

**AN ORDINANCE OF THE TOWNSHIP OF DEPTFORD, COUNTY OF  
GLOUCESTER AND STATE OF NEW JERSEY, AMENDING VARIOUS  
SECTIONS OF THE UNIFIED DEVELOPMENT ORDINANCE TO ADDRESS  
THE AFFORDABLE HOUSING REQUIREMENTS OF THE NEW JERSEY  
SUPERIOR COURT**

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

**WHEREAS**, the Township Council of the Township of Deptford is desirous of ensuring the proper implementation of the Fair Housing Act and associated rules through the adoption of affordable housing regulations by the governing body; and

**WHEREAS**, the Township of Deptford seeks to implement policies established by the New Jersey Supreme Court in In re N.J.A.C. 5:96 and 5:97, 221 N.J. 1, 30 (2015) (Mount Laurel IV) to foster affordable housing opportunities for the production of dwellings and their occupancy by low and moderate income households.

**WHEREAS**, the Mayor and Township Council recognize the need to adopt provisions for affordable housing within the Unified Development Ordinance of the Township of Deptford to implement the Housing Element and Fair Share Plan; and

**WHEREAS**, the Township Council formally refers this Ordinance to the Planning Board for examination, discussion, and recommendations in accordance with N.J.S.A. 40:55D-26 for consistency with the adopted Master Plan; and

**NOW, THEREFORE, BE IT ORDAINED** by the Township Council of the Township of Deptford, Gloucester County, New Jersey, as follows:

**Section 1.** Article II, §6, "Definitions," shall be amended to add or modify the following definitions.

Adaptable – Housing constructed in compliance with the technical design standards of the Barrier Free Sub-code, N.J.A.C. 5:23-7.

Administrative Agent – The entity responsible for the administration of affordable units in accordance with this Article, N.J.A.C. 5:91, N.J.A.C. 5:93 and N.J.A.C. 5:80-26.1 et seq.

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

Affordability Average – The average percentage of regional median income by household size at which restricted units in an affordable housing development are affordable to low- and moderate-income households.

Affordable – A sales price or rent level that is within the means of a low- or moderate-income household as defined in N.J.A.C. 5:93-7.4; in the case of an ownership unit, that the sales price for the unit conforms to the standards set forth in N.J.A.C. 5:80-26.6, as may be amended and supplemented, and, in the case of a rental unit, that the rent for the unit conforms to the standards set forth in N.J.A.C. 5:80-26.12, as may be amended and supplemented.

Affordable Rental Charges – A monthly rent including utilities charged to an eligible very low-, low- or moderate-income family which shall not exceed 30% of their monthly gross income as calculated by N.J.A.C. 5:93-7.4(f).

Affordable Unit – A housing unit proposed or created to be affordable in accordance with the NJ Fair Housing Act, approved for crediting by the Court, and/or funded through an affordable housing trust fund.

Age-Restricted Unit – A housing unit designed to meet the needs of, and exclusively for, the residents of an age-restricted segment of the population in an age-restricted development.

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

Assisted Living Residence or Assisted Living Facility – An establishment licensed by the New Jersey Department of Health and Senior Services to provide apartment-style housing and congregate dining for four or more adult persons unrelated to the proprietor, and a coordinated array of supportive personal and health services, available 24 hours per day, to residents who have been assessed to need help with the activities of daily life, including residents who require formal long-term care. Such facilities will offer units containing, at a minimum, one unfurnished room, a private bathroom, a kitchenette and a lockable door on the unit entrance.

Certified Household - A household that has been certified by an Administrative Agent as a very low-income, low-income household or moderate-income household.

Deficient Housing Unit – 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.

Development Fee – Money paid by a developer for the improvement of property as permitted in N.J.A.C. 5:93-8.8, as it may be amended or superseded, and utilized to provide affordable housing.

Household – *See* Housekeeping Unit.

Housing Plan Element – The portion of the Township's Master Plan, required by the Municipal Land Use Law (MLUL), N.J.S.A. 40:55D-28b(3) and other legislation.

Low-Income Household – A household with a total gross annual household income equal to 50% or less of the regional median household income by household size.

Low-Income Unit – A restricted unit that is affordable to a low-income household.

Major System (Rehabilitation) – 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 – Housing not restricted by income.

Median Income – The median income by household size for the applicable housing region, as adopted annually by the Township pursuant to this Article, by COAH or a successor entity approved by the New Jersey Superior Court.

Moderate-Income Household – A household with a total gross annual household income in excess of 50% but less than 80% of the regional median household income by household size.

Moderate-Income Unit – A restricted unit that is affordable to a moderate-income household.

Municipal Housing Liaison – A municipal employee annually appointed by resolution of the governing body, responsible for the tracking and reporting of affordable housing units to the appropriate authorities and parties in addition to other affordable housing duties that may be assigned by the Township Manager.

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

Qualified Purchaser or Renter - A person who:

- A. Submits an application for certification as a qualified purchaser or renter to the management of the unit;
- B. Whose gross aggregate family income at the time of the proposed purchase or rental of an affordable unit is within very low, low or moderate income levels, as defined herein; and

C. Who obtains certification as a qualified purchaser or renter of an affordable unit from Deptford Township's Administrative Agent.

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

Referral List, Affordable Housing - A register of eligible very low, low and moderate income households for which suitable units are not yet available.

Regional Asset Limit - 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 duly adopted regional income limits published annually by COAH or a successor entity.

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

Rent, Restricted Unit - 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 - 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 - The Uniform Housing Affordability Controls set forth in N.J.A.C. 5:80-26.1 et seq.

Very Low-Income Household - A household with a total gross annual household income equal to 30% or less of the median household income by household size.

Very Low-Income Unit - A restricted unit that is affordable to a very low-income household.

Weatherization (Rehabilitation) - 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, sufficient to constitute a major system for rehabilitation of housing.

**Section 2.** §104, "Severability and Repealer", shall be renumbered as §118.

**Section 3.** There is hereby created a new article, Article XIV, to be titled, "Amendments", to be inserted immediately after Article XIII. §102, "Amendments," and §103, "Procedure for Amendments," shall be renumbered §116 and §117, respectively.



**Section 4.** There is hereby created a new article, Article XIII, to be titled "Enforcement", to be inserted immediately after Article XII. §100, "Enforcement," and §101, "Violations and Penalties," shall be renumbered §114 and §115, respectively.

**Section 5.** There is hereby created a new article, Article XII, to be titled "Affordable Housing", to be inserted immediately after Article XI, §99, "Waivers." Article XII is to read as follows:

## **Article XII. Affordable Housing**

### **§ 100. Purpose**

- A. This Article of the Ordinance is designed to implement the Township's adopted Housing Element and Fair Share Plan for low- and moderate-income housing units in the Township consistent with the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301 et seq., extant regulations of the New Jersey Council on Affordable Housing ("COAH"), N.J.A.C. 5:93 et seq., the Uniform Housing Affordability Controls ("UHAC"), N.J.A.C. 5:80-26.1 et seq., except where modified by the requirements for very low-income housing as established in P.L. 2008, c.46 (the "Roberts bill," codified at N.J.S.A. 52:27D-329.1), and judicial decisions. This Article is designed to ensure that affordable housing created under the Fair Housing Act is occupied by low- and moderate-income households for the appropriate period of time. This Article provides rules for the establishment and administration of affordability controls on each restricted dwelling unit for which the Township receives credit.

### **§ 101. General Provisions**

- A. The provisions of this Article shall apply to all affordable housing developments and affordable housing units that currently exist and that are proposed to be created within the Township of Deptford pursuant to the Township's most recently adopted Housing Element and Fair Share Plan. All developers with sites identified for affordable housing pursuant to the most recent Housing Element and Fair Share Plan adopted by the Planning Board and Township Council of Deptford, according to their respective duties, shall provide affordable housing units in accordance with the plan. All development that falls within the time period of the present round of affordable housing obligation shall construct units or pay a development fee in accordance with this Article.
- B. Moreover, this provision of this Article shall apply to all developments that contain low- and moderate-income housing units, including any currently unanticipated future developments that will provide very low-, low- and moderate-income housing units. All restricted units, including those funded with federal Low Income Housing Tax Credits or other subsidy programs, shall include the required bedroom distribution and income distribution, shall be subject to affordability controls, and shall be affirmatively marketed in accordance with UHAC, with the exception that instead of 10% of all rental affordable units being affordable to households earning 35% or less of the regional median household income by household size, 13% of all rental affordable units shall be affordable to households earning 30% or less of the regional median household income by

household size, and all other applicable law. C. All new construction units shall be adaptable in conformance with N.J.S.A. 52:27D-311a and -311b and all other applicable law.

### **§ 102. Municipal Housing Liaison**

- A. The Municipal Housing Liaison shall be annually appointed by the Township Council and shall be a municipal employee.
- B. The Municipal Housing Liaison shall be responsible for oversight and administration of the affordable housing program for the Township of Deptford and shall undertake the following duties and responsibilities:
  - 1. Serve as the Township's primary point of contact for all inquiries from the State, affordable housing providers, administrative agents and interested households;
  - 2. Ensuring the implementation of the affirmative marketing provisions and affordability controls;
  - 3. When applicable, supervising any contracting Administrative Agent;
  - 4. Monitoring the status of all income restricted units listed in the Township of Deptford's Fair Share Plan;
  - 5. Compiling, verifying and submitting annual reports on affordable housing activity as required by court order, ordinance, rule or regulation;
  - 6. Coordinating meetings with affordable housing providers and administrative agents, as needed; and
  - 7. Attending continuing education programs in order to maintain these oversight and administrative duties.

### **§ 103. Township Administrative Agent and Other Administrative Agents**

- A. The Township Council shall yearly appoint a Township Administrative Agent to monitor sales and resales of affordable housing units pursuant to N.J.A.C. 5:80-26.14. The Administrative Agent of the municipality may also be the Municipal Housing Liaison, but is not required to be.
- B. The Township Administrative Agent shall monitor the designated Administrative Agent of the developer in the initial sales and rental transactions for low- and moderate-income dwellings in accordance with N.J.A.C. 5:80-26.14, as it may be amended or superseded. The developer's administrative agent shall have all of responsibilities as put forth in this rule. After the initial sales and rental transactions, the Township Administrative Agent shall monitor the activities of the developer's or owner's Administrative Agent for any re-sales or re-rentals. If the person is the Township's Administrative Agent, then he or she shall assume all of the duties and responsibilities set forth in N.J.A.C. 5:80-26.14 following the initial renting, sales and occupancy of low- and moderate-income dwellings. The affordability controls set forth in this Article shall be

administered and enforced by the Administrative Agent regardless of association. The primary responsibility of the Administrative Agent shall be to ensure that the restricted units are sold or rented, as applicable, only to low- and moderate-income households in accordance with the Fair Housing Act.

- C. The Administrative Agent, whether the Township's representative, developer's agent, or a delegated agent, shall have the responsibility to income qualify low and moderate-income households, to place income eligible households in low- and moderate-income units upon initial occupancy, to provide for the initial occupancy of low- and moderate-income units with income qualified households, to continue to qualify households for re-occupancy of units as they become vacant during the period of affordability controls, to assist with advertising and outreach to low- and moderate-income households, and to enforce the terms of the deed restriction and mortgage loan. All Administrative Agents shall 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.
- D. The Municipal Housing Liaison shall supervise the work of the Administrative Agent(s) and shall coordinate his or her activities with the Township Administrative Agent to ensure the accurate tracking of the progress of the occupancy of affordable housing in the municipality, answer inquiries regarding affordable housing from the public or direct same to the appropriate official or agency, and comply with the affordable housing monitoring and reporting requirements of the state.
- E. The Township Council may establish a reasonable fee to program participants for the administration of the affordability controls program. The fees of the Administrative Agent shall be paid by the owners of the affordable units for which the services of the Administrative Agent are required.
- F. In order to ensure an orderly transfer of control responsibility from a municipality to an Administrative Agent, from one Administrative Agent to another Administrative Agent, or other transfer, the requirements as set forth in N.J.A.C. 5:80-26.17 shall apply as are necessary before or during the transition. The Administrative Agent's enforcement responsibility for implementing such practices and procedures shall not be delegated or otherwise transferred to any other party, except to a successor administrative agent.
- G. By accepting state funds for affordable housing purposes, or by submitting to the jurisdiction of the court, the Township of Deptford shall be deemed to have delegated to the Administrative Agent the day-to-day responsibility for implementing practices and procedures designated to ensure effective compliance with the controls set forth in this Article. The governing body of the municipality, however, shall retain the ultimate responsibility for ensuring effective compliance with the requirements as set forth in UHAC and any settlement agreements pertaining to affordable housing matters.
- H. The Township Administrative Agent shall keep records of the affirmative marketing activities undertaken in accordance with the affirmative marketing plan established by any developer's Administrative Agent. The records shall include, but not be limited to, the following:
  - 1. Electronic reporting of affordable housing activity; any required paper forms;
  - 2. Copies of any press releases, brochures, flyers, print advertisements and application forms

used in the affirmative marketing program.

3. The income and demographic characteristics of each household applying for and occupying income-restricted housing.
  4. An evaluation of any necessary adjustments required to the affirmative marketing program as communicated by the Administrative Agent.
- I. An operating manual for each affordable housing program shall be provided by the Township Administrative Agent or developer's Administrative Agent and approved by the Municipal Housing Liaison prior to being placed into use. Such operating manual shall be a public record.
- J. The Administrative Agent(s) shall perform the duties and responsibilities of an administrative agent as are set forth in UHAC, including those set forth in N.J.A.C. 5:80-26.14, -26.16 and -26.18.
- K. Records retention.
- L. Resales and re-rentals.
1. Instituting and maintaining an effective means of communicating information between owners and the Administrative Agent regarding the availability of restricted units for resale or re-rental;
  2. Instituting and maintaining an effective means of communicating information to very low-, low-, or moderate-income households regarding the availability of restricted units for resale or re-rental.
- M. Processing requests from unit owners
1. Reviewing and approving requests to increase sales prices from owners of restricted units who wish to refinance or take out home equity loans during the term of their ownership that the amount of indebtedness to be incurred will not violate the terms of this Section;
  2. 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;
  3. Notifying the Township of an owner's intent to sell a restricted unit; and
  4. Making determinations on requests by owners of restricted units for hardship waivers.
- N. Enforcement
1. Securing annually from the municipality a list of all affordable ownership 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;

2. Securing from all developers and sponsors of restricted units, at the earliest point of contact in the processing of the project or development, written acknowledgement of the requirement that no restricted unit can be offered, or in any other way committed, to any person, other than a household duly certified to the unit by the Administrative Agent;
3. Posting annually in all rental properties, including two-family homes, a notice as to the maximum permitted rent together with the telephone number of the Administrative Agent where complaints of excess rent or other charges can be made;
4. 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;
5. Establishing a program for diverting unlawful rent payments to the Township's Affordable Housing Trust Fund; and
6. Creating and publishing a written operating manual for each affordable housing program administered by the Administrative Agent, to be approved by the Township Council and the Court, setting forth procedures for administering the affordability controls.

#### **§ 104. Affirmative Marketing**

- A. Purpose. The purpose of this Section is to establish administrative procedures to ensure a wide dissemination of knowledge of affordable housing units as they become available to the very low, low- and moderate-income population, and that the selection of tenants or homeowners, as the case may be, meets the requirements of UHAC.
- B. An 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 that are being marketed by a developer or sponsor of affordable housing. An Affirmative Marketing Plan is also intended to target those potentially eligible persons who are least likely to apply for affordable units in that region.
- C. Affirmative Marketing Requirements. Within the overall framework of the municipality's affirmative marketing program, all affordable housing units in Deptford Township shall be marketed in accordance with the provisions in this Section unless otherwise provided for in N.J.A.C 5:80-26-1. An Affirmative Marketing Plan shall be created for each development that contains or will contain low and moderate income units, including those that are part of the Township's prior round Housing Element and its current Housing Element and those that may be constructed in future developments not yet anticipated. This Affirmative Marketing Plan shall also apply to any rehabilitated units that are vacated and re-rented during the applicable period of controls for rehabilitated rental units when Deptford is allocated a rehabilitation component.
- D. Plan Preparation. The Township Administrative Agent or other Administrative Agent shall prepare an Affirmative Marketing Plan for each affordable housing program, as applicable, comporting

with N.J.A.C. 5:80-26.15. The Township Administrative Agent shall review and approve any other Administrative Agent's Plan for use in the municipality. Regardless of the drafting agent, the Affirmative Marketing Plan is intended to be used by developers of affordable housing restricted to low and moderate income households located within the municipality. The Administrative Agent responsible for specific affordable housing programs or developments shall ensure that the affirmative marketing of all affordable units is consistent with these provisions.

- E. Affirmative Marketing Implementation. The Affirmative Marketing Plan includes regulations for qualification of income eligibility, price and rent restrictions, bedroom distribution, affordability control periods, and unit marketing in accordance to N.J.A.C. 5:80-26. All newly created affordable units will comply with the thirty-year affordability control required by UHAC, N.J.A.C. 5:80-26.5 and -26.11, except for accessory apartments, which shall be for ten (10) years. This plan will be adhered to by all private, non-profit or municipal developers of affordable housing units and will cover the period of deed restriction or affordability controls on each affordable unit. The Affirmative Marketing Plan for each affordable housing development shall meet the following minimum requirements:
1. The Affirmative Marketing Plan shall provide a regional preference for all households that live and/or work in Housing Region 5, comprised of Burlington, Camden and Gloucester Counties.
  2. Although the Township has the ultimate responsibility for implementing all aspects of Deptford's affordable housing program, the Administrative Agent designated by the Township Administrative Agent shall assure that the affirmative marketing of all affordable units is consistent with the Affirmative Marketing Plan for the municipality.
  3. The Administrative Agent shall provide a list of counseling services to low and moderate-income applicants on subjects such as budgeting, credit problems, mortgage qualification, rental lease requirements, and landlord/tenant law.
  4. The affirmative marketing process for available affordable units shall begin at least four months prior to the expected date of occupancy. Advertising and outreach shall take place during the first week of the marketing program and each month thereafter until all of the affordable units have been leased or sold.
  5. The costs of advertising and affirmative marketing of the affordable units shall be the responsibility of the developer, sponsor or owner, unless otherwise determined or agreed to by the Township of Deptford.
  6. The Affirmative Marketing Plan for each affordable housing development shall describe the media to be used in advertising and publicizing the availability of housing. In implementing the Affirmative Marketing Plan, the Administrative Agent shall consider the use of language translations where appropriate.
  7. 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 Deptford Municipal Building and the Deptford Library; and the developer's rental office. Applications shall be mailed or emailed to prospective applicants upon request, and the application form(s) shall be available on-line on the municipal website.



8. The Township Administrative Agent shall develop, maintain and update a list of community contact person(s) and/or organizations(s) in the Region 5 Housing Area for the use of the Township and other Administrative Agents. In addition, the list shall also include Fair Share Housing Center, the New Jersey State Conference of the NAACP, the Latino Action Network, Gloucester County NAACP, Salem County NAACP, Senior Citizens United Community Services, and the Supportive Housing Association, which entities shall receive specific notice of all available affordable housing units along with copies of application forms. This list shall be updated periodically. The list shall contain organizations that will aid in the affirmative marketing program with particular emphasis on contacts with outreach to groups and individuals that are least likely to apply for affordable housing within the region. A representative sample of the organizations on the list not otherwise requiring specific notice herein shall be contacted as part of the affirmative marketing effort as approved by the Township Administrative Agent. Any third party undertaking affirmative marketing within the Township of Deptford shall comply with these provisions.
9. The Affirmative Marketing Plan of a developer or operator of restricted units shall be approved by the Township Administrative Agent prior to implementation.

#### **§ 105. Monitoring and Reporting Requirements**

- A. The Municipal Housing Liaison shall complete and return to COAH, its successor, or court of competent jurisdiction all forms necessary for monitoring requirements related to dwelling units in affordable housing projects and the collection of development fees from residential and non-residential developers, payments in lieu of constructing affordable units on site, funds from the sale of units with extinguished controls, barrier free escrow funds, rental income, repayments from affordable housing program loans, and any other funds collected in connection with the Township of Deptford's approved housing program, as well as to the expenditure of revenues and implementation of the approved plan.
- B. The Township will provide annual reporting of its Affordable Housing Trust Fund activity to the New Jersey Department of Community Affairs (NJDC), Council on Affordable Housing (COAH), or Local Government Services (NJLGS), or other entity designated by the State of New Jersey, with a copy provided to Fair Share Housing Center (FSHC) and posted on the municipal website, using forms developed for this purpose by the NJDC, COAH, or NJLGS. 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. The schedule for the reporting of this information shall be as set forth in the most recent settlement agreement between the Township of Deptford and FSHC.
- C. By July 1, 2020, as required pursuant to N.J.S.A. 52:27D-313, the Township will post on its municipal website, with a copy 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 municipality, with a copy to FSHC, regarding whether any sites no longer present a realistic opportunity. Any interested party may by motion request a hearing before the Court regarding these issues.



- D. As required by N.J.S.A. 52:27D-329.1, the Township will post on its municipal website, with a copy provided to FSHC, a status report as to its satisfaction of its very low income requirements, including its family very low income requirements. Such posting shall invite any interested party to submit comments to the municipality and FSHC on the issue of whether the municipality has complied with its very low income and family very low income housing obligations. The schedule for the reporting of this information shall be as set forth in the most recent settlement agreement between the Township of Deptford and FSHC.

## **§ 106. New Construction**

### **A. Submission of Affordable Housing Plan**

1. The developer of low- and moderate-income housing units shall submit to the Township Administrative Agent an Affordable Housing Plan that describes of the means to be used to insure that the required low and moderate income units are sold or rented only to low and moderate income households for a period of not less than 30 years, that such units meet bedroom distribution and phasing requirements, and comports with the requirements of this Article pertaining to the provisions, leasing, selling and transferring units among eligible low and moderate income households.
2. The Affordable Housing Plan shall indicate how the developer will comply with the procedures of this Article for selecting occupants of low- and moderate-income housing and the required affirmative marketing requirements. The requirements for affirmative marketing are found in §105, above. Whenever a developer proposes a third-party operator or manager of affordable housing units, the Municipal Housing Liaison shall specifically approve such operator and manager.
3. The following information shall promptly be provided to the Township Administrative Agent by the developer or sponsor of any project containing any affordable units subject to the requirements of this Article, upon the later of either final municipal land use approval or issuance of a grant contract by a governmental authority:
  - a. The total number of units in the project, and number of restricted units, broken down by bedroom size, identifying which are low and which are moderate income dwellings, and including street addresses of restricted dwellings;
  - b. Floor plans of all affordable dwellings, including complete and accurate identification of uses and dimensions of all rooms;
  - c. A project map identifying the locations of low and moderate income and market dwellings;
  - d. A list of project principals or partners, together with a list of all other affordable projects in which they have been involved over the previous five years;
  - e. Projected construction schedule;
  - f. Proposed pricing for all units, including any purchaser options and add-on items;
  - g. A list of all public funding sources and copies of grant or loan agreements for those sources;
  - h. Condominium fees or homeowner association and any other maintenance or other fees;

- i. Estimated real property taxes for sale units;
  - j. Sewer, trash disposal and any other utility assessments;
  - k. Flood insurance requirement, if applicable;
  - l. A description of all HVAC systems;
  - m. Location of any common areas and elevators;
  - n. Proposed form of lease for any rental units;
  - o. The name of the person who will be responsible for official contact with the Township Administrator for the duration of the project;
  - p. The name and qualifications of the developer's administrative agent, if applicable; and
  - q. The State-approved Planned Real Estate Development public offering statement and/or master deed where available or applicable.
4. The developer shall submit the Affordable Housing Plan to the Township Administrative Agent at least 45 days prior to the advertising of the availability of the units. The agent will approve or modify the plan within 30 working days of receipt of the plan or within such time as additionally granted by the developer.
- B. In the event that the inclusionary set-aside percentage (15% or 20%, as the case may be) of the total number of residential units does not result in a full integer, the following may occur:
1. The developer may in all cases round the set-aside upward and construct an additional affordable unit; or
  2. If the set-aside includes a fractional unit of 0.2 or less, the developer may round the set-aside downward and construct the lower whole number of affordable units, but must also make a payment in lieu of constructing the fractional additional unit ("fractional payment in lieu"). The fractional payment in lieu amount shall be calculated as the fractional unit multiplied by the payment in lieu amount of two hundred fifty thousand dollars (\$250,000.00), increased annually by the Urban Consumer Price Index for the metropolitan area.
- For example, if seven total units are developed at an inclusionary site, a 20% set-aside would require 1.4 affordable units. The developer must round up the fraction and construct a total of two affordable units. If six total units are developed, a 20% set-aside would require 1.2 affordable units. In that instance, the developer may either round up and construct a second affordable unit, or make a fractional payment in lieu of 0.2 x \$250,000, or \$50,000, into the Township's Affordable Housing Trust Fund.*
3. The payment shall be imposed as a condition of development approval by the Planning Board.
  4. During the development approval process, a developer may demonstrate to the governing body that the actual construction cost of an affordable unit less estimated capitalized revenue at the

development in question is lower than the imposed payment-in-lieu. At its discretion, the governing body may impose a lower payment-in-lieu amount equal or proximate to the amount estimated by the developer.

B. The following requirements shall apply to all new or planned developments that contain low- and moderate-income housing units:

1. 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.
2. Final site plan or subdivision approval for any inclusionary development shall be contingent upon the affordable housing development meeting the following phasing schedule for low- and moderate-income units, whether developed in one stage or more stages. The initial issuance of certificates of occupancy for market units shall be linked to the issuance of certificates of occupancy for affordable units. Prior to the issuance of the certificates of occupancy for market units, certificates of occupancy for affordable units shall be required in the following minimum ratios:

**Required Percentage of Affordable Units to Market Units**

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

3. Each unit of affordable housing shall require a certificate of occupancy, which shall become void upon a change of owner or tenant.
4. No certificate of occupancy shall be issued for a low and moderate income unit unless the provisions of N.J.A.C. 5:93-9.3, or superseding administrative code, are met.
5. The facade of an affordable housing dwelling shall be indistinguishable from those of market units in terms of the use of exterior materials, windows, doors, reveal, roof pitch, color, or other material. Affordable housing units shall be fully integrated with market rate housing to the greatest extent feasible and shall have access to open space and site amenities comparable to that of market rate units, unless otherwise approved by the Municipal Housing Liaison.
6. For inclusionary developments with a single housing type, the affordable housing units shall have the same tenure as the market housing units.

7. Tenant-paid utilities that are included in the utility allowance shall be so stated in the lease and shall be consistent with the utility allowance approved by the New Jersey Department of Community Affairs for its Section 8 program. Affordable units shall utilize the same type of heating source as market units within the affordable development.

### C. Accessibility Requirements

1. The first floor of all new 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 be subject to the technical design standards of the Barrier Free Subcode, N.J.A.C. 5:23-7 and the following:
  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 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;
    - e. If not all of the foregoing requirements in 2(a) through 2(d) can be satisfied, then an interior accessible route of travel must be provided between stories within an individual unit; but if all of the terms of 2(a) through 2(d) above have been satisfied, then an interior accessible route of travel shall not be required between stories within an individual unit; and
    - f. An accessible entranceway as set forth at P.L. 2005, c. 350 (N.J.S.A. 52:27D-311a et seq.) and the Barrier Free Subcode, N.J.A.C. 5:23-7, or evidence that the Township has collected funds from the developer sufficient to make 10% of the adaptable entrances in the development accessible:
      - i. 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.
      - ii. To this end, the builder of restricted units shall deposit funds within the Township of Deptford's Affordable Housing Trust Fund sufficient to install accessible entrances in 10% of the affordable units that have been constructed with adaptable entrances.
      - iii. The funds deposited under paragraph (2) herein shall be used by the Township for the sole purpose of making the adaptable entrance of an affordable unit accessible when

requested to do so by a person with a disability who occupies or intends to occupy the unit and requires an accessible entrance.

- iv. The developer of the restricted units shall submit to the Construction Official of the Township of Deptford a design plan and cost estimate for the conversion from adaptable to accessible entrances.
- v. Once the Construction Official has determined that the design plan to convert the unit entrances from adaptable to accessible meets the requirements of the Barrier Free Subcode, N.J.A.C. 5:23-7, and that the cost estimate of such conversion is reasonable, payment shall be made to the Township of Deptford'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 earmarked appropriately.

3. 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.

#### D. Income and Bedroom Distributions

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. The very low-income units shall be counted as part of the required number of low-income units within the development.
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.

- E. 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. Occupancy Standards

1. In determining the initial rents and initial sales prices for compliance with the affordable average requirements for restricted units other than age-restricted dwellings, the following standards shall be used:
  - a. Studio shall be affordable to a one-person household;
  - b. A one-bedroom unit shall be affordable to a one-and-one-half person household;
  - c. A two-bedroom unit shall be affordable to a three-person household;
  - d. A three-bedroom unit shall be affordable to a four-and-one-half person household;
  - e. A four-bedroom unit shall be affordable to a six-person household.
2. For age-restricted affordable dwellings, the following standards shall be used:
  - a. A studio shall be affordable to a one-person household;
  - b. A one-bedroom unit shall be affordable to one-and-one-half person household;
  - c. A two-bedroom unit shall be affordable to a two-person household or to two one-person households.
3. In referring certified households to specific restricted units, to the extent feasible and without causing an undue delay in occupying the unit, the administrative agent shall strive to:
  - a. Provide an occupant for each bedroom;
  - b. Provide separate bedrooms for parents and children;
  - c. Provide children of different sexes with separate bedrooms; and
  - d. Prevent more than two persons from occupying a single bedroom.
4. The minimum size of affordable housing units, which is necessary to ensure the public health, safety, and welfare of its occupants, shall be as indicated in the following table:

**Minimum Size of Affordable Housing Units**

<b>Type of Unit</b>	<b>Minimum Size</b>
---------------------	---------------------

	(gross square feet)
Efficiency	500
One-bedroom	600
Two-bedroom	750
Three-bedroom	900

**§ 107. Income Limits; 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 and the calculation procedures as approved by the Court and detailed below:
1. Regional income limits shall be established for the region in which the Township is located (i.e. 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 the Township's housing region. This quotient represents the regional weighted average of median income for a household of four. The income limit for a moderate-income unit for a household of four shall be 80% 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. The income limits calculated each year shall be the result of applying the percentages set forth 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. In no event shall the income limits be less than those for the previous year.
  2. 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 paragraph (a) above over the previous year's income limits, and applying the same percentage increase to the Regional Asset Limit from the prior year. In no event shall the regional asset limit be less than that for the previous year.
- B. The maximum rent for restricted rental units within each affordable development shall be affordable to households earning no more than 60% of regional median income by household size, and the average rent for restricted low- and moderate-income units shall be affordable to households earning no more than 52% of regional median income by household size.



- 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 households earning no more than 30% of regional median income by household size. These very low-income units shall be part of the low-income requirement.
- D. The maximum sales price of restricted ownership units within each affordable development shall be affordable to households earning no more than 70% of regional median income by household size, 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.
- E. For any affordable housing unit that is part of a condominium association and/or homeowner's 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.
- 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, including an allowance for tenant-paid utilities, 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.
- 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.
- I. The rent levels of very low-, low- and moderate-income units may be increased annually based on the percentage increase in the Housing Consumer Price Index for the Northeast Urban Area, upon its publication for the prior calendar year. This increase shall not exceed 9% in any one year. Rent increases for units constructed pursuant to Low-Income Housing Tax Credit regulations shall be indexed pursuant to the regulations governing low- income housing tax credits.

## **§ 108. Requirements for Restricted Ownership Units**

### **A. Affordability Controls**

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 controls on affordability for a period of at least 30 years, until the Township takes action to release the controls on affordability. 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 non-restricted, 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 obliging the purchaser, as well as the purchaser's heirs, successors, and assigns, to repay, upon the first non-exempt sale after the unit's release from the restrictions set forth in this Section, an amount equal to the difference between the unit's non-restricted fair market value and its restricted price, and the recapture note shall be secured by a recapture lien evidenced by a duly recorded mortgage on the unit.
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 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.

G. Price restrictions.

1. Price restrictions for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.1, as may be amended and supplemented, including:
2. The initial purchase price for a restricted ownership unit shall be approved by the Administrative Agent.
3. The Administrative Agent shall approve all resale prices, in writing and in advance of the resale, to assure compliance with the foregoing standards.

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

#### C. 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 regional median income by household size and moderate-income ownership units shall be reserved for households with a gross household income less than 80% of regional median income by household size.
2. Notwithstanding the foregoing, the Administrative Agent may, upon approval by the Township Council, and subject to the Court's approval, permit a moderate-income purchaser to buy a low-income unit if and only if the Administrative Agent can demonstrate that there is an insufficient number of eligible low-income purchasers in the housing region to permit prompt occupancy of the unit and all other reasonable efforts to attract a low-income purchaser, including pricing and financing incentives, have failed. Any such low-income unit that is sold to a moderate-income household shall retain the required pricing and pricing restrictions for a low-income unit.
3. 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 another certified household for a period not to exceed one year.
4. 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.

#### D. 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 issue such determination prior to the owner incurring such indebtedness.

2. With the exception of original purchase money mortgages, neither an owner nor a lender shall at any time during the control period 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).

#### E. Capital Improvements to Ownership Units

1. The owner of a restricted ownership unit 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 of the air conditioning equipment, which shall be subject to 10-year, straight-line depreciation, has been approved by the Administrative Agent. Unless otherwise approved by the Administrative Agent, the purchase of any property other than central air conditioning shall not be made a condition of the unit resale. The owner and the purchase 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.

### § 109. Requirements for Restricted Rental Units

#### A. Control Periods

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 of Deptford takes action to release the controls on affordability. 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.
2. 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 a 30-year compliance period plus a 15-year extended use period.
3. Rehabilitated renter-occupied housing units that are improved to code standards shall be subject to affordability controls for a period of 10 years.

4. 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 Gloucester. A copy of the filed document shall be provided to the Administrative Agent within 30 days of the receipt of a Certificate of Occupancy.
5. 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.

#### B. Rent Restrictions; Leases

1. A written lease shall be required for all restricted rental units, except for units in an assisted living residence, and tenants shall be responsible for security deposits and the full amount of the rent as stated on the lease. A copy of the current lease for each restricted rental unit shall be provided to the Administrative Agent.
2. No additional fees or charges shall be added to the approved rent (except, in the case of units in an assisted living residence, to cover the customary charges for food and services) without the express written approval of the Administrative Agent.
3. Application fees (including the charge for any credit check) shall not exceed 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 Article.
4. No rent control or other pricing restriction shall be applicable to either the market-rate units or the affordable units in any development in which at least 20% of the total number of dwelling units are restricted rental units in compliance with this Article.

#### C. 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 the regional median income by household size.

- b. Low-income rental units shall be reserved for households with a gross household income greater than 30% but less than or equal to 50% of the regional median income by household size.
  - c. Moderate-income rental units shall be reserved for households with a gross household income greater than 50% but less than 80% of the regional median income by household size.
2. The Administrative Agent shall certify a household as eligible for a restricted rental unit when the household is a very low-income, low-income or 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 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 reliable anticipated 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 -2.a through -2.e above with the Administrative Agent, who shall counsel the household on budgeting.

## **§ 110. Requirements for Alternative Living Arrangements**

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

## **§ 111. 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 in 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, 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;



- 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 Township of Deptford 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- or moderate-income unit.
    - a. 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- or 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.
    - b. 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- or moderate-income unit. The excess, if any, shall be applied to reimburse the municipality for any and all costs and expenses incurred in connection with either the court action resulting in the judgment of violation or the Sheriff's sale. In the event that the proceeds from the Sheriff's sale are insufficient to reimburse the municipality in full as aforesaid, the violating owner shall be personally responsible for the full extent of such deficiency, in addition to any and all costs incurred by the municipality in connection with collecting such deficiency. In the event that a surplus remains after satisfying all of the above, such surplus 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.
    - c. 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 they 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.

- d. 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- or 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- or 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 that would have been realized from an actual sale as previously described.
- e. Failure of the low- or 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 that may be referred to the owner by the municipality, with such offer to purchase being equal to the maximum resale price of the low- or moderate-income unit as permitted by the regulations governing affordable housing units.
- f. 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.

## **§ 112. Appeals**

Appeals from all decisions of an Administrative Agent designated pursuant to this Article shall be filed in writing with the Township.

## **§ 113. Development Fees**

### **A. General Provisions.**

1. This section establishes standards for the collection, maintenance, and expenditure of development fees that are consistent with COAH's regulations developed in response to P.L. 2008, c. 46, Sections 8 and 32-38 (C. 52:27D-329.2) and the Statewide Non-Residential Development Fee Act (C. 40:55D-8.1 through 8.7). Fees collected pursuant to this Section shall be used for the sole purpose of providing very low-, low- and moderate-income housing in accordance with a Court-approved Spending Plan.
2. COAH had previously approved the Township's development fee ordinance, which ordinance established the Township's Affordable Housing Trust Fund. The Township's development fee ordinance remains effective and is amended herein pursuant to the Superior Court's jurisdiction in accordance with N.J.A.C. 5:93-8.
3. The Township of Deptford shall not spend development fees until the Court has approved a plan for spending such fees in conformance with N.J.A.C. 5:93-8.

### **B. Residential Development Fees.**

1. Imposed fees.

- a. Within the Township of Deptford, 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. Development fees shall also be imposed and collected when an additional dwelling unit is added to an existing residential structure; in such cases, the fee shall be calculated based on the increase in the equalized assessed value of the property due to the additional dwelling unit.
- b. When an increase in residential density is permitted pursuant to a “d” variance granted under N.J.S.A. 40:55D-70d(5), developers shall be required to pay a “bonus” development fee of 6.0% of the equalized assessed value for each additional unit that may be realized, except that this provision shall not be applicable to a development that will include affordable housing. If the zoning on a site has changed during the two-year period preceding the filing of such a variance application, the base density for the purposes of calculating the bonus development fee shall be the highest density permitted by right during the two-year period preceding the filing of the variance application.

*Example: If an approval allows four units to be constructed on a site that was zoned for two units, the fees could equal 1.5% of the equalized assessed value on the first two units; and the specified higher percentage of 6% of the equalized assessed value for the two additional units, provided zoning on the site has not changed during the two-year period preceding the filing of such a 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, or by redevelopment agreement or other agreement with the Township of Deptford, shall be exempt from the payment of development fees.
- b. Developments that received preliminary or final site plan or subdivision approval prior to August 2, 1996 shall be exempt from the payment of development fees, unless the developer seeks a substantial change in the original approval. Where a site plan approval does not apply, the issuance of a zoning and/or building permit shall be synonymous with preliminary or final site plan approval for the purpose of determining the right to an exemption. In all cases, the applicable fee percentage shall be determined based upon the development fee ordinance in effect on the date that the construction permit is issued.
- c. Development fees shall be imposed and collected when an existing structure undergoes a change to a more intense use, is demolished and replaced, or is expanded, if the expansion is not otherwise exempt from the development fee requirement. The development fee shall be calculated on the increase in the equalized assessed value of the improved structure.

