

estimate of such conversion is reasonable, payment shall be made to the Township's Affordable Housing Trust Fund in care of the Township Treasurer, who shall ensure that the funds are deposited into the Affordable Housing Trust Fund and appropriately earmarked.

- (f) Full compliance with the foregoing provisions shall not be required where an entity can demonstrate that it is site impracticable to meet the requirements. Determinations of site impracticability shall be in compliance with the Barrier Free Subcode, N.J.A.C. 5:23-7.

4. Design.

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

5. Maximum rents and sales prices.

- a. In establishing rents and sales prices of affordable housing units, the Administrative Agent shall follow the procedures set forth in UHAC, utilizing the most recently published regional weighted average of the uncapped Section 8 income limits published by HUD and the calculation procedures as approved by the Court and detailed herein.
- b. The maximum rent for restricted rental units within each affordable development shall be affordable to households earning no more than 60% of median income, and the average rent for restricted rental units shall be affordable to households earning no more than 52% of median income.
- c. The developers and/or municipal sponsors of restricted rental units shall establish at least one rent for each bedroom type for both low-income and moderate-income units, provided that at least 13% of all low- and moderate-income rental units shall be affordable to very-low-income households.
- d. The maximum sales price of restricted ownership units within each affordable development shall be affordable to households earning no more than 70% of median income, and each affordable development must achieve an affordability average of 55% for restricted ownership units. In achieving this affordability average, moderate-income ownership units must be available for at least three different sales prices for each bedroom type, and low-income ownership units must be available for at least two different sales prices for each bedroom type.
- e. In determining the initial sales prices and rent levels for compliance with the affordability average requirements for restricted units other than assisted living facilities and age-restricted developments, the following standards shall be used:
  - (1) A studio shall be affordable to a one-person household;
  - (2) A one-bedroom unit shall be affordable to a one-and-one-half-person household;
  - (3) A two-bedroom unit shall be affordable to a three-person household;
  - (4) A three-bedroom unit shall be affordable to a four-and-one-half-person household; and
  - (5) A four-bedroom unit shall be affordable to a six-person household.
- f. The initial purchase price for all restricted ownership units shall be calculated so that the monthly carrying cost of the unit, including principal and interest (based on a mortgage loan equal to 95% of the purchase price and the Federal Reserve H.15 rate of interest), taxes, homeowner and private mortgage insurance and condominium or homeowner

association fees do not exceed 28% of the eligible monthly income of the appropriate size household as determined under N.J.A.C. 5:80-26.4, as may be amended and supplemented; provided, however, that the price shall be subject to the affordability average requirement of N.J.A.C. 5:80-26.3, as may be amended and supplemented.

- g. The initial rent for a restricted rental unit shall be calculated so as not to exceed 30% of the eligible monthly income of the appropriate size household, including an allowance for tenant paid utilities, as determined under N.J.A.C. 5:80-26.4, as may be amended and supplemented; provided, however, that the rent shall be subject to the affordability average requirement of N.J.A.C. 5:80-26.3, as may be amended and supplemented.
- h. 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. Income limits for all units 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 Township annually within 30 days of the publication of determinations of median income by HUD as follows:
  - (1) Regional income limits shall be established for the Region 5 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 Region 1. 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% 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% 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% 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.
  - (2) The income limits calculated each year shall be the result of applying the percentages set forth in Subsection **G.5.h(1)** above to HUD's determination of median income for the relevant fiscal year, and shall be utilized until the Township updates the income limits after HUD has published revised determinations of median income for the next fiscal year.
  - (3) 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 Township annually by taking the percentage increase of the income limits calculated pursuant to Subsection **G.5.h(1)** 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. The rent of very-low-, low- and moderate-income units may be increased annually based on the permitted percentage increase in the Housing Consumer Price Index for the United States. This increase shall not exceed 9% in any one year. Rents for units constructed pursuant to low-income housing tax credit regulations shall be indexed pursuant to the regulations governing low-income housing tax credits.

