AN ORDINANCE OF THE CITY OF BAYONNE IN HUDSON COUNTY, NEW JERSEY, AMENDING CHAPTER 33 OF THE PLANNING AND DEVELOPMENT REGULATIONS ORDINANCE OF THE CITY OF BAYONNE TO REPEAL ARTICLES 17 AND 18; AND TO AMEND ARTICLES 14, 15 AND 16

WHEREAS, the New Jersey Supreme Court and New Jersey Legislature have recognized and mandated in So. Burl. Co. NAACP v. Mount Laurel, 92 N.J. 158 (1983) ("Mount Laurel II") and the Fair Housing Act, N.J.S.A. 52:27D-301, et seq. ("FHA") that every municipality in New Jersey has an affirmative obligation to facilitate the provision of very low, low and moderate income housing; and

WHEREAS, the Planning Board of the City of Bayonne has adopted a housing element of the master plan and a fair share plan that comprehensively provides for the appropriate use and development of lands in the City necessary to meet the obligation to provide for affordable housing; and

WHEREAS, the Municipal Council has adopted a fair share plan and endorsed the housing element for the City of Bayonne that provides for the administration and implementation of affordable housing programs designed to meet the obligation to provide for affordable housing; and

WHEREAS, this Ordinance updates provisions in the Development Regulations Ordinance of the City of Bayonne for affordable housing development impact fees, inclusionary affordable housing and payment in lieu of construction of affordable housing; and the implementation of affordability controls and affirmative marketing of affordable housing in accordance with the Fair Housing Act, N.J.S.A. 52:27D-301 et seq.; and

NOW THEREFORE, BE IT ORDAINED by the Municipal Council of the City of Bayonne, Hudson County, New Jersey, as follows:

Section 1. Article 14 or Chapter 33, entitled, Development Fees and Housing Trust Fund, is hereby amended in its entirety as follows.

ARTICLE 14

DEVELOPMENT FEES AND AFFORDABLE HOUSING TRUST FUND

§33-14.1. Authority and 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.

B. Pursuant to N.J.S.A. 52:27D-329.2 and the Statewide Non-Residential Development Fee Act, N.J.S.A. 40:55D-8.1 through -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 have an approved spending plan may retain fees collected from non-residential development.

C. This Article establishes standards for the collection, maintenance, and expenditure of development fees pursuant to state regulations and in accordance with P.L.2008, c.46, Sections 8 and 32-38. Fees collected pursuant to this Article shall be used for the sole purpose of providing low- and moderate-income housing as set forth in §33-14.8. This Article shall be interpreted within the framework of the Act’s rules on development fees at N.J.S.A 52:27D-320, et seq..

§33-14.2. Limitations on Enactment.

A. The City of Bayonne’s Affordable Housing Development Fee Ordinance was approved by COAH on June 20, 2006 pursuant to N.J.S.A. 52:27D-329.2, et seq.

B. COAH approved the City of Bayonne’s third round spending plan on December 21, 2011. Accordingly, the City of Bayonne may spend development fees in conformance with N.J.S.A. 52:27D-320, et seq.; however, any amendments of substance to the municipality’s spending plan shall be approved by the Court or appropriate agency.

§33-14.4. Residential Development Fees.

A. Imposed fees.

(1) Within any zoning district or designated area in need of redevelopment, residential developers, except for developers of the types of development specifically exempted below, shall pay a fee of one percent (1.0%) of the equalized assessed value for residential development, provided no increased density is permitted, provided no increased density has been approved by the board of jurisdiction. If an increase in density has been approved, paragraph –(2), herein, shall apply to the subject development.

(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 six percent (6%) of the equalized assessed value for each additional dwelling 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 (4) dwellings to be constructed on a site that was zoned for two (2) dwellings, the fees could equal one percent (1.0%) of the equalized assessed value for the first two dwellings; and six percent (6%) of the equalized assessed value for the two (2) additional dwellings, provided zoning on the site has not changed during the two-year period preceding the filing of such a variance application.

B. Exemptions and application of eligible increases in residential development.

(1) Exemptions.

(a) Single one and two-family detached and single family attached owner-occupied dwellings where the development is less than five hundred (500) square feet of additional gross floor area, shall be exempt from development fees.

(b) Owner-occupied residential structures demolished and replaced because of a fire, flood, or natural disaster shall be exempt from paying a development fee.

(c) Affordable housing developments, developments where the developer is providing for the construction of affordable dwellings elsewhere in the municipality, and developments where the developer has made a payment
in lieu of on-site construction of affordable dwellings shall be exempt from development fees.

(d) Developments that have received preliminary or final site plan approval prior to June 20, 2006, when the ordinance was first approved by the NJ Council on Affordable Housing, shall be exempt from development fees, unless the developer seeks a substantial change in the approval (see definition of “substantial change”). 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.

(e) Non-profit organizations 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 City Clerk, together with a certification that services of the organization are provided at reduced rates to those who establish an inability to pay at established, existing charges, shall be exempted from paying a development fee.

(f) Federal, state, county, local governments and agencies of the same shall be exempted from paying a residential development fee.

(2) 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 otherwise not exempt from the payment of a development fee. The development fee shall be calculated on the increase in the equalized assessed value of the improved structure.


A. Imposed fees.

(1) Within all zoning districts, non-residential developers, except for developers of the types of development specifically exempted, shall pay a fee equal to two-and-one-half percent (2.5%) of the equalized assessed value of the land and improvements, for all new non-residential construction on an unimproved lot or lots.

(2) Non-residential developers, except for developers of the types of development specifically exempted, shall also pay a fee equal to two-and-one-half percent (2.5%) 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-one-half percent
(2.5%) shall be calculated on the difference between the equalized assessed value of the pre-existing land and improvement and the equalized assessed value of the newly improved structure, i.e. land and improvement, at the time the final certificate of occupancy is issued. If the calculation required under this section results in a negative number, the 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 the two-and-one-half percent (2.5%) development fee, unless otherwise exempted below.

(2) The two-and-one-half percent (2.5%) fee shall not apply to an increase in equalized assessed value resulting from alterations, change in use within existing footprint, reconstruction, renovations and repairs.

(3) Any exemption claimed by a developer of non-residential development shall be substantiated in accordance with the exemptions required pursuant to N.J.S.A. 40:55D-8.4, as specified in the Form N-RDF “State of New Jersey Non-Residential Development Certification/Exemption Form”. Non-residential development exempt from the development fee (exempted categorically, not exempted by statutory moratorium), include the following:

(a) Parking lots and parking structures, regardless of whether the parking lot or parking structure is constructed in conjunction with a non-residential development, such as an office building, or whether the parking lot is developed as an independent non-residential development;

(b) Any non-residential development which is an amenity to be made available to the public, including, but not limited to, recreational facilities, community centers, and senior centers, which are developed in conjunction with or funded by a non-residential developer;

(c) Non-residential construction resulting from a relocation of or an on-site improvement to a nonprofit hospital or a nursing home facility;

(d) Projects that are located within a specifically delineated urban transit hub, as defined pursuant to N.J.S.A. 34:1B-208;

(e) Projects that are located within an eligible municipality, as defined under N.J.S.A. 34:1B-208, when a majority of the project is located within a one-half mile radius of the midpoint of a platform area for a light rail system; and
(f) Projects determined by the New Jersey Transit Corporation to be consistent with a transit village plan developed by a transit village designated by the Department of Transportation A developer of a non-residential development exempted from the non-residential development fee pursuant to N.J.S.A. 40:55D-8.4 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 for occupancy of the non-residential development, whichever is later.

(4) If a property which was exempted from the collection of a non-residential development fee thereafter ceases to be exempt from property taxation, the owner of the property shall remit the fees required pursuant to this section within forty-five (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 Bayonne as a lien against the real property of the owner.


A. Upon the granting of a preliminary, final or other applicable approval for a development, the applicable approving authority shall direct its Secretary to notify the construction official responsible for the issuance of a building 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 Form” 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 building permit shall notify the municipal tax assessor of the issuance of the first building permit for a development which is subject to a development fee.

D. Within ninety (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 shall notify the municipal tax assessor of any and all requests for the scheduling of a final inspection on property which is subject to a development fee.
F. Within ten (10) business days of a request for the scheduling of a final inspection, the municipal tax assessor shall confirm or modify the previously estimated equalized assessed value of the improvements in the development; calculate the development fee; and thereafter notify the developer of the amount of the fee.

G. Should the City of Bayonne fail to determine or notify the developer of the amount of the development fee within ten (10) business days of the request for final inspection, the developer may estimate the amount due and pay that estimated amount consistent with the dispute process set forth in N.J.S.A. 40:55D-8.6.

H. Fifty percent (50%) of the total estimated 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 the issuance of the building permit and that determined at the issuance of the certificate of occupancy.


A. Appeal of development fees. 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 Bayonne. 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 ninety (90) days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.

B. A developer may challenge non-residential development fees imposed by filing a challenge with the Director of the Division of Taxation. Pending a review and determination by the Director, which shall be made within forty-five (45) days of receipt of the challenge, collected fees shall be placed in an interest bearing escrow account by the City of Bayonne. 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 ninety (90) days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.
§33-14.8. Affordable Housing Trust Fund.

A. Establishment of Fund. There is hereby established a separate, interest-bearing affordable housing trust fund to be maintained by the Chief Financial Officer of the City of Bayonne for the purpose of depositing development fees collected from residential and non-residential developers and proceeds from the sale of units with extinguished controls. Nothing herein shall prevent the Chief Financial Officer from maintaining an existing affordable housing trust fund account in lieu of the establishment of a new account provided the methods and procedures of this Article are followed in the operation of the fund.

