

ORDINANCE NO. 2017-16

**TOWNSHIP OF EAST WINDSOR
MERCER COUNTY
NEW JERSEY**

AN ORDINANCE OF THE TOWNSHIP OF EAST WINDSOR, COUNTY OF MERCER AND STATE OF NEW JERSEY AMENDING AND SUPPLEMENTING CHAPTER XX, "ZONING," SECTION 20-20 "AFFORDABLE HOUSING," SECTION 20-21 "DEVELOPMENT FEES FOR AFFORDABLE HOUSING," AND CHAPTER II, "ADMINISTRATIVE CODE," SECTION 2-37 "MUNICIPAL HOUSING LIAISON" OF THE REVISED GENERAL ORDINANCES OF THE TOWNSHIP OF EAST WINDSOR, COUNTY OF MERCER, STATE OF NEW JERSEY, TO UPDATE REGULATIONS IN ACCORDANCE WITH CURRENT STATE LAWS AND REGULATIONS AND APPLICABLE COURT REQUIREMENTS.

WHEREAS, the New Jersey Council on Affordable Housing ("COAH") has promulgated rules, set forth at N.J.A.C. 5:93 and 5:91, concerning the substantive and procedural requirements for obtaining third round substantive certification of the Township Housing Element and Fair Share Plan; and

WHEREAS, on March 10, 2015, the Supreme Court transferred responsibility to review and approve housing elements and fair share plans from COAH to designated Mt. Laurel trial judges within the Superior Court; and

WHEREAS, on July 7, 2015, the Township submitted a Declaratory Judgment Action to the New Jersey Superior Court; and

WHEREAS, as part of its review of the Township Declaratory Judgment filing, the Superior Court requires that the Township affordable housing ordinances be updated and brought into compliance with current, valid affordable housing rules.

BE IT ORDAINED by the Township Council of the Township of East Windsor, in the County of Mercer and State of New Jersey, that the "Revised General Ordinances of the Township of East Windsor" is hereby amended as follows:

SECTION 1. Chapter XX, "Zoning," Section 20-20, "Affordable Housing," and Chapter II, "Administrative Code," Section 2-37, "Municipal Housing Liaison," are deleted in their entirety and replaced with new Section 20-20, "Affordable Housing," as follows:

20-20 Affordable Housing

20-20.1. Statutory provisions.

- a. This section of the Township Ordinance sets forth regulations regarding the low and moderate income housing units in the Township consistent with the provisions known as the "Substantive Rules of the New Jersey Council on Affordable Housing" ("COAH"), N.J.A.C. 5:93 et seq., the Uniform Housing Affordability Controls ("UHAC"), N.J.A.C. 5:80-26.1 et seq., and the Township's constitutional obligation to provide a fair share of affordable housing for low and

moderate income households. In addition, this section applies requirements for very-low income housing as established in P.L. 2008, c.46 at N.J.S.A. 52:27D-329.1.

- b. This Ordinance is intended to assure that very-low, low- and moderate-income units ("affordable units") are created with controls on affordability over time and that very-low, low- and moderate-income households shall occupy these units. This Ordinance shall apply except where inconsistent with applicable law.
- c. The Township Planning Board has previously adopted a Housing Element and Fair Share Plan pursuant to the Municipal Land Use Law, N.J.S.A. 40:55D-1, et seq. The Plan has also been endorsed by the Township Council. The Fair Share Plan describes the ways the Township shall address its fair share for low- and moderate-income housing as determined by COAH or the Superior Court and documented in the Housing Element.
- 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, UHAC and the NJ Fair Housing Act ("FHA"), N.J.S.A. 52:27D-301, et seq.
- e. Pursuant to the requirements of the FHA, the Township shall file annual monitoring reports and status reports with COAH or the Superior Court and place the reports on its municipal website. Any plan evaluation report of the Housing Element and Fair Share Plan and monitoring prepared by the Special Master in accordance with N.J.A.C. 5:91 shall be available to the public at the Township Municipal Building, 16 Lanning Boulevard, East Windsor, NJ 08520.

