

**CITY OF ABSECON**

**ORDINANCE NO. 20-2014**

**AN ORDINANCE OF THE CITY OF ABSECON, COUNTY OF ATLANTIC AND STATE OF NEW JERSEY PROVIDING CHAPTER 225 "AFFORDABLE HOUSING" OF THE CODE OF THE CITY OF ABSECON TO ADDRESS THE REQUIREMENTS OF THE COUNCIL ON AFFORDABLE HOUSING AND UNIFORM HOUSING AFFORDABILITY CONTROLS**

**WHEREAS**, the New Jersey Council on Affordable Housing ("COAH") has promulgated rules, set forth at *N.J.A.C.* 5:96 and 5:97, concerning the substantive and procedural requirements for obtaining a judgment of compliance and repose of the City's Housing Element and Fair Share Plan from the Superior Court; and

**WHEREAS**, on May 15, 2014, the NJ Superior Court granted the City a final judgment of compliance and repose; and

**WHEREAS**, as part of its review and grant of the City's final judgment of compliance and repose, the NJ Superior Court requires that the City's affordable housing ordinances be updated and brought into compliance with its current rules.

**NOW THEREFORE, BE IT ORDAINED** by the City Council of the City of Absecon, County of Atlantic and State of New Jersey, that the "Comprehensive Land Development Ordinance of the City of Absecon" is hereby amended as follows:

**Section 1. Chapter 225, entitled "Affordable Housing, added.** New Chapter 225 "Affordable Housing" shall read as follows:

**Chapter 225  
AFFORDABLE HOUSING**

**ARTICLE I  
General Program Purposes, Procedures**

**§ 225-1. Affordable Housing Obligation.**

- A. This section of the City's Comprehensive Land Development Ordinance sets forth regulations regarding the low and moderate income housing units in the City consistent with the provisions known as the "Substantive Rules of the New Jersey Council on Affordable Housing", *N.J.A.C.* 5:97 et seq., the Uniform Housing Affordability Controls ("UHAC"), *N.J.A.C.* 5:80-26.1 et seq., and the City's constitutional obligation to provide a fair share of affordable housing for low and moderate income households. In addition, this section applies requirements for very low income housing as established in P.L. 2008, c.46 (the "Roberts Bill").
- B. This Ordinance is intended to assure that low- and moderate-income units ("affordable units") are created with controls on affordability over time and that low- and moderate-income households shall occupy these units. This Ordinance shall apply except where inconsistent with applicable law.

- C. The City of Absecon Planning Board has adopted a Housing Element and Fair Share Plan pursuant to the Municipal Land Use Law at *N.J.S.A. 40:55D-1*, et seq. The Plan has also been endorsed by the City Council of the City of Absecon. The Fair Share Plan describes the ways the City shall address its fair share for low- and moderate-income housing as determined by the Council on Affordable Housing (COAH) and documented in the City's Housing Element and Fair Share Plan.
- D. This Ordinance implements and incorporates the Fair Share Plan and addresses the requirements of *N.J.A.C. 5:97*, as may be amended and supplemented.
- E. The City shall file monitoring reports with the NJ Superior Court and COAH in accordance with *N.J.A.C. 5:96*, tracking the status of the implementation of the Housing Element and Fair Share Plan. Any plan evaluation report of the Housing Element and Fair Share Plan and monitoring prepared by COAH in accordance with *N.J.A.C. 5:96* shall be available to the public at the City of Absecon Municipal Building, 500 Mill Road, Absecon, New Jersey, or from COAH at 101 South Broad Street, Trenton, New Jersey.

**§ 225-2. Definitions.** As used herein the following terms shall have the following meanings:

“Accessory apartment” means a self-contained residential dwelling unit with a kitchen, sanitary facilities, sleeping quarters and a private entrance, which is created within an existing home, or through the conversion of an existing accessory structure on the same site, or by an addition to an existing home or accessory building, or by the construction of a new accessory structure on the same site.

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

“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, *N.J.A.C. 5:96*, *N.J.A.C. 5:97* and *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 in *N.J.A.C. 5:97-9*; 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 Housing Element and Fair Share Plan, and includes, but is not limited to, an inclusionary development, a municipal construction project or a 100% affordable development.