B. General Provisions.

1. The following funds shall be deposited in the Affordable Housing Trust Fund and shall at all times be identifiable by source and amount:
   (a) Payments in lieu of on-site construction of affordable units;
   (b) Developer contributed funds to make ten percent (10%) of the adaptable entrances in a townhouse or other multistory attached development accessible;
   (c) Rental income from municipally operated units;
   (d) Repayments from affordable housing program loans;
   (e) Recapture funds;
   (f) Proceeds from the sale of affordable units; and
   (g) Any other funds collected in connection with Bayonne’s affordable housing program.

2. The Mayor and Council, in the name of the fund, shall have the right to apply for and receive grants from any source to further the purposes of the fund.

C. Within seven (7) days of the opening of the trust fund account or change to a different bank, the City of Bayonne shall provide the Court or as directed by the Court with written authorization, in the form of a three-party escrow agreement between the municipality, the bank of deposit and any bank in successor, to direct the disbursement of the funds.

D. All interest accrued in the affordable housing trust fund shall only be used on eligible affordable housing activities.
§33-14.8. Use of Funds, Affordability Assistance and Monitoring of the Account.

A. Use of Funds. The expenditure of all funds shall conform to a spending plan approved by the Court or appropriate agency. Funds deposited in the housing trust fund may be used for any activity approved as part of the spending plan to address the municipality’s fair share obligation and may be set up as a grant or revolving loan program. Such activities include, but are not limited to: preservation or purchase of housing for the purpose of maintaining or implementing affordability controls, rehabilitation, new construction of affordable housing units and related costs, accessory apartment, market-to-affordable, or regional housing partnership programs, conversion of existing 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, or any other activity as permitted pursuant to N.J.S.A 52:27D-329.2(c) and as otherwise specified in the approved spending plan. Funds shall not be expended to reimburse the City of Bayonne for past housing activities.

B. Affordability Assistance. At least thirty percent (30%) of all development fees collected and interest earned 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 those very low households earning thirty percent (30%) or less of median income by region. Affordability assistance shall be governed by the following provisions:

1. Affordability assistance programs may include down payment assistance, security deposit assistance, low interest loans, rental assistance, assistance with homeowners association or condominium fees and special assessments, and assistance with emergency repairs.

2. Affordability assistance to households earning thirty percent (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 thirty percent (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.

C. Administrative Expenditures. No more than twenty percent (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 rehabilitation program, a Housing Element and Fair Share Plan, and/or an affirmative marketing program. Administrative funds may be used for income qualification of households, monitoring the turnover of sale and rental units, and compliance with monitoring requirements. Legal or other fees related to litigation opposing affordable housing sites or objecting to the Council’s regulations and/or action are not eligible uses of the affordable housing trust fund.

D. Monitoring Requirements. The City of Bayonne shall complete and return all forms necessary for monitoring requirements related to the collection of development fees from residential and non-residential 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 Bayonne’s approved housing program, as well as to the expenditure of revenues and implementation of the plan approved by the Court.

E. Collection Coterminous with Certification. The ability for the City of Bayonne to impose, collect and expend development fees shall expire with its substantive certification or judgment of repose unless the City of Bayonne has filed an adopted Housing Element and Fair Share Plan, has petitioned for substantive certification or judgment of repose, and has received approval of its development fee ordinance. If the City of Bayonne fails to renew its ability to impose and collect development fees prior to the expiration of substantive certification, it may be subject to forfeiture of any or all funds remaining within its municipal trust fund. Any funds so forfeited shall be deposited into the "New Jersey Affordable Housing Trust Fund" established pursuant to N.J.S.A. 52:27D-320. The City of Bayonne 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 City of Bayonne retroactively impose a development fee on such a development. The City of Bayonne shall not expend development fees after the expiration of its substantive certification or judgment of repose.

F. The City of Bayonne 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.S.A 52:27D-329.2(c)(4).

Section 2. Article 15, Chapter 33, entitled Housing Affordability Controls, is hereby amended in its entirety as follows:
ARTICLE 15

HOUSING AFFORDABILITY CONTROLS AND ADMINISTRATION

§33-15.1. Purpose, Municipal Housing Liaison and Administrative Agent.

A. Purpose. The purpose of this Article is to ensure that the implementation and administration of the City of Bayonne’s affordability housing program meets the requirements for restricting affordable housing to income qualified persons, that the programs are operated in a manner consistent with the Fair Housing Act and promulgated rules of the Council on Affordable Housing, and that the administration of the program is conducted in an impartial and equitable manner.

B. Definitions. The following terms shall have the meanings indicated unless a different meaning clearly is intended from the context:


ADMINISTRATIVE AGENT – The entity responsible for administering the affordability controls of this Article pursuant to N.J.A.C. 5:80-26.14 and N.J.S.A. 52:27D-301 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 low- or moderate-income household as defined in N.J.S.A. 52:27D-304; in the case of an ownership unit, that the sales price for the dwelling 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 dwelling, that the rent for the dwelling 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 DWELLING or UNIT – A dwelling proposed or created pursuant to the Fair Housing Act, credited pursuant to N.J.S.A. 52:27D-307(c), and/or funded through an affordable housing trust fund.

AFFORDABLE HOUSING DEVELOPMENT – A development included in the Housing Element and Fair Share Plan, or as otherwise identified by the City of Bayonne, and includes, but is not limited to, an inclusionary development, a municipal construction project or a 100 percent 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.

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


ASSISTED LIVING RESIDENCE – 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 dwelling entrance.

CERTIFIED HOUSEHOLD – A household that has been certified by an Administrative Agent as a low-income household or moderate-income household.

COAH – The New Jersey Council on Affordable Housing established under the Fair Housing Act (N.J.S.A. 52:27D-301 et seq.) which has primary jurisdiction for the administration of housing obligations in accordance with sound regional planning consideration in the State.

DCA – The State of New Jersey Department of Community Affairs.

DEFICIENT HOUSING UNIT – A housing dwelling 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 of any land proposed to be included in a development, including the holder of an option or contract to 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.
DEVELOPMENT FEE – Money paid by a developer for the improvement of property as set forth in this Article and as permitted under N.J.S.A. 52:27D-329.2.

DWELLING – A room or series of connected rooms designed for permanent human habitation containing living, cooking, sleeping and sanitary facilities for one household.

ECONOMIC FEASIBILITY STUDY – An analysis completed by an individual or group of individuals with demonstrated professional knowledge and experience in real estate finance, real estate costs of development and construction, and the market valuation of rental and for sale real estate products in New Jersey that assesses sites intended for residential development or mixed use development with a residential component for the inclusion of low- and moderate-income housing to determine if there is a realistic opportunity to attract the capital needed to develop or redevelop such sites.

EQUALIZED ASSESSED VALUE – The assessed value of a property divided by the current average ratio of assessed value to true value for the municipality in which the property is situated (the “equalization ratio”) as determined in accordance with Sections 1, 5 and 6 of P.L. 1973 c. 123 (N.J.S.A. 54:1-35a through -35c). Equalized assessed value may be estimated at the time of building permit by the tax assessor utilizing estimates for construction costs. Final "equalized assessed value" will be determined at project completion by the municipal tax assessor.


FAMILY – See “HOUSEHOLD”.

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.

GROSS AGGREGATE HOUSEHOLD INCOME – The combined income, as defined herein, of all members of a household or family.

HOUSEHOLD – All persons living as a single, nonprofit housekeeping dwelling, whether or not the same are related by blood, marriage or otherwise.

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

INCOME – Income from all sources, including but not limited to wages, salaries, tips, commissions, alimony, regularly scheduled overtime, pensions, social security, unemployment compensation, Temporary Assistance for Needy Families (TANF), verified regular child support, disability, net income from business or real
estate, and income from assets such as savings, certificates of deposit, money market accounts, mutual funds, stocks, bonds and imputed income from non-income producing assets, such as equity in real estate.

JUDGMENT OF REPOSE – A judgment issued by the Superior Court approving a municipality's plan to satisfy its fair share housing obligation for very low, low and moderate income housing.

LOW INCOME HOUSEHOLD – A household with a total gross annual household income that is equal to or less than 50% of the median gross household income for households of the same size within the applicable housing region.

LOW INCOME UNIT – A restricted dwelling 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 UNIT – A dwelling not restricted to low- and moderate-income households that may sell or rent at any price.

MEDIAN INCOME – The median gross household income by household size for the applicable housing region.

MODERATE INCOME HOUSEHOLD – A household with a total gross annual household income of more than 50 percent but less than 80 percent of the median gross household income for households of the same size within the applicable housing.

MODERATE INCOME UNIT – A restricted dwelling that is affordable to a moderate income household.

MUNICIPAL HOUSING LIAISON – A municipal employee responsible for coordinating the municipality’s response to meeting its affordable housing obligation and who may or may not be the designated administrative agent.

NON-EXEMPT SALE – Any sale or transfer of ownership other than the transfer of ownership between husband and wife; the transfer of ownership between former spouses ordered as a result of a judicial decree of divorce or judicial separation, but not including sales to third parties; the transfer of ownership between family members as a result of inheritance; the transfer of ownership through an executor’s deed to a Class A beneficiary and the transfer of ownership by court order.

OWNER – The entity or family holding title to a dwelling unit.

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 dwelling (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 percent of the regional median.

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 dwelling 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.

