

ORDINANCE #	23-3302
Introduction Date:	11/13/23 (Mon.)
Hearing Date:	12/5/23
Passage Date:	12/5/23
Effective Date:	12/14/23

AN ORDINANCE AMENDING CHAPTER 35, ARTICLES XVII THROUGH XIX OF THE DEVELOPMENT REGULATIONS OF THE GENERAL CODE OF THE CITY OF SUMMIT, TO ADDRESS THE REQUIREMENTS OF THE FAIR HOUSING ACT, STATEWIDE NON-RESIDENTIAL DEVELOPMENT FEE ACT, AND UNIFORM HOUSING AFFORDABILITY CONTROLS (UHAC) REGARDING COMPLIANCE WITH THE CITY’S AFFORDABLE HOUSING OBLIGATIONS (Relocate Affordable Housing Ordinance to City’s Development Regulations Ordinance and amendments to same)

Ordinance Summary: The proposed ordinance amends the Affordable Housing Ordinance and relocates it to the City’s Development Regulations Ordinance, where the Development Fee Ordinance and Mandatory Set-Aside Ordinance are currently located. The Affordable Housing Ordinance’s and Development Fee Ordinance’s proposed amendments will bring the City’s ordinances current with the latest developments in the law and statutory requirements. The Development Fee Ordinance also proposes amendments to increase the residential development fee allowable under COAH regulations and is commensurate with neighboring municipalities and to also add new language to clarify what type of development will require payment of a residential development fee.

WHEREAS, in order to comply with its constitutional obligation to provide its fair share of affordable housing, the City of Summit throughout the years has adopted an Affordable Housing Ordinance, a Development Fee Ordinance, and a Mandatory Set-Aside Ordinance; and

WHEREAS, since the adoption of the Affordable Housing Ordinance and the Development Fee Ordinance, there have been changes to the law and COAH regulations that will not only benefit the City’s affordable housing program, but also render some provisions of the City’s ordinances outdated and/or superseded by statute.

WHEREAS, it became necessary for the City of Summit to amend and reorganize its ordinances related to affordable housing to include all required provisions addressing the City’s constitutional obligation to provide for its fair share of low and moderate-income housing, as directed by the Superior Court and consistent with N.J.A.C. 5:93-1 et seq., as amended and supplemented; N.J.A.C. 5:80-26.1 et seq., as amended and supplemented; and the New Jersey Fair Housing Act of 1985; and

WHEREAS, the City’s Mandatory Set-Aside Ordinance contains no changes to the language and is only being changed to a new code section; and

WHEREAS, the City has found it necessary to reorganize these ordinances to place all ordinances related to affordable housing within the Development Regulations Ordinance, so that developers and residents can access all ordinances related to development, including applicable affordable housing regulations, in one chapter of the City’s code.

NOW, THEREFORE, BE IT ORDAINED, By the City Council of the City of Summit, as follows:

Section 1. Article XVII of Chapter 35, entitled “Affordable Housing Development Fees” is hereby repealed and replaced with the following, to retain the same title of “Affordable Housing Development Fees”:

§35-17.1. FINDINGS & PURPOSE

- a. The City of Summit Common Council finds and declares that the creation and preservation of affordable housing in Summit serves the public interest. Maintaining and improving a stock of sound affordable housing requires affirmative steps by local government working cooperatively with public bodies at all levels and with the private sector. The purpose of this Article is to create an Affordable Housing Trust Fund from payment of development fees to assist in the marshaling of public and private monies dedicated to affordable housing projects and programs.
- b. The Supreme Court in Holmdel Builders Assn. v. Holmdel Township, 121 N.J. 550 (1990) determined that mandatory development fees are both statutorily and constitutionally permissible. The Court further anticipated that the Council on Affordable Housing would promulgate appropriate development fee rules specifying, among other things, the standards for these development fees. The purpose of this Article is to provide municipal regulations that comport with the Fair Housing Act, N.J.S.A. 50:27D-301, and New Jersey Council on Affordable Housing Procedural and Substantive Regulations contained in N.J.A.C. 5:93 et. seq.
- c. The purpose of the Mandatory Affordable Housing Development Fee regulations is to provide revenues with which to fund rehabilitation of housing units occupied by very-low, low, and moderate income households, to construct housing for very-low, low, and moderate income households, and/or to fund other programs for low and moderate income housing in order for Summit to meet its responsibility for providing affordable housing pursuant to the Mount Laurel doctrine espoused by the Supreme Court, the Fair Housing Act, and other applicable laws.
- d. This Ordinance establishes standards for the collection, maintenance, and expenditure of development fees that are consistent with COAH’s regulations developed in response to P.L. 2008, c. 46, Sections 8 and 32-38 (C. 52:27D-329.2) and the Statewide Non-Residential Development Fee Act (C. 40:55D-8.1 through 8.7). Fees collected pursuant to this Ordinance shall be used for the sole purpose of providing very low, low- and moderate-income housing in accordance with a Court-approved or COAH-approved Spending Plan.

§35-17.2. BASIC REQUIREMENTS

- A. This Ordinance shall become effective upon adoption.
- B. The City of Summit's spending plan was approved by the Court on January 22, 2019, and the City is therefore entitled to spend development fees as stated in the City's spending plan, through the expiration of the City's Judgment of Compliance and Repose.

35-17.3. Definitions

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

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

"COAH" or the "Council" means the New Jersey Council on Affordable Housing established under the Fair Housing Act. When the City of Summit is under the jurisdiction of the Superior Court with regard to its affordable housing obligations, "COAH" or the "Council" shall also mean the Court where applicable.

"Development fee" means money paid by a developer for the improvement of property as authorized by Holmdel Builder's Association v. Holmdel City, 121 N.J. 550 (1990) and the Fair Housing Act of 1985, N.J.S.A. 52:27d-301, *et seq.*, and regulated by applicable COAH Rules.

"Developer" means the legal or beneficial owner or owners of a lot or of any land proposed to be included in a proposed development, including the holder of an option or contract to purchase, including a residential buyer under contract to purchase a newly-constructed dwelling unit from a builder, general contractor, individual constructing the unit, or other real estate development company, or other person having an enforceable proprietary interest in such land. Also includes any individual or entity applying for building permits for the construction of a residential unit or improvements to an existing residential unit or units.

