

**BOROUGH OF RED BANK  
COUNTY OF MONMOUTH  
STATE OF NEW JERSEY**

**ORDINANCE 2019-18**

**AN ORDINANCE OF THE BOROUGH OF RED BANK TO IMPLEMENT THE BOROUGH'S THIRD ROUND HOUSING PLAN ELEMENT AND FAIR SHARE PLAN CONSISTENT WITH THE TERMS OF A SETTLEMENT AGREEMENT REACHED BETWEEN THE BOROUGH OF RED BANK AND THE FAIR SHARE HOUSING CENTER REGARDING COMPLIANCE WITH THE BOROUGH'S THIRD ROUND AFFORDABLE HOUSING OBLIGATIONS IN ACCORDANCE WITH IN RE: N.J.A.C. 5:96 AND 5:97, 221 N.J. 1 (2015), THE NEW JERSEY FAIR HOUSING ACT, AND RELEVANT REGULATIONS AND POLICIES ADOPTED BY THE NEW JERSEY COUNCIL ON AFFORDABLE HOUSING.**

**NOW, THEREFORE BE IT ORDAINED**, by the Borough Council of the Borough of Red Bank that Chapter 205, Affordable Housing, of the Revised General Ordinances is hereby amended as follows (~~stricken text~~ indicates deletions, underlined text indicates additions):

**SECTION 1.** §205 Article 1, Fair Share Obligation, is hereby amended as follows:

Delete the following:

- 205-1
- 205-2
- 205-3
- 205-4
- 205-5
- 205-6
- 205-7
- 205-8
- 205-9

Add the following:

**§205-1 Affordable Housing Obligation**

- A. This Ordinance is intended to assure that low- and moderate-income units ("affordable units") are created with controls on affordability and that low- and moderate-income households shall occupy these units. This Ordinance shall apply except where inconsistent with applicable law.
- B. The Borough of Red Bank Planning Board has adopted a Housing Element and Fair Share Plan pursuant to the Municipal Land Use Law at N.J.S.A. 40:55D-1, et seq. The Fair Share Plan has been adopted by the Planning Board and endorsed by the governing body. The Fair Share Plan describes how Red Bank Borough shall address its fair share for low- and moderate-income housing as documented in the Housing Element and outlined in the terms of the settlement agreement between the Borough and Fair Share Housing Center (FSHC).
- C. This Ordinance implements the Borough's Fair Share Plan, addresses the requirements of the Court and the terms of the settlement agreement, and also implements a Borough wide requirement that all new multi-family residential development of five (5) or more units shall have a mandatory affordable housing set aside for low- and moderate-income units, subject to certain enumerated conditions.
- D. The Borough of Red Bank shall comply with the following monitoring and reporting requirements regarding the status of the implementation of its Court-approved Housing Element and Fair Share Plan:
  - (1) Beginning on the one year anniversary of the order granting compliance and repose, and on every anniversary of that date through 2025, the Borough agrees to provide annual reporting of its Affordable Housing Trust Fund activity to the New Jersey Department of Community Affairs, Council on Affordable Housing, or Local Government Services, or other entity designated by the State of New Jersey, with a copy provided to Fair Share Housing Center (FSHC) and posted on the municipal website, using forms developed for this purpose by the New Jersey Department of Community Affairs (NJDCA), Council on Affordable Housing (COAH), or 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.
  - (2) Beginning on the one year anniversary of the order granting compliance and repose, and on every anniversary of that date through 2025, the Borough agrees to 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.

- (3) By July 1, 2020, as required pursuant to N.J.S.A. 52:27D-313, 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 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.
- (4) By March 1, 2020, and every third year thereafter, as required by N.J.S.A. 52:27D-329.1, 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 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.

### **§205-2 Definitions**

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

“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 site, or by an addition to an existing home or accessory building, or by the construction of a new accessory structure on the same site.

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

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

“Administrative agent” means the entity responsible for the administration of affordable units in accordance with this ordinance, N.J.A.C. 5:96, N.J.A.C. 5:97 and N.J.A.C. 5:80-26.1 et seq.

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

“Affordability average” means the average percentage of median income at which restricted units in an affordable housing development are affordable to low- 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. 5:97-9; in the case of an ownership unit, that the sales price for the unit conforms to the standards set forth in N.J.A.C. 5:80-26.6, as may be amended and supplemented, and, in the case of a rental unit, that the rent for the unit conforms to the standards set forth in N.J.A.C. 5:80-26.12, as may be amended and supplemented.

“Affordable development” means a housing development all or a portion of which consists of restricted units.

“Affordable housing development” means 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 structure that provides for-sale or rental dwelling units for low & moderate income households within a residential use, structure, supportive or special needs dwelling, or residential component of a mixed-use development in accordance with the requirements of the Borough of Red Bank’s affordable housing ordinances and Housing Element & Fair Share Plan.

