

Approved

**BOROUGH OF STRATFORD LAND USE BOARD  
RESOLUTION #2021:12**

- Report, Recommendations and Findings, on Ordinance 2021:08 Involving Land Use and Zoning – Amending Chapter 17.05, Affordable Housing to Replace Section 17.05.010 in its Entirety With a New Section 17.05.010 Entitled “Affordable Housing Requirements” and to Update Section 17.05.020 Entitled “Affordable Housing Development Fees”
- Action and Memorialized Date: April 22, 2021  
Project: Recommendation on Proposed Ordinance No. 2021:08

WHEREAS, the Borough of Stratford (the “Borough”) is a municipal corporation organized and operating under the laws of the State of New Jersey; and

WHEREAS, pursuant to the MLUL, N.J.S.A. 40:55D-1, et seq., any ordinance involving and/or affecting the land use and zoning ordinances of a municipality must be referred to the Land Use Board for review and comment prior to a second reading; and

WHEREAS, the Mayor and Council of the Borough of Stratford introduced proposed Ordinance No. 2021:08, attached as Exhibit “A”, on first reading on April 13, 2021, which is and has been considered and reviewed by the Joint Land Use Board at its meeting on April 22, 2021; and

WHEREAS, Ordinance No. 2021:08 has been reviewed and considered by the Borough of Stratford Joint Land Use Board. In conjunction with that review, and at its April 22, 2021 meeting, the Board also heard and took into consideration the expert testimony of the Board Professional, Leah Furey Bruder, PP, AICP of LFB Land Planning, LLC. She provided testimony concerning the proposed Ordinance. She testified that Ordinance 2021:07 is part of a package of affordable housing compliance documents that she has assisted the Borough in putting together. The Borough entered into a Settlement Agreement with FSHC in November 2016. The Borough’s obligation is as follows: present need of 24, prior round of 70, and third round of 91. The Borough conducted a vacant land analysis and adjustment that resulted in an RDP of 22. The Housing Element and Fair Share Plan was adopted in January 2016 and then amended in December 2016 (adopted January 2017) to comply with conditions of the settlement. Ordinances and implementing documents were to be adopted as a condition of the Order granting Third Round Substantive Certification and this ordinance partially satisfies the conditions.

She testified that Section 17.05.010 included regulations related to affordable housing production based on growth share; which methodology was invalidated by the courts. The new section is the “affordable housing ordinance” that sets forth monitoring and reporting requirements; standards for affordable units in assisted living facilities; phasing requirements for

affordable housing; requirements for the 50-50 low-mod split, bedroom breakdown, length of controls, and accessibility; income requirements; affirmative marketing requirements, etc.

Section 17.05.020 addresses mandatory affordable housing development fees. The Borough already has a development fee ordinances, but it is being updated to revise references to COAH and to make the ordinance consistent with current regulations.

Ms. Furey Bruder offered her recommendation for the adoption of the proposed Ordinance No. 2021:07, for the reasons stated on the record during the meeting and her opinion that the proposed ordinances are consistent with the Housing Element of the Master Plan and are designed to implement the HEFS Plan and ensure compliance with the Borough's Fair Share obligations; and

WHEREAS, the Board is in agreement with the form, substance, and intent of Ordinance No. 2021:08 and recommends its adoption, without further comment. The Board determined that it is in the best interest of the Borough of Stratford to adopt the Ordinance as described above. The Board determines that it is in the best interest of the Borough of Stratford to adopt the Ordinance updating its Ordinances to ensure that the Ordinances are consistent with the Master Plan, Redevelopment Plans, and corresponding parts of the Borough Code; and

WHEREAS, a public hearing was required and the Board has considered that public comments were not made by the public;

WHEREAS, it appears that all jurisdictional and procedural requirements of applicable Township Ordinances have been met; and

WHEREAS, the Board has considered the proposed Ordinance No. 2021:08 of the Mayor and Council of the Borough of Stratford; and

WHEREAS, the Board has considered the recommendations and testimony of its Professional, Leah Furey Bruder, PP, AICP as detailed above;

NOW, THEREFORE, BE IT RESOLVED that:

1. The Borough of Stratford Joint Land Use Board has reviewed the proposed Ordinance No. 2021:08 and recommends that the Mayor and Council of the Borough of Stratford, New Jersey adopt the proposed Ordinance No. 2021:08 to amend the City Code as outlined in said Ordinance.

2. This Resolution shall be considered the report and recommendation of the Borough of Stratford Joint Land Use Board as required by N.J.S.A. 40:55D-1, et seq.

The foregoing action was taken and memorialized by the Borough of Stratford Joint Land Use Board on April 22, 2021 upon the motion of St. Maur, seconded by McGovern with the vote on the motion being as follows:

AYE: Mancini, McGovern, Keenan, Kozeniewski, Lomanno, Morello,  
Mount, & St. Maur

NAY:

ABSTAIN: Hall

ABSENT:

DID NOT PARTICIPATE:

The undersigned Secretary of the Board hereby certifies that the above is a true copy of the Resolution 2021:12 adopted and memorialized by the Board on April 22, 2021.

  
\_\_\_\_\_  
SHARON McCART,  
Stratford Joint Land Use Board Secretary

**EXHIBIT "A"**

**BOROUGH OF STRATFORD**

**ORDINANCE NO. 2021:08**

**ORDINANCE OF THE BOROUGH OF STRATFORD  
AMENDING CHAPTER 17.05, AFFORDABLE HOUSING, TO REPLACE SECTION  
17.05.010 "UNIFORM AFFORDABLE HOUSING PRODUCTIONS BASED ON  
GROWTH SHARE" IN ITS ENTIRETY WITH A NEW SECTION 17.05.010 ENTITLED  
"AFFORDABLE HOUSING REQUIREMENTS" AND TO UPDATE SECTION 17.05.020  
ENTITLED "AFFORDABLE HOUSING DEVELOPMENT FEES"**

**WHEREAS**, in 2005 the Borough of Stratford adopted section 17.05.010 of the Borough Code, which provided requirements for the production of affordable housing based on "growth share", and was intended to ensure that affordable housing was produced proportionate to new market rate housing in the Borough; and

**WHEREAS**, the "growth share" methodology was subsequently invalidated by the Superior Court of New Jersey and has been replaced with a methodology accepted by the Courts; and

**WHEREAS**, Stratford Borough has set forth a plan to comply with its Mount Laurel affordable housing obligations, which plan is summarized and memorialized in the Settlement Agreement dated November 3, 2016, signed on November 9, 2016 between Stratford Borough and Fair Share Housing Center, and approved by Court Order dated December 22, 2016; and

**WHEREAS**, in order to make the Borough Code consistent with the adopted Housing Element and Fair Share Plan and the Settlement Agreement, section 17.05.010 entitled "Uniform Affordable Housing Productions Based on Growth Share" will be repealed and replaced with a new section 17.05.010 entitled "Affordable Housing Requirements"; and

**WHEREAS**, in 2005 the Borough of Stratford adopted section 17.05.020 of the Borough Code, to enable the Borough to collect development fees as authorized by the Fair Housing Act, to be deposited into an Affordable Housing Trust Fund; which would then be expended in support of the production of affordable housing; and

**WHEREAS**, certain amendments to section 17.05.020 are necessary in order to update references and requirements to reflect the current regulatory environment; and

**WHEREAS**, the Borough strives to enact land use regulations that are consistent with current affordable housing rules and regulations and that advance the Borough's housing goals and objectives as set forth in the Housing Element and Fair Share Plan and that facilitate the production of affordable housing in satisfaction of the Borough's obligations under the Fair Housing Act.