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

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

"New Residential Development" shall mean:

- a. The construction of a new residential unit or dwelling structure which includes a new foundation.
- b. The construction of a new residential unit or dwelling structure where the existing building framing has been demolished and only the foundation or the foundation and floor joists are remaining.

c. Conversion of existing non-residential space to residential units within the existing building footprint.

d. Creation of new residential units as additions to an existing structure, thereby changing the use from single family to two family or multifamily.

e. New Residential Development does not include additions to or renovations of existing one and two-family dwellings that do not change the use of the structure or qualify under subsections a through d of this definition.

35-17.4. Residential Development Fees

A. Imposition of Fees

- 1) Within the City of Summit, all new residential development, except for developers of the types of developments specifically exempted below, shall pay a fee of one and a half percent (1.5%) of the equalized assessed value for all new residential development, provided no increased density is permitted. Development fees shall also be imposed and collected when an additional dwelling unit is added to an existing residential structure; in such cases, the fee shall be calculated based on the increase in the equalized assessed value of the property due to the additional dwelling unit.
- 2) When an increase in residential density is permitted pursuant to a “d” variance granted under N.J.S.A. 40:55D-70d(5), developers shall be required to pay a “bonus” development fee of six percent (6%) percent of the equalized assessed value for each additional unit that may be realized, except that this provision shall not be applicable to a development that will include affordable housing. If the zoning on a site has changed during the two-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.

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

- 1) Affordable housing developments, inclusionary projects that include affordable housing, and/or developments where the developer has made a payment in lieu of on-site construction of affordable units, if permitted by Ordinance or by Agreement with the City of Summit, shall be exempt from the payment of development fees.

- 2) Developments that have received preliminary or final site plan approval prior to the adoption of this Ordinance and any preceding Ordinance permitting the collection of development fees shall be exempt from the payment of development fees, unless the developer seeks a substantial change in the original approval. For example, a substantial alteration in site layout, development density, or types of uses within the proposed development. Where site plan approval is not applicable, the issuance of a Zoning Permit and/or Construction Permit shall be synonymous with preliminary or final site plan approval for the purpose of determining the right to an exemption. In all cases, the applicable fee percentage shall be determined based upon the Development Fee Ordinance in effect on the date that the Construction Permit is issued.
- 3) Any project for improvement of a structure to comply with existing state or local building, fire, health, sanitary or safety code specifications which are solely necessary to assure safe living conditions shall be exempt from paying a residential development fee.
- 4) Any alteration of a structure listed on the National Register of Historic Places or a state inventory of historic places shall be exempt from paying a residential 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.
- 4) Structural alterations that do not increase gross floor area of a residential building or structure or increase the equalized assessed value of a property shall be exempted from paying a development fee.
- 5) Nonprofit organizations constructing residential projects which have received tax-exempt status pursuant to Section 501(c)(3) of the Internal Revenue Code, providing current evidence of that status is submitted to the Municipal Clerk, together with a certification that services of the organization are provided at reduced rates to those who establish an inability to pay existing charges, shall be exempted from paying a development fee.
- 6) Federal, state, county and local governments shall be exempted from paying a development fee.

- 7) Homes replaced as a result of a natural disaster, fire, or flood shall be exempt from the payment of a development fee. This exemption applies only for the owner of record at the time of the fire, flood, or natural disaster and the use is not increased, i.e., a single-family house is destroyed and a two-family home is built in its place. Should this scenario occur, the fee will be calculated from the difference between the new, more intense use (two-family) from the original use that was destroyed (single family).
- 8) No exemption from the payment of residential development fees shall be made for any individual purchasing a new residential development unit where the contract purchaser waives a new home warranty or applies for building permits instead of the general contractor, developer, construction company, individual performing the construction of the dwelling unit, or property owner. Residential development fee is owed regardless of individual or entity applying for building permits.

35-17.5. Non-Residential Development Fees

A. Imposition of Fees

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

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

- 1) The non-residential portion of a mixed-use inclusionary or market rate development shall be subject to a two and a half percent (2.5%) development fee, unless otherwise exempted below.

- 2) The two and a half percent (2.5%) development fee shall not apply to an increase in equalized assessed value resulting from alterations, change in use within the existing footprint, reconstruction, renovations and repairs.
- 3) Non-residential developments shall be exempt from the payment of non-residential development fees in accordance with the exemptions required pursuant to the Statewide Non-Residential Development Fee Act (N.J.S.A. 40:55D-8.1 through 8.7), as specified in Form N-RDF "State of New Jersey Non-Residential Development Certification/Exemption". Any exemption claimed by a developer shall be substantiated by that developer.
- 4) A developer of a non-residential development exempted from the non-residential development fee pursuant to the Statewide Non-Residential Development Fee Act shall be subject to the fee at such time as the basis for the exemption no longer applies, and shall make the payment of the non-residential development fee, in that event, within three years after that event or after the issuance of the final Certificate of Occupancy for the non-residential development, whichever is later.
- 5) If a property which was exempted from the collection of a non-residential development fee thereafter ceases to be exempt from property taxation, the owner of the property shall remit the fees required pursuant to this Section within 45 days of the termination of the property tax exemption. Unpaid non-residential development fees under these circumstances may be enforceable by the City of Summit as a lien against the real property of the owner.
- 6) Federal, state, county and local governments constructing nonresidential housing shall be exempted from paying a development fee.

35-17.6. Collection Procedures

A. Upon the granting of a preliminary, final or other applicable approval for a development, the approving authority or entity shall notify or direct its staff to notify the Construction Official responsible for the issuance of a Construction Permit.

B. For non-residential developments only, the developer shall also be provided with a copy of Form N-RDF "State of New Jersey Non-Residential Development Certification/Exemption" to be completed as per the instructions provided. The developer of a non-residential development shall complete Form N-RDF as per the instructions provided. The Construction Official shall verify the information submitted by the non-residential developer as per the instructions provided in the Form N-RDF. The Tax Assessor shall verify exemptions and prepare estimated and final assessments as per the instructions provided in Form N-RDF.

C. The Construction Official responsible for the issuance of a Construction Permit shall notify the City Tax Assessor of the issuance of the first Construction Permit for a development which is subject to a development fee.