#### H. Utilities.

1. Affordable units shall utilize the same type of heating source as market-rate units within an inclusionary development.
  2. Tenant-paid utilities included in the utility allowance shall be set forth in the lease and shall be consistent with the utility allowance approved by DCA for its Section 8 program.
- I. Occupancy standards. In referring certified households to specific restricted units, the Administrative Agent shall, to the extent feasible and without causing an undue delay in the occupancy of a unit, strive to:
1. Provide an occupant for each bedroom;
  2. Provide children of different sexes with separate bedrooms;
  3. Provide separate bedrooms for parents and children; and
  4. Prevent more than two persons from occupying a single bedroom.
- J. 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 section for a period of at least 30 years, until the Township 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.
  2. Rehabilitated owner-occupied housing units that are improved to code standards shall be subject to affordability controls for a period of 10 years.
  3. The affordability control period for a restricted ownership unit shall commence on the date the initial certified household takes title to the unit.
  4. 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 nonrestricted, fair market value of the unit based on either an appraisal or the unit's equalized assessed value without the restrictions in place.
  5. At the time of the initial sale of the unit, 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 nonexempt sale after the unit's release from the restrictions set forth in this section, an amount equal to the difference between the unit's nonrestricted 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.
  6. The affordability controls set forth in this section shall remain in effect despite the entry and enforcement of any judgment of foreclosure with respect to restricted ownership units.
  7. 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 following the removal of the restrictions provided under N.J.A.C. 5:80-26.5(a), as may be amended and supplemented.
- K. 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:
    - a. The initial purchase price for a restricted ownership unit shall be approved by the Administrative Agent.

- b. The Administrative Agent shall approve all resale prices, in writing and in advance of the resale, to assure compliance with the foregoing standards.
  - c. The master deeds of inclusionary developments shall provide no distinction between the condominium or homeowner association fees and special assessments paid by low-and moderate-income purchasers and those paid by market-rate purchasers.
  - d. The owners of restricted ownership units may apply to the Administrative Agent to increase the maximum sales price for the unit on the basis of anticipated capital improvements. Eligible capital improvements shall be those that render the unit suitable for a larger household or the addition of a bathroom. See Subsection **M**.
- L. 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% of median income and moderate-income ownership units shall be reserved for households with a gross household income less than 80% of median income.
  2. A certified household that purchases a restricted ownership unit must occupy it as the certified household's principal residence and shall not lease the unit; provided, however, that the Administrative Agent may permit the owner of a restricted ownership unit, upon application and a showing of hardship, to lease the restricted unit to a certified household for a period not to exceed one year.
  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% of the household's eligible monthly income.
- M. Limitations on indebtedness secured by ownership unit; subordination.
1. Prior to incurring any indebtedness to be secured by a restricted ownership unit, the owner shall apply to the Administrative Agent for a determination, in writing, that the proposed indebtedness complies with the provisions of this section, and the Administrative Agent shall issue such determination prior to the owner incurring such indebtedness.
  2. With the exception of a first purchase money mortgage, neither an owner nor a lender shall at any time cause or permit the total indebtedness secured by a restricted ownership unit to exceed 95% of the maximum allowable resale price of the unit, as such price is determined by the Administrative Agent in accordance with N.J.A.C. 5:80-26.6(b).
- N. 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 unit on the basis of capital improvements made since the purchase of the unit. Eligible capital improvements shall be those that render the unit suitable for a larger household or that add an additional bathroom. In no event shall the maximum sales price of an improved housing unit exceed the limits of affordability for the larger household.
  2. Upon the resale of a restricted ownership unit, all items of property that are permanently affixed to the unit or were included when the unit was initially restricted (for example, refrigerator, range, washer, dryer, dishwasher, wall-to-wall carpeting) shall be included in the maximum allowable resale price. Other items may be sold to the purchaser at a reasonable price that has been approved by the Administrative Agent at the time of the signing of the agreement to purchase. The purchase of central air conditioning installed subsequent to the initial sale of the unit, and not included in the base price, may be made a condition of the unit resale provided the price, which shall be subject to ten-year, straight-line depreciation, has been approved by

the Administrative Agent. Unless otherwise approved by the Administrative Agent, the purchase of any property other than central air conditioning shall not be made a condition of the unit resale. The owner and the purchaser must personally certify at the time of closing that no unapproved transfer of funds for the purpose of selling and receiving property has taken place at the time of or as a condition of resale.