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

“Affordable unit” means a housing unit proposed or created pursuant to the Act, credited pursuant to *N.J.A.C. 5:97-4*, and/or funded through an affordable housing trust fund.

“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% of the units are occupied by one person that is 55 years or older; or 3) the development has been designated by the Secretary of the U.S. Department of Housing and Urban Development as “housing for older persons” as defined in Section 807(b)(2) of the Fair Housing Act, 42 U.S.C. § 3607.

“Assisted living residence” 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 Council on Affordable Housing, which is in, but not of, the Department of Community Affairs of the State of New Jersey, that was established under the New Jersey Fair Housing Act (*N.J.S.A. 52:27D-301* et seq.).

“DCA” means the State of New Jersey Department of Community Affairs.

“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.

"Fair Share Plan" means the plan that describes the mechanisms, strategies and the funding sources, if any, by which the City proposes to address its affordable housing obligation as established in the Housing Element, including the draft ordinances necessary to implement that plan, and addresses the requirements of *N.J.A.C. 5:97-3*.

"Housing Element" means the portion of the City's Master Plan, required by the Municipal Land Use Law ("MLUL"), *N.J.S.A. 40:55D-28b(3)* and the Act, that includes the information required by *N.J.A.C. 5:97-2.3* and establishes the City's fair share obligation.

“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% 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 COAH.

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

“Moderate-income unit” 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% of the regional median as defined by COAH’s adopted Regional Income Limits published annually by COAH.

“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% 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.

### **§ 225-3. Affordable Housing Programs**

The City of Absecon has determined that it will use the following mechanisms to satisfy its affordable housing obligations:

A. Rehabilitation program.

1. The City of Absecon’s rehabilitation program shall be designed to renovate deficient housing units occupied by low- and moderate-income households such that, after rehabilitation, these units will comply with the New Jersey State Housing Code pursuant to *N.J.A.C. 5:28*.
2. Both owner occupied and renter occupied units shall be eligible for rehabilitation funds.
3. All rehabilitated units shall remain affordable to low- and moderate-income households for a period of 10 years (the control period). For owner occupied units the control period will be enforced with a lien and for renter occupied units the control period will be enforced with a deed restriction.
4. The City of Absecon shall dedicate a minimum of \$10,000 for each unit to be rehabilitated through this program, reflecting the minimum hard cost of rehabilitation for each unit.
5. The City of Absecon shall adopt a resolution committing to fund any shortfall in the rehabilitation programs for the City of Absecon.
6. The City of Absecon shall designate, subject to the approval of the Department, one or more Administrative Agents to administer the rehabilitation program in accordance with *N.J.A.C. 5:96* and *N.J.A.C. 5:97*. The Administrative Agent(s) shall provide a rehabilitation manual for the owner occupancy rehabilitation program and a rehabilitation manual for the rental occupancy rehabilitation program to be adopted by resolution of the governing body and subject to approval of the Department. Both rehabilitation manuals shall be available for public inspection in the Office of the Municipal Clerk and in the office(s) of the Administrative Agent(s).
7. Units in a rehabilitation program shall be exempt from *N.J.A.C. 5:97-9* and Uniform Housing Affordability Controls (UHAC), but shall be administered in accordance with the following:
  - i. If a unit is vacant, upon initial rental subsequent to rehabilitation, or if a renter-occupied unit is re-rented prior to the end of controls on affordability, the deed restriction shall require the unit to be rented to a low- or moderate-income household at an affordable rent and affirmatively marketed pursuant to *N.J.A.C. 5:97-9* and UHAC.
  - ii. If a unit is renter-occupied, upon completion of the rehabilitation, the maximum rate of rent shall be the lesser of the current rent or the maximum permitted rent pursuant to *N.J.A.C. 5:97-9* and UHAC.
  - iii. Rents in rehabilitated units may increase annually based on the standards in *N.J.A.C. 5:97-9*.
  - iv. Applicant and/or tenant households shall be certified as income-eligible in accordance with *N.J.A.C. 5:97-9* and UHAC, except that households in owner occupied units shall be exempt from the regional asset limit.