ROOM – A living room, dining room, recreation room, kitchen or bedroom. Closets, bathrooms, cellars and attics shall be excluded, except where portions of cellars and attics have been improved to meet housing and building code requirements for rooms.

SUBSTANTIAL CHANGE – Any increase in an approved structure's bulk or floor area where the result exceeds any of the requirements of the zoning district in which it is located, and where any changes exceed the limitations necessary to qualify as an insubstantial change. An "insubstantial change" means a revision to a preliminary or final plat which does not violate any requirements of the City's ordinances, does not alter the amount of lower-income housing or other forms of participating in the lower-income housing program as set forth in the approved development and does not have changes which exceed any of the following: setback in any yard of five feet; seven feet in building height; 1% in the approved floor area ratio; 1% in the approved lot coverage (building, paving and other coverages); five feet in building spacing; three parking spaces; one loading space; five feet in driveway locations; and 1% of the area of the approved site disturbance. A substitution of similar landscaping material, lighting fixture and signage is not a substantial change, provided that there is no change in approved quantities and/or dimensions.

SUBSTANTIVE CERTIFICATION – A determination by COAH approving a municipality's housing element and fair share plan in accordance with the provisions of the Fair Housing Act, N.J.S.A. 52:27D-301 et seq., and the rules and criteria as set forth by COAH. A grant of substantive certification shall be valid for a period of six years in accordance with the terms and conditions contained in the substantive certification, or as otherwise determined by a court of competent jurisdiction.
TANF – Temporary Assistance for Needy Families, a supplemental income program within the U.S. Department of Health and Human Services administered by the State of New Jersey.

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

UNIT – See “DWELLING”

VERY LOW INCOME HOUSEHOLD – A household with a total gross annual household income equal to thirty percent (30%) or less of the median gross household income for households of the same size within the applicable housing.

VERY LOW INCOME UNIT – A restricted dwelling 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.

C. The Municipal Council shall appoint a Municipal Housing Liaison and Administrative Agent or Agents of the City by resolution. The Municipal Council may also approve by resolution project specific administrative agents proposed by the developers of low and moderate income housing in its initial sales and rental of new dwellings. The Municipal Housing Liaison shall be located within the Department of Municipal Services. The Municipal Housing Liaison shall be a municipal employee. Furthermore, the Municipal Housing Liaison shall meet any criteria and training requirements established by rule or order and shall be approved as appropriate. The Municipal Housing Liaison may also be the Administrative Agent provided such person is qualified to hold the position pursuant to the requirements of N.J.A.C. 5:80-26.14(e). Nothing within this Article shall be construed to affect the appointment or term of any prior established Municipal Housing Liaison or Administrative Agent position.

D. The Municipal Housing Liaison shall have the following duties:

1. Coordinate the activities of the Administrative Agent(s), Corporation Counsel, City Planner, City Engineer, service contractors and others to ensure compliance with the affordable housing obligation of the City of Bayonne.

2. Act as the main point of contact between the City of Bayonne and the COAH, or its successor; affordable housing providers; the Administrative Agent(s) and interested households.
3. Provide educational materials for the public; receive requests from the public concerning the affordable housing program, and direct inquiries to the appropriate official or service provider.

4. The Municipal Housing Liaison shall complete and return to COAH or its successor all forms necessary for monitoring requirements related to dwelling units in affordable housing projects and the collection of development fees from residential and non-residential 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 City of Bayonne’s approved housing program, as well as to the expenditure of revenues and implementation of the approved plan. In this activity, the Municipal Housing Liaison shall have the assistance of the Administrative Agent(s).

5. The Municipal Housing Liaison shall keep records of the affirmative marketing activities undertaken in accordance with the affirmative marketing plan established by the Administrative Agent and any developer’s administrative agent pursuant to Article 16 of Chapter 33. The records shall include, but not be limited to, the following:

   (a) Electronic reporting of affordable housing activity; any required paper forms;

   (b) Copies of any press releases, brochures, flyers, print advertisements and application forms used in the affirmative marketing program.

   (c) The income and demographic characteristics of each household applying for and occupying income-restricted housing.

   (d) An evaluation of any necessary adjustments required to the affirmative marketing program as communicated by the Administrative Agent.

6. Institute and maintain an effective means of communicating information between owners and the Administrative Agent regarding the availability of restricted dwellings for resale or rental.

7. Coordinate meetings with affordable housing providers and Administrative Agents, as applicable.

8. Attend continuing educational opportunities on affordability controls, compliance monitoring and affirmative marketing as offered or approved by COAH or its successor agency.
9. Other duties as directed by the Director of Municipal Services and/or as required for Municipal Housing Liaisons.

E. The Municipal Council shall designate by resolution and may contract with same; one or more Administrative Agents to administer newly constructed affordable units in accordance with N.J.S.A. 52:27D-301 et seq. and N.J.A.C. 5:80-26.1, et seq., subject to the approval of COAH to the degree the agency requires such approval. Each Administrative Agent shall have the following duties:

1. To ensure as his or her primary responsibility that the restricted dwellings under administration are sold or rented, as applicable, only to very low, low- and moderate-income households in accordance with the affordability controls as required in N.J.A.C. 5:80-26.1 et seq.

2. To ensure that the affirmative marketing of affordable housing dwellings undertaken by any Administrative Agent(s) is done in accordance with the provisions of N.J.A.C. 5:80-26.15 and Title 16, Affirmative Marketing of Affordable Units, of Chapter 33 of the Code of the City of Bayonne;

3. To create and maintain operating manuals for each program in the City’s housing element and fair share plan;

4. To solicit, schedule, conduct and follow up on interviews with interested households;

5. Conduct interviews and obtain sufficient documentation of gross income and assets upon which to base a determination of income eligibility for a low or moderate income dwelling;

6. Provide written notification to each applicant as to the determination of eligibility or non-eligibility;

7. Create and maintain a referral list of eligible applicant households living in the housing region and eligible applicant households with members working in the housing region where the dwellings are located;

8. Except as otherwise permitted by law, to employ a random selection process when referring households for certification to occupy affordable dwellings;

9. Furnish to attorneys or closing agents forms of deed restrictions and mortgages for recording at the time of conveyance of title of each restricted dwelling;

10. Create and maintain a file on each restricted dwelling for its control period, including the recorded deed with restrictions, recorded mortgage and note, as appropriate;
11. To institute and maintain an effective means of communicating information to the Municipal Housing Liaison and low and moderate income households regarding the availability of restricted dwellings for resale or re-rental;

12. Review and approve requests from owners of restricted dwellings who wish to take out home equity loans or refinance during the term of their ownership;

13. Review and approve requests to increase sales prices from owners of restricted dwellings who wish to make capital improvements to the dwellings that would affect the selling price (such authorizations to be limited to those improvements resulting in additional bedrooms or bathrooms and the cost of central air conditioning systems);

14. Provide or direct qualified low and moderate income applicants to counseling services on subjects such as budgeting, credit issues, mortgage qualifications, lease requirements and landlord/tenant law; and shall develop and maintain and update a list of entities and lenders willing and able to perform such services.

15. Process requests and make determinations on requests by owners of restricted dwellings for hardship waivers;

16. To communicate with lenders regarding foreclosures;

17. To ensure the issuance of Continuing Certificates of Occupancy or certifications pursuant to N.J.A.C. 5:80-26.10 for affordable housing units in the program;

18. To notify the Municipal Housing Liaison of an owner’s intent to sell a restricted dwelling;

19. To ensure that the removal of the deed restrictions and cancellation of the mortgage note are effectuated and properly filed with the Hudson County Register of Deeds after the termination of the affordability controls for each restricted dwelling;

20. To assist the Municipal Housing Liaison in completing monitoring reports to be submitted to COAH as required; and

21. Such other responsibilities as may be necessary to carry out the provisions of this Article as directed by the Director of Municipal Services.

F. The Administrative Agent shall create an operating manual for each affordable housing program operated by the municipality that implements the requirements of the Uniform Housing Affordability Controls rules and regulations (N.J.A.C. 5:80-
26.1, *et seq.* subject to the approval of COAH to the degree the agency requires such approval. Such program manual shall be reviewed and adopted by the Municipal Council, and shall be a public record and available for review in the Office of the City Clerk and in the office(s) of the Administrative Agent(s).

G. The Administrative Agent of the City shall monitor any Municipal Council designated administrative agent of the developer in the initial sales and rental transactions for low and moderate income dwellings in accordance with *N.J.A.C.* 5:80-26.14. The developer shall assume all costs for the affirmative marketing and initial sales and rental transactions associated with the low and moderate income housing development, including the cost of review and oversight by the City’s Administrative Agent. The developer’s administrative agent shall have all of responsibilities as put forth in this Article and shall follow the same procedures for affirmative marketing, qualifying individuals and households and recording of property instruments as described herein for the City’s Administrative Agent. The City’s Administrative Agent shall charge a reasonable fee to developers, owners or sellers to cover the costs of his or her oversight and administration of the affordability controls program. Copies of all instruments to be recorded shall be provided to the City’s Administrative Agent for review and approval prior to recording and shall be provided to both the City’s Administrative Agent and Municipal Housing Liaison after recording.

H. In order to ensure an orderly transfer of control responsibility from a municipality to an administrative agent, from one administrative agent to another administrative agent, or other transfer, the requirements as set forth in *N.J.A.C.* 5:80-26.17 shall apply as are necessary before or during the transition. The Administrative Agent’s enforcement responsibility for implementing such practices and procedures shall not be delegated or otherwise transferred to any other party, except to a successor administrative agent.