**NOW, THEREFORE, BE IT ORDAINED AND ESTABLISHED** by the Borough Council of the Borough of Stratford, County of Camden, State of New Jersey as follows:

**SECTION I. Amend Section 17.05.010 in its entirety to read as follows.**

**17.05.010 Affordable Housing Requirements**

**A. Background and Purpose.**

The Stratford Borough Planning Board has adopted and the Borough Council has endorsed a Housing Element and Fair Share Plan pursuant to the Municipal Land Use Law at N.J.S.A. 40:55D-1, et seq. (hereinafter "Fair Share Plan"). The Fair Share Plan describes how Stratford Borough will address its obligation to provide realistic opportunities for low- and moderate-income housing. The Borough's compliance mechanisms are also set forth in the Settlement Agreement entered into between the Borough and Fair Share Housing Center on November 9, 2016 (the "FSHC Settlement Agreement") and the Court Order approving same; which was entered by the Court on December 22, 2016 after a properly noticed Fairness Hearing. This section of the Borough Code is intended to provide assurances that low- and moderate- income housing units are created with controls on affordability over the restriction period and that low- and moderate-income households or individuals shall occupy those units.

**B. Applicability.**

These affordable housing regulations shall apply to all affordable housing units that currently exist or that are constructed or created in Stratford Borough, including affordable housing units funded through low income housing tax credit financing.

**C. Monitoring and Reporting Requirements.**

Stratford Borough shall comply with the following monitoring and reporting requirements regarding the status of the implementation of its Housing Element and Fair Share Plan:

1. Beginning on the date that the Borough's Affordable Housing Trust Fund is established and on every anniversary of that date through 2025, the Borough agrees to provide annual reporting of its Affordable Housing Trust Fund activity to the New Jersey Department of Community Affairs, Council on Affordable Housing or Local Government Services, or other entity designated by the State of New Jersey, with a copy provided to Fair Share Housing Center (FSHC) and posted on the municipal website, using forms developed for this purpose by the New Jersey Department of Community Affairs (NJDCA), Council on Affordable Housing (COAH), Local Government Services (NJLGS), or the Court. The reporting shall include an accounting of all Affordable Housing Trust Fund activity, including the source and amount of funds collected and the amount and purpose for which any funds have been expended.
2. Beginning on November 9, 2017, and on every anniversary of that date through July 1, 2025, the Borough agrees to provide annual reporting of the status of all affordable housing activity within the municipality through posting on the municipal website with a copy of such posting provided to Fair Share Housing Center using forms developed for this purpose by the New Jersey Department of Community Affairs (NJDCA), Council on Affordable Housing (COAH), or

Local Government Services (NJLGS), or any other forms endorsed by the Court.

3. The Fair Housing Act includes two provisions regarding action to be taken by the Borough during the ten-year period of protection provided in the Settlement Agreement with FSHC. The Borough will comply with those provisions as follows:
  - a. For the midpoint realistic opportunity review, as required pursuant to N.J.S.A. 52:27D-313, the Borough will post on its municipal website, with a copy provided to Fair Share Housing Center, a status report as to its implementation of its Plan and an analysis of whether any unbuilt sites or unfulfilled mechanisms continue to present a realistic opportunity. Such posting shall invite any interested party to submit comments to the Borough, with a copy to Fair Share Housing Center, regarding whether any sites no longer present a realistic opportunity and should be replaced. Any interested party may by motion request a hearing before the Court regarding these issues.
  - b. For the review of very low income housing requirements required by N.J.S.A. 52:27D-329.1, within 30 days of the third anniversary of the Settlement Agreement with FSHC, and every third year thereafter, the Borough will post on its municipal website, with a copy provided to Fair Share Housing Center, a status report as to its satisfaction of its very low income requirements, including the family very low-income requirements referenced herein. Such posting shall invite any interested party to submit comments to the Borough and Fair Share Housing Center on the issue of whether the Borough has complied with its very low income housing obligation under the terms of the Settlement Agreement with FSHC.

D. Definitions. The following terms when used in this Chapter shall have meanings given in this Section:

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

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

“Administrative agent” means the entity responsible for the administration of affordable units in accordance with this ordinance, applicable COAH regulations and the Uniform Housing Affordability Controls (UHAC)(N.J.A.C. 5:80-26.1 et seq.).

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

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

"Affordable" means, a sales price or rent within the means of a low- or moderate-income household as defined by COAH in its applicable regulations (N.J.A.C. 5:93-7.4) or an equivalent controlling New Jersey state agency; in the case of an ownership unit, that the sales price for the unit conforms to the standards set forth in N.J.A.C. 5:80-26.6, as may be amended and supplemented, and, in the case of a rental unit, that the rent for the unit conforms to the standards set forth in N.J.A.C. 5:80-26.12, as may be amended and supplemented.

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

"Affordable housing development" means a development included in the Borough's Fair Share Plan or otherwise intended to address the Borough's fair share obligation, and includes, but is not limited to, an inclusionary development, a municipal construction project, or a 100 percent affordable development.

"Affordable housing program(s)" means any mechanism in the Borough's Fair Share Plan prepared or implemented to address the Borough's fair share obligation or produce affordable housing pursuant to the Fair Housing Act and in accordance with COAH regulations.

"Affordable unit" means a housing unit proposed or created pursuant to the Act, credited pursuant to applicable COAH regulations, the FSHC Settlement Agreement, or an order of the Court.

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

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

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

"Assisted living residence" means a facility licensed by the New Jersey Department of Health and Senior Services to provide apartment-style housing and congregate dining and to assure that assisted living services are available when needed for four or more adult persons unrelated to the proprietor and that offers units



containing, at a minimum, one unfurnished room, a private bathroom, a kitchenette and a lockable door on the unit entrance.

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

"COAH" means the New Jersey Council on Affordable Housing.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Very low-income household" means a household with a total gross annual household income equal to 30 percent or less of the median household income.

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

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

E. Alternative Living Arrangements

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

F. Phasing for Inclusionary Housing. Inclusionary developments shall be subject to the following schedule, except where an alternate phasing schedule has been incorporated into a development or redevelopment agreement and approved by the Court:

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

G. New Construction

1. Low/Moderate Split and Bedroom Distribution of Affordable Housing Units:
  - a. The fair share obligation shall be divided equally between low- and moderate-income units, except that where there is an odd number of affordable housing units, the extra unit shall be a low income unit.

- b. At least thirteen percent (13%) of all affordable units in the Borough, with the exception of units constructed as of July 1, 2008, and units subject to preliminary or final site plan approval as of July 1, 2008, shall be designated for very-low income households at 30% of the median income, with at least fifty percent (50%) of all very-low income units being available to families. Very-low income units shall be considered low-income units for the purposes of evaluating compliance with the required low/moderate income unit splits, bedroom distribution, and phasing requirements of this ordinance.
  
- b. In each affordable development, at least 50 percent of the restricted units within each bedroom distribution shall be very low or low-income units.
  
- c. Affordable developments that are not age-restricted shall be structured in conjunction with realistic market demands such that:
  - 1) The combined number of efficiency and one-bedroom units shall be no greater than 20 percent of the total low- and moderate-income units;
  - 2) At least 30 percent of all low- and moderate-income units shall be two bedroom units;
  - 3) At least 20 percent of all low- and moderate-income units shall be three bedroom units; and
  - 4) The remaining units may be allocated among two and three bedroom units at the discretion of the developer.
  