“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. 5:97-4, 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 percent of the units are occupied by one person that is 55 years or older; or 3) the development has been designated by the Secretary of the U.S. Department of

Housing and Urban Development as “housing for older persons” as defined in Section 807(b)(2) of the Fair Housing Act, 42 U.S.C. § 3607.

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

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

“COAH” means the New Jersey Council on Affordable Housing established under the Fair Housing Act of 1985.

“Construction” means new construction and additions, but does not include alterations, reconstruction, renovations, and repairs as those terms are defined under the State Uniform Construction Code promulgated pursuant to the “State Uniform Construction Code Act,” P.L. 1975, c.217 (C.52:27D-119 et seq.).

“The Department” means the Department of Community Affairs of the State of New Jersey, that was established under the New Jersey Fair Housing Act (N.J.S.A. 52:27D-301 et seq.).

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

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

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

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

“Development fee” means money paid for an individual, person, partnership, association, company or corporation for the improvement of a property as permitted in COAH rules and regulations pursuant to N.J.A.C. 5:93-8, Development Fees.

“Equalized assessed value” means the assessed value of a property divided by the current State equalization ratio for the Borough, 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).

“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.”

“Inclusionary development” means a development containing both affordable units and market rate units. Inclusionary developments that has five or more units must have a minimum twenty percent set aside of affordable units if it is for sale and a minimum fifteen percent set aside for rentals. This term includes, but is not necessarily limited to: new construction, the conversion of a non-residential structure to residential and the creation of new affordable units through the reconstruction of a vacant residential structure.

“Judgment of compliance” means a determination issued by the Superior Court approving the Borough’s affordable housing plan to satisfy its fair share obligation.

“Low-income household” means a household with a total gross annual household income equal to 50 percent or less of the median household income.

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

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

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

“Median income” means the median income by household size for the applicable county, as adopted annually by the Department.

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

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

“Mixed-Use Development” means a structure or building that encompasses two or more different land uses, which shall be a retail or commercial component and a residential component, whereby any commercial use must be on the ground floor of said building or structure and the upper levels of the structure shall be the residential component and shall provide low and moderate income units, for-sale or rental, in accordance with the requirements of the Borough of Red Bank’s affordable housing ordinances and Housing Element & Fair Share Plan.

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

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

“Regional asset limit” means the maximum housing value in each housing region affordable to a four-person household with an income at 80 percent of the regional median as defined by the Department’s adopted Regional Income Limits published annually by the Department.

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

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

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

“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 percent or less of the median household income.

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

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

### **§205-3 Affordable Housing Mechanisms**

The Borough of Red Bank will use the following mechanisms to satisfy its affordable housing obligations:

A. Percentage of Mandatory Set Asides for All Future Residential Developments.

- (1) If the Borough permits the construction of multi-family or single-family attached residential development that is “approvable” and “developable,” as defined at N.J.A.C. 5:93-1.3, at a gross residential density of 6 units to the acre or more, and which consists of ten (10) or more new residential units, the Borough shall require that an appropriate percentage of the residential units be set aside for low and moderate income households.
- (2) This requirement shall apply beginning with the effective date of this ordinance to any multi-family or single-family attached residential development, including the residential portion of a mixed-use development, which consists of ten (10) or more new residential units, whether permitted by a zoning amendment, a variance granted by the Borough’s Planning or Zoning Board, or adoption of a Redevelopment Plan or amended Redevelopment Plan in areas in need of redevelopment or rehabilitation.
- (3) An affordable set-aside shall be required in accordance with the following:

<u>Total Number of Units</u>	<u>Minimum Percentage of Affordable Units</u>
<u>10 and under</u>	<u>None</u>

<u>11-25</u>	<u>10%</u>
<u>26-150</u>	<u>15%</u>
<u>151-215</u>	<u>17.5%</u>
<u>216 and over</u>	<u>20%</u>

- (4) Developers of 10 units and under will be required to pay the Borough's development fee. Developers of 11 units and above will be required to provide at least 70% of the units required on site and will have the option to satisfy the remaining obligation with either:
- [1] off-site affordable units; or
  - [2] a Payment In Lieu of such units in accordance with N.J.A.C. 5:93-8.10(c) and N.J.A.C. 5:97-6.4(c)3, provided that the Borough will only accept a Payment in Lieu if at the time of application the applicant can demonstrate that the Payment in Lieu will create an equivalent number of new construction or gut rehabilitation affordable units to those that would have been provided on site, which off-site or payment in lieu units, when combined with the on-site units, shall be consistent with the bedroom distribution, very-low-/low-/moderate-income split and all other terms of the Settlement Agreement.
  - [3] Off-site affordable units or units to be produced through a Payment in Lieu shall be subject to the phasing requirements in §205-4(B).
- (5) This requirement does not create any entitlement for a property owner or applicant for a zoning amendment, variance, or adoption of a Redevelopment Plan or amended Redevelopment Plan in areas in need of redevelopment or rehabilitation, or for approval of any particular proposed project.
- (6) This requirement does not apply to any sites or specific zones otherwise identified in the Settlement Agreement or Fair Share Plan, for which density and set-aside standards shall be governed by the specific standards set forth therein, though all other provisions of this ordinance shall be applicable to those sites unless otherwise specified.
- (7) A set-aside shall not apply to developments containing ten (10) or fewer dwelling units.
- (8) All subdivision and site plan approvals of qualifying residential developments shall be conditioned upon compliance with the provisions of this section. Where a developer demolishes existing dwelling units and builds new dwelling units on the same site, the provisions of this section shall apply only if the net number of dwelling units is ten (10) or more.

