposit assistance, low-interest loans, rental assistance, assistance with homeowners' association or condominium fees and special assessments, and assistance with emergency repairs.
 - (2) Affordability assistance to households earning 30% or less of median income may include buying down the cost of low- or moderate-income units in the municipal Fair Share Plan to make them affordable to households earning 30% or less of median income.
 - (3) Payments in lieu of constructing affordable units on site and funds from the sale of units with extinguished controls shall be exempt from the affordability assistance requirement.
- D. Highland Park may contract with a private or public entity to administer any part of its Housing Element and Fair Share Plan, including the requirement for affordability assistance, in accordance with *N.J.A.C. 5:93-8.16*.
- E. No more than 20% of all revenues collected from development fees may be expended on administration, including, but not limited to, salaries and benefits for municipal employees or consultant fees necessary to develop or implement a new construction program, a Housing Element and Fair Share Plan, and/or an affirmative marketing program. In the case of a rehabilitation program, no more than 20% of the revenues collected from development fees shall be expended for such administrative expenses. Administrative funds may be used for income qualification of households, monitoring the turnover of sale and rental units, and compliance with the monitoring requirements set forth in the Court-approved December 22, 2017 executed Settlement Agreement with Fair Share Housing Center. Legal or other fees related to litigation opposing affordable housing sites or objecting to the Council's regulations and/or action are not eligible uses of the affordable housing trust fund.

§86-34. Monitoring.

- A. On the anniversary of the Judgement of Compliance and Repose for every year through 2025, Highland Park shall provide annual reporting of trust fund activity to the New Jersey Department of Community Affairs (“DCA”), COAH, or Local Government Services (“LGS”), or other entity designated by the State of New Jersey, with a copy provided to Fair Share Housing Center and posted on the municipal website, using forms developed for this purpose by the DCA, COAH, or LGS. This reporting shall include an accounting of all housing trust fund activity, including the collection of development fees from nonresidential developers, payments in lieu of constructing affordable units on site, funds from the sale of units with extinguished controls, barrier-free escrow funds, rental income, repayments from affordable housing program loans, and any other funds collected in connection with Highland Park’s housing program, as well as to the expenditure of revenues and implementation of the plan approved by the Court.

§86-35. Ongoing collection of fees.

The ability for Highland Park to impose, collect and expend development fees shall expire with its Court-issued Judgement of Compliance unless Highland Park has filed an adopted Housing Element and Fair Share Plan with the Court or other appropriate jurisdiction, has filed a Declaratory Judgement Action, and has received the court’s approval of its development fee ordinance. If Highland Park fails to renew its ability to impose and collect development fees prior to the expiration of its Judgment of Compliance and Repose, it may be subject to forfeiture of any or all funds remaining within its municipal trust fund. Any funds so forfeited shall be deposited into the "New Jersey Affordable Housing Trust Fund" established pursuant to Section 20 of P.L. 1985, c. 222 (*N.J.S.A. 52:27D-320*).

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

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

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

The ordinance published herewith was introduced and passed upon first reading at a meeting of the Borough Council of the Borough of Highland Park, in the County of Middlesex, State of New Jersey, held on October 9, 2018. It will be further considered for final passage, after public hearing thereon, at a meeting of the Borough Council to be held in the meeting room of the municipal building, 221 Fifth Avenue, in the Borough of Highland Park on October 23, 2018 at 7:00 p.m., and during the week prior and up to and including the date of such meeting, copies of said ordinance will be made available at the Clerk’s Office to the members of the general public who shall request the same.

ATTEST:

APPROVED: October 23, 2018

Joan Hullings, Borough Clerk

Gayle Brill Mittler, Mayor