- d. Affordable developments that are age-restricted shall be structured such that the number of bedrooms shall equal the number of age-restricted low- and moderate-income units within the inclusionary development. This standard may be met by having all one-bedroom units or by having a two-bedroom unit for each efficiency unit. In the case of congregate living arrangements studio units may account for all of the affordable units.

2. Accessibility Requirements:

- a. The first floor of all restricted townhouse dwelling units and all restricted units in all other multistory buildings shall be subject to the technical design standards of the Barrier Free Sub Code, N.J.A.C. 5:23-7.
  
- b. All restricted townhouse dwelling units and all restricted units in other multistory buildings in which a restricted dwelling unit is attached to at least one other dwelling unit shall have the following features:
  - 1) An adaptable toilet and bathing facility on the first floor; and
  - 2) An adaptable kitchen on the first floor; and
  - 3) An interior accessible route of travel on the first floor; and

- 4) An adaptable room that can be used as a bedroom, with a door or the casing for the installation of a door, on the first floor; and
- 5) If not all of the foregoing requirements in b.1) through b.4) can be satisfied, then an interior accessible route of travel must be provided between stories within an individual unit, but if all of the terms of paragraphs b.1) through b.4) above have been satisfied, then an interior accessible route of travel shall not be required between stories within an individual unit; and
- 6) An accessible entranceway as set forth at P.L. 2005, c. 350 (N.J.S.A. 52:27D-311a, et seq.) and the Barrier Free Sub Code, N.J.A.C. 5:23-7, or evidence that Stratford Borough has collected funds from the developer sufficient to make 10 percent of the adaptable entrances in the development accessible:
  - a) Where a unit has been constructed with an adaptable entrance, upon the request of a disabled person who is purchasing or will reside in the dwelling unit, an accessible entrance shall be installed.
  - b) To this end, the builder of restricted units shall deposit funds within the Borough's Affordable Housing Trust Fund sufficient to install accessible entrances in 10 percent of the affordable units that have been constructed with adaptable entrances.
  - c) The funds deposited under paragraph 6)b) above shall be used by the Borough for the sole purpose of making the adaptable entrance of an affordable unit accessible when requested to do so by a person with a disability who occupies or intends to occupy the unit and requires an accessible entrance.
  - d) The developer of the restricted units shall submit a design plan and cost estimate to the Construction Official of Stratford Borough for the conversion of adaptable to accessible entrances.
  - e) Once the Construction Official has determined that the design plan to convert the unit entrances from adaptable to accessible meet the requirements of the Barrier Free SubCode, N.J.A.C. 5:23-7, and that the cost estimate of such conversion is reasonable, payment shall be made to the Borough's Affordable Housing Trust Fund in care of the Borough Treasurer who shall ensure that the funds are deposited into the Affordable Housing Trust Fund and appropriately earmarked.
- 7) Full compliance with the foregoing provisions shall not be required where an entity can demonstrate that it is "site impracticable" to meet the requirements. Determinations of site impracticability shall be in compliance with the Barrier Free Sub Code, N.J.A.C. 5:23-7.

### 3. Design.

- a. In inclusionary developments, to the extent possible, low- and moderate-income units shall be integrated with the market units.

- b. In inclusionary developments, low- and moderate-income units shall have access to all of the same common elements and facilities as the market units.
- c. Affordable units shall utilize the same type of heating source as market units within the affordable development.

H. Regional Income Limits.

1. Income limits for all units that are part of Stratford Borough's Fair Share Plan, and for which income limits are not already established through a federal program exempted from the Uniform Housing Affordability Controls pursuant to N.J.A.C. 5:80-26.1, shall be updated by the municipality annually within 30 days of the publication of determinations of median income by HUD as follows:
  - a. Regional income limits shall be established for the housing region that the municipality is in, based on the median income by household size, which shall be established by a regional weighted average of the uncapped Section 8 income limits published by HUD. To compute this regional income limit, the HUD determination of median county income for a family of four is multiplied by the estimated households within the county according to the most recent decennial Census. The resulting product for each county within the housing region is summed. The sum is divided by the estimated total households from the most recent decennial Census in the municipality's housing region. This quotient represents the regional weighted average of median income for a household of four. The income limit for a moderate-income unit for a household of four shall be 80 percent of the regional weighted average median income for a family of four. The income limit for a low-income unit for a household of four shall be 50 percent of the HUD determination of the regional weighted average median income for a family of four. The income limit for a very low-income unit for a household of four shall be 30 percent of the regional weighted average median income for a family of four. These income limits shall be adjusted by household size based on multipliers used by HUD to adjust median income by household size. In no event shall the income limits be less than those for the previous year.
  - b. The income limits applicable to Stratford Borough shall be the result of applying the percentages set forth in paragraph (a) above to HUD's determination of median income for the most current fiscal year, and shall be utilized until the municipality updates the income limits after HUD has published revised determinations of median income for the next fiscal year.
  - c. The Regional Asset Limit used in determining an applicant's eligibility for affordable housing pursuant to N.J.A.C. 5:80-26.16(b)3 shall be calculated by the Borough annually by taking the percentage increase of the income limits calculated pursuant to paragraph (a) above over the previous year's income limits, and applying the same percentage increase to the Regional Asset Limit from the prior year. In no event shall the Regional Asset Limit be less than that for the previous year.

I. Maximum Rents and Sales Prices:

1. In establishing rents and sales prices of affordable housing units, the Administrative Agent shall follow the procedures set forth in UHAC utilizing the most recently published regional weighted average of the uncapped Section 8 income limits published by HUD and approved by the court.
2. The maximum rent for restricted rental units within each affordable development shall be affordable to households earning no more than 60 percent of median income, and the average rent for restricted low- and moderate-income units shall be affordable to households earning no more than 52 percent of median income.
3. The developers and/or municipal sponsors of restricted rental units shall establish at least one rent for each bedroom type for both low-income and moderate-income units. At least thirteen percent (13%) of all low- and moderate-income dwelling units shall be affordable to households earning no more than 30 percent of median income.
4. The maximum sales price of restricted ownership units within each affordable development shall be affordable to households earning no more than 70 percent of median income, and each affordable development must achieve an affordability average of 55 percent for restricted ownership units; in achieving this affordability average, moderate-income ownership units must be available for at least three different prices for each bedroom type, and low-income ownership units must be available for at least two different prices for each bedroom type.
5. In determining the initial sales prices and rents for compliance with the affordability average requirements for restricted units other than assisted living facilities, the following standards shall be used:
  - a. A studio shall be affordable to a one-person household;
  - b. A one-bedroom unit shall be affordable to a one and one-half person household;
  - c. A two-bedroom unit shall be affordable to a three-person household;
  - d. A three-bedroom unit shall be affordable to a four and one-half person household; and
  - e. A four-bedroom unit shall be affordable to a six-person household.
6. In determining the initial rents for compliance with the affordability average requirements for restricted units in assisted living facilities, the following standards shall be used:
  - a. A studio shall be affordable to a one-person household;
  - b. A one-bedroom unit shall be affordable to a one and one-half person household; and