20-20.2. Definitions. As used herein, the following terms shall have the following meanings:

"Accessory apartment": 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": The Fair Housing Act of 1985, P.L. 1985, c. 222 (N.J.S.A. 52:27D-301 et seq.).

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

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

"Affirmative marketing": 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": The average percentage of median income at which restricted units in an affordable housing development are affordable to low- and moderate-income households.

"Affordable": A sales price or rent within the means of a very-low, low- or moderate-income household as defined in N.J.A.C. 5:93-7.4 and in N.J.S.A. 52:27D-329.1 for very-low income units; 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”: A housing development all or a portion of which consists of restricted units.

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

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

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

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

“Assisted living residence”: 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”: A household that has been certified by an Administrative Agent as a low-income household or moderate-income household.

“COAH”: 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”: The State of New Jersey Department of Community Affairs.

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

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

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

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

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

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

“Major system”: 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”: Housing not restricted to low- and moderate-income households that may sell or rent at any price.

“Median income”: The median income by household size for the applicable county, as adopted annually by COAH or approved by the NJ Superior Court.

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

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

“Non-exempt sale”: 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”: 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”: The maximum housing value in each 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”: The repair, renovation, alteration or reconstruction of any building or structure, pursuant to the Rehabilitation Subcode, N.J.A.C. 5:23-6.

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

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

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

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

“Weatherization”: 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.

20-20.3. Very-low, Low-, and Moderate-Income Breakdown.

New construction or inclusionary component will be divided equally between low- (including very-low income) and moderate- income households, per N.J.A.C. 5:93-2.20.

20-20.4. New Construction.

The following requirements shall apply to all new or planned developments that contain low- (including very-low income) 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

Minimum Percentage of Low-
and Moderate- Income

<u>Completed</u>	<u>Units Completed</u>
25	0
25+1	10
50	50
75	75
90 100	

- b. Design, Distribution, and Locational Criteria. To the extent reasonably attainable, the very-low, low- and moderate-income units shall not be situated in less desirable locations and should be as accessible to the common open space, public facilities or shopping facilities, if any are provided, as market rate units. In inclusionary developments, the affordable units shall be dispersed throughout the development.
- 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 *N.J.A.C. 5:93-8.10* (c).
- d. Utilities. Affordable units shall utilize the same type of heating source as market units within the affordable development.
- 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.
 - 2. In each affordable development, at least 50% of the restricted units within each bedroom distribution shall be low-income units.
 - 3. Within rental developments, of the total number of affordable rental units, at least 13% shall be affordable to very low income households.
 - 4. Affordable developments that are not age-restricted shall be structured in conjunction with realistic market demands such that:
 - (a) The combined number of efficiency and one-bedroom units shall be no greater than 20% of the total 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.
 - 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.
- f. 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 Subcode, N.J.A.C. 5:23-7.
2. All restricted townhouse dwelling units and all restricted units in other multistory buildings in which a restricted dwelling unit is attached to at least one other dwelling unit shall have the following features:
 - (a) An adaptable toilet and bathing facility on the first floor;
 - (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 Township 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 Township of East Windsor'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 Township 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 Township of East Windsor.
 - (5) Once the Construction Official has determined that the design plan to convert the unit entrances from adaptable to accessible meet the requirements of the Barrier Free Subcode, N.J.A.C. 5:23-7, and that the cost estimate of such conversion is reasonable, payment shall be made to the Township affordable housing trust fund in care of the municipal Chief Finance Officer who shall ensure that the funds are deposited into the affordable housing trust fund and appropriately earmarked.
 - (6) Full compliance with the foregoing provisions shall not be required where an entity

can demonstrate that it is site impracticable to meet the requirements. Determinations of site impracticability shall be in compliance with the Barrier Free Subcode, N.J.A.C. 5:23-7.

20-20.5. Maximum Rents and Sale Prices.