D. Within 90 days of receipt of such notification, the City Tax Assessor shall prepare an estimate of the equalized assessed value of the development based on the plans filed.

E. The Construction Official responsible for the issuance of a final Certificate of Occupancy shall notify the City Tax Assessor of any and all requests for the scheduling of a final inspection on a property which is subject to a development fee.

F. Within 10 business days of a request for the scheduling of a final inspection, the City Tax Assessor shall confirm or modify the previously estimated equalized assessed value of the improvements associated with the development; calculate the development fee; and thereafter notify the developer of the amount of the fee.

G. Should the City of Summit 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 (C.40:55D-8.6).

H. Fifty percent (50%) of the initially calculated development fee shall be collected at the time of issuance of the Construction Permit. The remaining portion shall be collected at the time of issuance of the Certificate of Occupancy. The developer shall be responsible for paying the difference between the fee calculated at the time of issuance of the Construction Permit and that determined at the time of issuance of the Certificate of Occupancy.

I. Appeal of Development Fees

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

35-17.7. Affordable Housing Trust Fund

A. There is hereby created a separate, interest-bearing Affordable Housing Trust Fund to be maintained by the Chief Financial Officer of the City of Summit for the purpose of depositing development fees collected from residential and non-residential developers and proceeds from the sale of units with extinguished controls.

B. The following additional funds shall be deposited in the Affordable Housing Trust Fund and shall at all times be identifiable by source and amount:

- 1) Payments in lieu of on-site construction of a fraction of an affordable unit, where permitted by Ordinance or by Agreement with the City of Summit;
- 2) Funds contributed by developers to make ten percent (10%) of the adaptable entrances in a townhouse or other multistory attached dwelling unit development accessible;
- 3) Rental income from municipally operated units;
- 4) Repayments from affordable housing program loans;
- 5) Recapture funds;
- 6) Proceeds from the sale of affordable units; and
- 7) Any other funds collected in connection with Summit's affordable housing program.

C. In the event of a failure by the City of Summit 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 City of Summit, 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 or impose such other remedies as may be reasonable and appropriate to the circumstances.

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

35-17.8. Use of Funds

A. The expenditure of all funds shall conform to a Spending Plan approved by the Court. Funds deposited in the Affordable Housing Trust Fund may be used for any activity approved by the Court to address the City of Summit'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; housing rehabilitation; new construction of affordable housing units and related costs; accessory apartments; a market to affordable program; Regional Housing Partnership programs; conversion of existing non-residential buildings to create new affordable units; green building strategies designed to be cost saving and in accordance with accepted national or State standards; purchase of land for affordable housing; improvement of land to be used for affordable housing; extensions or improvements of roads and infrastructure to affordable housing sites; financial assistance designed to increase affordability; administration necessary for implementation of the Housing Element and Fair Share Plan; and/or any other activity permitted by the Court and specified in the approved Spending Plan.

B. Funds shall not be expended to reimburse the City of Summit for past housing activities.

C. At least 30 percent of all development fees collected and interest earned on such fees shall be used to provide affordability assistance to very low-, 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 very low-income households earning 30 percent or less of the regional median household income by household size for Housing Region 2, in which Summit is located.

1) Affordability assistance programs may include down payment assistance, security deposit assistance, low interest loans, rental assistance, assistance with homeowners association or condominium fees and special assessments, and assistance with emergency repairs. The specific programs to be used for affordability assistance shall be identified and described within the Spending Plan.

2) Affordability assistance to households earning 30 percent or less of the regional median household income by household size 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 percent or less of median income. The specific programs to be used for very low income affordability assistance shall be identified and described within the Spending Plan.

3) Payments in lieu of constructing affordable housing units on site, if permitted by Ordinance or by Agreement with the City of Summit, and funds from the sale of units with extinguished controls shall be exempt from the affordability assistance requirement.

D. The City of Summit may contract with a private or public entity to administer any part of its Housing Element and Fair Share Plan, including its programs for affordability assistance.

E. No more than 20 percent of all revenues collected from development fees may be expended on administration, including, but not limited to, salaries and benefits for municipal employees or consultants' fees necessary to develop or implement a new construction program, prepare a Housing Element and Fair Share Plan, and/or administer an affirmative marketing program or a rehabilitation program.

1) In the case of a rehabilitation program, the administrative costs of the rehabilitation program shall be included as part of the 20 percent of collected development fees that may be expended on administration.

2) Administrative funds may be used for income qualification of households, monitoring the turnover of sale and rental units, and compliance with the Court's monitoring requirements. Legal or other fees related to litigation opposing affordable housing sites or related to securing or appealing a judgment from the Court are not eligible uses of the Affordable Housing Trust Fund.

35-17.9. Monitoring

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

35-17.10. Ongoing Collection of Fees

A. The ability for the City of Summit to impose, collect and expend development fees shall expire with the expiration of the repose period covered by its Judgment of Compliance unless the City of Summit has first filed an adopted Housing Element and Fair Share Plan with the Court or with a designated State administrative agency, has petitioned for a Judgment of Compliance from the Court or for Substantive Certification or its equivalent from a State administrative agency authorized to approve and administer municipal affordable housing compliance and has received approval of its Development Fee Ordinance from the entity that will be reviewing and approving the Housing Element and Fair Share Plan.

B. If the City of Summit fails to renew its ability to impose and collect development fees prior to the expiration of its Judgment of Compliance, it may be subject to forfeiture of any or all funds remaining within its Affordable Housing Trust Fund. Any funds so forfeited shall be deposited into the "New Jersey Affordable Housing Trust Fund" established pursuant to Section 20 of P.L. 1985, c. 222 (C. 52:27D-320).

C. The City of Summit shall not expend any of its collected development fees after the expiration of its Judgment of Compliance without permission from the Court or Court Master.