O. 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 section for a period of at least 30 years, until the Township 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, as may be amended and supplemented.
  - a. Restricted rental units created as part of developments receiving 9% low-income housing tax credits must comply with a control period of not less than thirty-year compliance period plus a fifteen-year extended use period.
2. Rehabilitated renter-occupied housing units that are improved to code standards shall be subject to affordability controls for a period of 10 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 recorded by the developer or seller with the Records Office of the County of Burlington. A copy of the filed, recorded document shall be provided to the Administrative Agent within 30 days of the receipt of a certificate of occupancy.
4. A restricted rental unit shall remain subject to the affordability controls of this section 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.

P. Rent restrictions for rental units; leases.

1. A written lease shall be required for all restricted rental units and tenants shall be responsible for security deposits and the full amount of the rent as stated on the lease. A copy of the current lease for each restricted rental unit shall be provided to the Administrative Agent.
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 5% of the monthly rent of the applicable restricted unit and shall be payable to the Administrative Agent to be applied to the costs of administering the controls applicable to the unit as set forth in this section.

Q. 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% of median income.



- b. Low-income rental units shall be reserved for households with a gross household income less than or equal to 50% of median income.
  - c. Moderate-income rental units shall be reserved for households with a gross household income less than 80% 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 household, low-income household or a moderate-income household, as applicable to the unit, and the rent proposed for the unit does not exceed 35% (40% for age-restricted units) of the household's eligible monthly income as determined pursuant to N.J.A.C. 5:80-26.16, as may be amended and supplemented; provided, however, that this limit may be exceeded if one or more of the following circumstances exists:
  - a. The household currently pays more than 35% (40% for households eligible for age-restricted units) of its gross household income for rent, and the proposed rent will reduce its housing costs;
  - b. The household has consistently paid more than 35% (40% for households eligible for age-restricted units) of eligible monthly income for rent in the past and has proven its continuing 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 Subsection **Q.1.a** through **2.e** above with the Administrative Agent, who shall counsel the household on budgeting.
- R. Conversions. Each housing unit created through the conversion of a nonresidential structure shall be considered a new housing unit and shall be subject to the affordability controls for a new housing unit.
- S. Municipal Housing Liaison.
  - 1. State regulations require the Township to appoint a specific municipal employee to serve as a Municipal Housing Liaison responsible for administering the affordable housing program, including affordability controls, the Affirmative Marketing Plan, monitoring and reporting, and, where applicable, supervising any contracted Administrative Agent. Medford shall adopt an ordinance creating the position of Municipal Housing Liaison; and shall adopt a resolution appointing a 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 Superior Court unless such approval is delegated by the Court to COAH and shall be duly qualified 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 for Medford, including the following responsibilities which may not be contracted out to the Administrative Agent:
    - a. Serving as Medford'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 Medford's Fair Share Plan;
    - c. Compiling, verifying and submitting annual monitoring reports as required by the Court;

- 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 as offered or approved by the Court.
- T. Administrative Agent. Subject to the approval of the Superior Court, the Township shall designate by resolution of the Township Council one or more Administrative Agent(s) to administer newly constructed affordable units in accordance with N.J.A.C. 5:93 and UHAC. An operating manual shall be provided by the Administrative Agent(s) to be adopted by resolution of the Township Council and subject to approval of the Superior Court or its designee. The operating manuals shall be available for public inspection in the office of the Township Clerk and in the office(s) of the Administrative Agent(s). The Municipal Housing Liaison shall supervise the contracting Administrative Agent(s). 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 the Affirmative Marketing Plan of the Township 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 noneligibility;
    - 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 Appendixes 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; and
    - f. Employing a random selection process as provided in the Affirmative Marketing Plan of the Township when referring households for certification to affordable units.
  - 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 Burlington 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 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 rental; and
  - b. Instituting and maintaining an effective means of communicating information to low- and moderate-income households regarding the availability of restricted units for resale or 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 section;
  - 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 acknowledgment 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. The posting annually in all rental properties, including legal two-family homes, of a notice as to the maximum permitted rent together with the telephone number of the Administrative Agent where complaints of excess rent or other charges can be made;
  - 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 or other appropriate municipal fund approved by the DCA; and
  - f. Creating and publishing a written operating manual, as approved by COAH, 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 for their submission by the Municipal Housing Liaison to the Court, as required by the Court.