- c. A two-bedroom unit shall be affordable to a two-person household or to two one-person households.
7. The initial purchase price for all restricted ownership units shall be calculated so that the monthly carrying cost of the unit, including principal and interest (based on a mortgage loan equal to 95 percent of the purchase price and the Federal Reserve H.15 rate of interest), taxes, homeowner and private mortgage insurance and condominium or homeowner association fees do not exceed 28 percent of the eligible monthly income of the appropriate size household as determined under N.J.A.C. 5:80-26.4, as may be amended and supplemented; provided, however, that the price shall be subject to the affordability average requirement of N.J.A.C. 5:80-26.3, as may be amended and supplemented.
8. The initial rent for a restricted rental unit shall be calculated so as not to exceed 30 percent of the eligible monthly income of the appropriate household size as determined under N.J.A.C. 5:80-26.4, as may be amended and supplemented; provided, however, that the rent shall be subject to the affordability average requirement of N.J.A.C. 5:80-26.3, as may be amended and supplemented.
9. The price of owner-occupied low- and moderate-income units may increase annually based on the percentage increase in the regional median income limit for each housing region. In no event shall the maximum resale price established by the administrative agent be lower than the last recorded purchase price.
10. The rent levels of very-low, low- and moderate-income units may be increased annually based on the percentage increase in the Housing Consumer Price Index for the Northeast Urban Area, upon its publication for the prior calendar year. This increase shall not exceed nine percent in any one year. Rents for units constructed pursuant to low- income housing tax credit regulations shall be indexed pursuant to the regulations governing low- income housing tax credits.
11. If at any time, COAH (or a successor administrative agency duly empowered by an amendment to the Fair Housing Act) begins to issue updated annual income limits and rules for increasing sales prices and rent levels each year, said updated income limits and rules for increasing sales prices and rent levels each year may be used instead of the methodology set forth herein.
12. 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 DCA for its Section 8 program.

#### J. Affirmative Marketing Requirements

1. The Borough of Stratford has adopted by resolution an Affirmative Marketing Plan, subject to approval of the Court, compliant with N.J.A.C. 5:80-26.15, as may be amended and supplemented. The Affirmative Marketing Plan requires direct notification of availability of affordable housing units in Stratford to the



following community and regional organizations: Fair Share Housing Center, the New Jersey State Conference of the NAACP, Camden County NAACP, The Latino Action Network, Burlington County Community Action Program, Southern Burlington County NAACP, and the New Jersey Housing Resource Center.

2. The Affirmative Marketing Plan is a regional marketing strategy designed to attract buyers and/or renters of all majority and minority groups, regardless of race, creed, color, national origin, ancestry, marital or familial status, gender, affectional or sexual orientation, disability, age or number of children to housing units which are being marketed by a developer, sponsor or owner of affordable housing. The Affirmative Marketing Plan is also intended to target those potentially eligible persons who are least likely to apply for affordable units in that region. It is a continuing program that directs all marketing activities toward Housing Region 5 and covers the period of deed restriction.
  3. The Affirmative Marketing Plan shall provide a regional preference for all households that live and/or work in Housing Region 5; which includes Burlington, Camden, and Gloucester counties.
  4. The Administrative Agent designated by Stratford Borough shall assure the affirmative marketing of all affordable units consistent with the Affirmative Marketing Plan for the municipality.
  5. In implementing the Affirmative Marketing Plan, the Administrative Agent shall provide a list of counseling services to low- and moderate-income applicants on subjects such as budgeting, credit issues, mortgage qualification, rental lease requirements, and landlord/tenant law.
  6. The affirmative marketing process for available affordable units shall begin at least four months prior to the expected date of occupancy.
  7. The costs of advertising and affirmative marketing of the affordable units shall be the responsibility of the developer, sponsor or owner, unless otherwise determined or agreed to by the Borough.
- K. Occupancy Standards. In referring certified households to specific restricted units, to the extent feasible, and without causing an undue delay in occupying the unit, the Administrative Agent shall strive to:
1. Provide an occupant for each bedroom;
  2. Provide children of different sex with separate bedrooms;
  3. Provide separate bedrooms for parents and children; and
  4. Prevent more than two persons from occupying a single bedroom.
- L. Control Periods for Restricted Ownership Units and Enforcement Mechanisms

1. Control periods for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.5, as may be amended and supplemented, and each restricted ownership unit shall remain subject to the requirements of this Ordinance for a period of at least thirty (30) years until Stratford Borough takes action to release the unit from such requirements; prior to such action, a restricted ownership unit must remain subject to the requirements of N.J.A.C. 5:80-26.1, as may be amended and supplemented, for at least 30 years.
  2. The affordability control period for a restricted ownership unit shall commence on the date the initial certified household takes title to the unit.
  3. Prior to the issuance of the initial certificate of occupancy for a restricted ownership unit and upon each successive sale during the period of restricted ownership, the Administrative Agent shall determine the restricted price for the unit and shall also determine the non-restricted, fair market value of the unit based on either an appraisal or the unit's equalized assessed value.
  4. At the time of the first sale of the unit, the purchaser shall execute and deliver to the Administrative Agent a recapture note obligating the purchaser (as well as the purchaser's heirs, successors and assigns) to repay to the Borough's Affordable Housing Trust Fund, upon the first non-exempt sale after the unit's release from the requirements of this Ordinance, an amount equal to the difference between the unit's non-restricted fair market value and its restricted price, and the recapture note shall be secured by a recapture lien evidenced by a duly recorded mortgage on the unit.
  5. The affordability controls set forth in this Ordinance shall remain in effect despite the entry and enforcement of any judgment of foreclosure with respect to restricted ownership units.
  6. A restricted ownership unit shall be required to obtain a Continuing Certificate of Occupancy or a certified statement from the Construction Official stating that the unit meets all code standards upon the first transfer of title that follows the expiration of the applicable minimum control period provided under N.J.A.C. 5:80-26.5(a), as may be amended and supplemented.
- M. Price Restrictions for Restricted Ownership Units, Homeowner Association Fees and Resale Prices
1. Price restrictions for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.1, as may be amended and supplemented, including:
  2. The initial purchase price for a restricted ownership unit shall be approved by the Administrative Agent.
  3. The Administrative Agent shall approve all resale prices, in writing and in advance of the resale, to assure compliance with the foregoing standards.
  4. The method used to determine the condominium association fee amounts and special assessments shall be indistinguishable between the low- and moderate-income unit owners and the market unit owners.

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

#### N. Buyer Income Eligibility

1. Buyer income eligibility for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.1, as may be amended and supplemented, such that low-income ownership units shall be reserved for households with a gross household income less than or equal to 50 percent of median income and moderate-income ownership units shall be reserved for households with a gross household income less than 80 percent of median income. Very low income units shall be reserved for households with a gross household income of less than 30 percent of median income.
2. Notwithstanding the foregoing, the Administrative Agent may, upon approval by the Borough Council and subject to the Court's approval, permit a moderate-income purchaser to buy a low-income unit if and only if the Administrative Agent can demonstrate that there is an insufficient number of eligible low-income purchasers in the housing region to permit prompt occupancy of the unit and all other reasonable efforts to attract a low income purchaser, including pricing and financing incentives, have failed. Any such low-income unit that is sold to a moderate-income household shall retain the required pricing and pricing restrictions for a low-income unit.
3. The Administrative Agent shall certify a household as eligible for a restricted ownership unit when the household is a low-income household or a moderate-income household, as applicable to the unit, and the estimated monthly housing cost for the particular unit (including principal, interest, taxes, homeowner and private mortgage insurance and condominium or homeowner association fees, as applicable) does not exceed 33 percent of the household's certified monthly income.