Section 2. Article VIII "Affordable Housing" is hereby repealed and reserved. Chapter 35, Article XVIII "Affordable Housing Multifamily Set-aside" is hereby repealed and replaced with the following, entitled Article XVIII "Affordable Housing":

§ 35-18.1. AFFORDABLE HOUSING OBLIGATION

- a. This chapter 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 chapter shall apply except where inconsistent with applicable law.
- b. The City of Summit 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 Housing Element and Fair Share Plan has been endorsed by the Governing Body. The Fair Share Plan describes the ways the City of Summit shall address its fair share for very-low, low-, and moderate-income housing as directed by the Superior Court and documented in the City's Housing Element and Fair Share Plan, as may be amended.
- c. This chapter implements and incorporates the adopted and endorsed Housing Element and Fair Share Plan and addresses the requirements of N.J.A.C. 5:93-1, et seq., as amended and supplemented, N.J.A.C. 5:80-26.1, et seq. as amended and supplemented, and the New Jersey Fair Housing Act of 1985.
- d. The City shall track the status of the implementation of its Fair Share Plan in accordance with Court Orders and the monitoring requirements set forth in this Article.

§ 35-18.2 DEFINITIONS.

The following terms when used in this chapter shall have the meanings given in this section:

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

ADAPTABLE - Shall mean constructed in compliance with the technical design standards of the Barrier Free Subcode, N.J.A.C. 5:23-7.

ADMINISTRATIVE AGENT - Shall mean the entity responsible for the administration of affordable units in accordance with this ordinance, N.J.A.C. 5:93, and N.J.A.C. 5:80-26.1 et seq.

AFFIRMATIVE MARKETING - Shall mean 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 - Shall mean the average percentage of median income at which restricted units in an affordable housing development are affordable to low- and moderate-income households.

AFFORDABLE - Shall mean 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; in the case of an ownership unit, that the sales price for the unit conforms to the standards set forth in N.J.A.C. 5:80-26.6, as may be amended and supplemented, and, in the case of a rental unit, that the rent for the unit conforms to the standards set forth in N.J.A.C. 5:80-26.12, as may be amended and supplemented.

AFFORDABLE HOUSING DEVELOPMENT - Shall mean a development included in or approved pursuant to the Housing Element and Fair Share Plan or otherwise intended to address the City's fair share obligation, and includes, but is not limited to, an inclusionary development, a municipal construction project or a one hundred (100%) percent affordable development.

AFFORDABLE HOUSING PROGRAM(S) - Shall mean any mechanism in a municipal Fair Share Plan prepared or implemented to address a municipality's fair share obligation.

AFFORDABLE UNIT - Shall mean a housing unit proposed or created pursuant to the Act and approved for crediting by the Court and/or funded through an affordable housing trust fund.

AGENCY - Shall mean 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 - Shall mean 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 sixty-two (62) years or older; or 2) at least eighty (80%) percent of the units are occupied by one person that is fifty-five (55) years or older; or 3) the development has been designated by the Secretary of the U.S. Department of Housing and Urban Development as "housing for older persons" as defined in Section 807(b)(2) of the Fair Housing Act, 42 U.S.C. § 3607.

ALTERNATIVE LIVING ARRANGEMENT - Shall mean a structure in which households live in distinct bedrooms, yet share kitchen and plumbing facilities, central heat and common areas. Alternative living arrangements include, but are not limited to: transitional facilities for the homeless; Class A, B, C, D and E boarding homes as regulated by the State of New Jersey Department of Community Affairs; residential health care facilities as regulated by the New Jersey Department of Health; group homes for the developmentally disabled and mentally ill as licensed and/or regulated by the New Jersey Department of Human Services; and congregative living arrangements.

ASSISTED LIVING RESIDENCE - Shall mean 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 (4) or more adult persons unrelated to the proprietor and that offers units containing, at a minimum, one (1) unfurnished room, a private bathroom, a kitchenette and a lockable door on the unit entrance.

CERTIFIED HOUSEHOLD - Shall mean a household that has been certified by an Administrative Agent as a very-low income household, low-income household, or moderate-income household.

COAH - Shall mean the Council on Affordable Housing, as established by the New Jersey Fair Housing Act (N.J.S.A. 52:27D-301, et seq.). Pursuant to the opinion and order of the New Jersey Supreme Court dated March 10, 2015, in In re Adoption of N.J.A.C. 5:96 and 5:97 by the N.J. Council on Affordable Housing, 221 N.J. 1 (2015), any reference to COAH or the Council shall be understood to refer to the Superior Court of New Jersey, Law Division, Union County.

DCA - Shall mean the State of New Jersey Department of Community Affairs.

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

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

LOW-INCOME HOUSEHOLD - Shall mean a household with a total gross annual household income equal to fifty (50%) percent or less of the median household income.

LOW-INCOME UNIT - Shall mean a restricted unit that is affordable to a low-income household.

MAJOR SYSTEM - Shall mean 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 - Shall mean housing not restricted to low- and moderate-income households that may sell or rent at any price.

MEDIAN INCOME - Shall mean the median income by household size for the applicable housing region, as adopted annually by COA or a successor entity approved by the Court.

MODERATE-INCOME HOUSEHOLD - Shall mean a household with a total gross annual household income in excess of fifty (50%) percent but less than eighty (80%) percent of the median household income.

MODERATE-INCOME UNIT - Shall mean a restricted unit that is affordable to a moderate-income household.

NON-EXEMPT SALE - Shall mean 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 - Shall mean 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 - Shall mean the maximum housing value in each housing region affordable to a four-person household with an income at eighty (80%) percent of the regional median as defined by duly adopted Regional Income Limits published annually by COA or a successor entity.

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

RENT - Shall mean 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 - Shall mean 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 - Shall mean the Uniform Housing Affordability Controls set forth in N.J.A.C. 5:80-26.1 et seq.

VERY LOW-INCOME HOUSEHOLD - Shall mean a household with a total gross annual household income equal to thirty (30%) percent or less of the median household income for the applicable housing region.

VERY LOW-INCOME UNIT - Shall mean a restricted unit that is affordable to a very-low-income household.

WEATHERIZATION - Shall mean building insulation (for attic, exterior walls and crawl space), siding to improve energy efficiency, replacement storm windows, replacement storm doors, replacement windows and replacement doors, and is considered a major system for purposes of a rehabilitation program.