- d. No development fee shall be collected for a demolition and replacement of a residential building resulting from fire, war, or a natural disaster.

### C. Non-Residential Development Fees.

#### 1. Imposition of fees.

- a. Within all zoning districts, non-residential developers, except for developers of the types of development specifically exempted below, shall pay a fee equal to 2.5% of the equalized assessed value of the land and improvements, for all new non-residential construction on an unimproved lot or lots.
- b. Within all zoning districts, non-residential developers, except for developers of the types of development specifically exempted below, 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 non-residential 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 pre-existing land and improvements and the equalized assessed value of the newly improved structure; i.e., land and improvements; and such calculation shall be made at the time a final certificate of occupancy is issued. If the calculation required under this section results in a negative number, the non-residential development fee shall be zero.

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

- a. The non-residential portion of a mixed-use inclusionary or market-rate development shall be subject to a 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 existing footprint, reconstruction, renovations and repairs.
- c. Non-residential developments shall be exempt from the payment of non-residential development fees in accordance with the exemptions required pursuant to the Statewide Non-Residential Development Fee Act (N.J.S.A. 40:55D-8.1 through 8.7), as specified in Form N-RDF "State of New Jersey Non-Residential Development Certification/Exemption." Any exemption claimed by a developer shall be substantiated by that developer.
- d. A developer of a non-residential development exempted from the non-residential development fee pursuant to the Statewide Non-Residential Development Fee Act shall be subject to the fee at such time as the basis for the exemption no longer applies, and shall make the payment of the non-residential development fee, in that event, within

three years after that event or after the issuance of the final certificate of occupancy of the non-residential development, whichever is later.

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

#### D. Collection of Fees.

1. Upon the passage of the resolution of memorialization granting of a preliminary, final or other applicable approval for a development, the Planning Board or Zoning Board of Adjustment Secretary shall notify the construction code official responsible for the issuance of a building permit of the approving authority's action.
2. Once all prior approvals have been obtained, the person requesting a building permit application for a non-residential development, only, shall also be provided with a copy of Form N-RDF, "State of New Jersey Non-Residential Development Certification/Exemption," to be completed by the developer as part of the building permit application. The construction code official shall verify the information submitted by the non-residential developer or developer's designee. The Deptford Township tax assessor shall verify any requested exemptions and prepare estimated and final assessments as per the instructions provided in Form N-RDF.
3. The construction code official responsible for the issuance of a building permit shall notify the Township tax assessor of the issuance of the first construction permit for a development that is subject to a development fee.
4. Within 90 days of receipt of that notice, the Township tax assessor shall provide an estimate, based on the plans filed, of the equalized assessed value of the development.
5. The construction code official responsible for the issuance of a final certificate of occupancy shall notify the Township tax assessor of any and all requests for the scheduling of a final inspection on property that is subject to a development fee.
6. Within 10 business days of a request for the scheduling of a final inspection, the Township tax assessor shall confirm or modify the previously estimated equalized assessed value of the improvements associated with the development; calculate the development fee; and thereafter notify the developer of the amount of the fee.
7. Should the Township of Deptford fail to determine or notify the developer of the amount of the development fee within 10 business days of the request for final inspection, the developer may estimate the amount due and pay that estimated amount consistent with the dispute process set forth in Subsection b. of section 37 of P.L.2008, c.46 (C.40:55D-8.6).

8. Fifty percent (50%) of the development fee shall be collected at the time of issuance of the construction permit. The remaining portion shall be collected at the time of issuance of the certificate of occupancy. The developer shall be responsible for paying the difference between the fee calculated at the time of issuance of the construction permit and that determined at the time of issuance of certificate of occupancy.

E. Appeal of development fees

1. A developer may challenge residential development fees imposed by filing a challenge with the Gloucester County Board of Taxation. Pending a review and determination by that board, collected fees shall be placed in an interest-bearing escrow account by the chief financial officer of the Township of Deptford. Appeals from a determination of the board may be made to the Tax Court in accordance with the provisions of the State Tax Uniform Procedure Law, R.S. 54:48-1 *et seq.*, within 90 days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.
2. A developer may challenge non-residential development fees imposed by filing a challenge with the director of the New Jersey 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 Deptford. Appeals from a determination of the director may be made to the Tax Court in accordance with the provisions of the State Tax Uniform Procedure Law, R.S. 54:48-1 *et seq.*, within 90 days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.

F. Affordable Housing Trust Fund

1. A separate, interest-bearing Affordable Housing Trust Fund was previously created and shall continue to be maintained by the chief financial officer of the Township of Deptford for the purpose of depositing development fees collected from residential and non-residential developers and proceeds from the sale of units with extinguished controls.
2. The following additional funds shall be deposited in the Affordable Housing Trust Fund and shall at all times be identifiable by source and amount:
  - a. Payments in lieu of on-site construction of an affordable unit, where permitted by ordinance or by agreement with the Township of Deptford;
  - b. Funds contributed by developers to make 10% of the adaptable entrances in a townhouse or other multistory attached dwelling unit development accessible to the handicapped;
  - c. Rental income from municipally operated units;
  - d. Repayments from affordable housing program loans;
  - e. Recapture funds;



- f. Proceeds from the sale of affordable units; and
  - g. Any other funds collected in connection with the Township of Deptford's affordable housing program.
3. In the event of a failure by the Township of Deptford to comply with trust fund monitoring and reporting requirements or to submit accurate monitoring reports; or a failure to comply with the conditions of the Judgment of Compliance or a revocation of the Judgment of Compliance; or a failure to implement the approved Spending Plan and to expend funds within the applicable required time period as set forth in *In re Tp. of Monroe*, 442 NJ Super. 565 (Law Div. 2015) (aff'd 442 NJ Super. 563); or the expenditure of funds on activities not approved by the Court; or for other good cause demonstrating the unapproved use(s) of funds, the Court may authorize the State of New Jersey, Department of Community Affairs, Division of Local Government Services (NJLGS), to direct the manner in which the funds in the Affordable Housing Trust Fund shall be expended, provided that all such funds shall, to the extent practicable, be utilized for affordable housing programs within the Township of Deptford, or, if not practicable, then within the county or the housing region.
  4. Any party may bring a motion before the Superior Court presenting evidence of such condition(s), and the Court may, after considering the evidence and providing the Township a reasonable opportunity to respond and/or to remedy the non-compliant condition(s), and upon a finding of continuing and deliberate non-compliance, determine to authorize NJLGS to direct the expenditure of funds in the trust fund or impose such other remedies as may be reasonable and appropriate to the circumstances.
  5. All interest accrued in the housing trust fund shall only be used on eligible affordable housing activities approved by the Court.