I. The City of Bayonne shall be deemed to have delegated to the Administrative Agent the day-to-day responsibility for implementing practices and procedures designated to ensure effective compliance with the controls set forth in this Article. The City of Bayonne, however, shall retain the ultimate responsibility for ensuring effective compliance with the requirements as set forth in *N.J.A.C.* 5:80-26.1, *et seq.*

§33-15.2. Selection of Eligible Households; Certificate of Eligibility.

A. The Administrative Agent shall secure all information from applicant households necessary and appropriate to determine that restricted dwellings are occupied by properly sized households with appropriate very low, low- or moderate-income levels. No household may be referred to a restricted dwelling, or may receive a commitment with respect to a restricted dwelling, unless that household has received a signed and dated certification, as set forth in this section, and has executed the certificate in the form provided.
B. The Administrative Agent shall use a random selection process to select occupants of very low, low- and moderate-income housing.

C. The Administrative Agent shall prepare a standard form of certification and shall sign and date one for each household when certified. This certification shall be known as a Certificate of Eligibility and shall be a prerequisite for the purchase or rental of an income-restricted dwelling. An initial certification shall be valid for no more than 180 days unless a valid contract for sale or lease has been executed within that time period. In this event, certifications shall be valid until such time as the contract for sale or lease is ruled invalid and no occupancy has occurred. Certifications may be renewed in writing at the request of a certified household for an additional period of 180 days at the discretion of the Administrative Agent.

D. When reviewing an applicant household’s income to determine eligibility, the Administrative Agent shall compare the applicant household’s total gross annual income to the regional very low, low and moderate income limits then in effect, as adopted by COAH or successor agency. For the purposes of this subchapter, income includes, but is not limited to, wages, salaries, tips, commissions, alimony, regularly scheduled overtime, pensions, social security, unemployment compensation, TANF, verified regular child support, disability, net income from business or real estate, and income from assets such as savings, certificates of deposit, money market accounts, mutual funds, stocks, bonds and imputed income from non-income producing assets, such as equity in real estate.

E. Except as otherwise specifically stated in this subchapter, the sources of income considered by the Administrative Agent shall be the types of regular income reported to the Internal Revenue Service and which is eligible to be used for mortgage loan approval. Household annual gross income shall be calculated by projecting current gross income over a 12-month period.

F. Assets not earning a verifiable income shall have an annual imputed interest income using a current average annual savings interest rate. Assets not earning income include, but are not limited to, present real estate equity. Applicants owning real estate must produce documentation of a market value appraisal and outstanding mortgage debt. The difference shall be treated as the monetary value of the asset and the imputed interest added to income. If the applicant household owns a primary residence with no mortgage on the property valued at or above the regional asset limit as published annually by COAH or successor agency, a Certificate of Eligibility shall be denied by the Administrative Agent, unless the applicant’s existing monthly housing costs (including principal, interest, taxes, homeowner and private mortgage insurance, and condominium and homeowner association fees as applicable) exceed 38 percent of the household’s eligible monthly income.

G. Rent from real estate shall be considered income, after deduction of any mortgage payments, real estate taxes, property owner’s insurance and reasonable property
management expenses as reported to the Internal Revenue Service. Other expenses are not deductible. If actual rent is less than fair market rent, the Administrative Agent shall impute a fair market rent.

H. Income does not include benefits, payments, rebates or credits received under any of the following:

1. Federal or State low-income energy assistance programs;
2. Food stamps, payments received for foster care, relocation assistance benefits;
3. Income of live-in attendants, scholarships, student loans, and personal property, including but not limited to, automobiles; and
4. Lump-sum additions to assets such as inheritances, lottery winnings, gifts, insurance settlements, and part-time income of persons enrolled as full-time students.
5. Income, however, does include interest and other earnings from the investment of any of the foregoing benefits, payments, rebates, or credits.

I. The Administrative Agent shall require each member of an applicant household who is 18 years of age or older to provide documentation to verify the member’s income, including income received by adults on behalf of minor children for their benefit. Household members 18 years of age or older who do not receive income must produce documentation of current status. Income verification documentation may include, but is not limited to, the following for each and every member of a household who is 18 years of age or older:

1. Four consecutive pay stubs, not more than 120 days old, including bonuses, overtime or tips, or a letter from the employer stating the present annual income figure;
2. Copies of Federal and State income tax returns for each of the preceding three tax years;
3. A letter or appropriate reporting form verifying monthly benefits such as Social Security, unemployment, TANF, disability or pension income (monthly or annually);
4. A letter or appropriate reporting form verifying any other sources of income claimed by the applicant, such as alimony or child support;
5. Income reports from banks or other financial institutions holding or managing trust funds, money market accounts, certificates of deposit, stocks or bonds; and

6. Evidence or reports of income from directly held assets such as real estate or businesses.

7. Court ordered payments for alimony or child support to another household, whether or not it is being paid regularly, shall be excluded from income for purposes of determining income eligibility.

J. At the discretion of the Administrative Agent, households may also be required to produce documentation of household composition for determining the correct dwelling size and applicable median income guide.

K. Withholding of a Certificate of Eligibility.

1. A certificate of eligibility may be withheld by the Administrative Agent as a result of an applicant’s inability to demonstrate sufficient present assets for down payment or security deposit purposes.

2. A certificate of eligibility may be withheld by the Administrative Agent as a result of an applicant’s inability to verify funds claimed as assets, household composition or other facts represented.

3. A certificate of eligibility shall be denied by the Administrative Agent as a result of any willful and material misstatement of fact made by the applicant in seeking eligibility.

L. The following information shall promptly be provided to the City’s Municipal Housing Liaison and Administrative Agent by the developer or sponsor of any project containing any affordable units subject to the requirements of this Article, upon the latter of either final municipal land use approval or issuance of a grant contract by a governmental authority:

1. The total number of units in the project, and number of restricted units, broken down by bedroom size, identifying which are low and which are moderate income dwellings, and including street addresses of restricted dwellings;

2. Floor plans of all affordable dwellings, including complete and accurate identification of uses and dimensions of all rooms;

3. A project map identifying the locations of low and moderate income and market dwellings;
4. A list of project principals or partners, together with a list of all other affordable projects in which they have been involved over the previous five years;

5. Projected construction schedule;

6. Proposed pricing for all units, including any purchaser options and add-on items;

7. A list of all public funding sources and copies of grant or loan agreements for those sources;

8. Condominium fees or homeowner association and any other maintenance or other fees;

9. Estimated real property taxes for sale units;

10. Sewer, trash disposal and any other utility assessments;

11. Flood insurance requirement, if applicable;

12. A description of all HVAC systems;

13. Location of any common areas and elevators;

14. Proposed form of lease for any rental units;

15. The name of the person who will be responsible for official contact with the City’s Administrative Agent for the duration of the project;

16. The name and qualifications of the developer’s administrative agent; and

17. The State-approved Planned Real Estate Development public offering statement and/or master deed where available or applicable.

M. Waiting list procedures.

1. Households remaining on a waiting list shall update the application no later than April 30 each year, including the most recent federal income tax return of each member of the proposed household and such other updated income and other information requested on the application.

2. Households on the waiting list who have not submitted the required information by May 15 each year shall be notified by certified mail, mailed to the address on file, that they have until June 30 of that year to provide the information or they shall be removed from the waiting list.
3. Any household whose income or priority category has changed such that the household has become eligible for a different category of housing or priority list shall be placed on the appropriate list without penalty or favor as of the date of the original application.

4. Any household whose income has increased to the degree that it is no longer eligible for low or moderate income housing shall be removed from the waiting list.

5. If the Administrative Agent has reason to believe that the information on file is erroneous or incomplete, he or she shall have the right to conduct an investigation and request any additional information deemed necessary to obtain accurate household information. If an applicant does not cooperate in such investigation or refuses to reply with the requested additional information within thirty (30) days of said request, the applicant shall be removed from the list.

6. All applications shall be notarized and certified complete and accurate. Anyone knowingly submitting incomplete, inaccurate, incorrect or false information may be removed from eligibility for very low, low and moderate income dwellings. All information submitted to the Administrative Agent of the purposes of determining applicant eligibility shall be strictly confidential and not considered a public record.

7. Prior to the time of availability of a very low, low and moderate income dwelling, the Administrative Agent shall notify by certified mail the top three households on the waiting list for the type of dwelling available, its location and the estimated date it will be available. If a purchaser or tenant cannot be found from the top three households on the waiting list, notice shall be sent to the fourth, fifth, etc., household until a purchaser or tenant is found. The household shall, within fourteen (14) days of mailing, notify the Administrative Agent, in writing, of its intent to occupy the dwelling and, if selected, its intent to comply with the requirements of Subsection – M.8, below, within fifteen (15) days. Any household which fails to respond to the notice or chooses to reject a specific dwelling by informing the Administrative Agent in writing, shall retain its priority and shall be notified of available dwellings in the future, except that if a household chooses to reject a dwelling or fails to respond three times, it shall be removed from the list and must reapply and re-qualify if it wishes to be placed on the list at a new qualified priority.

8. At the time of notice to a household of the availability of an appropriate type of dwelling and if the household notifies the Administrative Agent of its intent to occupy the dwelling and that household is selected for occupancy, each household member shall update the records on file and
recertify the accuracy of the information as required herein. Information shall be reviewed and the eligibility status reconfirmed. The household selected shall only at that point proceed to make the legal and financial arrangements to acquire or lease the dwelling.

9. If a household selected for occupancy is unable to obtain financing, it shall lose its eligibility for that dwelling, after notice, but shall retain its priority status for a similar appropriate dwelling as other dwellings become available and as long as the household remains eligible. When notified of the availability of another dwelling, updating and recertifying data as outlined in Subsection –M.8 above is required.