#### O. Limitations on indebtedness secured by ownership unit; subordination

1. Prior to incurring any indebtedness to be secured by a restricted ownership unit, the Administrative Agent shall determine in writing that the proposed indebtedness complies with the provisions of this chapter.
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 unit to exceed 95 percent of the maximum allowable resale price of that unit, as such price is determined by the Administrative Agent in accordance with N.J.A.C.5:80-26.6(b).

#### P. Control Periods for Restricted Rental Units

1. Control periods for restricted rental units shall be in accordance with N.J.A.C. 5:80-26.11, as may be amended and supplemented, and each restricted rental unit shall remain subject to the requirements of this Ordinance for a period of at least 30 years, until Stratford takes action to release the unit from such requirements. Prior to such action, a restricted rental unit must remain subject to the requirements of N.J.A.C. 5:80-26.1, et al as may be amended and supplemented, for at least 30 years.
2. 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 Camden. A copy of the filed document shall be provided to the Administrative Agent within 30 days of the receipt of a Certificate of Occupancy.
3. A restricted rental unit 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 unit;
  - b. Sale or other voluntary transfer of the ownership of the unit; or
  - c. The entry and enforcement of any judgment of foreclosure on the property containing the unit.

Q. Price 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 unit 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 of the monthly rent of the applicable restricted unit and shall be payable to the Administrative Agent to be applied to the costs of administering the controls applicable to the unit as set forth in this Ordinance.

R. Tenant Income Eligibility

1. Tenant income eligibility shall be in accordance with N.J.A.C. 5:80-26.13, as may be amended and supplemented, and shall be determined as follows:
  - a. Very low-income rental units shall be reserved for households with a gross household income less than or equal to 30 percent of median income.
  - b. Low-income rental units shall be reserved for households with a gross household income less than or equal to 50 percent of median income.

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

**S. Municipal Housing Liaison**

1. Stratford Borough shall appoint a specific municipal employee to serve as a Municipal Housing Liaison responsible for overseeing the Borough's affordable housing program, including overseeing the administration of affordability controls on the affordable units and the affirmative marketing of available affordable units in accordance with the Borough's Affirmative Marketing Plan; fulfilling monitoring and reporting requirements; and supervising Administrative Agent(s). Stratford Borough has adopted Ordinance 2007:21 creating the position of Municipal Housing Liaison and is empowered to adopt a resolution appointing the person to fulfill the position of Municipal Housing Liaison. The Municipal Housing Liaison shall be appointed by the governing body and may be a full or part time municipal employee. The Municipal Housing Liaison shall be approved by the Court and shall be duly qualified through a training program sponsored by Affordable Housing Professionals of New Jersey before assuming the duties of Municipal Housing Liaison.
2. The Municipal Housing Liaison shall be responsible for oversight and administration of the affordable housing program, including the following responsibilities which may not be contracted out to the Administrative Agent:

- a. Serving as Stratford's primary point of contact for all inquiries from the State, affordable housing providers, Administrative Agents and interested households;
  - b. Monitoring the status of all restricted units in Stratford's Fair Share Plan;
  - c. Compiling, verifying, submitting and posting all monitoring reports as required by the Court and by this Ordinance;
  - d. Coordinating meetings with affordable housing providers and Administrative Agents, as needed; and
  - e. Attending continuing education opportunities on affordability controls, compliance monitoring and affirmative marketing at least annually and more often as needed.
3. Stratford Borough shall designate one or more Administrative Agent(s) to administer and to affirmatively market the affordable units constructed in the Borough in accordance with UHAC and this Ordinance. An Operating Manual for each affordable housing program shall be provided by the Administrative Agent(s) to be adopted by resolution of the governing body and subject to approval of the Court. The Operating Manual(s) shall be available for public inspection in the office of the Borough Clerk and in the office of the Municipal Housing Liaison, and in the office(s) of the Administrative Agent(s). The Municipal Housing Liaison shall supervise the work of the Administrative Agent(s).

T. Administrative Agent

An Administrative Agent shall be an independent entity serving under contract to and reporting to the municipality. The fees of the Administrative Agent shall be paid by the owners of the affordable units for which the services of the Administrative Agent are required unless otherwise agreed by the Borough and the Administrative Agent. The Administrative Agent shall perform the duties and responsibilities of an Administrative Agent as set forth in UHAC, including those set forth in Sections 5:80-26.14, 16 and 18 thereof, which includes:

1. Affirmative Marketing:

- a. Conducting an outreach process to affirmatively market affordable housing units in accordance with Stratford Borough's Affirmative Marketing Plan and the provisions of N.J.A.C. 5:80-26.15; and
- b. Providing counseling or contracting to provide counseling services to low- and moderate-income applicants on subjects such as budgeting, credit issues, mortgage qualification, rental lease requirements, and landlord/tenant law.

2. Household Certification:

- a. Soliciting, scheduling, conducting and following up on interviews with interested households;
- b. Conducting interviews and obtaining sufficient documentation of gross income and assets upon which to base a determination of income eligibility for a low- or moderate-income unit;
- c. Providing written notification to each applicant as to the determination of eligibility or non-eligibility;
- d. Requiring that all certified applicants for restricted units execute a certificate substantially in the form, as applicable, of either the ownership or rental certificates set forth in Appendices J and K of N.J.A.C. 5:80-26.1 et seq.;
- e. Creating and maintaining a referral list of eligible applicant households living in the housing region and eligible applicant households with members working in the housing region where the units are located;
- f. Employing a random selection process as provided in Stratford Borough's Affirmative Marketing Plan when referring households for certification to affordable units; and
- g. Notifying the following entities of the availability of affordable housing units in Stratford Borough: Fair Share Housing Center, the New Jersey State Conference of the NAACP, Camden County NAACP, The Latino Action Network, Burlington County Community Action Program, Southern Burlington County NAACP, and the New Jersey Housing Resource Center.

3. Affordability Controls:

- a. Furnishing to attorneys or closing agents forms of deed restrictions and mortgages for recording at the time of conveyance of title of each restricted unit;
- b. Creating and maintaining a file on each restricted unit for its control period, including the recorded deed with restrictions, recorded mortgage and note, as appropriate;
- c. Ensuring that the removal of the deed restrictions and cancellation of the mortgage note are effectuated and properly filed with the Camden County Register of Deeds or Camden County Clerk's office after the termination of the affordability controls for each restricted unit;
- d. Communicating with lenders regarding foreclosures; and
- e. Ensuring the issuance of Continuing Certificates of Occupancy or certifications pursuant to N.J.A.C. 5:80-26.10.