- c. The Administrative Agent shall attend continuing education sessions on affordability controls, compliance monitoring, and affirmative marketing as offered or approved by the Court.

U. Affirmative marketing requirements.

1. The Township shall adopt by resolution an Affirmative Marketing Plan, subject to approval of the Court, that is compliant with N.J.A.C. 5:80-26.15, as may be amended and supplemented.
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 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 marketing activities toward COAH Housing Region 5 and is required to be followed throughout the period of restriction.
  - a. The Township shall add to the list of community and regional organizations in its Affirmative Marketing Plan, pursuant to N.J.A.C. 5:80-26.15(f)(5), Fair Share Housing Center; the New Jersey State Conference of the NAACP; the Southern Burlington County, Willingboro, Camden County and Camden County East Branches of the NAACP; and the Latino Action Network. The Township also agrees to require any other entities, including developers or persons or companies retained to do affirmative marketing, to comply with this subsection.
3. The Affirmative Marketing Plan shall provide a preference for veterans of military service as permitted by law. It shall also provide regional preference for all households that live and/or work in COAH Housing Region 5, comprised of Burlington, Camden and Gloucester Counties.
4. The municipality has the ultimate responsibility for adopting the Affirmative Marketing Plan and for the proper administration of the Affirmative Marketing Program, including initial sales and rentals and resales and rerentals. The Administrative Agent designated by the Township of Medford shall implement the Affirmative Marketing Plan to assure the affirmative marketing of all affordable units.
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 Plan shall describe the media to be used in advertising and publicizing the availability of housing. In implementing the Affirmative Marketing Plan, the Administrative Agent shall consider the use of language translations where appropriate.
7. The affirmative marketing process for available affordable units shall begin at least four months prior to the expected date of occupancy.
8. Applications for affordable housing shall be available in several locations, including, at a minimum, the County Administration Building and/or the County Library for each county within the housing region; the municipal administration building and the municipal library in the municipality in which the units are located; and the developer's rental office. Applications shall be mailed to prospective applicants upon request.
9. The costs of advertising and affirmative marketing of the affordable units shall be the responsibility of the developer, sponsor or owner.

V. 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 Township shall have all remedies provided at law or equity, including but not limited to foreclosure, tenant eviction, a requirement for household

recertification, acceleration of all sums due under a mortgage, recuperation of any funds from a sale in violation of the regulations, injunctive relief to prevent further violation of the regulations, entry on the premises, and specific performance.