**§ 225-4. Inclusionary Zoning**

A. Presumptive densities and set-asides. To ensure the efficient use of land through compact forms of development and to create realistic opportunities for the construction of affordable housing, inclusionary zoning permits minimum presumptive densities and presumptive maximum affordable housing set-asides as follows:

1. For Sale Developments

i. Inclusionary zoning in Planning Area 1 permits residential development at a presumptive minimum gross density of eight units per acre and a presumptive maximum affordable housing set-aside of 25 percent of the total number of units in the development;

The zoning of the Train Station Overlay zone provides for a 20 percent set-aside for restricted units and a density of 35 units per acre.

2. Rental Developments

i. Inclusionary zoning permits a presumptive minimum density of 12 units per acre and a presumptive maximum affordable housing set-aside of 20 percent of the total number of units in the development and the zoning provides for at least 10 percent of the affordable units to be affordable to households earning 30 percent or less of the area median income for the Housing Region.

The zoning of the Multi-Unit Rental Development (MURD) zone provides for a 100 percent set-aside for restricted units and a density of 10 units per acre.

B. Phasing. In inclusionary developments the following schedule shall be followed:

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

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

D. Payments-in-lieu and off-site construction. The standards for the collection of Payments-in-Lieu of constructing affordable units or standards for constructing affordable units off-site, shall be in accordance with N.J.A.C. 5:97-6.4.

E. Utilities. Affordable units shall utilize the same type of heating source as market units within the affordable development.

**§ 225-5. New Construction.** The following requirements shall apply to all new or planned developments that contain low- and moderate-income housing units.

A. Phasing. Final site plan or subdivision approval shall be contingent upon the affordable housing development meeting the following phasing schedule for low and moderate income units whether developed in a single phase development, or in a multi-phase development:

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

- B. Design. In inclusionary developments, to the extent possible, low- and moderate- income units shall be integrated with the market units.
- C. Payments-in-lieu and off-site construction. The standards for the collection of payments-in-lieu of constructing affordable units or standards for constructing affordable units off-site, shall be in accordance with *N.J.A.C. 5:97-6.4*.
- D. Utilities. Affordable units shall utilize the same type of heating source as market units within the affordable development.
- E. Low/Moderate Split and Bedroom Distribution of Affordable Housing Units:
  - 1. The fair share obligation shall be divided equally between low- and moderate-income units, except that where there is an odd number of affordable housing units, the extra unit shall be a low income unit.
  - 2. In each affordable development, at least 50% of the restricted units within each bedroom distribution shall be low-income units.
  - 3. Within rental developments, of the total number of affordable rental units, at least 13% shall be affordable to very low income households.
  - 4. Affordable developments that are not age-restricted shall be structured in conjunction with realistic market demands such that:
    - (a) The combined number of efficiency and one-bedroom units shall be no greater than 20% of the total low- and moderate-income units;
    - (b) At least 30% of all low- and moderate-income units shall be two bedroom units;
    - (c) At least 20% of all low- and moderate-income units shall be three bedroom units; and
    - (d) The remaining units may be allocated among two and three bedroom units at the discretion of the developer.
  - 5. Affordable developments that are age-restricted shall be structured such that the number of bedrooms shall equal the number of age-restricted low- and moderate-income units within the inclusionary development. The standard may be met by having all one-bedroom units or by having a two-bedroom unit for each efficiency unit.
- F. Accessibility Requirements:
  - 1. The first floor of all restricted townhouse dwelling units and all restricted units in all other multistory buildings shall be subject to the technical design standards of the Barrier Free Subcode, *N.J.A.C. 5:23-7* and *N.J.A.C. 5:97-3.14*.
  - 2. All restricted townhouse dwelling units and all restricted units in other multistory buildings in which a restricted dwelling unit is attached to at least one other dwelling unit shall have the following features:
    - (a) An adaptable toilet and bathing facility on the first floor;

- (b) An adaptable kitchen on the first floor;
- (c) An interior accessible route of travel on the first floor;
- (d) An interior accessible route of travel shall not be required between stories within an individual unit;
- (e) An adaptable room that can be used as a bedroom, with a door or the casing for the installation of a door, on the first floor; and
- (f) An accessible entranceway as set forth at P.L. 2005, c. 350 (*N.J.S.A. 52:27D-311a et seq.*) and the Barrier Free Subcode, *N.J.A.C. 5:23-7* and *N.J.A.C. 5:97-3.14*, or evidence that the City has collected funds from the developer sufficient to make 10% of the adaptable entrances in the development accessible:

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

(2) To this end, the builder of restricted units shall deposit funds within the City of Absecon's affordable housing trust fund sufficient to install accessible entrances in 10% of the affordable units that have been constructed with adaptable entrances.