4. Resales and Re-rentals:

- a. Instituting and maintaining an effective means of communicating information between owners and the Administrative Agent regarding the availability of restricted units for resale or re-rental; and
  - b. Instituting and maintaining an effective means of communicating information to low- (or very low-) and moderate-income households regarding the availability of restricted units for resale or re-rental.
5. Processing Requests from Unit Owners:
- a. Reviewing and approving requests for determination from owners of restricted units who wish to take out home equity loans or refinance during the term of their ownership that the amount of indebtedness to be incurred will not violate the terms of this Ordinance;
  - b. Reviewing and approving requests to increase sales prices from owners of restricted units who wish to make capital improvements to the units that would affect the selling price, such authorizations to be limited to those improvements resulting in additional bedrooms or bathrooms and the depreciated cost of central air conditioning systems;
  - c. Notifying the municipality of an owner's intent to sell a restricted unit; and
  - d. Making determinations on requests by owners of restricted units for hardship waivers.
6. Enforcement:
- a. Securing annually from the municipality a list of all affordable housing units for which tax bills are mailed to absentee owners, and notifying all such owners that they must either move back to their unit or sell it;
  - b. Securing from all developers and sponsors of restricted units, at the earliest point of contact in the processing of the project or development, written acknowledgement of the requirement that no restricted unit can be offered, or in any other way committed, to any person, other than a household duly certified to the unit by the Administrative Agent;
  - c. Posting annually, in all rental properties (including two-family homes), a notice as to the maximum permitted rent together with the telephone number of the Administrative Agent where complaints of excess rent or other charges can be made;
  - d. Sending annual mailings to all owners of affordable dwelling units, reminding them of the notices and requirements outlined in N.J.A.C. 5:80-26.18(d)4;
  - e. Establishing a program for diverting unlawful rent payments to the municipality's Affordable Housing Trust Fund; and



- f. Creating and publishing a written operating manual for each affordable housing program administered by the Administrative Agent, to be approved by the Borough Council and the Court, setting forth procedures for administering the affordability controls.

7. Additional Responsibilities:

- a. The Administrative Agent shall have the authority to take all actions necessary and appropriate to carry out its responsibilities hereunder.
- b. The Administrative Agent shall prepare monitoring reports for submission to the Municipal Housing Liaison in time to meet the Court-approved monitoring and reporting requirements in accordance with the deadlines set forth in this Ordinance.
- c. The Administrative Agent shall attend continuing education sessions on affordability controls, compliance monitoring, and affirmative marketing at least annually and more often as needed.

U. Enforcement of Affordable Housing Regulations

1. Upon the occurrence of a breach of any of the regulations governing the affordable unit by an Owner, Developer or Tenant the municipality shall have all remedies provided at law or equity, including but not limited to foreclosure, tenant eviction, municipal fines, a requirement for household recertification, acceleration of all sums due under a mortgage, recoupment of any funds from a sale in the violation of the regulations, injunctive relief to prevent further violation of the regulations, entry on the premises, and specific performance.
2. After providing written notice of a violation to an Owner, Developer or Tenant of a low- or moderate-income unit and advising the Owner, Developer or Tenant of the penalties for such violations, the municipality may take the following action against the Owner, Developer or Tenant for any violation that remains uncured for a period of 60 days after service of the written notice:
  - a. 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:
    - i. A fine of not more than \$10,000.00 or imprisonment for a period not to exceed 90 days, or both. Each and every day that the violation continues or exists shall be considered a separate and specific violation of these provisions and not as a continuing offense;
    - ii. In the case of an Owner who has rented his or her low- or moderate-income unit in violation of the regulations governing affordable housing

units, payment into the Stratford Borough Affordable Housing Trust Fund of the gross amount of rent illegally collected;

- iii. 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.
- b. The municipality may file a court action in the Superior Court seeking a judgment, which would result in the termination of the Owner's equity or other interest in the unit, in the nature of a mortgage foreclosure. Any judgment shall be enforceable as if the same were a judgment of default of the First Purchase Money Mortgage and shall constitute a lien against the low- and moderate-income unit.
- c. Such judgment shall be enforceable, at the option of the municipality, by means of an execution sale by the Sheriff, at which time the low- and moderate-income unit of the violating Owner shall be sold at a sale price which is not less than the amount necessary to fully satisfy and pay off any First Purchase Money Mortgage and prior liens and the costs of the enforcement proceedings incurred by the municipality, including attorney's fees. The violating Owner shall have the right to possession terminated as well as the title conveyed pursuant to the Sheriff's sale.
- d. The proceeds of the Sheriff's sale shall first be applied to satisfy the First Purchase Money Mortgage lien and any prior liens upon the low- and moderate-income unit. The excess, if any, shall be applied to reimburse the municipality for any and all costs and expenses incurred in connection with either the court action resulting in the judgment of violation or the Sheriff's sale. In the event that the proceeds from the Sheriff's sale are insufficient to reimburse the municipality in full as aforesaid, the violating Owner shall be personally responsible for and to the extent of such deficiency, in addition to any and all costs incurred by the municipality in connection with collecting such deficiency. In the event that a surplus remains after satisfying all of the above, such surplus, if any, shall be placed in escrow by the municipality for the Owner and shall be held in such escrow for a maximum period of two years or until such earlier time as the Owner shall make a claim with the municipality for such. Failure of the Owner to claim such balance within the two-year period shall automatically result in a forfeiture of such balance to the municipality. Any interest accrued or earned on such balance while being held in escrow shall belong to and shall be paid to the municipality, whether such balance shall be paid to the Owner or forfeited to the municipality.
- e. Foreclosure by the municipality due to violation of the regulations governing affordable housing units shall not extinguish the restrictions of the regulations governing affordable housing units as the same apply to the low- and moderate-income unit. Title shall be conveyed to the purchaser at the Sheriff's sale, subject to the restrictions and provisions of the regulations governing the affordable housing unit. The Owner determined to be in violation of the provisions of this plan and from whom title and

possession were taken by means of the Sheriff's sale shall not be entitled to any right of redemption.

- f. If there are no bidders at the Sheriff's sale, or if insufficient amounts are bid to satisfy the First Purchase Money Mortgage and any prior liens, the municipality may acquire title to the low- and moderate-income unit by satisfying the First Purchase Money Mortgage and any prior liens and crediting the violating owner with an amount equal to the difference between the First Purchase Money Mortgage and any prior liens and costs of the enforcement proceedings, including legal fees and the maximum resale price for which the low- and moderate-income unit could have been sold under the terms of the regulations governing affordable housing units. This excess shall be treated in the same manner as the excess which would have been realized from an actual sale as previously described.
- g. Failure of the low- and moderate-income unit to be either sold at the Sheriff's sale or acquired by the municipality shall obligate the Owner to accept an offer to purchase from any qualified purchaser which may be referred to the Owner by the municipality, with such offer to purchase being equal to the maximum resale price of the low- and moderate-income unit as permitted by the regulations governing affordable housing units.
- h. The Owner shall remain fully obligated, responsible and liable for complying with the terms and restrictions of governing affordable housing units until such time as title is conveyed from the Owner.

V. Appeals.

Appeals from all decisions of an Administrative Agent appointed pursuant to this ordinance shall be filed in writing with the Superior Court of New Jersey, Burlington County.

**SECTION II. Amend Section 17.05.020 in its entirety to read as follows.**

**Section 17.05.020 Affordable Housing Development Fees**

**A. Short Title.** This section of the Stratford Borough Code shall be known and may be cited as the Mandatory Development Fee Ordinance of the Borough of Stratford as amended.

**B. Purpose**

1. In Holmdel Builder's Association V. Holmdel Township, 121 N.J. 550 (1990), the New Jersey Supreme Court determined that mandatory development fees are authorized by the Fair Housing Act of 1985 (the Act), N.J.S.A. 52:27d-301 et seq., and the State Constitution, subject to the Council on Affordable Housing's (COAH's) adoption of rules.
2. Pursuant to P.L.2008, c.46 section 8 (C. 52:27D-329.2) and the Statewide

Non-Residential Development Fee Act (C. 40:55D-8.1 through 8.7), COAH was authorized to adopt and promulgate regulations necessary for the establishment, implementation, review, monitoring and enforcement of municipal affordable housing trust funds and corresponding spending plans. Municipalities that are under the jurisdiction of the Council or Court of competent jurisdiction and have a COAH-approved or Court approved spending plan may retain fees collected from non-residential development.