§ 35-18.3. REHABILITATION PROGRAM

- a. The City will continue to participate in the Union County Home Improvement Program and/or other rehabilitation programs to address its Rehabilitation obligation. Any such rehabilitation programs will update and renovate deficient housing units occupied by low- and moderate-income households such that, after rehabilitation, these units will comply with the New Jersey State Housing Code pursuant to N.J.A.C. 5:28.
 1. All rehabilitated rental and owner-occupied units shall remain affordable to low- and moderate-income households for a period of ten (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.
 2. The City shall dedicate an average of at least ten thousand dollars (\$10,000) for each unit to be rehabilitated through this program, reflecting the minimum hard cost of rehabilitation for each unit.
 3. Units in the rehabilitation programs shall be exempt from N.J.A.C. 5:93-9 and UHAC requirements, but shall be administered in accordance with the following:

- i. 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.
- ii. 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.
- iii. Rents in rehabilitated units may increase annually based on the standards in N.J.A.C. 5:93-9 or standards issued by a New Jersey administrative agency with proper authority to issue such standards.
- iv. 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.

§ 35-18.4. ALTERNATIVE LIVING ARRANGEMENTS.

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

§ 35-18.5. INCLUSIONARY ZONING.

- a. Phasing: In inclusionary developments, the following schedule shall be followed:

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

- b. Payments-in-Lieu: The City may allow developers of sites zoned for inclusionary development to pay a fee in lieu of building low-and moderate- income units on site once the parameters for payments in lieu of are established by the Legislature, Courts, COAH, or other authority.

§ 35-18.6. NEW CONSTRUCTION.

The following general guidelines apply to all newly constructed developments, including the conversion of non-residential into residential 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. 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, and further provided that at least thirteen (13%) percent of all restricted units shall be very low-income units (affordable to a household earning 30 percent or less of the regional median income by household size) across bedroom distribution. Very-low-income units shall be counted as part of the required number of low-income units within a development (i.e. 37% low units and 13% very-low units).
2. In each affordable development, at least fifty (50%) percent of the restricted units within each bedroom distribution shall be low-income units.
3. 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 twenty (20%) percent of the total low- and moderate-income units;
 - (b) At least thirty (30%) percent of all low- and moderate- income units shall be two-bedroom units;
 - (c) At least twenty (20%) percent of all low- and moderate- income units shall be three-bedroom units; and
 - (d) The remaining units may be allocated among two- and three-bedroom units at the discretion of the developer.
4. Affordable developments that are age-restricted shall be structured such that the number of bedrooms shall equal the number of age-restricted low- and moderate-income units within the inclusionary development. The standard may be met by having all one-bedroom units or by having a two- bedroom unit for each efficiency unit.

b. 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 (1) other dwelling unit shall have the following features:
 - (a) An adaptable toilet and bathing facility on the first floor;
 - (b) An adaptable kitchen on the first floor;

- (c) An interior accessible route of travel on the first floor;
- (d) An interior accessible route of travel shall not be required between stories within an individual unit;
- (e) An adaptable room that can be used as a bedroom, with a door or the casing for the installation of a door, on the first floor; and
- (f) An accessible entranceway as set forth at P.L. 2005, c. 350 (N.J.S.A. 52:27D-311a et seq.) and the Barrier Free Subcode, N.J.A.C. 5:23-7, or evidence that the City of Summit has collected funds from the developer sufficient to make ten (10%) percent of the adaptable entrances in the development accessible:
 - (1) Where a unit has been constructed with an adaptable entrance, upon the request of a disabled person who is purchasing or will reside in the dwelling unit, an accessible entrance shall be installed.
 - (2) To this end, the builder of restricted units shall deposit funds within the City's affordable housing trust fund sufficient to install accessible entrances in ten (10%) percent of the affordable units that have been constructed with adaptable entrances.
 - (3) The funds deposited under paragraph b above shall be used by the City of Summit for the sole purpose of making the adaptable entrance of any affordable unit accessible when requested to do so by a person with a disability who occupies or intends to occupy the unit and requires an accessible entrance.
 - (4) The developer of the restricted units shall submit a design plan and cost estimate for the conversion from adaptable to accessible entrances to the Construction Official of the City of Summit.
 - (5) Once the Construction Official has determined that the design plan to convert the unit entrances from adaptable to accessible meet the requirements of the Barrier Free Subcode, N.J.A.C. 5:23-7, and that the cost estimate of such conversion is reasonable, payment shall be made to the City's Affordable Housing Trust Fund in care of the City's Chief Financial Officer who shall ensure that the funds are deposited into the Affordable Housing Trust Fund and appropriately earmarked.
- (g) Full compliance with the foregoing provisions shall not be required where an entity can demonstrate that it is site impracticable to meet the requirements. Determinations of site impracticability shall be in compliance with the Barrier Free Subcode, N.J.A.C. 5:23-7

c. Design.

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

d. 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 the calculation procedures approved by the Court.
 - (a) Regional income limits shall be established for the region that the City is located within, based on the median income by household size, which shall be established by a regional weighted average of uncapped Section 8 income limits published by HUD. To compute this regional income limit, the HUD determination of median county income for a family of four is multiplied by the estimated households within the county according to the most recent decennial Census. The resulting product for each county within the housing region is summed. The sum is divided by the estimated total households from the most recent decennial Census in the City's housing region. This quotient represents the regional weighted average of median income for a household of four. The income limit for a moderate-income unit for a household of four shall be 80 percent of the regional weighted average median income for a household of four. The income limit for a low-income unit for a household of four shall be 50 percent of the regional weighted average median income for a household of four. The income limit for a very-low-income unit for a household of four shall be 30 percent of the regional weighted average median income for a household of four. These income limits shall be adjusted by household size, based on multipliers used by HUD to adjust median income by household size. In no event shall the income limits be less than the previous year.
 - (b) The income limits are the result of applying the percentages set forth in paragraph (a) above to HUD's determination of median income for the fiscal year 2020, and shall be utilized until the City updates the income limits after HUD has published revised determinations of median income for the next fiscal year.
 - (c) The Regional Asset Limit used in determining an applicant's eligibility for affordable housing pursuant to N.J.A.C. 5:80-26.16(b)(3) shall be calculated by the City annually by taking the percentage increase of the income limits calculated pursuant to paragraph (a) above over the previous year's income limits, and applying the same percentage increase to the Regional Asset Limit from the prior year. In no event shall the Regional Asset Limit be less than that for the previous year.
 - (d) In establishing sale prices and rents of affordable housing units, the City's administrative agent shall follow the procedures set forth in UHAC, utilizing the regional income limits established pursuant to the process defined above:
 - (1) The resale prices 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, determined pursuant to the above methodology. In no event shall the maximum resale price established by the administrative agent be lower than the last recorded purchase price.