G. Use of Funds.

1. The expenditure of all funds shall conform to a Spending Plan approved by the Court. Funds deposited in the Affordable Housing Trust Fund may be used for any activity approved by the Court to address the Township of Deptford's fair share obligation and may be set up as a grant or revolving loan program. Such activities include, but are not limited to: preservation or purchase of housing for the purpose of maintaining or implementing affordability controls; housing rehabilitation; new construction of affordable housing units and related costs; accessory apartments; a market-to-affordable program; conversion of existing non-residential buildings to create new affordable units; green building strategies designed to be cost-saving and in accordance with accepted national or state standards; purchase of land for affordable housing; improvement of land to be used for affordable housing; extensions or improvements of roads and infrastructure to affordable housing sites; financial assistance designed to increase affordability; administration necessary for implementation of the Housing Element and Fair Share Plan; and/or any other activity permitted by the Court and specified in the approved Spending Plan.



2. Funds shall not be expended to reimburse the Township of Deptford for past 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 the municipal Fair Share Plan. At least one-third of the affordability assistance portion of development fees collected shall be used to provide affordability assistance to very low-income households earning 30% or less of regional median income by household size for Housing Region 5, in which the Township of Deptford is located.
  - a. Affordability assistance programs may include down payment assistance, security deposit assistance, low-interest loans, rental assistance, assistance with homeowners association or condominium fees and special assessments, infrastructure assistance, and assistance with emergency repairs. The specific programs to be used for affordability assistance shall be identified and described within the Spending Plan.
  - b. Affordability assistance to households earning 30% or less of the regional median household income by household size may include producing very low-income units or buying down the cost of low- or moderate-income units in the municipal Fair Share Plan to make them affordable to households earning 30% or less of regional median income by household size.
  - c. Payments in lieu of constructing affordable units on site and funds from the sale of units with extinguished controls shall be exempt from the affordability assistance requirement. The specific programs to be used for very low-income affordability assistance shall be identified and described within the Spending Plan.
4. The Township of Deptford may contract with a private or public entity to administer any part of its Housing Element and Fair Share Plan, including the requirement for affordability assistance, in accordance with N.J.A.C. 5:93-8.16.
5. No more than 20% of all revenues collected from development fees, and interest, may be expended on administration, including, but not limited to, salaries and benefits for municipal employees or consultants' fees necessary to develop or implement a new construction program, prepare a Housing Element and Fair Share Plan, and/or administer an affirmative marketing program.
  - a. In the case of a rehabilitation program, the administrative costs of the rehabilitation program shall be included as part of the 20% of collected development fees that may be expended on administration.
  - b. Administrative funds may be used for income qualification of households, monitoring the turnover of sale and rental units, and compliance with the monitoring requirements set forth in any settlement agreement related to affordable housing in the municipality. Legal or other fees related to litigation opposing affordable housing sites or related to appealing a judgement from the Court are not eligible uses of the Affordable Housing Trust Fund.

## H. Ongoing Collection of Fees

1. The ability for the Township of Deptford to impose, collect and expend development fees shall expire with the expiration of the repose period covered by its Judgment of Repose unless the Township of Deptford has first filed an adopted Housing Element and Fair Share Plan with the Court or with a designated state administrative agency, has petitioned for a Judgment of Repose from the Court or for substantive certification or its equivalent from a state administrative agency authorized to approve and administer municipal affordable housing compliance, and has received approval of its development fee ordinance from the entity that will be reviewing and approving the Housing Element and Fair Share Plan.
2. If the Township of Deptford fails to renew its ability to impose and collect development fees prior to the expiration of its Judgment of Compliance, it may be subject to forfeiture of any or all funds remaining within its Affordable Housing Trust Fund. Any funds so forfeited shall be deposited into the New Jersey Affordable Housing Trust Fund established pursuant to section 20 of P.L.1985, c.222 (C. 52:27D-320).
3. The Township of Deptford shall not impose a residential development fee on a development that receives preliminary or final site plan approval after the expiration of its Judgment of Compliance, nor shall the Township of Deptford retroactively impose a development fee on such a development. The Township of Deptford also shall not expend any of its collected development fees after the expiration of its Judgment of Compliance.

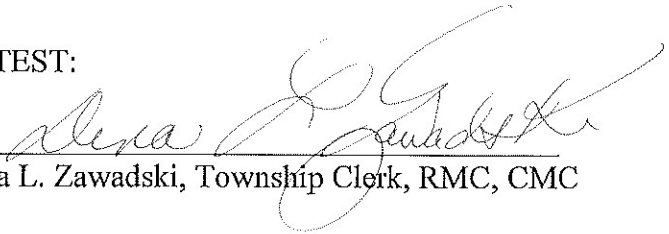
**Section 6.** Article V, §38, "Affordable Housing Controls and Affirmative Marketing Requirements" and §38.1, "Development Impact Fee" are hereby repealed. All references in the Township's Unified Development Ordinance to §38 or §38.1 are to be revised to refer to the appropriate section(s) in Article XII.

**Section 7. Repealer.** All ordinances or code provisions or parts thereof inconsistent with this ordinance are hereby repealed to the extent of such inconsistency.

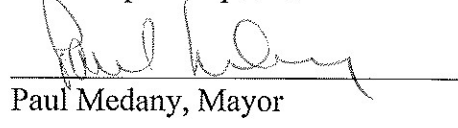
**Section 8. Severability.** If any section, subsection, paragraph, sentence or any other part of this ordinance is adjudged unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remainder of this ordinance.

**Section 9. Effective Date.** This ordinance shall take effect upon transmittal to the Gloucester County Planning Board and its passage and publication, as required by law.

ATTEST:

  
Dina L. Zawadski, Township Clerk, RMC, CMC

Township of Deptford

  
Paul Medany, Mayor

**CERTIFICATION**

The foregoing Ordinance was introduced at a Council Meeting of Township Council of the Township of Deptford held on the 14<sup>th</sup> day of September, 2020 and will be considered for final passage and adoption at a Work Session Meeting at which time any person interested therein will be given an opportunity to be heard. Said meeting to be held on the 19th day of October, 2020 at the Municipal Building, 1011 Cooper Street, Deptford, New Jersey.

  
Dina L. Zawadski, Township Clerk, RMC, CMC

RECORD OF VOTE – Introduction O.13.20					RECORD OF VOTE – Adoption O.13.20				
Council Member	Yes	No	Abstain	Absent	Council Member	Yes	No	Abstain	Absent
Medany	✓				Medany	✓			
Hufnell	✓				Hufnell	✓			
Barnshaw	✓				Barnshaw	✓			
Belling	✓				Belling	✓			
Lamb	✓				Lamb	✓			
Love	✓				Love	✓			
Schocklin					Schocklin				✓