3. In Re: Adoption of N.J.A.C. 5:96 and 5:97 by the New Jersey Council on Affordable Housing, 221 N.J. 1 (2015), also known as the Mount Laurel IV decision, the Supreme Court remanded COAH's duties to the Superior Court. As a result, affordable housing fee collections and expenditures from the municipal affordable housing trust funds to implement municipal third round Fair Share Plans through July 1, 2025 are under the Court's jurisdiction and are subject to approval by the Court.
4. This section establishes standards for the collection, maintenance, and expenditure of development fees pursuant to COAH's regulations and in accordance P.L. 2008, c.46, Sections 8 and 32-38. Fees collected pursuant to this section shall be used for the sole purpose of providing and supporting low- and moderate-income housing. This section shall be interpreted within the framework of COAH's rules on development fees, codified at N.J.A.C. 5:93-8.

**C. Definitions.** The following terms, as used in this ordinance, shall have the following meanings:

1. "**Affordable housing development**" means a development included in the Borough's Fair Share Plan or otherwise intended to address the Borough's fair share obligation, and includes, but is not limited to, an inclusionary development, a municipal construction project, or a 100 percent affordable development.
2. "**COAH**" or the "**Council**" means the New Jersey Council on Affordable Housing established under the Fair Housing Act which previously had primary jurisdiction for the administration of housing obligations in accordance with sound regional planning consideration in the State. Pursuant to the Executive Reorganization Act of 1969, P.L. 1969, c. 203 (C. 52:14C-1 et seq.), the Governor abolished the Council and transferred all functions, powers, and duties to the Commissioner of the Department of Community Affairs, effective August 29, 2011. As such, any and all references to COAH shall mean the Department.
3. "**Development fee**" means money paid by a developer for the improvement of property and in support of affordable housing as permitted in N.J.A.C. 5:93-8.
4. "**Developer**" means the legal or beneficial owner or owners of a lot or of any land proposed to be included in a proposed development, including the holder of an option or contract to purchase, or other person having an enforceable proprietary interest in such land.

5. **"Equalized assessed value"** means the assessed value of a property divided by the current average ratio of assessed to true value for the municipality in which the property is situated, as determined in accordance with sections 1, 5, and 6 of P.L.1973, c.123 (C.54:1-35a through C.54:1-35c). The tax assessor may estimate the equalized assessed value at the time of issuance of a building permit utilizing estimates for construction cost. Final equalized assessed value will be determined by the tax assessor at project completion.
6. **"Green building strategies"** means those strategies that minimize the impact of development on the environment, and enhance the health, safety and well-being of residents by producing durable, low-maintenance, resource-efficient housing while making optimum use of existing infrastructure and community services.
7. **"Housing Trust Fund"** means the interest-bearing account in which all development fees will be deposited pursuant to N.J.A.C. 5:93-8.15.
8. **"Judgement of Compliance and Repose"** means a judgement issued by the Superior Court approving a municipality's plan to satisfy its fair share obligation.

**D. Residential Development fees**

1. Imposed fees
  - a. Within all residential zoning districts, residential developers, except for developers of the types of development specifically exempted below, shall pay a fee of one and a half percent (1.5%) of the equalized assessed value for residential development provided no increased density is permitted.
  - b. When an increase in residential density pursuant to N.J.S.A. 40:55D-70d(5) (known as a "d" variance) has been permitted, developers may be required to pay a development fee of six percent (6%) of the equalized assessed value for each additional unit that may be realized. However, if the zoning on a site has changed during the two-year period preceding the filing of such a variance application, the base density for the purposes of calculating the bonus development fee shall be the highest density permitted by right during the two-year period preceding the filing of the variance application.
2. Eligible exactions, ineligible exactions and exemptions for residential development
  - a. Affordable housing developments, developments where the developer is providing for the construction of affordable units elsewhere in the municipality, and developments where the developer has made a payment in lieu of on-site construction of affordable units shall be exempt from development fees.

- b. Developments that have received preliminary or final site plan approval prior to the adoption of a municipal development fee ordinance shall be exempt from development fees, unless the developer seeks a substantial change in the approval. Where a site plan approval does not apply, a zoning and/or building permit shall be synonymous with preliminary or final site plan approval for this purpose. The fee percentage shall be vested on the date that the building permit is issued.
- c. Development fees shall not be imposed on isolated single lots (infill lots) when the lot was not part of a subdivision, and when only one single-family dwelling is constructed.
- d. Residential structures demolished and replaced as a result of a fire, flood, or similar natural disaster shall be exempt from paying a development fee.

**E. Non-residential Development fees**

1. Imposed fees

- a. 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 (2.5) percent of the equalized assessed value of the land and improvements, for all new non-residential construction on an unimproved lot or lots.
- b. Non-residential developers, except for developers of the types of development specifically exempted, shall also pay a fee equal to two and one-half (2.5) percent of the increase in equalized assessed value resulting from any additions to existing structures to be used for non-residential purposes.
- c. Development fees shall be imposed and collected when an existing structure is demolished and replaced. The development fee of two and a half percent (2.5%) shall be calculated on the difference between the equalized assessed value of the pre-existing land and improvement and the equalized assessed value of the newly improved structure, i.e. land and improvement, at the time 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.

2. Eligible exactions, ineligible exactions and exemptions for non-residential development

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

- b. The 2.5 percent fee shall not apply to an increase in equalized assessed value resulting from alterations, change in use within existing footprint, reconstruction, renovations and repairs.
- c. Non-residential developments shall be exempt from the payment of non-residential development fees in accordance with the exemptions required pursuant to P.L.2008, c.46, as specified in the Form N-RDF "State of New Jersey Non-Residential Development Certification/Exemption" Form. Any exemption claimed by a developer shall be substantiated by that developer.
- d. A developer of a non-residential development exempted from the non-residential development fee pursuant to P.L.2008, c.46 shall be subject to it at such time the basis for the exemption no longer applies, and shall make the payment of the non-residential development fee, in that event, within three years after that event or after the issuance of the final certificate of occupancy of the non-residential development, whichever is later.
- e. If a property which was exempted from the collection of a non-residential development fee thereafter ceases to be exempt from property taxation, the owner of the property shall remit the fees required pursuant to this section within 45 days of the termination of the property tax exemption. Unpaid non-residential development fees under these circumstances may be enforceable by Stratford Borough as a lien against the real property of the owner.
- f. Religious organizations that engage in construction activity for religious purposes shall be exempt from paying development fees.

**F. Collection procedures**

1. Upon the granting of a preliminary, final or other applicable approval, for a development, the applicable approving authority shall direct its staff to notify the construction official responsible for the issuance of a building permit.
2. For non-residential developments only, the developer shall also be provided with a copy of Form N-RDF "State of New Jersey Non-Residential Development Certification/Exemption" to be completed as per the instructions provided. The developer of a non-residential development shall complete Form N-RDF as per the instructions provided. The construction official shall verify the information submitted by the non-residential developer as per the instructions provided in the Form N-RDF. The Tax assessor shall verify exemptions and prepare estimated and final assessments as per the instructions provided in Form N-RDF.
3. The construction official responsible for the issuance of a building permit shall notify the local tax assessor of the issuance of the first building permit for a development which is subject to a development fee.