In conjunction with realistic market information, the following criteria will be used in determining maximum rents and sale prices:

- a. 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 regional income limits established.
- b. 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.
- c. 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 13% of all low- and moderate-income rental units shall be affordable to households earning no more than 30% of median income.
- d. 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.
- e. 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:
 1. A studio or efficiency unit 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.
- f. 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:
 1. A studio or efficiency unit 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.
- g. 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.
 - h. 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.
 - i. 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.
 - j. The rent of low- and moderate-income units may be increased annually based on the percentage increase in the Housing Consumer Price Index for the United States. This increase shall not exceed 9% 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.
 - k. Tenant-paid utilities that are included in the utility allowance shall be so stated in the lease and shall be consistent with the utility allowance approved by DCA for its Section 8 program.

20-20.6. Condominium and Homeowners Association Fees.

For any affordable housing unit that is part of a condominium association and/or homeowners 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.

20-20.7. Affirmative Marketing.

- a. The Township shall adopt by resolution an Affirmative Marketing Plan, subject to approval of COAH or the Superior Court, compliant with N.J.A.C. 5:80-26.15, as may be amended and supplemented.
- b. The affirmative marketing plan is a regional marketing strategy designed to attract buyers and/or renters of all majority and minority groups, regardless of race, creed, color, national origin, ancestry, marital or familial status, gender, affectional or sexual orientation, disability, age or number of children to housing units which are being marketed by a developer, sponsor or owner of affordable housing. The affirmative marketing plan is also intended to target those potentially eligible persons who are least likely to apply for affordable units in that region. It is a continuing program that directs all marketing activities toward COAH Housing Region 4 and covers the period of deed restriction.

- c. The affirmative marketing plan shall provide a regional preference for all households that live and/or work in COAH Housing Region 4, comprised of Mercer, Monmouth, and Ocean Counties
- d. The Administrative Agent designated by the Township shall assure the affirmative marketing of all affordable units is consistent with the Affirmative Marketing Plan for the municipality.
- e. In implementing the affirmative marketing plan, the Administrative Agent shall provide a list of counseling services to low- and moderate-income applicants on subjects such as budgeting, credit issues, mortgage qualification, rental lease requirements, and landlord/tenant law.
- f. The affirmative marketing process for available affordable units shall begin at least four months prior to the expected date of occupancy.
- g. The costs of advertising and affirmative marketing of the affordable units shall be the responsibility of the developer, sponsor or owner, unless otherwise determined or agreed to by the Township of East Windsor.

20-20.8. 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. 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.

20-20.9. 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.*

20-20.10. 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.
- b. Rehabilitated owner-occupied single family 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.

20-20.11 Review of 95/5 Restrictions.

- a. At the end of 25 years from the issuance of the last certificate of occupancy in a development, the Township Council shall review the obligation of the Township for the continued maintenance of low- and moderate-income units and shall establish by ordinance whether or not all or a portion of the then-existing low- and moderate-income units will remain as such for a period in excess of 30 years. If the Township Council determines that all or a portion of these units shall not be maintained as low- and moderate income units, the Council shall by ordinance determine the disposition of any resale profits in excess of the profit which would be allowed had the units remained as low- and moderate-income units.
- b. This subsection shall be set forth in its entirety in all documents and covenants running with the land to insure proper notice of the terms and conditions of this subsection, and shall be in a form acceptable to the Township attorney.

20-20.12. 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.

20-20.13. 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. 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.

20-20.14. 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).

20-20.15. 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.
- b. Developments that receive 9% Low Income Housing Tax Credits shall have control periods of not less than 30 years, plus a 15-year extended use period.
- c. Rehabilitated renter-occupied housing units that are improved to code standards shall be subject to affordability controls for a period of 10 years.
- d. 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 Mercer. A copy of the filed document shall be provided to the Administrative Agent within 30 days of the receipt of a Certificate of Occupancy.
- e. 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.

20-20.16. 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.

20-20.17. 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.

20-20.18. Conversions.

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.

20-20.19. Unnecessary Cost-generating Features.