§33-15.3. Purchase and Sale of Dwellings.

A. Both the buyer and seller of low and moderate income dwellings, including the initial seller, shall comply with N.J.A.C. 5:80-26.5, Control Periods of Ownership Units; -26.6, Price Restrictions for Ownership Units; -26.7, Buyer Income Eligibility for Ownership Units; -26.8, Limitations on Indebtedness Secured by Ownership Unit; Subordination; -26.9, Capital Improvements to Ownership Units; and -26.10, Maintenance of Restricted Ownership Units, as they may be amended or superseded, and more particularly described in §33-15.3.I, herein.

B. Deed restrictions, restrictive covenants, form of release, payment of recapture amounts, certificates of eligibility, mortgage notes and other property documents for affordable housing shall be as required in N.J.A.C. 5:80-26.1 et seq., as it may be amended or superseded.

C. No person may buy a restricted dwelling who has not received a Certificate of Eligibility from the Administrative Agent, or the developer’s administrative agent for the initial sale, pursuant to the procedures in §33-15.2.

D. Deed provisions on sale of rental dwellings. A deed conveying title from an owner of a rental dwelling occupied by very low, low and moderate income families shall include a clause which shall read, "The rental dwelling(s) located in the premises conveyed herein are subject to the terms, conditions, restrictions, limitations and provisions as set forth in an ordinance of the City of Bayonne codified as Article 15, Chapter 33, as it may be amended and supplemented."

E. Exempt transactions. The following transfer of ownership of a dwelling shall be deemed "non-sales" for the purposes of this Article:

1. Between husband and wife.

2. Between former spouses ordered as a result of a judicial decree of divorce (and not including sales to third parties).
3. To an heir as a result of inheritance.

4. Through an order of the Superior Court or other court, in a foreclosure proceeding or transfer in lieu of foreclosure after a foreclosure proceeding has commenced.

5. Statement of exemption. To permit the transfer of title under this subsection or to permit the sale, resale or lease of an affordable dwelling, the Administrative Agent shall issue a statement of exemption in recordable form to the person receiving title to the dwelling. A copy of the statement of exemption shall be given, at the time of closing, to the seller of the dwelling. The statement of exemption issued pursuant to this subsection shall exempt only the specific sale, transfer, resale or rental transaction for which it was issued. It shall not exempt the transaction for the low-income/moderate-income resale/re-rental price restrictions set forth in this Article.

6. The restrictions of resale or re-rental to a purchaser in accordance with this Article shall apply to all subsequent re-sales or re-rentals of affordable dwellings unless a new statement of exemption is issued pursuant to this Subsection E specifically for a subsequent resale or re-rental transaction. All other terms, provisions and restrictions of this Article shall remain in full force and effect. Such purchaser, however, shall take title and possession to the affordable dwelling, subject to the terms, restrictions, conditions and provisions of this Article, including those addressing use, occupancy, improvement and resale as though such purchaser were, in fact, a qualified very low, low and moderate income purchaser.

7. Where title is acquired pursuant to –E.1 through –E.4 of this section, the cost basis for subsequent resale shall be fixed at the same price as the last preceding nonexempt sale. That price may be adjusted in accordance with the procedures of this Article through application of the appropriate Consumer Price Index changes since the date of that nonexempt sale.

8. Nothing herein shall preclude the City of Bayonne from purchasing the affordable dwelling and holding, renting or conveying it to a qualified very low, low and moderate income purchaser if such option is exercised prior to the owner accepting a bona fide offer to purchase such dwelling.

9. Prior to the issuance of the initial certificate of occupancy for a restricted ownership dwelling and upon each successive sale during the period of restricted ownership, the Administrative Agent shall determine the restricted price for the dwelling and shall also determine the non-restricted, fair market value of the dwelling based on either an appraisal or the dwelling’s equalized assessed value without the restrictions in place.
10. At the time of the initial sale of the dwelling, the initial purchaser shall execute and deliver to the Administrative Agent a recapture note obligating the purchaser (as well as the purchaser’s heirs, successors and assigns) to repay, upon the first non-exempt sale after the dwelling’s release from the restrictions set forth in this Ordinance, an amount equal to the difference between the dwelling’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 dwelling.

11. The affordability controls set forth in this Article shall remain in effect despite the entry and enforcement of any judgment of foreclosure with respect to restricted ownership units.

12. A restricted ownership dwelling shall be required to obtain a Continuing Certificate of Occupancy or a certified statement from the Construction Official stating that the dwelling 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).

§33-15.4. Additional Regulation of Affordable Dwellings.

A. Affordability Average; Bedroom Distribution.

1. In each affordable development, at least fifty percent (50%) of the restricted dwellings within each bedroom distribution shall be low-income dwellings, including very low income dwellings and the remainder may be moderate-income dwellings.

2. At least thirteen percent (13%) of all affordable rental units shall be very low income units (affordable to households earning thirty percent [30%] or less of median income). The very low income units shall be counted as part of the required number of low income units within the development.

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 is no greater than twenty percent (20%) of the total low and moderate-income units;

   (b) At least thirty percent (30%) of all low and moderate-income units are two bedroom units;

   (c) At least twenty percent (20%) of all low and moderate-income units are three bedroom units; and
(d) The remainder, if any, may be allocated at the discretion of the developer.

(e) Age-restricted low and moderate-income units may utilize a modified bedroom distribution. At a minimum, the number of bedrooms shall equal the number of age-restricted low and moderate-income units within the affordable development. The standard may be met by creating all one-bedroom units or by creating a two-bedroom dwelling for each efficiency dwelling.

4. In establishing rents and sales prices of affordable housing units, the administrative agent shall follow the procedures set forth in UHAC, utilizing the regional income limits established by COAH or successor agency.

5. The maximum rent for affordable units within each affordable development shall be affordable to households earning no more than sixty percent (60%) of median income and the average rent for low and moderate-income units shall be affordable to households earning no more than fifty-two percent (52%) of median income. 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, provided that at least thirteen percent (13%) of all low and moderate-income units shall be affordable to households earning no more than thirty percent (30%) of median income.

6. The maximum sales price of restricted ownership units within each affordable development shall be affordable to households earning no more than seventy percent (70%) of median income. Each affordable development shall achieve an affordability average of fifty-five percent (55%) for restricted ownership units. In achieving this affordability average, moderate income ownership units shall be available for at least three different prices for each bedroom type, and low income ownership units shall be available for at least two different prices for each bedroom type.

B. Initial Pricing and Annual Increases of Affordable Dwellings.

1. Owner-Occupied Dwellings Initial Pricing. The initial purchase price for all restricted ownership units shall be calculated so that the monthly carrying cost of the dwelling, including principal and interest (based on a mortgage loan equal to ninety-five percent (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 twenty-eight percent (28%) of the eligible monthly income of the appropriate size household as determined under N.J.A.C. 5:80-26.4;
provided, however, that the price shall be subject to the affordability average requirement as noted above.

2. Rental Dwellings Initial Pricing. The initial rent for a restricted rental dwelling shall be calculated so as not to exceed thirty percent (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 as noted in sub-section –A(5) and –A(6) above and the utility allowance in sub-section –B(5), below.

3. Owner-Occupied Dwellings Annual Increase. 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.

4. Rental Dwellings Annual Increase. 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 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.

5. Utilities. Tenant-paid utilities that are included in the utility allowance shall be so stated in the lease and shall be consistent with the utility allowance approved by the NJ Department of Community Affairs for its Section 8 program.

C. Price Restrictions for Restricted Ownership Units, Homeowner Association Fees and Resale Prices.

1. The initial purchase price for a restricted ownership dwelling shall be approved by the Administrative Agent.

2. The Administrative Agent shall approve all resale prices, in writing and in advance of the resale, to assure compliance with the foregoing standards.

3. The method used to determine the condominium association fee amounts and special assessments shall be indistinguishable between the low- and moderate-income homeowners and the market homeowners.

D. The owners of restricted ownership units may apply to the Administrative Agent to increase the maximum sales price for the dwelling on the basis of eligible capital improvements. Eligible capital improvements shall be those that render the dwelling suitable for a larger household or the addition of a bathroom.
E. Occupancy Standards.

1. In determining the initial rents and initial sales prices for compliance with the affordable 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 dwelling shall be affordable to a one and one-half person household;

   (c) A two bedroom dwelling shall be affordable to a three person household;

   (d) A three bedroom dwelling shall be affordable to a four and one-half person household;

   (e) A four bedroom dwelling shall be affordable to a six person household.

2. For assisted living facilities, the following standards shall be used:

   (a) A studio shall be affordable to a one person household;

   (b) A one-bedroom dwelling shall be affordable to one and one-half person household;

   (c) A two-bedroom dwelling shall be affordable to a two person household or to two one-person households.

3. In referring certified households to specific restricted units, to the extent feasible and without causing an undue delay in occupying the dwelling, the administrative agent shall strive to:

   (a) Provide an occupant for each unit’s bedroom;

   (b) Provide children of different sex with separate bedrooms; and

   (c) Prevent more than two persons from occupying a single bedroom.

F. Utilities and Heating Source. 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 the NJ Department of Community Affairs for its Section 8 program. Affordable units shall utilize the same type of heating source as market units within the affordable development.
G. Appearance. The facade of an affordable housing dwelling shall be indistinguishable from those of market units in terms of the use of exterior materials, windows, doors, reveal, roof pitch, color, or other material. Affordable housing units shall be fully integrated with market rate housing to the greatest extent feasible.