**B. Rehabilitation Program.**

- (1) The Borough of Red Bank and Fair Share Housing Center have agreed upon a rehabilitation program of one hundred and twenty-nine (129) units. The Borough will create and administer both a rental and owner occupied rehabilitation program to satisfy its 129 unit present need obligation. A Spending Plan will be prepared and adopted by the Borough that shall outline the schedule and expenditures through 2025 to realize 129 rehabilitated units. The Spending Plan will be funded through the Borough's existing Developer Fee Ordinance and payments in lieu where appropriate. The Administrative Agent shall be responsible for submitting the rehabilitation program manuals and documenting each rehabilitation application and documents thoroughly. Any renovation of deficient housing units to be occupied by low- and moderate-income households will comply with the New Jersey State Housing Code pursuant to N.J.A.C. 5:28.
- (2) All rehabilitated rental or owner-occupied units shall remain affordable to low- and moderate-income households for a period of 10 years (the control period). For owner-occupied units, the control period will be enforced with a lien and for renter occupied units the control period will be enforced with a deed restriction.
- (3) The Borough of Red Bank shall dedicate an average of \$10,000 for each unit to be rehabilitated through this program, reflecting the minimum hard cost of rehabilitation for each unit.
- (4) The Borough of Red Bank shall designate, subject to the approval of the Court, one Administrative Agent to administer the rehabilitation program in accordance with N.J.A.C. 5:91 and N.J.A.C. 5:93. The Administrative Agent shall provide a rehabilitation manual for both rental and owner occupant rehabilitations. These manuals when created will be reviewed by the governing body and adopted by resolution subject to approval of the Court. Both rehabilitation manuals shall be available for public inspection in the Office of the Municipal Clerk and in the office of the Administrative Agent.
- (5) Units in a rehabilitation program shall be exempt from N.J.A.C. 5:93-9 and Uniform Housing Affordability Controls (UHAC), but shall be administered in accordance with the following:
  - [1] If a unit is vacant, upon initial rental subsequent to rehabilitation, or if a renter-occupied unit is re-rented prior to the end of controls on affordability, the deed restriction shall require the unit to be rented to a low- or moderate-income household at an affordable rent and affirmatively marketed pursuant to N.J.A.C. 5:93-9 and UHAC.

- [2] If a unit is renter-occupied, upon completion of the rehabilitation, the maximum rate of rent shall be the lesser of the current rent or the maximum permitted rent pursuant to N.J.A.C. 5:93-9 and UHAC.
- [3] Rents in rehabilitated units may increase annually based on the standards in N.J.A.C. 5:93-9.
- [4] Applicant and/or tenant households shall be certified as income-eligible in accordance with N.J.A.C. 5:93-9 and UHAC, except that households in owner occupied units shall be exempt from the regional asset limit.

C. First-Time Homebuyers Program

- (1) The Borough will develop a First-Time Homebuyer Program to provide for an opportunity for homeownership in the Borough to at least fifty (50) low- and moderate-income households by 2025. The program will be funded with development fees collected by the Borough, and the properties involved will be deed restricted for a thirty (30) year period (control period) to remain affordable to low or moderate income households consistent with the Uniform Housing Affordability Controls (UHAC) at N.J.A.C. 5:80-16.1 et seq. The maximum loan amount to be dedicated to each unit shall be \$10,000.

D. Alternative Living Arrangements

- (1) The administration of an alternative living arrangement shall be in compliance with N.J.A.G. 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).
- (2) 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.
- (3) 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.

**§205-4 New Construction**

The following general guidelines apply to all newly constructed developments that contain low-and moderate-income housing units, including any currently unanticipated future developments that will provide low- and moderate-income housing units.