- (2) The rent levels of very-low, low- and moderate-income units may be increased annually based on the percentage increase in the Housing Consumer Price Index for the Northeast Urban Area, upon its publication for the prior calendar year. This increase shall not exceed nine percent (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.
2. The maximum rent for restricted rental units within each affordable development shall be affordable to households earning no more than sixty (60%) percent of median income, and the average rent for restricted low- and moderate-income units shall be affordable to households earning no more than fifty-two (52%) percent of median income.
3. The developers and/or municipal sponsors of restricted rental units shall establish at least one (1) rent for each bedroom type for both low-income and moderate-income units, provided that at least thirteen (13%) percent of all low- and moderate-income rental units shall be affordable to very low income households.
4. The maximum sales price of restricted ownership units within each affordable development shall be affordable to households earning no more than seventy (70%) percent of median income, and each affordable development must achieve an affordability average of fifty (55%) percent for restricted ownership units; in achieving this affordability average, moderate-income ownership units must be available for at least three (3) different prices for each bedroom type, and low-income ownership units must be available for at least two (2) 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:
 - (a) A studio shall be affordable to a one-person household;
 - (b) A one-bedroom unit shall be affordable to a one and one-half person household;
 - (c) A two-bedroom unit shall be affordable to a three-person household;
 - (d) A three-bedroom unit shall be affordable to a four and one-half person household; and
 - (e) A four-bedroom unit shall be affordable to a six-person household.
6. In determining the initial rents for compliance with the affordability average requirements for restricted units in assisted living facilities, the following standards shall be used:
 - (a) A studio shall be affordable to a one-person household;
 - (b) A one-bedroom unit shall be affordable to a one and one-half person household; and
 - (c) A two-bedroom unit shall be affordable to a two-person household or to two one-person households.

7. The initial purchase price for all restricted ownership units shall be calculated so that the monthly carrying cost of the unit, including principal and interest (based on a mortgage loan equal to ninety-five (95%) percent of the purchase price and the Federal Reserve H.15 rate of interest), taxes, homeowner and private mortgage insurance and condominium or homeowner association fees do not exceed twenty-eight (28%) percent of the eligible monthly income of the appropriate size household as determined under N.J.A.C. 5:80-26.4, as may be amended and supplemented; provided, however, that the price shall be subject to the affordability average requirement of N.J.A.C. 5:80-26.3, as may be amended and supplemented.
 8. The initial rent for a restricted rental unit shall be calculated so as not to exceed thirty (30%) percent of the eligible monthly income of the appropriate 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.
- e. Utilities.
1. Affordable units shall utilize the same type of heating source as market units within an inclusionary development.
 2. 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.

§ 35-18.7. AFFIRMATIVE MARKETING REQUIREMENTS.

- a. The City of Summit has adopted by resolution an Affirmative Marketing Plan, which was approved by the Court and is compliant with N.J.A.C. 5:80-26.15, as may be amended and supplemented.
- b. The affirmative marketing plan is a regional marketing strategy designed to attract buyers and/or renters of all majority and minority groups, regardless of race, creed, color, national origin, ancestry, marital or familial status, gender, affectional or sexual orientation, disability, age or number of children to housing units which are being marketed by a developer, sponsor, or owner of affordable housing. The affirmative marketing plan is also intended to target those potentially eligible persons who are at least likely to apply for affordable housing units in that region. It is a continuing program that directs all marketing activities toward COAH Housing Region 2 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 2, comprised of Essex, Union, Warren, and Morris counties.
- d. The Administrative Agent designated by the City of Summit 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 very-low-, low-, and moderate-income applicants on subjects such as budgeting, credit issues, mortgage qualification, rental lease requirements, and landlord/tenant law.

- f. The affirmative marketing process for available affordable units shall begin at least four (4) months prior to the expected date of occupancy.
- g. The costs of advertising and affirmative marketing of the affordable units shall be responsibility of the developer, sponsor, or owner, unless otherwise determined or agreed to by the City of Summit.

§ 35-18.8. 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 sexes with separate bedrooms;
 - 3. Provide separate bedrooms for parents and children; and
 - 4. Prevent more than two (2) persons from occupying a single bedroom.
- b. Additional provisions related to occupancy standards (if any) shall be provided in the municipal Operating Manual.

§ 35-18.9. CONTROL PERIODS FOR RESTRICTED OWNERSHIP UNITS AND ENFORCEMENT MECHANISMS.

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 chapter until the City of Summit 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 thirty (30) years.

- a. The affordability control period for a restricted ownership unit shall commence on the date the initial certified household takes title to the unit.
- b. 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.
- c. 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 chapter, 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.
- d. The affordability controls set forth in this chapter 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.

§ 35-18.10. 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.

§ 35-18.11. 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 fifty (50%) percent of median income and moderate-income ownership units shall be reserved for households with a gross household income less than eighty (80%) percent of median income.
- b. The Administrative Agent shall certify a household as eligible for a restricted ownership unit when the household is a low-income household or a moderate-income household, as applicable to the unit, and the estimated monthly housing cost for the particular unit (including principal, interest, taxes, homeowner and private mortgage insurance and condominium or homeowner association fees, as applicable) does not exceed thirty-three (33%) percent of the household's certified monthly income.

§ 35-18.12. 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 ninety-five (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).

§ 35-18.13. 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 chapter until the City of Summit 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 thirty (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 Union County. A copy of the filed document shall be provided to the Administrative Agent within thirty (30) days of the receipt of a Certificate of Occupancy.
- c. A restricted rental unit shall remain subject to the affordability controls of this chapter, 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.

§ 35-18.14. RENT 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 five (5%) percent of the monthly rent of the applicable restricted unit and shall be payable to the Administrative Agent to be applied to the costs of administering the controls applicable to the unit as set forth in this chapter.

§ 35-18.15. TENANT INCOME ELIGIBILITY.