H. Tenure. For inclusionary developments with a single housing type, the affordable housing units shall have the same tenure as the market housing units.

I. Ownership Unit Affordability Controls.

1. The affordability control period for a restricted ownership dwelling shall commence on the date the initial certified household takes title to the dwelling.

2. Each restricted ownership dwelling shall remain subject to the requirements of the Uniform Housing Affordability Controls (N.J.A.C. 5:80-26.1 et seq.) until the City of Bayonne elects to release the dwelling from such requirements pursuant to action taken in compliance with N.J.A.C. 5:80-26.5(g). Prior to such municipal election, a restricted ownership dwelling shall remain subject to the requirements of N.J.A.C. 5-80-26.5, for a period of at least thirty (30) years.

3. The affordability control period for a restricted ownership dwelling shall commence on the date the initial certified household takes title to the dwelling.


J. Limitations on indebtedness secured by ownership dwelling; subordination.

1. Prior to incurring any indebtedness to be secured by a restricted ownership dwelling, the Administrative Agent shall determine in writing that the proposed indebtedness complies with the provisions of this section.

2. 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 dwelling to exceed 95% of the maximum allowable resale price of that dwelling, as such price
K. Capital Improvements to Ownership Units

1. The owners of restricted ownership units may apply to the Administrative Agent to increase the maximum sales price for the dwelling on the basis of capital improvements made since the purchase of the dwelling. Eligible capital improvements shall be those that render the dwelling suitable for a larger household or that adds an additional bathroom. In no event shall the maximum sales price of an improved housing dwelling exceed the limits of affordability for the larger household.

2. Upon the resale of a restricted ownership dwelling, all items of property that are permanently affixed to the dwelling or were included when the dwelling was initially restricted (for example, refrigerator, range, washer, dryer, dishwasher, wall-to-wall carpeting) shall be included in the maximum allowable resale price. Other items may be sold to the purchaser at a reasonable price that has been approved by the Administrative Agent at the time of the signing of the agreement to purchase. The purchase of central air conditioning installed subsequent to the initial sale of the dwelling and not included in the base price may be made a condition of the dwelling resale provided the price, which shall be subject to 10-year, straight-line depreciation, has been approved by the Administrative Agent. Unless otherwise approved by the Administrative Agent, the purchase of any property other than central air conditioning shall not be made a condition of the dwelling resale. The owner and the purchaser must personally certify at the time of closing that no unapproved transfer of funds for the purpose of selling and receiving property has taken place at the time of or as a condition of resale.

L. Notice of Resale, Recapture Covenant and 95/5 Purchase Options.

1. The owner of the Property is required to notify the Administrative Agent and COAH or successor agency by certified mail of any intent to sell the property ninety (90) days prior to entering into an agreement for the first non-exempt sale of the Property after the conclusion of the period of affordability controls on restricted units in effect at the time the Property was first restricted as part of the Affordable Housing Program.

2. Upon the first such non-exempt sale of the Property, ninety-five percent (95%) of the difference between, (i), the actual sale price; and (ii), the regulated maximum sales price that would be applicable were the period of affordability controls on restricted units still in effect, shall be paid at
closing to the NJ Department of Community Affairs, acting as receiving
agent for the local municipality.

3. Such non-exempt sale is subject to the options provided for in N.J.A.C. 5:80-26.20 (Option to buy 95/5 units), N.J.A.C. 5:80-26.21 (Municipal Option on 95/5 units), N.J.A.C. 5:80-26.22 (State Option on 95/5 Units), N.J.A.C. 5:80-26.23 (Non-Profit Option on 95/5 Units), N.J.A.C. 5:80-26.24 (Seller Option on 95/5 Units), N.J.A.C. 5:80-26.25 (Municipal Rejection of Repayment Option on 95/5 Units) and N.J.A.C. 5:80-26.26 (Continued Application of Options to Create, Rehabilitate or Maintain 95/5 Units) of UHAC.

M. Rental Dwelling Affordability Controls.

1. Each restricted rental dwelling shall remain subject to the requirements of the Uniform Housing Affordability Controls until the City of Bayonne elects to release the dwelling from such requirement pursuant to action taken in compliance with N.J.A.C. 5:80-26.11(e). Prior to such a municipal election, a restricted rental dwelling shall remain subject to the requirements of N.J.A.C. 5:80-26.11, for a minimum of thirty (30) years.


3. 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 Hudson. 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.

4. A restricted rental dwelling shall remain subject to the affordability controls of this Ordinance, despite the occurrence of any of the following events:

(a) Sublease or assignment of the lease of the dwelling;

(b) Sale or other voluntary transfer of the ownership of the dwelling; or

(c) The entry and enforcement of any judgment of foreclosure.

N. Rent Restrictions for Rental Units; Leases.

1. 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 dwelling shall be provided to the Administrative Agent.

2. 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.

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

O. Phasing. A phasing schedule for inclusionary developments shall be submitted at the time of application for development conforming to the minimum ratios of market to affordable dwellings in the following table:

<table>
<thead>
<tr>
<th>Percentage of Market Dwellings Completed</th>
<th>Minimum Percentage of Very Low, Low and Moderate Income Dwellings that Must be Completed</th>
</tr>
</thead>
<tbody>
<tr>
<td>25%</td>
<td>0%</td>
</tr>
<tr>
<td>25% + 1 dwelling</td>
<td>10%</td>
</tr>
<tr>
<td>50% + 1 dwelling</td>
<td>50%</td>
</tr>
<tr>
<td>75% + 1 dwelling</td>
<td>75%</td>
</tr>
<tr>
<td>90% + 1 dwelling</td>
<td>100%</td>
</tr>
</tbody>
</table>

Where the phasing schedule and bedroom distribution result in a fraction, the number shall be rounded to the next highest whole number.

P. Accessibility Requirements. The following barrier free accessibility and adaptability requirements shall apply to all new construction:

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 dwellings and all restricted units in other multistory buildings in which a restricted dwelling is attached to at least one other dwelling 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 dwelling;

(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 in accordance with 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 municipality has collected funds from the developer sufficient to make ten percent (10%) of the adaptable entrances in the development accessible:

[1] Where a dwelling has been constructed with an adaptable entrance, upon the request of a disabled person who is purchasing or will reside in the dwelling, an accessible entrance shall be installed.

[2] To this end, the builder of restricted units shall deposit funds within the affordable housing trust fund of the City of Bayonne in accordance with §33-14.8 sufficient to install accessible entrances in ten percent (10%) of the affordable units that have been constructed with adaptable entrances.

[3] The funds deposited under sub-paragraph -[2] above shall be used by the City for the sole purpose of making the adaptable entrance of any affordable dwelling accessible when requested to do so by a person with a disability who occupies or intends to occupy the dwelling and requires an accessible entrance.

(g) The developer of the restricted units shall submit a design plan and cost estimate for the conversion from an adaptable to an accessible entrances to the Construction Code Official.

(h) Once the Construction Code 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 into the municipality’s affordable housing trust fund by the Chief Financial Officer who shall ensure that the funds are deposited into the affordable housing trust fund and appropriately earmarked.
3. Full compliance with the foregoing provisions shall not be required where an entity can demonstrate that physical or environmental conditions of the site render it 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.

§33-15.5. Violations; Penalties and Remedies; Enforcement.

A. Upon the occurrence of a breach of any of the regulations governing the affordable dwelling 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 dwelling 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 sixty (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 one thousand dollars ($1,000.00) or imprisonment for a period not to exceed ninety (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 dwelling in violation of the regulations governing affordable housing units, payment into the City of Bayonne’s 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 dwelling, 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.

3. Such judgment shall be enforceable, at the option of the municipality, by means of an execution sale by the county 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.

C. The proceeds of the sheriff's sale shall first be applied to satisfy the first purchase money mortgage lien upon the dwelling and any prior liens on the dwelling. The excess, if any, shall be applied to reimburse the City 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 City in full as aforesaid, the violating owner shall be personally responsible for the deficiency, in addition to any and all costs incurred by the City in connection with collecting said deficiency. The remainder, if any, up to a maximum of the amount the owner would be entitled to if he or she were to sell the dwelling as permitted by N.J.S.A. 5:80-26.1 et seq., shall be placed in escrow by the City for the owner and shall be held in such escrow for a period of two years or until such time as the owner shall make a claim with the City for the same. Failure of the owner to claim said sum within the two-year period shall automatically result in a forfeiture of said remainder to the City for its use pursuant to the Affordable Housing Trust Fund established in §33-14.8 of this Article. Any interest accrued or earned on the remainder while being held in escrow shall belong to and shall be paid to the City's Affordable Housing Fund whether the remainder is paid to the owner or forfeited to the City. Any excess funds derived over and above the sum due the owner shall be paid over to the City's Affordable Housing Trust Fund.

D. 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 dwelling. 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.
E. 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.