(3) The funds deposited under paragraph (2) herein, shall be used by the City for the sole purpose of making the adaptable entrance of any affordable unit accessible when requested to do so by a person with a disability who occupies or intends to occupy the unit and requires an accessible entrance.

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

(5) Once the Construction Official has determined that the design plan to convert the unit entrances from adaptable to accessible meet the requirements of the Barrier Free Subcode, *N.J.A.C. 5:23-7* and *N.J.A.C. 5:97-3.14*, and that the cost estimate of such conversion is reasonable, payment shall be made to the City of Absecon's affordable housing trust fund in care of the Chief Financial Officer who shall ensure that the funds are deposited into the affordable housing trust fund and appropriately earmarked.

(6) Full compliance with the foregoing provisions shall not be required where an entity can demonstrate that it is site impracticable to meet the requirements. Determinations of site impracticability shall be in compliance with the Barrier Free Subcode, *N.J.A.C. 5:23-7* and *N.J.A.C. 5:97-3.14*.

G. 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 and in COAH, utilizing the regional income limits established by COAH.



2. The maximum rent for restricted rental units within each affordable development shall be affordable to households earning no more than 60% of median income, and the average rent for restricted low- and moderate-income units shall be affordable to households earning no more than 52% of median income.
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.
  - (a) At least 13% of all low- and moderate-income rental units shall be affordable to households earning no more than 30% 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% of median income, and each affordable development must achieve an affordability average of 55% for restricted ownership units; in achieving this affordability average, moderate-income ownership units must be available for at least three different prices for each bedroom type, and low-income ownership units must be available for at least two different prices for each bedroom type.
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 met:
  - (a) A studio or efficiency unit 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 met:
  - (a) A studio or efficiency unit 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% 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.

8. The initial rent for a restricted rental unit shall be calculated so as not to exceed 30% of the eligible monthly income of the appropriate household size as determined under *N.J.A.C. 5:80-26.4*, as may be amended and supplemented; provided, however, that the rent shall be subject to the affordability average requirement of *N.J.A.C. 5:80-26.3*, as may be amended and supplemented.
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 of low- and moderate-income units may be increased annually based on the percentage increase in the Housing Consumer Price Index for the United States. This increase shall not exceed 9% in any one year. Rents for units constructed pursuant to low- income housing tax credit regulations shall be indexed pursuant to the regulations governing low- income housing tax credits.
11. 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.

**§ 225-6. Condominium and Homeowners Association Fees.**

For any affordable housing unit that is part of a condominium association and/or homeowners association, the Master Deed shall reflect that the association fee assessed for each affordable housing unit shall be established at 100% of the market rate fee.

**§ 225-7. Reserved.**

**§ 225-8. Reserved.**

**§ 225-9. Reserved.**

**§ 225-10. Reserved.**

**§ 225-11. Reserved.**

**ARTICLE II  
Affordable Unit Controls and Requirements**

**§ 225-12. Purpose.**

The requirements of this section apply to all developments that contain affordable housing units, including any currently unanticipated future developments that will provide low- and moderate-income housing units.

**§ 225-13. Affirmative Marketing.**

- A. The City shall adopt by resolution an Affirmative Marketing Plan, subject to approval of COAH, compliant with *N.J.A.C. 5:80-26.15*, as may be amended and supplemented.