Section 14(b) of the Fair Housing Act, N.J.S.A. 52:270-301 et seq. incorporates the need to eliminate unnecessary cost-generating features from East Windsor's land use ordinances. Accordingly, East Windsor will eliminate development standards that are not essential to protect the public welfare and to expedite or fast-track municipal approvals/denials on inclusionary development applications. East Windsor will adhere to the components of N.J.A.C. 5:93-10.1- 10.3.

20-20.20. Municipal Housing Liaison.

- a. The position of Municipal Housing Liaison for the Township of East Windsor is hereby established. The Municipal Housing Liaison shall be appointed by duly adopted resolution of the Township Council and be subject to the approval by COAH or the Superior Court.
- b. The Municipal Housing Liaison must be either a full-time or part-time employee of the Township.
- 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 Township of East Windsor, 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 contracted Administrative Agent.
 4. Monitoring the status of all restricted units in the Township of East Windsor's Fair Share Plan;
 5. Compiling, verifying and submitting annual reports as required by the Superior Court;
 6. Coordinating meetings with affordable housing providers and Administrative Agents, as applicable; and
 7. Attending continuing education opportunities on affordability controls, compliance monitoring and affirmative marketing as offered or approved by the Superior Court.

20-20.21. Administrative Agent.

- a. The Township shall designate by resolution of the Township Council, one or more Administrative Agents to administer newly constructed affordable units in accordance with N.J.A.C. 5:93 and UHAC. The Administrative Agent shall, as delegated by the Township Council, have the authority

to take all actions necessary and appropriate to carry out its responsibilities.

- b. 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.
- c. The Administrative Agent shall perform the duties and responsibilities of an administrative agent as set forth in UHAC, including N.J.A.C. 5:80-26.14, 16 and 18, and described in the Operating Manual, which includes:
 - 1. Attending continuing education opportunities on affordability controls, compliance monitoring, and affirmative marketing;
 - 2. Affirmative Marketing;
 - 3. Household Certification;
 - 4. Affordability Controls;
 - 5. Records retention;
 - 6. Resale and re-rental;
 - 7. Processing requests from unit owners; and
 - 8. Enforcement, although the ultimate responsibility for retaining controls on the units rests with the municipality.

20-20.22. 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 Township 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.

20-20.23. Appeals. Appeals from all decisions of an Administrative Agent designated pursuant to this section shall be filed in writing with the Township.

SECTION 2: Chapter XX, "Zoning," Section 20-21, "Development Fees for Affordable Housing" is hereby deleted in its entirety and replaced with a new section 20-21 " Development Fees for Affordable Housing."

20-21 "Development Fees for Affordable Housing"

20-21.1 Purpose.

- a. In *Holmdel Builder's Association v. Holmdel Township*, 121 N.J. 550 (1990), the New Jersey Supreme Court determined that mandatory development fees are authorized by the Fair Housing Act of 1985 (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. Pursuant to 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 N.J.S.A. 40:55D-8.7), COAH is authorized to adopt and promulgate regulations necessary for the establishment, implementation, review, monitoring and enforcement of municipal affordable housing trust funds and corresponding spending plans. Municipalities that are under the jurisdiction of COAH or a Court of competent jurisdiction and have a COAH or NJ Superior Court-approved spending plan may retain fees collected from nonresidential development.
- c. This Section establishes standards for the collection, maintenance, and expenditure of development fees pursuant to COAH's extant regulations and in accordance with P.L. 2008, c. 46, Sections 8 and 32 through 38. Fees collected pursuant to this section shall be used for the sole purpose of providing very-low, low-, and moderate-income housing. This section shall be interpreted within the framework of COAH's rules on development fees, codified at N.J.A.C. 5:93-8.1-8.22.

20-21.2. Definitions. As used in this section, the following terms shall have the following meanings:

"Affordable Housing Development": A development included in the Housing Element and Fair Share Plan and includes, but is not limited to, an inclusionary development, a municipal construction project or a one-hundred-percent affordable development.

“COAH”: The New Jersey Council on Affordable Housing established under the Act which has primary jurisdiction for the administration of housing obligations in accordance with sound regional planning consideration in the state.