F. 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.

G. 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.

H. Bayonne’s Right to Cure. The City may, at its option, advance and pay all sums necessary to protect, preserve and retain the dwelling as an affordable dwelling, subject to the terms of this Article. All sums so advanced and paid by the City shall become a lien against said dwelling and shall have a higher priority than any lien except the first purchase money mortgage lien and liens by duly authorized government agencies. Such sums may include but are not limited to insurance premiums, taxes, assessments (public or private) and costs of repair necessary to bring the dwelling up to any and all applicable local, state or federal codes and liens which may be or become prior and senior to any first purchase money mortgage as a lien on the dwelling or any part thereof. If, in the event of a default or nonpayment by the owner of an affordable dwelling, any first mortgagee or other creditor of an owner of an affordable dwelling exercises its contractual or legal remedies available, the owner shall notify the Administrative Agent and the Corporation Counsel of the City, in writing, within ten (10) days of notification by the first mortgagee or creditor and no later than ten (10) days after service of any summons and complaint, and the City shall have the option to purchase, redeem or cure any default upon such terms and conditions as may be agreeable to all parties in interest and/or to acquire the first purchase money mortgage to the dwelling, thereby replacing the first mortgagee as the first mortgagee of the dwelling. The City shall have the same priority of lien as was held by the first mortgagee at the time the City acquires such first purchase money mortgage and shall have the right of subrogation with respect to any other claim or lien it satisfies or acquires.
I. Provisions for First Purchase Money Mortgagees.

1. The terms and restrictions of this section shall be subordinate only to a first purchase money mortgage lien on any affordable dwelling and in no way shall impair the first mortgagee's ability to exercise the contract remedies available to it in the event of default as set forth in the first purchase money mortgage. The first mortgagee and/or mortgage servicer shall serve written notice upon the City within ten (10) days after the first purchase money mortgage is two months in arrears and again within ten (10) calendar days of the filing of a complaint seeking foreclosure of the first purchase money mortgage held on an affordable dwelling. However, a judgment of foreclosure upon the property shall in no instance terminate the conditions and requirements of this Article maintaining the dwelling as an affordable, income-restricted residence.

2. The obligation of the first mortgagee and servicer to notify the City shall cease automatically and immediately upon the sale of the first purchase money mortgage to the Federal National Mortgage Association or in the secondary mortgage market, unless the rules and regulations or guidelines of the Federal National Mortgage Association are amended so as to not prohibit or exclude placing such obligation upon the holder of the mortgage or its service representative, in which case, an instrument duly evidencing the same shall be recorded with the Register of Deeds, Hudson County, New Jersey, before any such obligation shall exist. Provided that the first mortgagee is obligated to give the City the above-mentioned notices, the first mortgagee shall also serve written notice of any proposed foreclosure sale upon the City at least thirty (30) days prior to the first scheduled date of such sale. The first mortgagee shall serve notice upon the City within thirty (30) days of the sale of the first purchase money mortgage to the Federal National Mortgage Association or in the secondary mortgage market.

3. The City of Bayonne or any instrumentality designated by the City shall have the right to purchase any mortgage which is in default at any time prior to the entry of a foreclosure judgment or within the redemption period thereafter. Notification of a default and of the institution of a foreclosure action and of a sheriff's sale shall be served, in writing, upon the City Clerk and Corporate Counsel. The City of Bayonne shall at all times be considered a party in interest and shall have the right to be joined as a party defendant and/or shall have the right to intervene in any foreclosure action seeking foreclosure of a first mortgage and/or shall have the right to redeem and acquire the owner's equity of redemption or to acquire the dwelling from the owner upon such terms and conditions as may be determined by the City.
4. Surplus funds. In the event of a foreclosure sale by the holder of the first purchase money mortgage, the owner shall be personally obligated to pay to the City any excess funds, but only to the extent that such excess funds exceed the difference between what the owner could have resold his dwelling for under this Article at the time of the foreclosure sale and the amount necessary to redeem and satisfy the first purchase money mortgage debt, including costs of foreclosure and costs of repairs necessary to bring the dwelling up to any and all applicable local, state or federal codes. For the purposes of this subsection, excess funds shall be the total paid to the sheriff in excess of the amount required to pay and satisfy the first purchase money mortgage, including the costs of foreclosure, even if junior creditors actually receive payment from said surplus funds to the exclusion of the owner. The City is hereby given a first priority lien, second only to the first mortgagee for any taxes or public assessments by a duly authorized governmental body up to the full amount of excess funds. This obligation of the owner to pay this full amount to the City shall be deemed to be a personal obligation of the owner of record at the time of the foreclosure sale, and the City is hereby empowered to enforce this obligation in any appropriate court of law or equity as though the same were a personal contractual obligation of the owner. Neither the first mortgagee nor the purchaser at the foreclosure sale shall be responsible or liable to the City for any portion of this excess. The City shall deposit any funds received in the Affordable Housing Trust Fund and use it for the purposes as set forth in §33-14.8 of this Article.


A. Nothing in these rules should be construed to limit the rights and duties of the owner and tenant to maintain the dwelling in accordance with all appropriate New Jersey State codes.

B. Notwithstanding anything to the contrary in this Article, any member of a household occupying a dwelling under this Article and subject to the regulations of the City of Bayonne is subject to eviction for any reasons allowed under applicable New Jersey law. The provisions of this Article are not intended to confer any additional rights or obligations on property owners or tenants other than those mandated by statute or required by the courts of the State of New Jersey or the Council on Affordable Housing.

Section 3. Article 16, Chapter 33, entitled, Affirmative Marketing of Affordable Units, is hereby amended in its entirety as follows.

ARTICLE 16
AFFIRMATIVE MARKETING OF AFFORDABLE UNITS

§33-16.1. Purpose.

A. The purpose of the Article is to establish administrative procedures to ensure a wide dissemination of knowledge of affordable housing units as they become available to the low and moderate income population, and that the selection of tenants or homeowners, as the case may be, meets the requirements of the Uniform Housing Affordability Controls (N.J.A.C. 5:80-26-1 et seq.).

B. The affirmative marketing program 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 or sponsor of affordable housing. The City of Bayonne’s affirmative marketing program addresses the requirements of N.J.A.C. 5:80-26.15. Bayonne is located in COAH Housing Region 1 that consists of Hudson, Bergen, Passaic, and Sussex Counties. Any affirmative marketing plan for use in the City of Bayonne shall provide a regional preference for all households that live and work in Housing Region 1.

§33-16.2. Affirmative Marketing Requirements.

A. Affirmative Marketing Requirements. Within the overall framework of the City’s affirmative marketing program, all affordable housing units in the City of Bayonne shall be marketed in accordance with the provisions herein unless otherwise provided for in N.J.A.C. 5:80-26.1, et seq., as they may be amended or superseded. An Affirmative Marketing Plan shall be created for each development that contains or will contain low and moderate income units, including those that are part of the City’s prior round Fair Share Plan and its current Fair Share Plan and those that may be constructed in future developments not yet anticipated by the Fair Share Plan. This Affirmative Marketing Plan shall also apply to any rehabilitated units that are vacated and re-rented during the applicable period of controls for rehabilitated rental units.

B. Plan Preparation. The Administrative Agent shall prepare an Affirmative Marketing Plan for each affordable housing program, as applicable, comporting with N.J.A.C. 5:80-26.15, for review and approval by the Director of Municipal Services for conformance with this Article. Alternatively, the Administrative Agent of the City may oversee the work of a developer’s Administrative Agent provided that the latter Agent has been approved by the City of Bayonne and COAH, should COAH require such approval, in accordance with the procedures herein. Regardless of the drafting agent, the Affirmative Marketing Plan is intended to be used by all developers of affordable housing restricted to low and moderate-income households located within the City of Bayonne. The
Administrative Agent designated by the City for specific affordable housing programs shall ensure that the affirmative marketing of all affordable units is consistent with the Affirmative Marketing Plan for the municipality.

C. The Affirmative Marketing Plan for each affordable housing development shall describe the media to be used in advertising and publicizing the availability of housing. In implementing the Affirmative Marketing Plan, the Administrative Agent shall consider the use of language translations where appropriate.
§33-16.3. Affirmative Marketing Implementation.

A. The affirmative marketing process for available affordable units shall begin at least four months prior to the expected date of occupancy. Advertising and outreach shall take place during the first week of the marketing program and each month thereafter until all of the affordable units have been leased or sold.

B. 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 City of Bayonne.

C. The Affirmative Marketing Plan for each affordable housing development shall meet the following minimum requirements:

1. Information provided in the marketing of low and moderate-income units shall contain the name, address, directions (to the project), the number of units (including the number of sales and/or rental units), a range of prices or the price of sales and/or rental units, the name of the sales agent and/or rental manager along with their business hours where applications may be obtained and directions to their office, a description of the size (in bedrooms) of the units and of the random selection method that shall be used to select occupants, a disclosure of required application fee(s), and the maximum income permitted to qualify for the housing units.

2. The media and outreach sources to be used in advertising and publicizing of the availability of housing in the affirmative marketing plan shall include the following:

   a. Newspapers of general circulation within the housing region. All newspaper articles, announcements, and requests for applications for low and moderate income units shall appear in the following publications: Star Ledger and Jersey Journal.

   b. Other publications circulated within the housing region. All newspaper articles, announcements, and requests for applications for low and moderate income housing shall appear in the following neighborhood oriented weekly newspaper: Bayonne Community News.

   c. Radio and television stations within the housing region. Public service announcements shall be made through the use of the following radio stations broadcasting throughout the region: WPAT (93.1) Paterson, WFDU (89.1) Newark and WNJP (91.5) New Jersey Public Radio, Sussex.
d. One other media as identified in Section 3c of COAH’s Affirmative Fair Housing Marketing Plan for Affordable Housing in Region 1 as it may be amended or superseded.

3. The primary marketing shall take the form of at least one press release and a paid display advertisement in each of the above newspapers once a week for four consecutive weeks. Additional advertising and publicity shall be on an "as needed" basis. The developer/owner shall disseminate all public service announcements and pay for display advertisements. The developer/owner shall provide proof of publication to the Administrative Agent. All press releases and advertisements shall be approved in advance by the Administrative Agent.