- B. The affirmative marketing plan is a regional marketing strategy designed to attract buyers and/or renters of all majority and minority groups, regardless of race, creed, color, national origin, ancestry, marital or familial status, gender, affectional or sexual orientation, disability, age or number of children to housing units which are being marketed by a developer, sponsor or owner of affordable housing. The affirmative marketing plan is also intended to target those potentially eligible persons who are least likely to apply for affordable units in that region. It is a continuing program that directs all marketing activities toward COAH Housing Region 6 and covers the period of deed restriction.
- C. The affirmative marketing plan shall provide a regional preference for all households that live and/or work in COAH Housing Region 6, comprised of Atlantic, Cape May, Cumberland and Salem counties.
- D. The Administrative Agent designated by the City shall assure the affirmative marketing of all affordable units is consistent with the Affirmative Marketing Plan for the municipality.
- E. In implementing the affirmative marketing plan, the Administrative Agent shall provide a list of counseling services to low- and moderate-income applicants on subjects such as budgeting, credit issues, mortgage qualification, rental lease requirements, and landlord/tenant law.
- F. The affirmative marketing process for available affordable units shall begin at least four months prior to the expected date of occupancy.
- G. The costs of advertising and affirmative marketing (including the contract with the Administrative Agent) of the affordable units shall be the responsibility of the developer, sponsor or owner, unless otherwise determined or agreed to by the City of Absecon.

**§ 225-14. Occupancy Standards.**

- A. In referring certified households to specific restricted units, to the extent feasible, and without causing an undue delay in occupying the unit, the Administrative Agent shall strive to:
  - 1. Provide an occupant for each bedroom;
  - 2. Provide children of different sex with separate bedrooms; and
  - 3. Prevent more than two persons from occupying a single bedroom.
- B. Additional provisions related to occupancy standards (if any) shall be provided in the municipal Operating Manual.

**§ 225-15. Selection of Occupants of Affordable Housing Units.**

- A. The administrative agent shall use a random selection process to select occupants of low- and moderate- income housing.
- B. A waiting list of all eligible candidates will be maintained in accordance with the provisions of *N.J.A.C. 5:80-26 et seq.*

**§ 225-16. Control Periods for Restricted Ownership Units and Enforcement Mechanisms.**

- A. Control periods for restricted ownership units shall be in accordance with *N.J.A.C. 5:80-26.5*, and each restricted ownership unit shall remain subject to the controls on affordability for a period of at least 30 years.
- B. Rehabilitated owner-occupied single family housing units that are improved to code standards shall be subject to affordability controls for a period of 10 years.
- C. The affordability control period for a restricted ownership unit shall commence on the date the initial certified household takes title to the unit.
- D. The affordability controls set forth in this Ordinance shall remain in effect despite the entry and enforcement of any judgment of foreclosure with respect to restricted ownership units.
- E. A restricted ownership unit shall be required to obtain a Continuing Certificate of Occupancy or a certified statement from the Construction Official stating that the unit meets all code standards upon the first transfer of title that follows the expiration of the applicable minimum control period provided under *N.J.A.C. 5:80-26.5(a)*, as may be amended and supplemented.

**§ 225-17. Price Restrictions for Restricted Ownership Units, Homeowner Association Fees and Resale Prices.**

Price restrictions for restricted ownership units shall be in accordance with *N.J.A.C. 5:80-26.1*, as may be amended and supplemented, including:

- A. The initial purchase price for a restricted ownership unit shall be approved by the Administrative Agent.
- B. The Administrative Agent shall approve all resale prices, in writing and in advance of the resale, to assure compliance with the foregoing standards.
- C. The method used to determine the condominium association fee amounts and special assessments shall be indistinguishable between the low- and moderate-income unit owners and the market unit owners.
- D. The owners of restricted ownership units may apply to the Administrative Agent to increase the maximum sales price for the unit on the basis of capital improvements. Eligible capital improvements shall be those that render the unit suitable for a larger household or the addition of a bathroom.

**§ 225-18. Buyer Income Eligibility.**

- A. Buyer income eligibility for restricted ownership units shall be in accordance with *N.J.A.C. 5:80-26.1*, as may be amended and supplemented, such that low-income ownership units shall be reserved for households with a gross household income less than or equal to 50% of median income and moderate-income ownership units shall be reserved for households with a gross household income less than 80% of median income.
- B. The Administrative Agent shall certify a household as eligible for a restricted ownership unit when the household is a low-income household or a moderate-income household, as

applicable to the unit, and the estimated monthly housing cost for the particular unit (including principal, interest, taxes, homeowner and private mortgage insurance and condominium or homeowner association fees, as applicable) does not exceed 33% of the household's certified monthly income.