- a. Tenant income eligibility shall be in accordance with N.J.A.C. 5:80-26.13, as may be amended and supplemented, and shall be determined as follows:
 - 1. Very low-income rental units shall be reserved for households with a gross household income less than or equal to thirty (30%) percent of median income.
 - 2. Low-income rental units shall be reserved for households with a gross household income less than or equal to fifty (50%) percent of median income.
 - 3. Moderate-income rental units shall be reserved for households with a gross household income less than eighty (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 thirty-five (35%) percent (forty (40%) percent for age-restricted units) of the household's eligible monthly income as determined pursuant to N.J.A.C. 5:80-26.16, as may be amended and supplemented; provided, however, that this limit may be exceeded if one or more of the following circumstances exists:

1. The household currently pays more than thirty-five (35%) percent (forty (40%) percent for households eligible for age-restricted units) of its gross household income for rent, and the proposed rent will reduce its housing costs;
2. The household has consistently paid more than thirty-five (35%) percent (forty (40%) percent for households eligible for age-restricted units) of eligible monthly income for rent in the past and has proven its ability to pay;
3. The household is currently in substandard or overcrowded living conditions;
4. The household documents the existence of assets with which the household proposes to supplement the rent payments; or
5. The household documents 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 subsection 8-14b1 through 8-14b5 above with the Administrative Agent, who shall counsel the household on budgeting.

§ 35-18.16. ADMINISTRATION.

The administration and oversight of the City of Summit's affordable housing program will be the responsibility of the Municipal Housing Liaison, pursuant to Chapter 2, Article III, Section 2-7 of the City Code, as may be amended and supplemented.

§35-18.17. ENFORCEMENT OF AFFORDABLE HOUSING REGULATIONS

- a. Upon the occurrence of a breach of any of the regulations governing an affordable unit by an Owner, Developer or Tenant, the municipality shall have all remedies provided at law or equity, including but not limited to foreclosure, tenant eviction, a requirement for household recertification, acceleration of all sums due under a mortgage, recuperation of any funds from a sale in violation of the regulations, injunctive relief to prevent further violation of the regulations, entry on the premises, and specific performance.
- b. After providing written notice of a violation to an Owner, Developer or Tenant of a low- or moderate-income unit and advising the Owner, Developer or Tenant of the penalties for such violations, the municipality may take the following action(s) against the Owner, Developer or Tenant for any violation that remains uncured for a period of 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 adjudged by the Court to have violated any provision of the regulations governing affordable housing units the Owner, Developer or Tenant shall be subject to one or more of the following penalties, at the discretion of the Court:
 - i. A fine of not more than \$500.00 per day or imprisonment for a period not to exceed 90 days, or both, provided that each and every day that the violation continues or exists shall be considered a separate and specific violation of these provisions and not a continuation of the initial offense;
 - ii. In the case of an Owner who has rented a low- or moderate-income unit in violation of the regulations governing affordable housing units, payment into the City of Summit Affordable Housing Trust Fund of the gross amount of rent illegally collected;
 - iii. In the case of an Owner who has rented a 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 that would result in the termination of the Owner's equity or other interest in the unit, in the nature of a mortgage foreclosure. Any such judgment shall be enforceable as if the same were a judgment of default of the First Purchase Money Mortgage and shall constitute a lien against the low- or moderate-income unit.
 - i. The 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 his right to possession terminated as well as his title conveyed pursuant to the Sheriff's sale.

- ii. 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 the full extent of such deficiency, in addition to any and all costs incurred by the municipality in connection with collecting such deficiency. In the event that a surplus remains after satisfying all of the above, such surplus, if any, shall be placed in escrow by the municipality for the Owner and shall be held in such escrow for a maximum period of two 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.
- iii. 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.
- iv. 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.
- v. 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.

- vi. 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.

§ 35-18.18. APPEALS.

Appeals from all decisions of an Administrative Agent designated pursuant to this chapter or pursuant to Chapter 2, Article III, Section 2-7 of the City Code shall be filed in writing with the Court.

§ 35-18.19. REPORTING AND MONITORING REQUIREMENTS.

- a. On the first anniversary of the entry of the order granting the City a Final Judgment of Compliance and Repose, and every anniversary thereafter, through the end of the Repose period, the City shall provide annual reporting of its Affordable Housing Trust Fund activity to the Council on Affordable Housing or its successor agency at the State Level, with copies provided to FairShare Housing Center, and posted on the municipal website, using forms developed for this purpose by the Council on Affordable Housing. The reporting shall include an accounting of all Affordable Housing Trust Fund activity, including the source and amount of funds collected and the amount and purpose for which any funds have been expended.
- b. On the first anniversary of the entry of the order granting the City a Final Judgment of Compliance and Repose, and every anniversary thereafter, through the end of the Repose period, the City shall provide annual reporting of the status of all affordable housing activity within the City through posting on the municipal website with copies provided to Fair Share Housing Center, using forms previously developed for this purpose by the Council on Affordable Housing or any other forms endorsed by the Court-appointed Special Master and Fair Share Housing Center.
- c. For the midpoint realistic opportunity review due on July 1, 2020, as required pursuant to N.J.S.A. 52:27D-313, the City shall post on its municipal website, with copies provided to Fair Share Housing Center, a status report as to its implementation of its Plan and an analysis of whether any unbuilt sites or unfulfilled mechanisms continue to present a realistic opportunity. Such posting shall invite any interested party to submit comments to the City, with copies provided to Fair Share Housing Center, regarding whether any sites no longer present a realistic opportunity and should be replaced. Any interested party may, by motion, request a hearing before the Court regarding these issues.
- d. For the review of very low-income housing requirements required by N.J.S.A. 52:27D-329.1, within thirty (30) days of the third anniversary of the entry of the Order granting the City a Final Judgment of Compliance and Repose, and every third year thereafter, the City shall post on its municipal website, with copies provided to Fair Share Housing Center, a status report as to its satisfaction of its very low-income requirements, including the family very low-income requirements referenced herein. Such posting shall invite any interested party to submit comments to the City with copies provided to Fair Share Housing Center, on the issue of whether the municipality has complied with its very low-income housing obligation.

Section 3. Chapter 35, Article XIX is hereby repealed and replaced with the following, entitled “Affordable Housing Multifamily Set-Aside”:

§ 35-19.1. QUANTIFICATION OF AFFORDABLE HOUSING FOR MULTIFAMILY DEVELOPERS.