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(s) against the owner, developer or tenant for any violation that remains uncured for a period of 60 days after service of the written notice:
  - a. The Township may file a court action in Superior Court pursuant to N.J.S.A. 2A:58-11 alleging a violation or violations of the regulations governing the affordable housing unit. If the owner, developer or tenant is adjudged by the Court to have violated any provision of the regulations governing affordable housing units, the owner, developer or tenant shall be subject to one or more of the following penalties, at the discretion of the Superior Court:
    - (1) A fine of not more than \$500 per day or imprisonment for a period not to exceed 90 days, or both, provided that each and every day that the violation continues or exists shall be considered a separate and specific violation of these provisions and not a continuation of the initial offense;
    - (2) In the case of an owner who has rented a low- or moderate-income unit in violation of the regulations governing affordable housing units, payment into the Township of Medford Affordable Housing Trust Fund of the gross amount of rent illegally collected;
    - (3) In the case of an owner who has rented a low- or moderate-income unit in violation of the regulations governing affordable housing units, payment of an innocent tenant's reasonable relocation costs, as determined by the Superior Court.
  - b. The Township may file a court action in the Superior Court seeking a judgment that would result in the termination of the owner's equity or other interest in the unit, in the nature of a mortgage foreclosure. Any such judgment shall be enforceable as if the same were a judgment of default of the first purchase money mortgage and shall constitute a lien against the low- or moderate-income unit.
    - (1) The judgment shall be enforceable, at the option of the Township, by means of an execution sale by the Sheriff, at which time the low- and moderate-income unit of the violating owner shall be sold at a sale price which is not less than the amount necessary to fully satisfy and pay off any first purchase money mortgage and prior liens and the costs of the enforcement proceedings incurred by the municipality, including attorney's fees. The violating owner shall have his right to possession terminated as well as his title conveyed pursuant to the Sheriff's sale.
    - (2) 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 Township 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 Township in full as aforesaid, the violating owner shall be personally responsible for the full extent of such deficiency, in addition to any and all costs incurred by the municipality in connection with collecting such deficiency. In the event that a surplus remains after satisfying all of the above, such surplus, if any, shall be placed in escrow by the Township 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 Township, whether such balance shall be paid to the owner or forfeited to the municipality.

- (3) Foreclosure by the Township 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.
- (4) 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 Township 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.
- (5) 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.
- (6) The owner shall remain fully obligated, responsible and liable for complying with the terms and restrictions of governing affordable housing units such time as title is conveyed from the owner.

#### W. Reporting.

1. On the first anniversary of the entry of the execution of the Township's agreement with FSHC in IMO Application of the Township of Medford, Docket No. MID-L-3929-15, and every anniversary thereafter through the end of the repose period, the Township shall provide annual reporting of its Affordable Housing Trust Fund activity to the DCA, COAH or Local Government Services, or other entity designated by the State of New Jersey, with a copy provided to FSHC and posted on the municipal website, using forms developed for this purpose by DCA, COAH or Local Government Services. 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. On the first anniversary of the execution of the Township's agreement with FSHC in IMO Application of the Township of Medford, Docket No. MID-L-3929-15, and every anniversary thereafter through the end of the repose period, the Township shall provide annual reporting of the status of all affordable housing activity within the municipality through posting on the municipal website, with copies provided to FSHC, using forms previously developed for this purpose by COAH or any other forms endorsed by the Court-appointed Special Master and FSHC.
3. For the midpoint realistic opportunity review due on July 1, 2020, as required pursuant to N.J.S.A. 52:27D-313, the Township shall post on its municipal website, with copies provided to FSHC, a status report as to its implementation of its Plan and an analysis of whether any unbuilt sites or unfulfilled mechanisms continue to present a realistic opportunity. Such posting shall invite any interested party to submit comments to the Township, with copies provided to FSHC, 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.

4. 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 entry of the order granting Medford a final judgment of compliance and repose in IMO Application of the Township of Medford, Docket No. MID-L-3929-15, and every third year thereafter, the Township will post on its municipal website, with copies provided to FSHC, a status report as to its satisfaction of its very-low-income requirements, including the family very-low-income requirements. Such posting shall invite any interested party to submit comments to the Township, with copies provided to FSHC, on the issue of whether the municipality has complied with its very-low-income housing obligation.
- X. Appeals. Appeals from all decisions of an Administrative Agent appointed pursuant to this section shall be filed, in writing, with the Superior Court unless the Superior Court delegates this responsibility.
- Y. Repealer. All ordinances or parts of ordinances inconsistent herewith are repealed as to such inconsistencies.
- Z. Severability. If any section, subsection, sentence, clause, phrase or portion of this section is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions thereof.
- AA. Effective date. This section shall take effect upon passage and publication as provided by law.