**§ 225-19. Limitations on indebtedness secured by ownership unit; subordination.**

- A. Prior to incurring any indebtedness to be secured by a restricted ownership unit, the administrative agent shall determine in writing that the proposed indebtedness complies with the provisions of this section.
- B. With the exception of original purchase money mortgages, during a control period neither an owner nor a lender shall at any time cause or permit the total indebtedness secured by a restricted ownership unit to exceed 95% of the maximum allowable resale price of that unit, as such price is determined by the administrative agent in accordance with *N.J.A.C.5:80-26.6(b)*.

**§ 225-20. Control Periods for Restricted Rental Units.**

- A. Control periods for restricted rental units shall be in accordance with *N.J.A.C. 5:80-26.11*, and each restricted rental unit shall remain subject to the controls on affordability for a period of at least 30 years.
- B. Rehabilitated renter-occupied housing units that are improved to code standards shall be subject to affordability controls for a period of 10 years.
- C. 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 Atlantic. A copy of the filed document shall be provided to the Administrative Agent within 30 days of the receipt of a Certificate of Occupancy.
- D. A restricted rental unit shall remain subject to the affordability controls of this Ordinance, despite the occurrence of any of the following events:
  - 1. Sublease or assignment of the lease of the unit;
  - 2. Sale or other voluntary transfer of the ownership of the unit; or
  - 3. The entry and enforcement of any judgment of foreclosure.

**§ 225-21. Price Restrictions for Rental Units; Leases.**

- A. A written lease shall be required for all restricted rental units, except for units in an assisted living residence, and tenants shall be responsible for security deposits and the full amount of the rent as stated on the lease. A copy of the current lease for each restricted rental unit shall be provided to the Administrative Agent.
- B. No additional fees or charges shall be added to the approved rent (except, in the case of units in an assisted living residence, to cover the customary charges for food and services) without the express written approval of the Administrative Agent.
- C. Application fees (including the charge for any credit check) shall not exceed 5% of the monthly rent of the applicable restricted unit and shall be payable to the Administrative

Agent to be applied to the costs of administering the controls applicable to the unit as set forth in this Ordinance.

**§ 225-22. Tenant Income Eligibility.**

- A. Tenant income eligibility shall be in accordance with *N.J.A.C. 5:80-26.13*, as may be amended and supplemented, and shall be determined as follows:
1. Very low-income rental units shall be reserved for households with a gross household income less than or equal to 30% of median income
  2. Low-income rental units shall be reserved for households with a gross household income less than or equal to 50% of median income.
  3. Moderate-income rental units shall be reserved for households with a gross household income less than 80% of median income.
- B. The Administrative Agent shall certify a household as eligible for a restricted rental unit when the household is a very low-income, low-income household or a moderate-income household, as applicable to the unit, and the rent proposed for the unit does not exceed 35% (40% for age-restricted units) of the household's eligible monthly income as determined pursuant to *N.J.A.C. 5:80-26.16*, as may be amended and supplemented; provided, however, that this limit may be exceeded if one or more of the following circumstances exists:
1. The household currently pays more than 35% (40% for households eligible for age-restricted units) of its gross household income for rent, and the proposed rent will reduce its housing costs;
  2. The household has consistently paid more than 35% (40% for households eligible for age-restricted units) of eligible monthly income for rent in the past and has proven its ability to pay;
  3. The household is currently in substandard or overcrowded living conditions;
  4. The household documents the existence of assets with which the household proposes to supplement the rent payments; or
  5. The household documents proposed third-party assistance from an outside source such as a family member in a form acceptable to the Administrative Agent and the owner of the unit.
- C. The applicant shall file documentation sufficient to establish the existence of the circumstances in (b)1 through 5 above with the Administrative Agent, who shall counsel the household on budgeting.

**§ 225-23. Conversions.**

Each housing unit created through the conversion of a non-residential structure shall be considered a new housing unit and shall be subject to the affordability controls for a new housing unit.