- A. Affordable Housing Plan. The applicant for approval of an 11 unit or more residential or development shall present the planned method of affordable housing compliance based upon the full build-out of the property for residential and/or nonresidential development. The applicant shall demonstrate compliance by completing an Affordable Housing Plan Form which shall be submitted at the time of application filing.
- B. Phasing. Inclusionary developments shall be subject to the following schedule:

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

- C. Fractional Units. If the required set-aside of the total number of units in a development results in a fraction or decimal, the developer shall be required to round up and provide an additional affordable unit on site if the fraction is 0.5 or greater. If the fraction is less than 0.5, the developer shall be required to provide the affordable housing development fee for the fractional units.

Examples:

A 15-unit development requiring an affordable housing set-aside of 1.5 units is proposed. The development is required to provide two (2) affordable units.

A 12-unit development requiring an affordable housing set-aside of 1.2 units is proposed. The developer is required to provide one (1) affordable unit, and pay the affordable housing development fee for two (2) units.

- D. Design. In inclusionary developments, to the extent possible, low- and moderate-income units shall be integrated with the market units.
- E. Off-site construction. The standards for constructing affordable units off-site, shall be in accordance with the Borough's recommendations, provided that at least the same number of affordable units are provided, at least half of the affordable units are available to families, and not more than 25% are age-restricted, and the affordable units provided are otherwise consistent with the terms of the Settlement Agreement.
- F. Utilities. Affordable units shall utilize the same type of heating source as market units within the affordable development.
- G. Low/Moderate Split and Bedroom Distribution of Affordable Housing Units:
- (1) The fair share obligation shall be divided equally between low- and moderate-income units, except that where there is an odd number of affordable housing units, the extra unit shall be a low income unit.
  - (2) In each affordable development, at least 50 percent of the restricted units within each bedroom distribution shall be low-income units, including that 13% shall be very low-income within each bedroom distribution. If there is only one affordable unit it must be a low income unit.
  - (3) Thirteen percent (13%) of all affordable units approved or constructed since July 17, 2008 in the Borough shall be designated as very-low income households at 30% of the median income, with at least fifty percent (50%) of all very-low income units being available to families. If an inclusionary development proposes less than 10 total units, a payment in lieu of the cost of subsidizing a very low income unit shall be deposited into the Borough's Affordable Housing Trust Fund based on the difference in cost between providing a very low income unit and the region's affordability average. Very-low income units shall be considered low-income units for the purposes of evaluating compliance with the required low/moderate income unit splits, bedroom distribution, and phasing requirements of this ordinance.
  - (4) Affordable developments that are not age-restricted shall be structured in conjunction with realistic market demands such that:
    - [1] The combined number of efficiency and one-bedroom units shall be no greater than 20 percent of the total low- and moderate-income units;
    - [2] At least 30 percent of all low- and moderate-income units shall be two bedroom units;
    - [3] At least 20 percent of all low- and moderate-income units shall be three bedroom units; and
    - [4] The remaining units may be allocated among two and three bedroom units at the discretion of the developer.
  - (5) Affordable developments that are age-restricted shall be structured such that the number of bedrooms shall equal the number of age-restricted 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.
- H. Accessibility Requirements:
- (1) The first 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 Sub-code, N.J.A.C. 5:23-7 and the standards in § 205-4H(2)[1] through [6].
  - (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:
    - [1] An adaptable toilet and bathing facility on the first floor;
    - [2] An adaptable kitchen on the first floor;
    - [3] An interior accessible route of travel on the first floor;
    - [4] 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;
    - [5] If not all of the foregoing requirements in §205-4H(2)[1] through §205-4H(2)[4] 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 §205-4H(2)[1] through §205-4H(2)[4] above have been satisfied, then an interior accessible route of travel shall not be required between stories within an individual unit; and

- [6] 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 Sub-code, N.J.A.C. 5:23-7, or evidence that the Borough of Red Bank has collected funds from the developer sufficient to make ten percent (10%) of the adaptable entrances in the development accessible;
- (3) 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.
  - (4) To this end, the builder of restricted units shall deposit funds within the Borough's Affordable Housing Trust Fund sufficient to install accessible entrances in ten percent (10%) of the affordable units that have been constructed with adaptable entrances.
  - (5) The funds deposited under §205-4H(4) above shall be used by the Borough of Red Bank 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.
  - (6) 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.
  - (7) 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 Sub-code, N.J.A.C. 5:23-7, and that the cost estimate of such conversion is reasonable, payment shall be made to the Borough's affordable housing trust fund where the funds shall be deposited into the affordable housing trust fund and appropriately earmarked.
  - (8) 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 Sub-code, N.J.A.C. 5:23-7.