4. Applications, brochure(s), sign(s) and/or poster(s) used as part of the affirmative marketing program shall be available/posted in one or more the following locations:

a. Bayonne City Municipal Building (Community Development Office).

b. Bayonne Free Public Library.

c. Developer's sales or rental office.

d. Employers throughout the housing region. The following Bayonne employers will be contacted for the posting of advertisements and the distribution of flyers regarding available affordable housing: Bayonne Hospital, Bookazine Company, Haddad Apparel Group, Ideal Window Manufacturing, Inserra, Jerhel Plastics, Muralo Company, Royal Wine Corporation, Season Contracting, Inc., and other prominent employers as they may appear.

e. Quarterly informational flyers and applications shall be sent to:

[1] The Board of Realtors of Eastern Bergen, Liberty (Secaucus), Passaic County, Real Source Association (Waldwick), and Sussex County for publication in their newsletters and for circulation among their members.

[2] Hudson County Department of Health and Human Services, Bergen County Center for Housing, Health and Human Services, Passaic County Department of Human Services, and Sussex County Department of Human Services.


[4] Catholic Charities of the Diocese of Newark; and
Lutheran Social Ministries of New Jersey.

D. Applications shall be mailed by the Administrative Agent and Municipal Housing Liaison to prospective applicants upon request. Also, applications shall be available at the developer’s sales/rental office and shall be mailed to prospective applicants upon request.

E. The Administrative Agent shall develop, maintain and update a list of community contact person(s) and/or organization(s) in Hudson, Bergen, Passaic and Sussex Counties that will aid in the affirmative marketing program with particular emphasis on contacts that will reach out to groups that are least likely to apply for housing within the region.

Section 4. Sections 16.4 and 16.5 of Article 16, Chapter 33 are hereby repealed.

Section 5. Article 17, Chapter 33, entitled, Growth Share Affordable Housing Obligation, is hereby repealed.

Section 6. Article 17, Chapter 33, entitled, Affordable Housing Inclusionary Development, is hereby added to Chapter 33 of the Code of the City of Bayonne as follows.

ARTICLE 17

AFFORDABLE HOUSING INCLUSIONARY DEVELOPMENT

§33-17.1. Authority and purpose.

Pursuant to the provisions of the Third Round Substantive and Procedural Rules promulgated and adopted by the New Jersey Council on Affordable Housing, N.J.S.A. 52:27D-311 et seq., it is hereby declared that the purpose of this Article is to assist the City of Bayonne to fulfill its affirmative obligation to facilitate the provision of affordable housing.

§33-17.2. Definitions.

As used in this Article, words and phrases shall have the same meanings they have pursuant to Article 15 of Chapter 33. For the purposes of this Article, “residential development” shall mean both a development that is entirely residential, or that includes both residential and non-residential uses. "Residential development" shall also include new market-rate residential units created from the conversion of a non-residential building to residential dwelling(s) requiring the issuance of a certificate of occupancy. Within designated redevelopment areas, the entire redevelopment area shall be considered when determining
whether it constitutes a residential development, excepting the Maritime District of the Peninsula at Bayonne Harbor Redevelopment Plan.

§33-17.3. Inclusionary Residential Development.

A. Any residential development of twenty-four (24) or more dwelling units in the CBD, UBD, ORS, C-1 and TDO zoning districts and twenty (20) or more dwelling units in any other zoning district in the City shall provide a minimum of twenty percent (20%) of the total number of dwellings as affordable to low and moderate income households if the restricted units are for sale and fifteen percent (15%) if the restricted units are for rent, except as otherwise exempted herein. Fractions of a unit may be addressed by rounding the number up to the next highest whole number or paying a pro-rata percentage of the cost of a restricted unit for a payment-in-lieu-of-construction as determined in -17.5.C herein.

B. Any residential development of less than twenty-four (24) dwelling units in the CBD, UBD, ORS, C-1 and TDO zoning districts and less than twenty (20) dwelling units in any other zoning district in the City shall only be subject to an affordable housing development fee in accordance with Article 14 of Chapter 33.

C. Considerable municipal and other governmental expense has been incurred within the designated redevelopment areas of the City of Bayonne, including but not limited to, the cost of acquiring land, demolition of derelict properties, site clearance, decontamination, the provision and extension of public water, public sewer, storm water management, flood control, flood plain elevation, electricity, natural gas and cabling for media, streets and walkways, parks and open space. Furthermore, the allowed intensity and density of development has been increased from the base zoning controls or changed from one land use category to another to facilitate redevelopment. These factors demonstrate an adequate compensatory benefit to the redeveloper for the provision of affordable housing pursuant to this Article.

D. It shall be a rebuttable presumption that the percentage of affordable housing units as established in Paragraph -A in an inclusionary development is financially feasible. A developer or redeveloper may submit an economic feasibility analysis to the Fair Housing Committee to demonstrate that due to the cost to build market rate and affordable units or operate as rental units, capital markets, equity percentage and internal rate of return on investment, interest rates, expected build-out of the development and other factors influencing the decision to build, the required percentages of affordable dwellings in the specific development render the project financially infeasible. The Fair Housing Committee may engage its own development analyst to advise the members on the economic feasibility analysis. The developer or redeveloper shall be responsible for establishing an escrow account with the City for the reasonable payment of such services to the Fair
Housing Committee based upon a duly adopted resolution establishing the fee structure of the escrow account.

§33-17.4. Satisfaction of Affordable Housing Obligation.

A. A developer with an application for development shall construct the affordable housing required on-site unless approved for construction off-site or as a payment-in-lieu of construction under the provisions of §33-17.5. A developer may also apply to construct a portion of the affordable housing on site in combination with a payment-in-lieu of construction or off-site within the City.

B. In the event that the Court adopts a payment-in-lieu amount applicable to the City of Bayonne, the amount required to be paid by the developer shall equal this amount. In the event that a designated redeveloper and the City or any of its agencies voluntarily enters into a redevelopment agreement setting forth the percentage of affordable housing on-site or addressed through a payment-in-lieu of construction payment, such agreement shall govern.

C. Other Means of Meeting the Affordable Housing Obligation. With the prior written approval of the Municipal Council upon favorable recommendation by the Fair Housing Committee the developer may also choose to satisfy its affordable housing obligation through the totality of programs and techniques permitted in COAH's or successor agency’s duly adopted rules governing affordable housing production. In making a recommendation to the governing body, the Fair Housing Committee shall be guided by the adopted Housing Element and Fair Share Plan, Hudson County Comprehensive Housing Affordability Strategy, or other governmental adopted housing plan for use in the municipality.

§33-17.5. Production of Affordable Housing.

A. Construction of Affordable Housing On-Site. The construction of affordable housing units on site shall comport with the regulations of §§33-15 – 33-16 in addition to this section.

B. Construction of Affordable Housing Units Off-Site Within the City.

1. Applicants electing to create affordable housing units elsewhere within the City of Bayonne may do so with the prior written approval of the Municipal Council, and may do so within existing buildings, whether converted, reconstructed or purchased for market-to-affordable purposes, in any residential zone of Bayonne, as set forth and regulated herein. The Municipal Council in determining whether to accept, accept with conditions, or deny such request shall forward such request to the Fair Housing Committee for review and recommendation. The Fair Housing
Committee shall have forty-five (45) days from the date the Municipal Council makes such a request to undertake and transmit their recommendation to the governing body. The recommendation from the Fair Housing Committee shall be advisory only.

2. All required setbacks, building height and impervious coverage limits for the zone shall be met on the lot, except that existing setback deficiencies and other non-conformities of the lot and/or building(s) located thereon may be continued for as long as the buildings remain on site, without the need for additional variances.

C. Payment-in-Lieu-of-Construction.

1. Applicants electing to make a payment-in-lieu-of-construction within the City of Bayonne may do so with the prior written approval of the Municipal Council. The Municipal Council in determining whether to accept, accept with conditions, or deny such request shall forward such request to the Fair Housing Committee for review and recommendation. The Fair Housing Committee shall have forty-five (45) days from the date the Municipal Council makes such a request to undertake and transmit their recommendation to the governing body. The recommendation from the Fair Housing Committee shall be advisory only.

2. The minimum payment for each income restricted dwelling required shall be twenty thousand dollars ($20,000.00) or part thereof. This figure shall be increased in accordance with the increase in the Consumer Price Index for housing in the New York City PMSA as of January 1 of each year.

Section 6. Article 18, Chapter 33, entitled, Development Fee Requirements, is hereby repealed and reserved.

Section 7. Continuation. In all other respects, Chapter 33 of the Ordinance of the City of Bayonne shall remain unchanged.

Section 8. Severability. If any portion of this Ordinance is for any reason held to be unconstitutional or invalid by a court of competent jurisdiction, such decision shall not affect the validity of this Ordinance as a whole, or any other part thereof. Any invalidation shall be confined in its operation to the section, paragraph, sentence, clause, phrase, term, or provision or part thereof of directly involved in the controversy in which such judgment shall have been rendered.

Section 9. Interpretation. If the terms of this Ordinance shall be in conflict with those of another Ordinance of the City of Bayonne, then the restriction which imposes the greater limitation shall be enforced.
Section 10. Repealer. All ordinances or parts of ordinances which are inconsistent with the provisions of this Ordinance are hereby repealed to the extent of such inconsistency only.

Section 11. Enactment. This Ordinance shall take effect following the final passage and adoption by the Municipal Council of the City of Bayonne and publication by the City Clerk in the manner prescribed by law.

[ADD Signature Lines]