**§ 225-24. Reserved.**

**§ 225-25. Reserved.**

**§ 225-26. Reserved.**

**ARTICLE III  
Administration**

**§ 225-27. Municipal Housing Liaison.**

- A. The position of Municipal Housing Liaison for the City of Absecon is hereby established. The Municipal Housing Liaison shall be appointed by duly adopted resolution of the City Council and be subject to the approval of COAH.
- B. The Municipal Housing Liaison must be either a full-time or part-time employee of the City of Absecon.
- C. The Municipal Housing Liaison must meet COAH's requirements for qualifications, including initial and periodic training.
- D. The Municipal Housing Liaison shall be responsible for oversight and administration of the affordable housing program for the City of Absecon, including the following responsibilities which may not be contracted out to the Administrative Agent:
  - 1. Serving as the municipality's primary point of contact for all inquiries from the State, affordable housing providers, Administrative Agents and interested households;
  - 2. The implementation of the Affirmative Marketing Plan and affordability controls.
  - 3. When applicable, supervising any contracting Administrative Agent.
  - 4. Monitoring the status of all restricted units in the City of Absecon's Fair Share Plan;
  - 5. Compiling, verifying and submitting annual reports as required by COAH or the NJ Superior Court;
  - 6. Coordinating meetings with affordable housing providers and Administrative Agents, as applicable; and
  - 7. Attending continuing education opportunities on affordability controls, compliance monitoring and affirmative marketing as offered or approved by COAH.

**§ 225-28. Administrative Agent.**

- A. The City shall designate by resolution of the City Council, subject to the approval of COAH, one or more Administrative Agents to administer newly constructed affordable units in accordance with *N.J.A.C. 5:96*, *N.J.A.C. 5:97* and UHAC.
- B. An Operating Manual shall be provided by the Administrative Agent(s) to be adopted by resolution of the governing body and subject to approval of COAH. The Operating Manuals shall be available for public inspection in the Office of the Municipal Clerk and in the office(s) of the Administrative Agent(s).
- C. The Administrative Agent shall perform the duties and responsibilities of an administrative agent as are set forth in UHAC and which are described in full detail in the Operating

Manual, including those set forth in *N.J.A.C.* 5:80-26.14, 16 and 18 thereof, which includes:

1. Attending continuing education opportunities on affordability controls, compliance monitoring, and affirmative marketing as offered or approved by COAH;
2. Affirmative Marketing;
3. Household Certification;
4. Affordability Controls;
5. Records retention;
6. Resale and re-rental;
7. Processing requests from unit owners; and
8. Enforcement, although the ultimate responsibility for retaining controls on the units rests with the municipality.
9. The Administrative Agent shall, as delegated by the City Council, have the authority to take all actions necessary and appropriate to carry out its responsibilities, hereunder.

**§ 225-29. Enforcement of Affordable Housing Regulations.**

- A. Upon the occurrence of a breach of any of the regulations governing the affordable unit by an Owner, Developer or Tenant, the municipality shall have all remedies provided at law or equity, including but not limited to foreclosure, tenant eviction, municipal fines, a requirement for household recertification, acceleration of all sums due under a mortgage, recoupment of any funds from a sale in the violation of the regulations, injunctive relief to prevent further violation of the regulations, entry on the premises, and specific performance.
- B. After providing written notice of a violation to an Owner, Developer or Tenant of a low- or moderate-income unit and advising the Owner, Developer or Tenant of the penalties for such violations, the municipality may take the following action against the Owner, Developer or Tenant for any violation that remains uncured for a period of 60 days after service of the written notice:
  1. The municipality may file a court action pursuant to *N.J.S.A.* 2A:58-11 alleging a violation, or violations, of the regulations governing the affordable housing unit. If the Owner, Developer or Tenant is found by the court to have violated any provision of the regulations governing affordable housing units the Owner, Developer or Tenant shall be subject to one or more of the following penalties, at the discretion of the court:
    - (a) A fine of not more than \$500.00 or imprisonment for a period not to exceed 90 days, or both. Each and every day that the violation continues or exists shall be considered a separate and specific violation of these provisions and not as a continuing offense;



(b) In the case of an Owner who has rented his or her low- or moderate-income unit in violation of the regulations governing affordable housing units, payment into the City of Absecon Affordable Housing Trust Fund of the gross amount of rent illegally collected;

(c) In the case of an Owner who has rented his or her low- or moderate-income unit in violation of the regulations governing affordable housing units, payment of an innocent tenant's reasonable relocation costs, as determined by the court.

2. The municipality may file a court action in the Superior Court seeking a judgment, which would result in the termination of the Owner's equity or other interest in the unit, in the nature of a mortgage foreclosure. Any judgment shall be enforceable as if the same were a judgment of default of the First Purchase Money Mortgage and shall constitute a lien against the low- and moderate-income unit.