#### I. Maximum Rents and Sales Prices

- (1) In establishing rents and sales prices of affordable housing units, the administrative agent shall follow the procedures set forth in UHAC utilizing the most recently published regional weighted average of the uncapped Section 8 income limits published by HUD and by the Superior Court.
- (2) The maximum rent for restricted rental units within each affordable development shall be affordable to households earning no more than 60 percent of median income, and the average rent for restricted low- and moderate-income units shall be affordable to households earning no more than 52 percent 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.
  - [1] At least thirteen percent (13%) of all low- and moderate-income dwelling units shall be affordable to households earning no more than 30 percent 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 percent of median income, and each affordable development must achieve an affordability average of 55 percent 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 used:
  - [1] A studio shall be affordable to a one-person household;
  - [2] A one-bedroom unit shall be affordable to a one and one-half person household;
  - [3] A two-bedroom unit shall be affordable to a three-person household;
  - [4] A three-bedroom unit shall be affordable to a four and one-half person household; and
  - [5] A four-bedroom unit shall be affordable to a six-person household.
- (6) In determining the initial sales prices and rents for compliance with the affordability average requirements for restricted units in assisted living facilities and age-restricted development, the following standards shall be used:
  - [1] A studio shall be affordable to a one-person household;
  - [2] A one-bedroom unit shall be affordable to a one and one-half person household; and

- [3] 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 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 28 percent of the eligible monthly income of the appropriate size household as determined under N.J.A.C. 5:80-26.4, as may be amended and supplemented; provided, however, that the price shall be subject to the affordability average requirement of N.J.A.C. 5:80-26.3, as may be amended and supplemented.
- (8) The initial rent for a restricted rental unit shall be calculated so as not to exceed 30 percent of the eligible monthly income of the appropriate household size, including an allowance for tenant paid utilities, as determined under N.J.A.C. 5:80-26.4, as may be amended and supplemented; provided, however, that the rent shall be subject to the affordability average requirement of N.J.A.C. 5:80-26.3, as may be amended and supplemented.
- (9) The price of owner-occupied low- and moderate-income units may increase annually based on the percentage increase in the regional median income limit for each housing region. In no event shall the maximum resale price established by the administrative agent be lower than the last recorded purchase price.
- (10) The rent of 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. This increase shall not exceed nine 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.
- (11) Utilities. Tenant-paid utilities that are included in the utility allowance shall be so stated in the lease and shall be consistent with the utility allowance approved by HUD for its Section 8 program.

**SECTION 2.** §205 Article II, Growth Share Requirement is hereby amended as follows:

~~Growth Share Requirement~~ Affordable Housing Administration

Delete the following:

- 205-10
- 205-11
- 205-12
- 205-13
- 205-14

Add the following:

**§205-5 Affirmative Marketing Requirements**

- A. The Borough of Red Bank shall adopt by resolution an Affirmative Marketing Plan, subject to approval of the 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 Housing Region 4 and covers the period of deed restriction.
- C. The affirmative marketing plan shall provide a regional preference for all households that live and/or work in Housing Region 4.
- D. The Borough has the ultimate responsibility for adopting the affirmative marketing plan and for the proper administration of the affirmative marketing program, including initial sales and rentals and resales and rerentals. The Administrative Agent designated by the Borough of Red Bank shall assure the affirmative marketing of all affordable units consistent with the Affirmative Marketing Plan for the municipality.

- E. In implementing the affirmative marketing plan, the Administrative Agent shall provide a list of counseling services to low- and moderate-income applicants on subjects such as budgeting, credit issues, mortgage qualification, rental lease requirements, and landlord/tenant law.
- F. The affirmative marketing 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 months 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 Borough in which the units are located; and the developer's rental office. Pre-applications shall be emailed or mailed to prospective applicants upon request.
- I. In addition to other affirmative marketing strategies, the Administrative Agent shall provide specific notice of the availability of affordable housing units in Red Bank, and copies of the applications forms, to the following entities: Fair Share Housing Center, the New Jersey State Conference of the NAACP, the Latino Action Network, and the Trenton, Greater Red Bank, Asbury Park/Neptune, Bayshore, Greater Freehold, Greater Long Branch Branches of the NAACP, the Red Bank Affordable Housing Corporation, Pilgrim Baptist Church, Shiloh Baptist Church, 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, unless otherwise determined or agreed to by the Borough.

#### **§205-6 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 children of different sex with separate bedrooms; and
  - (3) Provide separate bedrooms for parents and children; 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.

#### **§205-7 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, as may be amended and supplemented, and each restricted ownership unit shall remain subject to the requirements of this Ordinance until the Borough of Red Bank elects to release the unit from such requirements however, and prior to such an election, a restricted ownership unit must remain subject to the requirements of N.J.A.C. 5:80-26.1, as may be amended and supplemented, for at least 30 years.
- 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.
- D. At the time of the first sale of the unit, the purchaser shall execute and deliver to the Administrative Agent a recapture note obligating the purchaser (as well as the purchaser's heirs, successors and assigns) to repay, upon the first non-exempt sale after the unit's release from the requirements of this 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 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.