All zones or districts in which multifamily developments, as defined in Section 35-7.2, are permitted shall be subject to a mandatory set-aside of affordable dwelling units and shall provide affordable dwellings on-site in accordance with the requirements of this section.

- a. Any multifamily development of five (5) or more dwelling units in a multifamily, residential development that is not a rental development, as described below in paragraph b, shall provide an affordable housing set-aside such that twenty percent (20%) of the dwelling units on site shall be affordable dwellings. As an example, if five (5) units are proposed on a site, at least one (1) affordable unit must be constructed on site.
- b. Any multifamily development of five (5) or more dwelling units in a multifamily, residential development that is a rental development shall provide an affordable housing set-aside such that fifteen percent (15%) of the dwelling units on site are affordable units.
- c. At least thirteen percent (13%) of the affordable dwellings shall be affordable to households earning thirty percent (30%) or less of the median income for the COAH Region.
- d. Where the set-aside requirement of twenty percent (20%) in paragraph a, above, or fifteen percent (15%) in paragraph b, above, results in a fractional unit, the total set-aside requirement shall be rounded upwards to the next whole number.
- e. Developers shall have the opportunity to demonstrate that the set-aside percentages set forth in paragraphs a and b above render the proposed project to be economically infeasible and, upon the provision of satisfactory proofs, may seek relief such as, but not limited to, additional density, a monetary subsidy from the City’s affordable housing trust fund, bulk/design waivers, a payment in lieu of taxes, or other forms of relief, provided that developers shall not be permitted to seek reductions in the set-aside required by this Section.

§ 35-19.2. PERMISSIBLE MANNER OF SATISFACTION OF AFFORDABLE HOUSING OBLIGATION OF RESIDENTIAL DEVELOPERS.

- A. For all residential development, an applicant shall satisfy its affordable housing production obligation through on-site housing in connection with the residential project, which is one of the mechanisms permitted pursuant to COAH regulations.
- B. The other alternative mechanisms permitted under COAH regulations include:
 1. The purchase of an existing, market-rate unit at another location in the community and its conversion to an affordable, deed-restricted unit in accordance with COAH’s criteria, regulations, and policies, and/or

2. Participation in reconstruction and/or buy-down/write-down, buy-down/rent-down programs. An applicant shall only be entitled to satisfy its affordable housing obligation via one or more of the alternative mechanisms set forth above if the applicant demonstrates to the Common Council that one or more of the alternatives better advances the goals and policies set forth in the City's Housing Element and Fair Share Plan. The Common Council shall have the complete discretion to determine whether the alternative(s) better advances the goals and policies set forth in the City's Housing Element and Fair Share Plan.
- C. Full and complete satisfaction of compliance with the affordable housing requirements of the development shall be a specific, automatic, essential, and non-severable condition of all land use approvals. Pursuant to this condition, the applicant must demonstrate that it has satisfied the Zoning Board's affordable housing condition of approval prior to obtaining the first building permit and compliance with the affordable housing condition should be a continuing condition of all Board approvals for development.
 - D. The affordable unit(s) to be produced by this Article shall be available to a low-income individual or household should only one (1) affordable unit be required. Thereafter, each of the affordable units shall be divided evenly between low and moderate-income households except in the event of the applicable formulas resulting in an odd number of affordable units; in which event the unit shall be a low-income residential unit. All affordable units shall strictly comply with COAH's regulations, policies and the Uniform Housing Affordability Controls (UHAC) rules including, but not limited to, pricing, phasing, bedroom distribution, controls on affordability, range of affordability, affirmative marketing, and income qualification. It shall be the applicant's responsibility, at its sole cost and expense, to arrange for a qualified Administrative Agent to ensure full compliance and to file such certificates, reports and/or monitoring forms as may be required by the Court to verify compliance for each affordable unit.

Section 4:

After introduction, the City Clerk is hereby directed to submit a copy of the within Ordinance to the Planning Board of the City of Summit for its review in accordance with N.J.S.A. 40:55D-26 and N.J.S.A. 40:55D-64.

Section 5:

The City Clerk is directed to give notice at least ten (10) days prior to a hearing on the adoption of this Ordinance to the Union County Planning Board and to all other persons entitled thereto pursuant to 40:55D-15, and N.J.S.A. 40:55D-63 (if required).

Section 6:

Repeal of Inconsistent Provisions. All ordinances or parts thereof in conflict or inconsistent with this Ordinance are hereby repealed, but only however, to the extent of such conflict or inconsistency, it being the legislative intent that all ordinances or part of ordinances now existing or in effect unless the same being conflict or inconsistent with any provision of this Ordinance shall remain in effect.

Section 7:

Severability. The provisions of this Ordinance are declared to be severable and if any section, subsection, sentence, clause, or phrase thereof for any reason is held to be invalid or unconstitutional by a court or competent jurisdiction, such decision shall not affect the validity of the remaining sections, subsections, sentences, clauses and phrases of this Ordinance, but shall remain in effect; it being the legislative intent this Ordinance shall stand notwithstanding the invalidity of any part.

Section 8:

Codification: This Ordinance shall be a part of the Code of the City of Summit as though codified and fully set forth therein. The City Clerk shall have this ordinance codified and incorporated in the official copies of the Code. The City Clerk and the City Attorney are authorized and directed to change any Chapter, Article, and/or Section number of the Code of the City of Summit in the event that the codification of this Ordinance reveals that there is a conflict between the numbers and the existing Code, and in order to avoid confusion and possible accidental repealers of existing provisions not intended to be repealed.

Section 9:

This Ordinance shall take effect upon passage, adoption, and publication in the matter prescribed by law.

Section 10:

Upon adoption of this Ordinance, the City Clerk shall file same with (a) the Union County Planning Board pursuant to N.J.S.A. 40:55D-16 and (b) the City Tax Assessor as required by N.J.S.A. 40:49-2.1(c)

Dated: December 5, 2023

I, Rosalia M. Licatase, City Clerk of the City of Summit, do hereby certify that the foregoing ordinance was duly passed by the Common Council of said City at regular meeting held on Tuesday evening, December 5, 2023.

Approved:

Mayor

City Clerk