C. Such judgment shall be enforceable, at the option of the municipality, by means of an execution sale by the Sheriff, at which time the low- and moderate-income unit of the violating Owner shall be sold at a sale price which is not less than the amount necessary to fully satisfy and pay off any First Purchase Money Mortgage and prior liens and the costs of the enforcement proceedings incurred by the municipality, including attorney's fees. The violating Owner shall have the right to possession terminated as well as the title conveyed pursuant to the Sheriff's sale.

D. The proceeds of the Sheriff's sale shall first be applied to satisfy the First Purchase Money Mortgage lien and any prior liens upon the low- and moderate-income unit. The excess, if any, shall be applied to reimburse the municipality for any and all costs and expenses incurred in connection with either the court action resulting in the judgment of violation or the Sheriff's sale. In the event that the proceeds from the Sheriff's sale are insufficient to reimburse the municipality in full as aforesaid, the violating Owner shall be personally responsible for and to the extent of such deficiency, in addition to any and all costs incurred by the municipality in connection with collecting such deficiency. In the event that a surplus remains after satisfying all of the above, such surplus, if any, shall be placed in escrow by the municipality for the Owner and shall be held in such escrow for a maximum period of two years or until such earlier time as the Owner shall make a claim with the municipality for such. Failure of the Owner to claim such balance within the two-year period shall automatically result in a forfeiture of such balance to the municipality. Any interest accrued or earned on such balance while being held in escrow shall belong to and shall be paid to the municipality, whether such balance shall be paid to the Owner or forfeited to the municipality.

E. Foreclosure by the municipality due to violation of the regulations governing affordable housing units shall not extinguish the restrictions of the regulations governing affordable housing units as the same apply to the low- and moderate-income unit. Title shall be conveyed to the purchaser at the Sheriff's sale, subject to the restrictions and provisions of the regulations governing the affordable housing unit. The Owner determined to be in violation of the provisions of this plan and from whom title and possession were taken by means of the Sheriff's sale shall not be entitled to any right of redemption.

F. If there are no bidders at the Sheriff's sale, or if insufficient amounts are bid to satisfy the First Purchase Money Mortgage and any prior liens, the municipality may acquire title to the low- and moderate-income unit by satisfying the First Purchase Money Mortgage and any prior liens and crediting the violating owner with an amount equal to the difference between the First Purchase Money Mortgage and any prior liens and costs of the

enforcement proceedings, including legal fees and the maximum resale price for which the low- and moderate-income unit could have been sold under the terms of the regulations governing affordable housing units. This excess shall be treated in the same manner as the excess which would have been realized from an actual sale as previously described.

- G. Failure of the low- and moderate-income unit to be either sold at the Sheriff's sale or acquired by the municipality shall obligate the Owner to accept an offer to purchase from any qualified purchaser which may be referred to the Owner by the municipality, with such offer to purchase being equal to the maximum resale price of the low- and moderate-income unit as permitted by the regulations governing affordable housing units.
- H. The Owner shall remain fully obligated, responsible and liable for complying with the terms and restrictions of governing affordable housing units until such time as title is conveyed from the Owner.

**§ 225-30. Appeals.** Appeals from all decisions of an Administrative Agent designated pursuant to this Ordinance shall be filed in writing to the Executive Director of COAH.

**BE IT FURTHER ORDAINED** that:

- 1. This Ordinance shall take effect upon final passage, approval and publication as provided by law.
- 2. To the extent that any part or parts of this ordinance are repealed or otherwise modified or voided by State Statute, case law, or a legal body with appropriate jurisdiction the remaining sections of this ordinance shall remain in full force and effect.
- 3. Any Ordinances or parts thereof inconsistent herewith are hereby repealed.

**DATED: November 6, 2014**

**SIGNED:** \_\_\_\_\_  
**John Armstrong, Mayor**

**ATTEST:** \_\_\_\_\_  
**Carie A. Crone, RMC, Municipal Clerk**

Passed on first reading at a work and regular meeting of the Municipal Council held on October 16, 2014. Laid over and advertised for public hearing and final adoption on November 06, 2014. Notice is hereby given that the foregoing Ordinance was approved for final adoption by the Municipal Council of the City of Absecon at a work and regular meeting held on November 6, 2014