### **§205-8 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. 5:80-26.1, 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 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.
- D. The owners of restricted ownership units may apply to the Administrative Agent to increase the maximum sales price for the unit on the basis of capital improvements. Eligible capital improvements shall be those that render the unit suitable for a larger household or the addition of a bathroom.

### **§205-9 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 percent of median income and moderate-income ownership units shall be reserved for households with a gross household income less than 80 percent of median income.
- B. Notwithstanding the foregoing, however, the administrative agent may, upon approval by the Borough Mayor and Council, and subject to the court's approval, permit moderate-income purchasers to buy low-income units in housing markets if the administrative agent determines that there is an insufficient number of eligible low-income purchasers to permit prompt occupancy of the units. All such low-income units to be sold to moderate-income households shall retain the required pricing and pricing restrictions for low-income units.
- C. A certified household that purchases a restricted ownership unit must occupy it as the certified household's principal residence and shall not lease the unit; provided, however, that the administrative agent may permit the owner of a restricted ownership unit, upon application and a showing of hardship, to lease the restricted unit to another certified household for a period not to exceed one 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 percent of the household's certified monthly income.

### **§205-10 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 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 percent 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).

### **§205-11 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 adds an additional bathroom. In no event shall the maximum sales price of an improved housing unit exceed the limits of affordability for the larger household.
- B. Upon the resale of a restricted ownership unit, all items of property that are permanently affixed to the unit or were included when the unit was initially restricted (for example, refrigerator, range, washer, dryer, dishwasher, wall-to-wall carpeting) shall be included in the maximum allowable resale price. Other items may be sold to the purchaser at a reasonable price that has been approved by the administrative agent at the time of the signing of the agreement to purchase. The purchase of central air conditioning installed subsequent to the initial sale of the unit and not included in the base price may be made a condition of the unit resale provided the price, which shall be subject to 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.

#### **§205-12 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, as may be amended and supplemented, and each restricted rental unit shall remain subject to the requirements of this Ordinance until the Borough of Red Bank elects to release the unit from such requirements pursuant to action taken in compliance with N.J.A.C. 5:80-26.1, as may be amended and supplemented, and prior to such an election, 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, for at least 30 years.
- 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 Monmouth. A copy of the filed document shall be provided to the Administrative Agent within 30 days of the receipt of a Certificate of Occupancy.
- 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.

#### **§205-13 Price Restrictions for Rental Units; Leases**

- A. A written lease shall be required for all restricted rental units, and tenants shall be responsible for security deposits and the full amount of the rent as stated on the lease. A copy of the current lease for each restricted rental unit shall be provided to the Administrative Agent.
- B. No additional fees or charges shall be added to the approved rent (except, in the case of units in an assisted living residence, to cover the customary charges for food and services) without the express written approval of the Administrative Agent.
- C. Application fees (including the charge for any credit check) shall not exceed five percent of the monthly rent of the applicable restricted unit and shall be payable to the Administrative Agent to be applied to the costs of administering the controls applicable to the unit as set forth in this Ordinance.

#### **§205-14 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 percent of median income.
  - (2) Low-income rental units shall be reserved for households with a gross household income less than or equal to 50 percent of median income.
  - (3) Moderate-income rental units shall be reserved for households with a gross household income less than 80 percent 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 percent (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 35 percent (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 35 percent (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 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.