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

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

“Equalized Assessed Value”: 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 N.J.S.A. 54:1-35c).

“Green Building Strategies”: 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.

20-21.3. Basic Requirements.

- a. East Windsor’s initial development fee ordinance was approved by COAH on July 19, 2000 and an amended ordinance was approved by COAH on September 2, 2008. Amendments to this section shall not be effective until approved by COAH or the NJ Superior Court pursuant to N.J.A.C. 5:93-8.2.
- b. The Township shall not spend development fees until COAH or the NJ Superior Court has approved a plan for spending such fees in conformance with N.J.A.C. 5:93-5.1(c).

20-21.4. Residential Development Fees.

- a. Mandatory Set-Aside of Units.
 1. All new development consisting of 25 or more units and constituting a dwelling net density of more than four units per acre shall be required to set aside mandatorily 20 percent of the dwelling units for the construction of low and moderate income housing in accordance with the provisions of this section.
 2. The developer shall provide that half of the low and moderate income units constructed be affordable by low income households including very low income households per N.J.S.A. 52:27D-329.1, and that the remaining half be affordable by moderate income households
 3. Twenty (20) percent of the low and moderate income units shall be three bedroom units.
 4. Subdivision and site plan approval shall be denied by the planning board unless the developer complies with the requirements to provide low and moderate income housing pursuant to the provisions of this section. The planning board may impose any reasonable conditions to insure such compliance.
- b. Imposed fees.

1. Within all zoning districts, 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 that 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 shall 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 1.5% of the equalized assessed value on the first two units and the specified higher percentage of 6% of the equalized assessed value for the two additional units, provided that zoning on the site has not changed during the two-year period preceding the filing of such a variance application.

c. Eligible Exactions, Ineligible Exactions and Exemptions for Residential Development.

1. Affordable housing developments, developments where the developer is providing for off-site affordable housing units, and developments where the developer has made a payment in lieu of on-site construction of affordable units shall be exempt from the standard affordable housing development fees.
2. Developments that have received preliminary or final site plan approval prior to the adoption of a municipal development fee ordinance shall be exempt from development fees, unless the developer seeks a substantial change in the approval. Where a site plan approval does not apply, a zoning and/or building permit shall be synonymous with preliminary or final site plan approval for this purpose. The fee percentage shall be vested on the date that the building permit is issued.
3. Development fees shall be imposed and collected when an existing structure undergoes a change to a more intense use, is demolished and replaced, or is expanded, if the expansion is not otherwise exempt from the development fee requirement. The development fee shall be calculated on the increase in the equalized assessed value of the improved structure.
4. Developers of residential structures demolished and replaced as a result of fire damage, flood or similar natural disaster shall be exempt from paying a development fee.
5. In accordance with N.J.A.C. 5:93-8.10(c) of COAH's Substantive Rules and as permitted by N.J.S.A. 52:27D-329.3, developers of inclusionary residential developments within the ARH Age-Restricted Housing zoning district shall make a payment to East Windsor Township in lieu of constructing the otherwise required set-aside of low and moderate income units in accordance with the following:
 - (a) The amount of the in-lieu payment shall be equal to or greater than the cost of subsidizing the low and moderate income units that are replaced by the in-lieu payment; and
 - (b) The payment in lieu of constructing the otherwise required set-aside of low and moderate

income units within the inclusionary development must be found by COAH to be consistent with East Windsor Township's Housing Plan and Fair Share Plan and to provide a realistic opportunity for addressing the township's fair share affordable housing obligation.

20-21.5. 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 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 a 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 development fee, of 2.5% unless otherwise exempted below.
2. The fee of 2.5% shall not apply to an increase in equalized assessed value resulting from alterations, change in use within the existing footprint, reconstruction, renovations and repairs.
3. 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.
4. 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 as the basis for 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.
5. 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 the Township as a lien against the real property of the owner.