**Appendix E          Current Medford Development Fee Ordinance**



*Township of Medford, NJ  
Thursday, May 29, 2025*

## Chapter DR. Development Regulations

### SECTION 900. Fees, Guarantees, Inspections and Off-Tract Improvements

#### § 905. Development Fees for Affordable Housing.

[Ord. No. 1999-10 § 1; Ord. No. 2000-2 §§ 1, 2; Ord. No. 2005-9 §§ 1-3; Ord. No. 2008-3; amended 4-13-2010 by Ord. No. 2010-6; 8-18-2020 by Ord. No. 2020-17]

##### A. 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 (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 40:55D-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 a court of competent jurisdiction and have an approved spending plan may retain fees collected from nonresidential development.
3. Pursuant to the March 10, 2015, Supreme Court Order, the Court transferred all functions, powers, and duties of COAH to the courts.
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 low- and moderate-income housing.

##### B. Basic requirements.

1. This section shall not become effective until approved by the Court pursuant to N.J.A.C. 5:93-8.2.
2. The Township of Medford shall not spend development fees until the Court has approved a plan for spending such fees in conformance with N.J.A.C. 5:93-5.1(c).

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

###### **AFFORDABLE HOUSING DEVELOPMENT**

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

###### **COAH or the COUNCIL**

The New Jersey Council on Affordable Housing established under the Fair Housing Act<sup>[1]</sup> which previously had primary jurisdiction for the administration of housing obligations in accordance with sound regional planning consideration in the state.

## DEVELOPER

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

## DEVELOPMENT FEE

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

## EQUALIZED ASSESSED VALUE

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 (N.J.S.A. 54:1-35a through 54:1-35c).

## GREEN BUILDING STRATEGIES

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

[1] *Editor's Note: See N.J.S.A. 52:27D-301 et seq.*

### D. Residential development fees.

#### 1. Imposed fees.

- a. Within all Township zoning district(s), residential developers, except for developers of the types of development specifically exempted below, shall pay a fee of 1.5% of the equalized assessed value for residential development provided no increased density is permitted.
- b. When an increase in residential density pursuant to N.J.S.A. 40:55D-70d(5) (known as a density or "d" variance) has been approved, developers shall be required to pay a development fee of 6% of the equalized assessed value for each additional unit that may be realized, except that this provision shall not be applicable to a development that will include a set-aside of affordable housing units. 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 applicable development fee percentage shall be vested on the date that the building permit is issued.
- c. Owner-occupied residential structures demolished and replaced as a result of a fire, flood, or natural disaster shall be exempt from paying a development fee.

- d. Development fees shall be imposed and collected when an existing structure is demolished and replaced. The development fee shall be calculated on the increase in the equalized assessed value of the improved structure.
- e. Development fees shall be imposed and collected when an existing structure undergoes a change to a more intense use, which requires the issuance of a certificate of occupancy (for example, when a single-family home is converted to a two-family home or a single-family home is converted to an apartment building). The development fee shall be calculated on the increase in the equalized assessed value of the improved structure.
- f. Development fees shall be imposed and collected when a certificate of occupancy is issued for a new residential unit on a newly created lot that is the result of a subdivision. The development fee shall be calculated on the equalized assessed value of the land and improvements.
- g. Additions to existing homes and improvements such as decks, patios and like shall be exempt from the payment of a development fee.

E. Nonresidential development fees.

1. Imposed fees.

- a. Within all zoning districts, nonresidential developers, except for developers of the types of development specifically exempted, shall pay a fee equal to 2.5% of the equalized assessed value of the land and improvements for all new nonresidential construction on an unimproved lot or lots.
- b. Nonresidential developers, except for developers of the types of development specifically exempted herein, shall also pay a fee equal to 2.5% of the increase in equalized assessed value resulting from any additions to existing structures to be used for nonresidential purposes.
- c. Development fees shall be imposed and collected when an existing structure is demolished and replaced. The development fee of 2.5% shall be calculated on the difference between the equalized assessed value of the preexisting land and improvements and the equalized assessed value of the newly improved structure, i.e., land and improvements, at the time the final certificate of occupancy is issued. If the calculation required under this section results in a negative number, the nonresidential development fee shall be zero.

2. Eligible exactions, ineligible exactions and exemptions for nonresidential development.

- a. The nonresidential portion of a mixed-use inclusionary or market rate development shall be subject to the 2.5% development fee, unless otherwise exempted below.
- b. The 2.5% fee shall not apply to an increase in equalized assessed value resulting from alterations, change in use within the existing building footprint, reconstruction, renovations and repairs.
- c. Nonresidential developments shall be exempt from the payment of nonresidential development fees in accordance with the exemptions required pursuant to P.L. 2008, c. 46, as specified in the Form N-RDF "State of New Jersey Non-Residential Development Certification/Exemption Form." Any exemption claimed by a developer shall be substantiated by that developer.
- d. A developer of a nonresidential development exempted from the nonresidential development fee pursuant to P.L. 2008, c. 46, shall be subject to the development fee at such time as the basis for the exemption no longer applies, and shall make the payment of the nonresidential development fee, in that event, within three years after that event or after the issuance of the final certificate of occupancy for the nonresidential development, whichever is later.

- e. If a property which was exempted from the collection of a nonresidential development fee thereafter ceases to be exempt from property taxation, the owner of the property shall remit the fees required pursuant to this section within 45 days of the termination of the property tax exemption. Unpaid nonresidential development fees under these circumstances may be enforceable by the Township of Medford as a lien against the real property of the owner.

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 nonresidential 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 nonresidential development shall complete Form N-RDF as per the instructions provided. The construction official shall verify the information submitted by the nonresidential developer as per the instructions provided in 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 shall notify 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 associated with the development; calculate the development fee; and thereafter notify the developer of the amount of the fee.
7. Should the Township of Medford fail to determine or notify the developer of the amount of the development fee within 10 business days of the request for final inspection, the developer may estimate the amount due and pay that estimated amount consistent with the dispute process set forth in Subsection b of Section 37 of P.L. 2008, c. 46 (N.J.S.A. 40:55D-8.6).
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 the Township of Medford. Appeals from a determination of the Board may be made to the tax court in accordance with the provisions of the State Tax Uniform Procedure Law, N.J.S.A. 54:48-1 et seq., within 90 days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.
  - b. A developer may challenge nonresidential development fees imposed by filing a challenge with the Director of the Division of Taxation. Pending a review and determination by the Director, which shall be made within 45 days of receipt of the challenge, collected fees shall be placed in an interest-bearing escrow account by the Township of Medford.

Appeals from a determination of the Director may be made to the tax court in accordance with the provisions of the State Tax Uniform Procedure Law, N.J.S.A. 54:48-1 et seq., within 90 days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.

G. Affordable Housing Trust Fund.

1. There is a separate, interest-bearing housing trust fund to be maintained by the Chief Financial Officer of the Township for the purpose of depositing development fees collected from residential and nonresidential 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 10% of the adaptable entrances in a townhouse or other multistory attached development accessible;
  - c. Net rental income (after payment of expenses) 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 the Township of Medford's affordable housing program.
3. Within seven days from the opening of the trust fund account, the Township of Medford shall provide COAH and/or the Department of Community Affairs (DCA) with written authorization, in the form of a three-party escrow agreement between the Township, the bank, and COAH and/or DCA, to permit COAH and/or DCA to direct the disbursement of the funds as provided for in N.J.A.C. 5:93-8.19.
4. All interest accrued in the housing trust fund shall only be used to fund 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 Court. Funds deposited in the housing trust fund may be used for any activity approved by the Court to address the Township of Medford'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 and market to affordable programs, conversion of existing nonresidential buildings to create new affordable units, green building strategies designed to be cost saving and in accordance with accepted national or state standards, purchase of land for affordable housing, improvement of land to be used for affordable housing, extensions or improvements of roads and infrastructure to affordable housing sites, financial assistance designed to increase affordability, administration necessary for implementation of the Housing Element and Fair Share Plan, or any other activity as permitted pursuant to N.J.A.C. 5:93-8.16 and specified in the approved spending plan.
2. Funds shall not be expended to reimburse the Township of Medford for past affordable housing activities.
3. At least 30% of all development fees collected and interest earned shall be used to provide affordability assistance to low- and moderate-income households in affordable units included in