### **§205-15 Administration**

- A. The position of Municipal Housing Liaison (MHL) for the Borough of Red Bank is established by this ordinance. The Borough shall make the actual appointment of the MHL by means of a resolution.
- (1) The MHL must be either a full-time or part-time employee of Red Bank.
  - (2) The person appointed as the MHL must be reported to the Court and thereafter posted on the Borough's website.
  - (3) The MHL must meet all the requirements for qualifications, including initial and periodic training.
  - (4) The Municipal Housing Liaison shall be responsible for oversight and administration of the affordable housing program for the Borough of Red Bank, including the following responsibilities which may not be contracted out to the Administrative Agent:
    - [1] Serving as the municipality's primary point of contact for all inquiries from the State, affordable housing providers, Administrative Agents and interested households;
    - [2] The implementation of the Affirmative Marketing Plan and affordability controls.
    - [3] When applicable, supervising any contracting Administrative Agent.
    - [4] Monitoring the status of all restricted units in the Borough's Fair Share Plan;
    - [5] Compiling, verifying and submitting annual reports as required;
    - [6] Coordinating meetings with affordable housing providers and Administrative Agents, as applicable; and
    - [7] Attending continuing education opportunities on affordability controls, compliance monitoring and affirmative marketing as offered or approved by the Affordable Housing Professionals of New Jersey (AHPNJ).
- B. The Borough of Red Bank shall designate by resolution of the Borough Committee, subject to the approval of the Court, one or more Administrative Agents to administer newly constructed affordable units in accordance with UHAC.
- C. An Operating Manual shall be provided by the Administrative Agent(s) to be adopted by resolution of the governing body. 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). The municipal housing liaison shall supervise the work of the Administrative Agent(s).
- D. The 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.*** The Administrative Agent shall perform the duties and responsibilities of an administrative agent as are set forth in UHAC, including those set forth in N.J.A.C. 5:80-26.14, 16 and 18 thereof, which includes:
- (1) Attending continuing education opportunities on affordability controls, compliance monitoring, and affirmative marketing as offered or approved by the Affordable Housing Professionals of New Jersey (AHPNJ).;
  - (2) Affirmative Marketing;
    - [1] Conducting an outreach process to affirmatively market affordable housing units in accordance with the Borough's affirmative marketing plan and the provisions of N.J.A.C. 5:80-26.15; and
    - [2] 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;
    - [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; and
  - [6] Employing a random selection process as provided in the affirmative marketing plan of the Borough when referring households for certification to affordable units.
  - [7] Notifying the following entities of the availability of affordable housing units in the Borough of Red Bank: Fair Share Housing Center, the new Jersey State Conference of the NAACP, the Latino Action Network, NORWESCAP, the Supportive Housing Association, and the Central Jersey Housing Resource Center.
- (4) 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 Hunterdon County Register of Deeds or 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.
- (5) Records retention;
- (6) Resale and re-rental;
- [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 rental; and
  - [2] Instituting and maintaining an effective means of communicating information to low- and moderate-income households regarding the availability of restricted units for resale or re-rental.
- (7) 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 chapter;
  - [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 Borough of an owner's intent to sell a restricted unit; and
  - [4] Making determinations on requests by owners of restricted units for hardship waivers.
- (8) Enforcement, though the ultimate responsibility for retaining controls on the units rests with the municipality.
- [1] Securing annually from the Borough a list of all affordable housing units for which tax bills are mailed to absentee owners, and notifying all such owners that they must either move back to their unit or sell it;
  - [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, of a notice as to the maximum permitted rent together with the telephone number of the administrative agent where complaints of excess rent or other charges can be made;
  - [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 Borough'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 Borough Mayor and Council and the court, setting forth procedures for administering the affordability controls.
- (9) The Administrative Agent shall have authority to take all actions necessary and appropriate to carry out its responsibilities, hereunder.
- E. The Administrative Agent shall also implement the rehabilitation program, affordability assistance program, and any other affordable housing programs required within the Spending Plan and adopted Housing Plan Element and Fair Share Plan.
- (1) The administrative agent shall prepare monitoring reports for submission to the municipal housing liaison in time to meet any monitoring requirements and deadlines imposed by the court.
  - (2) The administrative agent shall attend continuing education sessions on affordability controls, compliance monitoring, and affirmative marketing at least annually and more often as needed.

### **§205-16 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:
    - [1] A fine of not more than \$10,000.00 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;
    - [2] 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 Red Bank Affordable Housing Trust Fund of the gross amount of rent illegally collected;
    - [3] 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.

### **§205-17 Appeals**

Appeals from all decisions of an Administrative Agent designated pursuant to this Ordinance shall be filed with the Superior Court of New Jersey, Monmouth County.

**SECTION 3.** §205 Article III, Mandatory Affordable Housing Fees is hereby amended as follows:

Delete the following:

- 205-16

Amend the following:

- 205-15 to 205-18
  - A. This article shall not be effective until approved by ~~COAH~~ the Court pursuant to N.J.A.C. 5:96-5.1
  - B. The Borough shall not spend development fees until ~~COAH~~ the Court has approved a plan for spending such fees in conformance with N.J.A.C. 5:97-8.10 and N.J.A.C. 5:96-5.3.
- 205-17 to 205-19
  - A. Imposed fees.
    - (1) Within all district(s), residential developers, except for developers of the types of development specifically exempted below, shall pay a fee of 1.5% of the equalized assessed value for residential development, ~~provided no increased density is permitted.~~
    - (2) ~~When an increase in residential density pursuant to N.J.S.A. 40:55D-70d(5) (known as a "d" variance) has been permitted, developers may be required to pay a development fee of 6% of the equalized assessed value for each additional unit that may be realized. However if the zoning on a site has changed during the two year period preceding the filing of such a variance application, the base density for the purposes of calculating the bonus development fee shall be the highest density permitted by right during the two year period preceding the filing of the variance application. Example: If an approval allows four units to be constructed on a site that was zoned for two units, the fees could equal 1 ½% of the equalized assessed value on the first two units; and the specified higher percentage up to 6% of the equalized assessed value for the two additional units, provided zoning on the site has not changed during the two year period preceding the filing of such a variance application.~~
  - B. Eligible exactions, ineligible exactions and exemptions for residential development.

(1) *No change.*

(2) *No change.*

(3) *No change.*

(4) The following types of developments shall be exempt from paying a development fee:

a) ~~One or two family owner occupied dwellings units that are being expanded without creating new dwelling units.~~ Improvements or additions to existing one and two-family dwellings on individual lots shall not be required to pay a development fee, but a development fee shall be charged for any new dwelling constructed as a replacement for a previously existing dwelling on the same lot that was or will be demolished, unless the owner resided in the previous dwelling for a period of one year or more prior to obtaining a demolition permit. Where a development fee is charged for a replacement dwelling, the development fee shall be calculated on the increase in the equalized assessed value of the new structure as compared to the previous structure.

b) *No change.*

- 205-18 to 205-20
- 205-19 to 205-21
- 205-20 to 205-22

A. *No change.*

B. *No change.*

C. ~~Within seven days from the opening of the trust fund account, the Borough shall provide COAH with written authorization, in the form of a three party escrow agreement between the municipality, the bank, and COAH, to permit COAH to direct the disbursement of the funds as provided for in N.J.A.C. 5:97-8.13(b).~~ In the event of a failure by the Borough of Red Bank to comply with trust fund monitoring and reporting requirements or to submit accurate monitoring reports; or a failure to comply with the conditions of the judgment of compliance or a revocation of the judgment of compliance; or a failure to implement the approved Spending Plan and to expend funds within the applicable required time period as set forth in In re Tp. of Monroe, 442 N.J. Super. 565 (Law Div. 2015) (aff'd 442 N.J. Super. 563); or the expenditure of funds on activities not approved by the Court; or for other good cause demonstrating the unapproved use(s) of funds, the Court may authorize the State of New Jersey, Department of Community Affairs, Division of Local Government Services (LGS), to direct the manner in which the funds in the Affordable Housing Trust Fund shall be expended, provided that all such funds shall, to the extent practicable, be utilized for affordable housing programs within the Borough of Red Bank, 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. All interest accrued in the housing trust fund shall only be used on eligible affordable housing activities approved by ~~COAH~~ the Court.

- 205-21 to 205-23

A. The expenditure of all funds shall conform to a spending plan approved by ~~COAH~~ the Court. Funds deposited in the housing trust fund may be used for any activity approved by ~~COAH~~ 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. 5:97-8.7 through 8.9 and specified in the approved spending plan.

B. *No change.*

C. *No change.*

D. *No change.*

E. *No change.*

F. *No change.*

G. *No change.*

H. 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 ~~COAH's~~ the Court's monitoring requirements. Legal or other fees related to litigation opposing affordable housing sites or objecting to the Council's and/or the Court's regulations and/or action are not eligible uses of the affordable housing trust fund.

- 205-22 to 205-24

The Borough shall complete and return to ~~COAH~~ the Court all monitoring forms included in monitoring requirements related to the collection of development fees from residential and nonresidential developers, payments in lieu of constructing affordable units on site, funds from the sale of units with extinguished controls, barrier free escrow funds, rental income, repayments from affordable housing program loans, and any other funds collected in connection with the Borough's housing program, as well as to the expenditure of revenues and implementation of the plan certified by ~~COAH~~ the Court. All monitoring reports shall be completed on forms designed by COAH and/or approved by the Court. The Borough of Red Bank 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 Borough), funds from the sale of units with extinguished controls, barrier free escrow funds, rental income from Borough owned affordable housing units, repayments from affordable housing program loans, and any other funds collected in connection with Red Bank's affordable housing programs, as well as an accounting of the expenditures of revenues and implementation of the Spending Plan approved by the Court.

- 205-23 to 205-25

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

#### **SECTION 4.**

A copy of this Ordinance, upon introduction, shall be provided to all appropriate municipal agencies, including the Planning Board, for their review and comment pursuant to applicable New Jersey statutes.

#### **SECTION 5.**

Any ordinances or portions thereof which are inconsistent with the provisions of this Ordinance are hereby repealed as of the effective date of this Ordinance. All other provisions of the Revised General Ordinances are ratified and remain in full force and effect.

**SECTION 6.**

If any provision of this Ordinance or the application of such provision to any person or circumstance is declared invalid, such invalidity shall not affect the other provisions or applications of this Ordinance which can be given effect, and to this end, the provisions of this Ordinance are declared to be severable.

**SECTION 7. Effective Date**

This Ordinance shall take effect upon its passage and publication according to law.

	Motion	Yes	No	Abstain	Absent
Councilman Yassin		X			
Councilwoman Triggiano		X			
Councilman Ballard	Motion	X			
Councilman Yngstrom		X			
Councilman Zipprich					X
Councilwoman Horgan	Second	X			

Introduction: April 10, 2019  
Public Hearing/Adoption: April 24, 2019  
Adopted: April 24, 2019

\_\_\_\_\_  
Pamela Borghi, Municipal Clerk

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Pasquale Menna, Mayor