4. Within 90 days of receipt of that notice, the municipal tax assessor, based on the plans filed, shall provide an estimate of the equalized assessed value of the development.
5. The construction official responsible for the issuance of a final certificate of occupancy notifies the local assessor of any and all requests for the scheduling of a final inspection on property which is subject to a development fee.
6. Within 10 business days of a request for the scheduling of a final inspection, the municipal assessor shall confirm or modify the previously estimated equalized assessed value of the improvements of the development; calculate the development fee; and thereafter notify the developer of the amount of the fee.
7. Should Stratford Borough fail to determine or notify the developer of the amount of the development fee within 10 business days of the request for final inspection, the developer may estimate the amount due and pay that estimated amount consistent with the dispute process set forth in subsection b. of section 37 of P.L.2008, c.46 (C.40:55D-8.6).
8. Fifty percent of the development fee shall be collected at the time of issuance of the building permit. The remaining portion shall be collected at the issuance of the certificate of occupancy. The developer shall be responsible for paying the difference between the fee calculated at building permit and that determined at issuance of certificate of occupancy.
9. Appeal of development fees
  - a. 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 Stratford Borough. Appeals from a determination of the Board may be made to the tax court in accordance with the provisions of the State Tax Uniform Procedure Law, R.S.54:48-1 et seq., within 90 days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.
  - c. A developer may challenge non-residential development fees imposed by filing a challenge with the Director of the Division of Taxation. Pending a review and determination by the Director, which shall be made within 45 days of receipt of the challenge, collected fees shall be placed in an interest-bearing escrow account by Stratford Borough. Appeals from a determination of the Director may be made to the tax court in accordance with the provisions of the State Tax Uniform Procedure Law, R.S.54:48-1 et seq., within 90 days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.



**G. Affordable Housing trust fund**

1. There is hereby created a separate, interest-bearing housing trust fund to be maintained by the chief financial officer for the purpose of depositing development fees collected from residential and non-residential developers and proceeds from the sale of units with extinguished controls.
2. The following additional 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 Stratford Borough's affordable housing program.
3. In the event of a failure by the Borough to comply with trust fund monitoring and reporting requirements or to submit accurate monitoring reports; or a failure to comply with the conditions of the judgement of compliance or a revocation of the judgement of compliance; or a failure to implement the approved spending plan and to expend funds within the applicable required time period as set forth in In re Tp. Of Monroe, 442 N.J. Super. 565 (Law Div 2015) (aff'd 442 N.J. Super 563); or the expenditure of funds on activities not approved by the Court or for other good cause demonstrating the unapproved use of funds, the Court may authorize the State of New Jersey, Department of Community Affairs, Division of Local Government Services (LGS) to direct the manner in which the funds in the Affordable Housing Trust Fund shall be expended, provided that all such funds, to the extent practicable, be utilized for affordable housing programs within the Borough of Stratford, or, if not practicable then within the County or the Housing Region.
4. Any party may bring a motion before the Superior Court presenting evidence of such condition and the Court may, after considering the evidence and providing the municipality a reasonable opportunity to respond and/or to remedy the non-compliant conditions, and upon a finding of continuing and deliberate non-compliance, determine to authorize LGS to direct the expenditure of funds in the Trust Fund. The Court may also impose such other remedies as may be reasonable and appropriate to the circumstances.
5. All interest accrued in the housing trust fund shall only be used on eligible affordable housing activities approved by the Court.

## H. Use of funds

1. The expenditure of all funds shall conform to a spending plan approved by the Department or the Superior Court (as the case may be). Funds deposited in the housing trust fund may be used for any activity approved by the Department or Court to address Stratford Borough's fair share obligation and may be set up as a grant or revolving loan program. Such activities include, but are not limited to: preservation or purchase of housing for the purpose of maintaining or implementing affordability controls, rehabilitation, new construction of affordable housing units and related costs, accessory apartment, market to affordable, or regional housing partnership programs, conversion of existing 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.A.C. 5:93-8 and specified in the approved spending plan.
2. Funds shall not be expended to reimburse Stratford Borough for past housing activities.
3. At least 30 percent of all development fees collected and interest earned shall be used to provide affordability assistance to low- and moderate-income households in affordable units included in the municipal Fair Share Plan. One-third of the affordability assistance portion of development fees collected shall be used to provide affordability assistance to those households earning 30 percent or less of median income by region.
  - a. Affordability assistance programs may include down payment assistance, security deposit assistance, low interest loans, rental assistance, assistance with homeowner's association or condominium fees and special assessments, and assistance with emergency repairs.
  - b. Affordability assistance to households earning 30 percent or less of median income may include buying down the cost of low- or moderate-income units in the municipal Fair Share Plan to make them affordable to households earning 30 percent or less of median income.
  - c. 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.
4. Stratford Borough may contract with a private or public entity to administer any part of its Housing Element and Fair Share Plan, including the requirement for affordability assistance, in accordance with N.J.A.C. 5:94-7.

5. No more than 20 percent of all revenues collected from development fees, may be expended on administration, including, but not limited to, salaries and benefits for municipal employees or consultant fees necessary to develop or implement a new construction program, a Housing Element and Fair Share Plan, and/or an affirmative marketing program. In the case of a rehabilitation program, no more than 20 percent of the revenues collected from development fees shall be expended for such administrative expenses. Administrative funds may be used for income qualification of households, monitoring the turnover of sale and rental units, and compliance with the Department's 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.

**I. Monitoring**

1. On an annual basis commencing with the first anniversary of the entry of the Order granting a Final Judgement of Compliance and Repose, Stratford Borough shall provide annual reporting of trust fund activity to the New Jersey Department of Community Affairs (DCA), COAH or Local Government Services (LGS) or other entity designated by the State of New Jersey, with a copy provided to Fair Share Housing Center and posted on the municipal website, using forms developed for this purpose by the DCA, COAH, or LGS. This reporting shall include an accounting of all trust fund activity, including 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 Township's housing program, as well as the expenditure of revenues and implementation of the plan approved by the Court.

**J. Ongoing collection of fees**

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

**SECTION III. REPEALER**

Ordinances or provisions thereof inconsistent with the provisions of this Ordinance shall be and are hereby repealed to the extent of such inconsistency.

**SECTION IV. INVALIDITY**

If any section, paragraph, subdivision, clause or provision of this Ordinance shall be adjudged invalid, such adjudication shall only apply to the section, paragraph, subdivision, clause or provision and the remainder of this Ordinance shall be deemed valid and effective.

**SECTION V. EFFECTIVE DATE**

This Ordinance shall take effect upon adoption and publication according to law and the filing of same with the Camden County Planning Board in accordance with N.J.S.A. 40:55D-16.

**PUBLIC NOTICE**

Notice is hereby given that the foregoing Ordinance was introduced and passed on the first reading at the meeting of the Governing Body held on April 13, 2021 and will be considered for final passage on May 11, 2021 subsequent to a Public Hearing of the same date to be held through electronic teleconference.

---

John D. Keenan, Jr. Acting Borough Administrator

Notice is hereby given that a Public Hearing was held for the foregoing Ordinance on May 11, 2021. I certify that the foregoing Ordinance 2021:08 was approved for the final adopting by the Governing Body of the Borough of Stratford at a meeting held on May 11, 2021.

---

John D. Keenan, Jr.  
Acting Borough Administrator

---

Josh Keenan  
Mayor