20-21.6. 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. For nonresidential developments, the developer shall also be provided with a copy of Form N-RDF, "State of New Jersey Nonresidential Development Certification/Exemption," and complete as per the instructions provided.
- 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 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 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 East Windsor Township 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 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 residential development fees imposed by filing a challenge with the County Board of Taxation. Pending a review and determination by the Board, collected fees shall be placed in an interest-bearing escrow account by East Windsor Township. Appeals from a determination of the Board may be made to the Tax Court in accordance with the provisions of the State Tax Uniform Procedure Law, 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.

2. 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 the Township. Appeals from a determination of the Director may be made to the Tax Court in accordance with the provisions of the State Tax Uniform Procedure Law, 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.

20-21.7. Affordable Housing Trust Fund.

- a. There is hereby created a separate, interest-bearing housing trust fund to be maintained by the Township Chief Financial Officer for the purpose of depositing development fees collected from residential and nonresidential developers and proceeds from the sale of units with extinguished controls.
- 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 the Township affordable housing program.
- c. Within seven days from the opening of the trust fund account, the Township shall provide COAH or the Superior Court with written authorization, in the form of a three-party escrow agreement between the municipality, the bank, and COAH or the Superior Court, to permit COAH or the Superior Court to direct the disbursement of the funds as provided for in N.J.A.C. 5:93-8.17.
- d. All interest accrued in the housing trust fund shall only be used on eligible affordable housing activities approved by COAH or the Superior Court.

20-21.8. Use of Funds.

- a. The expenditure of all funds shall conform to a spending plan approved by COAH or the Superior Court. Funds deposited in the housing trust fund may be used for any activity approved by COAH or the Superior Court to address East Windsor Township'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 or market to affordable 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 Housing Element and Fair Share Plan, or any other activity as permitted pursuant to N.J.A.C. 5:93-8.16 and specified in the approved spending plan.

- b. Funds shall not be expended to reimburse the Township 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 very-low income 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, creation of very-low income units 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. The Township 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(d).
- 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 COAH or the Superior Court's monitoring requirements. Legal or other fees related to litigation opposing affordable housing sites or objecting to COAH's regulations and/or action are not eligible uses of the Affordable Housing Trust Fund.

20-21.9. Monitoring. The Township shall complete and return to COAH or the Superior 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 Township housing program, as well as to the expenditure of revenues and implementation of the plan certified by COAH or approved by the court. All monitoring reports shall be completed on forms designed by COAH or the Superior Court.

20-21.10. Ongoing Collection of Fees. The ability for the Township to impose, collect and expend development fees shall expire with its substantive certification from COAH or judgment of compliance from the court (as the case may be) unless the Township has filed an adopted Housing Element and Fair Share Plan with COAH or the Superior Court, has petitioned for substantive certification or the entry of a judgment of compliance from the court, and has received COAH's / the Superior Court's approval of its development fee ordinance. If the Township fails to renew its ability to impose and collect development fees prior to the expiration of substantive certification or its judgment of compliance, 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 Township 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 Township retroactively impose a development fee on such a development. The Township shall not expend development fees after the expiration of its substantive certification or judgment of compliance.

SECTION 3. All ordinances or parts thereof which are inconsistent or conflict with the provisions of this ordinance or any part thereof are hereby repealed to the extent of said inconsistency or conflict.

SECTION 4. If the provisions of any section, subsection, paragraph, subdivision or clause of this ordinance shall be judged to be invalid by a Court of competent jurisdiction, such Order or Judgment shall not affect or invalidate the remainder of any section, subsection, paragraph, subdivision or clause if this Ordinance, or any other ordinance which is referred to herein, and to this end, the provisions of any section, subsection, paragraph, subdivision or clause of this Ordinance are hereby declared to be severable. Should any clause, sentence or other part of this ordinance be judged invalid by a Court of competent jurisdiction, such judgment shall not affect, impair or invalidate the remainder of this ordinance.

SECTION 5. This Ordinance shall take effect twenty (20) days after the final adoption, publication and the filing of this Ordinance with the Mercer County Planning Board, all in accordance with law.

ATTEST:

Kelly Lettera
Acting Municipal Clerk

JANICE S. MIRONOV
Mayor

Adopted:
Publication:
Effective: