ORDINANCE NO. 670

AN ORDINANCE AMENDING CHAPTER 150 LAND USE OF THE BOROUGH OF BUENA CODE CREATING A NEW ARTICLE XIV AFFORDABLE HOUSING AND CREATING A NEW SECTION 150-142.1 ZONING OVERLAY DISTRICT

WHEREAS, the purpose of this Ordinance is to amend Chapter 150, Land Use, of the Code of the Borough of Buena to incorporate standards for affordable housing in accordance with the adopted Housing Element and Fair Share Plan and Spending Plan; and

WHEREAS, the Land Use Board of the Borough of Buena, Atlantic County, State of New Jersey, adopted a Housing Element, Fair Share Plan and Spending Plan in August, 2018 in accordance with COAH's rules at N.J.A.C. 5:91 et seq. and N.J.A.C. 5:93 et seq., and subsequent applicable laws and regulations such as amendments to the FHA; and

WHEREAS, the Borough's Land Use Board recommends the adoption of this ordinance pursuant to the approval of the Housing Element and Fair Share Plan and Spending Plan by the Governing Body in accordance with the requirements of N.J.S.A. 40:55D-64. The Land Use Board found that the proposed ordinance is consistent with the adopted Master Plan Elements and made a favorable recommendation supporting the ordinance amendments at its August ,2018 meeting; and

NOW THEREFORE, BE IT ORDAINED by the Governing Body for the Borough of Buena, County of Atlantic and State of New Jersey, that Chapter 150, Land Use is hereby amended as follows:

SECTION I. Create New Article XIV. Affordable Housing as follows:

Article XIV. Affordable Housing

Section 150-255. General Program Purposes, Procedures

A. Affordable Housing Obligation.

(1) This section of the Borough Code sets forth regulations regarding the low and moderate income housing units in the Borough consistent with the provisions known as the "Substantive Rules of the New Jersey Council on Affordable Housing", *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 terms of a Settlement Agreement between the Borough and Fair Share Housing Center ("FSHC") such that the statutory requirement to provide very-low income units equal to 13% of affordable units approved and constructed after July 1, 2008, to be affordable to households at 30% of the regional median income, overrides the UHAC requirement that 10% of all low- and moderate-income units must be affordable at 35% of the regional median income, and the Borough's constitutional obligation to provide a fair share of affordable housing for low and moderate income households. In addition, this section applies requirements for very low income housing as established in P.L. 2008, c.46 (the "Roberts Bill", codified at *N.J.S.A.* 52:27D-329.1).

(2) This Ordinance is intended to assure that very-low, low- and moderate-income units ("affordable units") are created with controls on affordability over time and that very-low, low- and moderate-income households shall occupy these units. This Ordinance shall apply to all inclusionary developments and 100% affordable developments (including those funded with low-income housing tax credit financing) except where inconsistent with applicable law.

(3) The Buena Borough Land Use Board has adopted a Housing Element and Fair Share Plan pursuant to the Municipal Land Use Law at *N.J.S.A.* 40:55D-1, et seq. The Plan has also been endorsed by the Borough Council of the Borough of Buena. The Fair Share Plan describes the ways the Borough shall address its fair share for low- and moderate-income housing as determined by the Superior Court and documented in the Housing Element.

(4) This Ordinance implements and incorporates the Fair Share Plan and addresses the requirements of *N.J.A.C.* 5:93, as may be amended and supplemented.

(5) The Borough shall file monitoring and status reports with the Superior Court and place the reports on its municipal website. Any plan evaluation report of the Housing Element and Fair Share Plan and monitoring evaluation report prepared by the Special Master in accordance with *N.J.A.C.* 5:91 shall be available to the public at the Buena Borough Municipal Building, 616 Central Avenue, Minotola, New Jersey 08341.

(6) On or about September 27 of each year through the end of the period of Third Round Judgment of Repose, the Borough will provide annual reporting of the status of all affordable housing activity within the municipality through posting on the municipal website with a copy of such posting provided to all parties to the Borough's Court-approved Settlement Agreements, using forms previously developed for this purpose by the Council on Affordable Housing or any other forms endorsed by the Special Master and Fair Share Housing Center ("FSHC").

(7) The Fair Housing Act includes two provisions regarding action to be taken by the Borough during the ten-year period of protection provided in the Borough's agreement with FSHC. The Borough agrees to comply with those provisions as follows:

(a) By July 1, 2020, the Borough must prepare a midpoint realistic opportunity review, as required pursuant to N.J.S.A. 52:27D-313, which the Borough 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 and should be replaced and whether any mechanisms to meet unmet need should be revised or supplemented. Any interested party may by motion request a hearing before the Court regarding these issues. In the event the Court determines that a site or mechanism no longer presents a realistic opportunity and should be replaced or supplemented, then the municipality shall have the opportunity to supplement or revise its plan to correct any deficiency.

(b) Within 30 days of September 27, 2020 and September 27, 2023 the Borough shall prepare a review of compliance with the very low income housing requirements required by N.J.S.A. 52:27D-329.1 and its Settlement Agreement with Fair Share Housing Center. The Borough 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 the family very low income requirements referenced herein and in the Borough's Settlement Agreement with FSHC. 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 housing obligation.

B. Definitions. As used herein the following terms shall have the following meanings:

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

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

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

"Administrative agent" means the entity responsible for the administration of affordable units in accordance with this ordinance, *N.J.A.C.* 5:91, *N.J.A.C.* 5:93 and *N.J.A.C.* 5:80-26.1 et seq.

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

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

"Affordable" means, a sales price or rent within the means of a low- or moderate-income household as defined in *N.J.A.C.* 5:93-7.4; 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 development" means a housing development all or a portion of which consists of restricted units.

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

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

"Affordable unit" means a housing unit proposed or created pursuant to the Act, credited pursuant to *N.J.A.C.* 5:93, and/or funded through an affordable housing trust fund.

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

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

"Alternative living arrangement" means a structure in which households live in distinct bedrooms, yet share kitchen and plumbing facilities, central heat and common areas. Alternative living arrangement includes, but is 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" means a facility licensed by the New Jersey Department of Health and Senior Services to provide apartment-style housing and congregate dining and to assure that assisted living services are available when needed for four or more adult persons unrelated to the proprietor and that offers units containing, at a minimum, one unfurnished room, a private bathroom, a kitchenette and a lockable door on the unit entrance.

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

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

"DCA" means the State of New Jersey Department of Community Affairs.

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

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

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

"Fair Share Plan" means the plan that describes the mechanisms, strategies and the funding sources, if any, by which the Borough proposes to address its affordable housing obligation as established in the Housing Element, including the draft ordinances necessary to implement that plan, and addresses the requirements of *N.J.A.C.* 5:93-5.

"Housing Element" means the portion of the Borough's Master Plan, required by the Municipal Land Use Law ("MLUL"), *N.J.S.A.* 40:55D-28b(3) and the Act, that includes the information required by *N.J.A.C.* 5:93-5.1 and establishes the Borough's fair share obligation.

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

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

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

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

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

"Median income" means the median income by household size for the applicable county, as adopted annually by COAH or approved by the NJ Superior Court.

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

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

"Non-exempt sale" means any sale or transfer of ownership other than the transfer of ownership between husband and wife; the transfer of ownership between former spouses ordered as a result of a judicial decree of divorce or judicial separation, but not including sales to third parties; the transfer of ownership between family members as a result of

inheritance; the transfer of ownership through an executor's deed to a class A beneficiary and the transfer of ownership by court order.

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

"Regional asset limit" means the maximum housing value in each housing region affordable to a four-person household with an income at 80% of the regional median as defined by adopted/approved Regional Income Limits.

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

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

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

"Special master" means an expert appointed by a judge to make sure that judicial orders are followed. A master's function is essentially investigative, compiling evidence or documents to inform some future action by the court.

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

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

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

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

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

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

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

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

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

(4) Low/Moderate Split and Bedroom Distribution of Affordable Housing Units:

(a) The fair share obligation shall be divided equally between low- and moderate- income units, except that where there is an odd number of affordable housing units, the extra unit shall be a low income unit.

(b) In each affordable development, at least 50% of the restricted units within each bedroom distribution shall be low-income units.

(c) Within rental developments, of the total number of affordable rental units, at least 13% shall be affordable to very low income households.

(d) Affordable developments that are not age-restricted shall be structured in conjunction with realistic market demands such that:

(i) The combined number of efficiency and one-bedroom units shall be no greater than 20% of the total low- and moderate-income units;

(ii) At least 30% of all low- and moderate-income units shall be two bedroom units;

(iii) At least 20% of all low- and moderate-income units shall be three bedroom units; and

(iv) 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.

(5) Accessibility Requirements:

(a) The first floor of all new restricted townhouse dwelling units and all restricted multistory dwelling units attached to at least one (1) other dwelling unit shall be subject to the technical design standards of the Barrier Free Subcode, *N.J.A.C.* 5:23-7.

(b) All restricted townhouse dwelling units and all restricted multistory dwelling units attached to at least one (1) other dwelling unit shall have the following features:

(i) An adaptable toilet and bathing facility on the first floor;

(ii) An adaptable kitchen on the first floor;

(iii) An interior accessible route of travel on the first floor;

(iv) An interior accessible route of travel shall not be required between stories within an individual unit;

(v) An adaptable room that can be used as a bedroom, with a door or the casing for the installation of a door, on the first floor; and

(vi) 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 Borough has collected funds from the developer sufficient to make 10% of the adaptable entrances in the development accessible:

[1] Where a unit has been constructed with an adaptable entrance, upon the request of a disabled person who is purchasing

or will reside in the dwelling unit, an accessible entrance shall be installed.

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

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

[4] The developer of the restricted units shall submit a design plan and cost estimate for the conversion from adaptable to accessible entrances to the Construction Official of the Borough of Buena.

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

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

(6) 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 by the Superior Court, utilizing the regional income limits established.

(b) The maximum rent for restricted rental units within each affordable development shall be affordable to households earning no more than 60% of median income, and the average rent for restricted low- and moderate-income units shall be affordable to households earning no more than 52% of median income.

(c) The developers and/or municipal sponsors of restricted rental units shall establish at least one rent for each bedroom type for both low-income and moderate-income units.

(i) At least 13% of all low- and moderate-income rental units shall be affordable to households earning no more than 30% of median income.

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

(e) In determining the initial sales prices and rents for compliance with the affordability average requirements for restricted units other than assisted living facilities, the following standards shall be met:

(i) A studio or efficiency unit shall be affordable to a one-person household;

(ii) A one-bedroom unit shall be affordable to a one and one-half person household;

(iii) A two-bedroom unit shall be affordable to a three-person household;

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

(v) A four-bedroom unit shall be affordable to a six-person household.

(f) In determining the initial rents for compliance with the affordability average requirements for restricted units in assisted living facilities, the following standards shall be met:

(i) A studio or efficiency unit shall be affordable to a one-person household;

(ii) A one-bedroom unit shall be affordable to a one and one-half person household; and

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

(g) 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.

(h) The initial rent for a restricted rental unit shall be calculated so as not to exceed 30% of the eligible monthly income of the appropriate household size as determined under *N.J.A.C.* 5:80-26.4, as may be amended and supplemented; provided, however, that the rent shall be subject to the affordability average requirement of *N.J.A.C.* 5:80-26.3, as may be amended and supplemented.

(i) The price of owner-occupied low- and moderate-income units may increase annually based on the percentage increase in the regional median income limit for each housing region. In no event shall the maximum resale price established by the administrative agent be lower than the last recorded purchase price.

Income limits for all units for which income limits are not already established through a federal program exempted from the Uniform Housing Affordability Controls pursuant to N.J.A.C. 5:80-26.1 shall be updated by the Borough annually within 30 days of the publication of determinations of median income by HUD as follows:

(i) Regional income limits shall be established for the Region 6 based on the median income by household size, which shall be established by a regional weighted average of the uncapped Section 8 income limits published by HUD. To compute this regional income limit, the HUD determination of median county income for a family of four is multiplied by the estimated households within the county according to the most recent decennial Census. The resulting product for each county within the housing region is summed. The sum is divided by the estimated

total households from the most recent decennial Census in Region 6. This quotient represents the regional weighted average of median income for a household of four. The income limit for a moderate-income unit for a household of four shall be 80 percent of the regional weighted average median income for a family of four. The income limit for a low-income unit for a household of four shall be 50 percent of the HUD determination of the regional weighted average median income for a family of four. The income limit for a very low income unit for a household of four shall be 30 percent of the regional weighted average median income for a family of four. These income limits shall be adjusted by household size based on multipliers used by HUD to adjust median income by household size. In no event shall the income limits be less than those for the previous year.

(ii) The income limits calculated each year shall be the result of applying the percentages set forth in paragraph (a) above to HUD's determination of median income for the relevant fiscal year, and shall be utilized until the Borough updates the income limits after HUD has published revised determinations of median income for the next fiscal year.

(iii) The Regional Asset Limit used in determining an applicant's eligibility for affordable housing pursuant to N.J.A.C. 5:80-26.16(b)3 shall be calculated by the Borough annually by taking the percentage increase of the income limits calculated pursuant to paragraph (a) above over the previous year's income limits, and applying the same percentage increase to the Regional Asset Limit from the prior year. In no event shall the Regional Asset Limit be less than that for the previous year.

(j) The rent levels of very-low-, low- and moderate-income units may be increased annually based on the percentage increase in the Housing Consumer Price Index for the Northeast Urban Area, upon its publication for the prior calendar year. This increase shall not exceed nine percent in any one year. Rents for units constructed pursuant to low income housing tax credit regulations shall be indexed pursuant to the regulations governing low income housing tax credits.

(k) Tenant-paid utilities that are included in the utility allowance shall be so stated in the lease and shall be consistent with the utility allowance approved by DCA for its Section 8 program.

C. Condominium and Homeowners Association Fees.

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.

Section 150-256. Affordable Unit Controls and Requirements

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

B. Affirmative Marketing.

(1) The Borough shall adopt by resolution an Affirmative Marketing Plan, subject to approval of the Superior Court, compliant with *N.J.A.C.* 5:80-26.15, as may be amended and supplemented.

(2) The affirmative marketing plan is a regional marketing strategy designed to attract buyers and/or renters of all majority and minority groups, regardless of race,

creed, color, national origin, ancestry, marital or familial status, gender, affectional or sexual orientation, disability, age or number of children to housing units which are being marketed by a developer, sponsor or owner of affordable housing. The affirmative marketing plan is also intended to target those potentially eligible persons who are least likely to apply for affordable units in that region. It is a continuing program that directs all marketing activities toward COAH Housing Region 6 and covers the period of deed restriction.

(3) The affirmative marketing plan shall provide a regional preference for all households that live and/or work in COAH Housing Region 6, comprised of Atlantic, Cape May, Cumberland and Salem Counties.

(4) The Administrative Agent designated by the Borough shall assure the affirmative marketing of all affordable units is consistent with the Affirmative Marketing Plan for the municipality.

(5) In implementing the affirmative marketing plan, the Administrative Agent shall provide a list of counseling services to low- and moderate-income applicants on subjects such as budgeting, credit issues, mortgage qualification, rental lease requirements, and landlord/tenant law.

(6) The affirmative marketing process for available affordable units shall begin at least four months prior to the expected date of occupancy.

(7) The costs of advertising and affirmative marketing of the affordable units shall be the responsibility of the developer, sponsor or owner, unless otherwise determined or agreed to by the Borough of Buena.

C. Occupancy Standards.

(1) 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.

(2) Additional provisions related to occupancy standards (if any) shall be provided in the municipal Operating Manual.

D. Selection of Occupants of Affordable Housing Units.

(1) The administrative agent shall use a random selection process to select occupants of low- and moderate- income housing.

(2) A waiting list of all eligible candidates will be maintained in accordance with the provisions of *N.J.A.C.* 5:80-26 *et seq*.

E. Control Periods for Restricted Ownership Units and Enforcement Mechanisms.

(1) Control periods for restricted ownership units shall be in accordance with *N.J.A.C.* 5:80-26.5, and each restricted ownership unit shall remain subject to the controls on affordability for a period of at least 30 years, until the municipality takes action to release the controls on affordability.

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

(5) 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.

F. Price Restrictions for Restricted Ownership Units, Homeowner Association Fees and Resale Prices. Price restrictions for restricted ownership units shall be in accordance with *N.J.A.C.* 5:80-26.1, as may be amended and supplemented, including:

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

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

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

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

G. Buyer Income Eligibility.

(1) Buyer income eligibility for restricted ownership units shall be in accordance with *N.J.A.C.* 5:80-26.1, as may be amended and supplemented, such that low-income ownership units shall be reserved for households with a gross household income less than or equal to 50% of median income and moderate-income ownership units shall be reserved for households with a gross household income less than 80% of median income.

(2) The Administrative Agent shall certify a household as eligible for a restricted ownership unit when the household is a low-income household or a moderate-income household, as applicable to the unit, and the estimated monthly housing cost for the particular unit (including principal, interest, taxes, homeowner and private mortgage insurance and condominium or homeowner association fees, as applicable) does not exceed 33% of the household's certified monthly income.

H. Limitations on indebtedness secured by ownership unit; subordination.

(1) Prior to incurring any indebtedness to be secured by a restricted ownership unit, the administrative agent shall determine in writing that the proposed indebtedness complies with the provisions of this section.

(2) With the exception of original purchase money mortgages, during a control period neither an owner nor a lender shall at any time cause or permit the total indebtedness secured by a restricted ownership 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).

I. Control Periods for Restricted Rental Units.

(1) Control periods for restricted rental units shall be in accordance with *N.J.A.C.* 5:80-26.11, and each restricted rental unit shall remain subject to the controls on affordability for a period of at least 30 years, until the municipality takes action to release the controls on affordability.

(a) Restricted rental units created as part of developments receiving nine percent (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.

(2) Rehabilitated renter-occupied housing units that are improved to code standards shall be subject to affordability controls for a period of 10 years.

(3) Deeds of all real property that include restricted rental units shall contain deed restriction language. The deed restriction shall have priority over all mortgages on the property, and the deed restriction shall be filed by the developer or seller with the records office of the County of Atlantic. A copy of the filed document shall be provided to the Administrative Agent within 30 days of the receipt of a Certificate of Occupancy.

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

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

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

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

J. Price Restrictions for Rental Units; Leases.

(1) A written lease shall be required for all restricted rental units, except for units in an assisted living residence, and tenants shall be responsible for security deposits and the full amount of the rent as stated on the lease. A copy of the current lease for each restricted rental unit shall be provided to the Administrative Agent.

(2) No additional fees or charges shall be added to the approved rent (except, in the case of units in an assisted living residence, to cover the customary charges for food and services) without the express written approval of the Administrative Agent.

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

K. Tenant Income Eligibility.

(1) Tenant income eligibility shall be in accordance with *N.J.A.C.* 5:80-26.13, as may be amended and supplemented, and shall be determined as follows:

(a) Very low-income rental units shall be reserved for households with a gross household income less than or equal to 30% of median income.

(b) Low-income rental units shall be reserved for households with a gross household income less than or equal to 50% of median income.

(c) Moderate-income rental units shall be reserved for households with a gross household income less than 80% of median income.

(2) The Administrative Agent shall certify a household as eligible for a restricted rental unit when the household is a very low-income, low-income household or a moderate-income household, as applicable to the unit, and the rent proposed for the unit does not exceed 35% (40% for age-restricted units) of the household's eligible monthly income as determined pursuant to *N.J.A.C.* 5:80-26.16, as may be amended and supplemented; provided, however, that this limit may be exceeded if one or more of the following circumstances exists:

(a) The household currently pays more than 35% (40% for households eligible for age-restricted units) of its gross household income for rent, and the proposed rent will reduce its housing costs;

(b) The household has consistently paid more than 35% (40% for households eligible for age-restricted units) of eligible monthly income for rent in the past and has proven its ability to pay;

(c) The household is currently in substandard or overcrowded living conditions;

(d) The household documents the existence of assets with which the household proposes to supplement the rent payments; or

(e) The household documents proposed third-party assistance from an outside source such as a family member in a form acceptable to the Administrative Agent and the owner of the unit.

(3) The applicant shall file documentation sufficient to establish the existence of the circumstances in (2)a through e above with the Administrative Agent, who shall counsel the household on budgeting.

L. Conversions.

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

M. Alternative Living Arrangements.

(1) The administration of an alternative living arrangement shall be in compliance with N.J.A.C. 5:93-5.8 and UHAC, with the following exceptions:

(a) Affirmative marketing (N.J.A.C. 5:80-26.15), provided, however, that the units or bedrooms may be affirmatively marketed by the provider in accordance with an alternative plan approved by the Court;

(b) Affordability average and bedroom distribution (N.J.A.C. 5:80-26.3).

(2) With the exception of units established with capital funding through a 20-year operating contract with the Department of Human Services, Division of Developmental Disabilities, alternative living arrangements shall have at least 30 year controls on affordability in accordance with UHAC, unless an alternative commitment is approved by the Court.

(3) The service provider for the alternative living arrangement shall act as the Administrative Agent for the purposes of administering the affirmative marketing and affordability requirements for the alternative living arrangement.

Section 150-257. Administration.

A. Municipal Housing Liaison.

(1) The position of Municipal Housing Liaison for the Borough of Buena is hereby established. The Municipal Housing Liaison shall be appointed by duly adopted resolution of the Governing Body and be subject to the approval by the Superior Court.

(2) The Municipal Housing Liaison must be either a full-time or part-time employee of the Borough of Buena.

(3) The Municipal Housing Liaison must meet the requirements for qualifications, including initial and periodic training found in *N.J.A.C.* 5:93.

(4) The Municipal Housing Liaison shall be responsible for oversight and administration of the affordable housing program for the Borough of Buena, including the following responsibilities which may not be contracted out to the Administrative Agent:

(a) Serving as the municipality's primary point of contact for all inquiries from the State, affordable housing providers, Administrative Agents and interested households;

(b) The implementation of the Affirmative Marketing Plan and affordability controls.

(c) When applicable, supervising any contracting Administrative Agent.

(d) Monitoring the status of all restricted units in the Borough of Buena's Fair Share Plan;

(e) Compiling, verifying and submitting annual reports as required by the Superior Court;

(f) Coordinating meetings with affordable housing providers and Administrative Agents, as applicable; and

(g) Attending continuing education opportunities on affordability controls, compliance monitoring and affirmative marketing as offered or approved by the Superior Court.

B. Administrative Agent.

(1) The Borough shall designate by resolution of the Governing Body, subject to the approval of the Superior Court, one or more Administrative Agents to administer newly constructed affordable units in accordance with *N.J.A.C.* 5:93 and UHAC.

(2) An Operating Manual shall be provided by the Administrative Agent(s) to be adopted by resolution of the governing body and subject to approval of the Superior Court. The Operating Manuals shall be available for public inspection in the Office of the Municipal Clerk and in the office(s) of the Administrative Agent(s).

(3) The Administrative Agent shall perform the duties and responsibilities of an administrative agent as are set forth in UHAC and which are described in full detail in the Operating Manual, including those set forth in *N.J.A.C.* 5:80-26.14, 16 and 18 thereof, which includes:

(a) Attending continuing education opportunities on affordability controls, compliance monitoring, and affirmative marketing as offered or approved by the Superior Court;

(b) Affirmative Marketing;

(c) Household Certification;

(d) Affordability Controls;

(e) Records retention;

(f) Resale and re-rental;

(g) Processing requests from unit owners; and

(h) Enforcement, although the ultimate responsibility for retaining controls on the units rests with the municipality.

(i) The Administrative Agent shall, as delegated by the Governing Body, have the authority to take all actions necessary and appropriate to carry out its responsibilities, hereunder.

C. Enforcement of Affordable Housing Regulations.

(1) Upon the occurrence of a breach of any of the regulations governing the affordable unit by an Owner, Developer or Tenant, the municipality shall have all remedies provided at law or equity, including but not limited to foreclosure, tenant eviction, municipal fines, a requirement for household recertification, acceleration of all sums due under a mortgage, recoupment of any funds from a sale in the violation of the regulations, injunctive relief to prevent further violation of the regulations, entry on the premises, and specific performance.

(2) After providing written notice of a violation to an Owner, Developer or Tenant of a low- or moderate-income unit and advising the Owner, Developer or Tenant of the penalties for such violations, the municipality may take the following action

against the Owner, Developer or Tenant for any violation that remains uncured for a period of 60 days after service of the written notice:

(a) The municipality may file a court action pursuant to *N.J.S.A.* 2A:58-11 alleging a violation, or violations, of the regulations governing the affordable housing unit. If the Owner, Developer or Tenant is found by the court to have violated any provision of the regulations governing affordable housing units the Owner, Developer or Tenant shall be subject to one or more of the following penalties, at the discretion of the court:

(i) A fine of not more than $500.00 or imprisonment for a period not to exceed 90 days, or both. Each and every day that the violation continues or exists shall be considered a separate and specific violation of these provisions and not as a continuing offense;

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

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

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

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

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

(5) Foreclosure by the municipality due to violation of the regulations governing affordable housing units shall not extinguish the restrictions of the regulations governing affordable housing units as the same apply to the low- and moderate-income unit. Title shall be conveyed to the purchaser at the Sheriff's sale, subject

to the restrictions and provisions of the regulations governing the affordable housing unit. The Owner determined to be in violation of the provisions of this plan and from whom title and possession were taken by means of the Sheriff's sale shall not be entitled to any right of redemption.

(6) If there are no bidders at the Sheriff's sale, or if insufficient amounts are bid to satisfy the First Purchase Money Mortgage and any prior liens, the municipality may acquire title to the low- and moderate-income unit by satisfying the First Purchase Money Mortgage and any prior liens and crediting the violating owner with an amount equal to the difference between the First Purchase Money Mortgage and any prior liens and costs of the enforcement proceedings, including legal fees and the maximum resale price for which the low- and moderate-income unit could have been sold under the terms of the regulations governing affordable housing units. This excess shall be treated in the same manner as the excess which would have been realized from an actual sale as previously described.

(7) Failure of the low- and moderate-income unit to be either sold at the Sheriff's sale or acquired by the municipality shall obligate the Owner to accept an offer to purchase from any qualified purchaser which may be referred to the Owner by the municipality, with such offer to purchase being equal to the maximum resale price of the low- and moderate-income unit as permitted by the regulations governing affordable housing units.

(8) 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.

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

Section 150-258. Development Fee Ordinance

A. Purpose

(1) In Holmdel Builder's Association v. Holmdel Township, 121 N.J. 550 (1990), the New Jersey Supreme Court determined that mandatory development fees are authorized by the Fair Housing Act of 1985, N.J.S.A. 52:27d-301 *et seq.*, and the State Constitution, subject to the adoption of Rules by the Council on Affordable Housing (COAH).

(2) Pursuant to P.L. 2008, c. 46, Section 8 (C. 52:27D-329.2) and the Statewide Non-Residential Development Fee Act (C. 40:55D-8.1 through 8.7), COAH was authorized to adopt and promulgate regulations necessary for the establishment, implementation, review, monitoring and enforcement of municipal affordable housing trust funds and corresponding spending plans. Municipalities that were under the jurisdiction of COAH and that are now before a court of competent jurisdiction and have a Court-approved Spending Plan may retain fees collected from non-residential development.

(3) This Ordinance 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 Ordinance shall be used for the sole purpose of providing low- and moderate-income housing in accordance with a Court-approved Spending Plan.

B. Basic Requirements

(1) This Ordinance shall not be effective until approved by the Court.

(2) The Borough of Buena shall not spend development fees until the Court has approved a plan for spending such fees (Spending Plan).

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

"Affordable housing development" means a development included in the Housing Element and Fair Share Plan, and includes, but is not limited to, an inclusionary development, a municipal construction project or a 100 percent affordable housing development.

"COAH" or the "Council" means the New Jersey Council on Affordable Housing established under the Fair Housing Act.

"Development fee" means money paid by a developer for the improvement of property as permitted at N.J.A.C. 5:97-8.3.

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

"Equalized assessed value" means the assessed value of a property divided by the current average ratio of assessed to true value for the municipality in which the property is situated, as determined in accordance with Sections 1, 5, and 6 of P.L. 1973, c.123 (C.54:1-35a through C.54:1-35c).

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

D. Residential Development Fees

(1) Imposition of Fees. Within the Borough of Buena, all residential developers, except for developers of the types of developments specifically exempted below and developers of developments that include affordable housing, shall pay a fee in accordance with the following:

(a) For each new residential dwelling unit that is constructed pursuant to an application for development before the Planning or Zoning Board, except for isolated lot variances pursuant to N.J.S.A. 40:55D-70.c. on an existing lot of record, a fee of 1.5% of the equalized assessed value of the residential development fee imposed for the purposes of funding the Borough's Affordable Housing Program.

(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 six percent (6%) percent 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.

(2) Eligible Exactions, Ineligible Exactions and Exemptions for Residential Developments

(a) Affordable housing developments and/or developments where the developer has made a payment in lieu of on-site construction of affordable units, if permitted by Ordinance or by Agreement with the Borough of Buena, shall be exempt from the payment of development fees.

(b) Developments that have received preliminary or final site plan approval prior to the adoption of this Ordinance shall be exempt from the payment of development fees, unless the developer seeks a substantial change in the original approval. Where site plan approval is not applicable, the issuance

of a Zoning Permit and/or Construction 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) Improvements or additions to existing one and two-family dwellings on individual lots shall not be required to pay a development fee, but a development fee shall be charged for any new dwelling constructed as a replacement for a previously existing dwelling on the same lot that was or will be demolished, unless the owner resided in the previous dwelling for a period of one year or more prior to obtaining a demolition permit. Where a development fee is charged for a replacement dwelling, the development fee shall be calculated on the increase in the equalized assessed value of the new structure as compared to the previous structure.

(d) Homes replaced as a result of a natural disaster (such as a fire or flood) shall be exempt from the payment of a development fee.

E. Non-Residential Development Fees

(1) Imposition of Fees

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

(b) Within all zoning districts, non-residential developers, except for developers of the types of developments specifically exempted below, shall also pay a fee equal to two and one-half (2.5) percent of the increase in equalized assessed value resulting from any additions to existing structures to be used for non-residential purposes.

(c) Development fees shall be imposed and collected when an existing structure is demolished and replaced. The development fee of two and a half percent (2.5%) shall be calculated on the difference between the equalized assessed value of the pre-existing land and 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 two and a half percent (2.5%) development fee, unless otherwise exempted below.

(b) The two and a half percent (2.5%) development fee shall not apply to an increase in equalized assessed value resulting from alterations, change in use within the 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 for the non-residential development, whichever is later.

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

F. Collection Procedures

(1) Upon the granting of a preliminary, final or other applicable approval for a development, the approving authority or entity shall notify or direct its staff to notify the Construction Official responsible for the issuance of a Construction Permit.

(2) For non-residential developments only, the developer shall also be provided with a copy of Form N-RDF "State of New Jersey Non-Residential Development Certification/ Exemption" to be completed as per the instructions provided. The developer of a non-residential development shall complete Form N-RDF as per the instructions provided. The Construction Official shall verify the information submitted by the non-residential developer as per the instructions provided in the Form N-RDF. The Tax Assessor shall verify exemptions and prepare estimated and final assessments as per the instructions provided in Form N-RDF.

(3) The Construction Official responsible for the issuance of a Construction Permit shall notify the Borough Tax Assessor of the issuance of the first Construction Permit for a development which is subject to a development fee.

(4) Within 90 days of receipt of such notification, the Borough Tax Assessor shall prepare an estimate of the equalized assessed value of the development based on the plans filed.

(5) The Construction Official responsible for the issuance of a final Certificate of Occupancy shall notify the Borough Tax Assessor of any and all requests for the scheduling of a final inspection on a property which is subject to a development fee.

(6) Within 10 business days of a request for the scheduling of a final inspection, the Borough 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 Borough of Buena 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) Except as provided in Section 5.A.3) hereinabove, fifty percent (50%) of the initially calculated 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 the Certificate of Occupancy.

(9) Appeal of Development Fees

(a) A developer may challenge residential development fees imposed by filing a challenge with the County Board of Taxation. Pending a review and

determination by the Board, collected fees shall be placed in an interest bearing escrow account by the Borough of Buena. 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.

(b) A developer may challenge non-residential development fees imposed by filing a challenge with the Director of the Division of Taxation. Pending a review and determination by the Director, which shall be made within 45 days of receipt of the challenge, collected fees shall be placed in an interest bearing escrow account by the Borough of Buena. Appeals from a determination of the Director may be made to the tax court in accordance with the provisions of the State Tax Uniform Procedure Law, R.S.54:48-1, *et seq.*, within 90 days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.

G. Affordable Housing Trust Fund

(1) There is hereby created a separate, interest-bearing Affordable Housing Trust Fund to be maintained by the Chief Financial Officer of the Borough of Buena 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 a fraction of an affordable unit, where permitted by Ordinance or by Agreement with the Borough of Buena;

(b) Funds contributed by developers to make ten percent (10%) of the adaptable entrances in a townhouse or other multistory attached dwelling unit development accessible;

(c) Rental income from municipally operated units;

(d) Repayments from affordable housing program loans;

(e) Recapture funds;

(f) Proceeds from the sale of affordable units; and

(g) Any other funds collected in connection with Buena's affordable housing program.

(3) In the event of a failure by the Borough of Buena 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 N.J. Super. 565 (Law Div. 2015) (aff'd 442 N.J. Super. 563); or the expenditure of funds on activities not approved by the Court; or for other good cause demonstrating the unapproved use(s) of funds, the Court may authorize the State of New Jersey, Department of Community Affairs, Division of Local Government Services (LGS), to direct the manner in which the funds in the Affordable Housing Trust Fund shall be expended, provided that all such funds shall, to the extent practicable, be utilized for affordable housing programs within the Borough of Buena, or, if not practicable, then within the County or the Housing Region.

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 municipality 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 LGS to direct the expenditure of funds in the Trust Fund. The Court may also impose such other remedies as may be reasonable and appropriate to the circumstances.

(4) Interest accrued in the Affordable Housing Trust Fund shall only be used to fund eligible affordable housing activities approved by the Court.

H. Use of Funds

(1) The expenditure of all funds shall conform to a Spending Plan approved by the Court. Funds deposited in the Affordable Housing Trust Fund may be used for any activity approved by the Court to address the Borough of Buena'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; Regional Housing Partnership programs; conversion of existing non-residential buildings to create new affordable units; green building strategies designed to be cost saving and in accordance with accepted national or State standards; purchase of land for affordable housing; improvement of land to be used for affordable housing; extensions or improvements of roads and infrastructure to affordable housing sites; financial assistance designed to increase affordability; administration necessary for implementation of the Housing Element and Fair Share Plan; 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 Borough of Buena for past housing activities.

(3) At least 30 percent of all development fees collected and interest earned on such fees shall be used to provide affordability assistance to low- and moderate-income households in affordable units included in the municipal Fair Share Plan. One-third of the affordability assistance portion of development fees collected shall be used to provide affordability assistance to those households earning 30 percent or less of the median income for Housing Region 6, in which Buena 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, 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 percent or less of median income may include buying down the cost of low or moderate income units in the municipal Fair Share Plan to make them affordable to households earning 30 percent or less of median income. The specific programs to be used for very low income affordability assistance shall be identified and described within the Spending Plan.

(c) Payments in lieu of constructing affordable housing units on site, if permitted by Ordinance or by Agreement with the Borough of Buena, and funds from the sale of units with extinguished controls shall be exempt from the affordability assistance requirement.

(4) The Borough of Buena may contract with a private or public entity to administer any part of its Housing Element and Fair Share Plan, including its programs for affordability assistance.

(5) No more than 20 percent of all revenues collected from development fees may be expended on administration, including, but not limited to, salaries and benefits for municipal employees or 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 or a rehabilitation program.

(a) In the case of a rehabilitation program, the administrative costs of the rehabilitation program shall be included as part of the 20 percent 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 COAH's monitoring requirements. Legal or other fees related to litigation opposing affordable housing sites or related to securing or appealing a judgment from the Court are not eligible uses of the Affordable Housing Trust Fund.

I. Monitoring

The Borough of Buena shall provide annual reporting of Affordable Housing Trust Fund activity to the State of New Jersey, Department of Community Affairs, Council on Affordable Housing or Local Government Services or other entity designated by the State of New Jersey, with a copy provided to Fair Share Housing Center and posted on the municipal website, using forms developed for this purpose by the New Jersey Department of Community Affairs, Council on Affordable Housing or Local Government Services. The reporting shall include an accounting of all Affordable Housing Trust Fund activity, including the sources and amounts of funds collected and the amounts and purposes for which any funds have been expended. Such reporting shall include an accounting of development fees collected from residential and non-residential developers, payments in lieu of constructing affordable units on site (if permitted by Ordinance or by Agreement with the Borough), funds from the sale of units with extinguished controls, barrier free escrow funds, rental income from Borough owned affordable housing units, repayments from affordable housing program loans, and any other funds collected in connection with Buena's affordable housing programs, as well as an accounting of the expenditures of revenues and implementation of the Spending Plan approved by the Court.

J. Ongoing Collection of Fees

(1) The ability for the Borough of Buena to impose, collect and expend development fees shall expire with the expiration of the repose period covered by its Judgment of Compliance unless the Borough of Buena 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 Compliance 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 Borough of Buena 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 Borough of Buena 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 Borough of Buena retroactively impose a development fee on such a development. The Borough of Buena also shall not expend any of its collected development fees after the expiration of its Judgment of Compliance.

Section 150-259. Affirmative Marketing Plan

A. In accordance with the rules and regulations pursuant to N.J.A.C. 5:94 et seq. and the New Jersey Uniform Housing Affordability Controls pursuant to N.J.A.C. 5:80-26 et seq., Buena Borough adopts the following as an affirmative marketing plan.

(1) All affordable housing units shall be marketed in accordance with the provisions herein.

(2) The Borough of Buena has an affordable housing obligation. This subsection shall apply to all developments that contain proposed low- and moderate-income units and any future developments that may occur.

(3) In implementing the affirmative marketing program, the Municipal Housing Liaison shall undertake all of the following strategies:

(a) Publication of one advertisement in a newspaper of general circulation within the Housing Region.

(b) Broadcast of one advertisement by a radio or television station broadcasting throughout the Housing Region.

(c) At least one additional regional marketing strategy using one of the other sources listed below.

(4) The affirmative marketing plan is a regional marketing strategy designed to attract buyers and/or renters of all majority and minority groups, regardless of race, creed, color, national origin, ancestry, marital or familial status, gender, affectional or sexual orientation, disability, age or number of children, to housing units which are being marketed by a developer or sponsor of affordable housing. The affirmative marketing plan is also intended to target those potentially eligible persons who are least likely to apply for affordable units in that region. It is a continuing program that directs all marketing activities toward the COAH Housing Region in which the municipality is located and covers the period of deed restriction. The Borough of Buena is in the Housing Region 6 consisting of Atlantic, Cape May, Cumberland and Salem Counties. The affirmative marketing program is a continuing program and shall meet the following requirements:

(a) All newspaper articles, announcements and requests for applications for low- and moderate-income units shall appear in the following daily regional newspaper/publication:

(i) The Atlantic City Press.

(ii) The Daily Journal

(iii) The Atlantic County Record

(b) The primary marketing shall take the form of at least one press release sent to the above publication and a paid display advertisement in the above newspaper. Additional advertising and publicity shall be on an "as needed" basis. The developer shall disseminate all public service announcements and pay for display advertisements. The developer shall provide proof of publication to the Housing Administrator. The Housing Administrator shall approve all press releases and advertisements in advance. The advertisement shall include a description of the:

(i) Location of the units;

(ii) Direction to the units;

(iii) Range of prices for the units;

(iv) Size, as measured in bedrooms, of units;

(v) Maximum income permitted to qualify for the units;

(vi) Location of applications;

(vii) Business hours when interested households may obtain an application; and

(viii) Application fees, if any.

(c) All newspaper articles, announcements and requests for applications for low- and moderate-income housing shall appear in the following neighborhood-oriented weekly newspapers within the region:

(i) Atlantic City Press.

(ii) The Daily Journal.

(iii) Atlantic County Record.

(d) The following regional cable television station or regional radio station shall be used. The developer must provide satisfactory proof of public dissemination:

(i) WSJO 104.9.

(ii) New Jersey 101.5 FM.

(iii) News Channel 40.

(e) The following is the location of applications, brochure(s), sign(s) and/or poster(s) used as part of the affirmative marketing program:

(i) Buena Borough Municipal Building.

(ii) Atlantic County Public Library and Branches.

(iii) Buena Borough Web site.

(iv) Developer's sales office.

(v) Municipal libraries and municipal administrative buildings in the region.

(vi) Atlantic County Office of Municipal and County Government Services.

(vii) Atlantic County Housing Authority.

(f) The following is a listing of community contact person(s) and/or organizations(s) in Atlantic, Cape May, Cumberland and Salem that will aid in the affirmative marketing program with particular emphasis on contracts that will reach out to groups that are least likely to apply for housing within the region:

(i) Lions club.

(ii) Habitat for Humanity.

(iii) Rotary Club.

(iv) Houses of worship.

(v) New Jersey Housing Resource Center.

(vi) Fair Share Housing Center

(vii) The New Jersey State Conference of the NAACP

(viii) Latino Action Network

(ix) Mainland/Pleasantville, Mizpah, Atlantic City and Cape May County branches of the NAACP

(g) Quarterly flyers and applications shall be sent to each of the following agencies for publication in their journals and for circulation among their members:

(i) Atlantic County Board of Realtors

(ii) Cape May County Board of Realtors

(iii) Cumberland County Board of Realtors

(iv) Salem County Board of Realtors

(5) Applications shall be mailed to prospective applicants upon request. Also, applications shall be available at the developer's sales/rental office.

(6) Additionally, quarterly informational circulars and applications shall be sent to the chief administrative employees of each of the following agencies in the counties of Atlantic, Cape May, Cumberland and Salem:

(a) Welfare or social services board

(b) Rental assistance office (local office of DCA)

(c) Office on Aging

(d) Housing Agency or Authority

(e) Library

(f) Area community action agencies

(7) A random selection method to select occupants of low- and moderate-income housing will be used by the Municipal Housing Liaison, in conformance with N.J.A.C. 5:80-26.16 (1).

B. The Municipal Housing Liaison is the person responsible to administer the program. The Municipal Housing Liaison has 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 reoccupancy of units as they become vacant during the period of affordability controls; to assist with outreach to low- and moderate-income households; and to enforce the terms of the deed restriction and mortgage loan as per N.J.A.C. 5:80-26. The Municipal Housing Liaison within the Borough of Buena is the designated housing officer to act as liaison to the Borough Administrator. Also, the Municipal Housing Liaison shall direct qualified low- and moderate-income applicants to counseling services on subjects such as budgeting, credit issues, mortgage qualifications, rental lease requirements and landlord/tenant law.

C. All developers of low- and moderate-income housing units shall be required to assist in the marketing of the affordable units in their respective developments.

D. The marketing program shall commence at least 120 days before the issuance of either temporary or permanent certificates of occupancy. The marketing program shall continue until all low-income housing units are initially occupied and for as long as affordable units are deed restricted and occupancy or reoccupancy of units continue to be necessary.

E. The Municipal Housing Liaison will comply with monitoring and reporting requirements as per N.J.A.C. 5:80-26

SECTION IV. Create a new Section 150-142.1 under Article XVI Zoning Districts; Standards:

Section 150-142.1. Housing Overlay Zone (AH-1).

A. Purpose. In order to provide for Buena Borough's fair share of the region's low- and moderate-income housing, an affordable housing overlay zone is created for Block 113, Lot 16.04 and Block 171, Lot 22. The overlay zone is requires demonstration of the provision of adequate sewer and water in order for its provisions to be used.

The Borough is required to provide for up to 20 low-and moderate-income units within the overlay zones. The Borough is also permitted to create new low- and moderate-income units in existing units elsewhere in the municipality. The overlay zone may be

re-examined and adjusted in accordance with the Settlement Agreement between the Borough and Fair Share Housing Center if units are provided elsewhere in the municipality before these properties are approved for development under the overlay zoning.

B. Permitted uses:

(1) Non-age restricted single-family detached housing at a density of 4 units per acre with an affordable housing set-aside of 15% with public sewer and public water.

(2) Non-age restricted single-family detached housing at a density of 5 units per acre with an affordable housing set-aside of 20% with public sewer and public water.

(3) Accessory uses customary to the private residential use.

C. Bulk Standards:

(1) Single-family with a density of 4 units per acre

Minimum lot size:	10,000 square feet
Minimum lot width:	100 feet
Minimum Setbacks:	
Front Yard:	30 feet
Rear Yard:	30 feet
Side Yard:	12 feet each
Maximum lot coverage:	30%
Accessory Building (Side or Rear Yard Only):	
Rear Yard:	6 feet
Side Yard:	6 feet

(2) Single-family with a density of 5 units per acre

Minimum lot size:	8,700 square feet
Minimum lot width:	80 feet
Minimum Setbacks:	
Front Yard:	30 feet
Rear Yard:	30 feet
Side Yard:	10 feet
Maximum lot coverage:	30%
Accessory Building (Side or Rear Yard Only):	
Rear Yard:	6 feet
Side Yard:	6 feet

(3) Maximum Building Height: 25 feet

(4) Parking is required in accordance with the Residential Site Improvement Standards (RSIS)

D. General Standards:

(1) Pursuant to N.J.A.C. 5:93-5.6(f) and Mount Laurel II guidelines, if constructed within a development project, the affordable housing units shall be disbursed throughout the site plan and shall, to the extent practicable, have an exterior design which is compatible with the surrounding market-rate units. Similarly, affordable units constructed separate from a development project shall, to the extent practicable, have an exterior design which is compatible with the surrounding housing in the neighborhood.

(2) Where affordable housing units are to be constructed as part of the development project, all land use approvals and permits required to construct such units, including, but not limited to, Buena Planning Board, Buena Zoning Board, County Planning Board, Pinelands, NJDEP/CAFRA and local building permits, shall be obtained under a single series of applications. Where said 20% affordable housing units are to be constructed separately from the development project, all

land use approvals and permits required to construct the development project and the affordable units shall be obtained by the filing of separate but simultaneous applications.

(3) Regardless of whether constructed as part of a development project or as separate units, no certificate of occupancy for the market-rate units shall be issued unless a proportionate number of certificates of occupancy are issued for the affordable units as per item 4 below. Similarly, where a development project is proposed to be constructed in phases, the developer shall provide a phasing plan which provides for the affordable housing to be developed proportionately with the market-rate units in accordance with item 4 below.

(4) In accordance with N.J.A.C. 5:93-5.6(d), the proportion of affordable to market-rate units to be issued certificate of occupancy shall be as follows:

Maximum % of Market-Rate Housing Units Completed	**Minimum % of Affordable Units Completed**
25+1%	10%
50%	50%
75%	75%
90%	100%
100%	

(5) All to-be-constructed affordable housing units shall be specifically identified on the site plan for the development project, along with the support services required to sustain such affordable housing units. It is the intent herein to not only encourage but to sustain a quality of life for affordable housing residents within prescribed residential developments.

(6) In pursing the development of affordable housing as part of a development project, the Planning Board or Zoning Board, as applicable, may grant such bulk (c) variances and/or design waivers as may be necessary to assist in adjusting the site plan configuration to provide for such units, thereby allowing the placement of disbursed affordable housing units throughout the development project.

(7) All affordable housing units shall be deed-restricted by the developer for a period of at least 30 years in accordance with the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.1 et. Seq. Copies of the proposed deed restrictions shall be submitted as part of the site plan review and approval process.

(8) In addition to building types permitted in planned developments, units developed under the Mount Laurel II procedures may also include modular and manufactured housing units.

E. The regulations contained in Article XXIV Affordable Housing shall also apply.

SECTION V. Amend the Zoning Map to create a new Housing Overlay (AH-1) District on Block 113, Lot 16.04 and Block 171, Lot 22

NOW THEREFORE, BE IT FURTHER ORDAINED by the Governing Body for the Borough of Buena, County of Atlantic and State of New Jersey, that a certified copy of this ordinance is forwarded to the Pinelands Commission for certification.

BY:

ROSALIE M. BAKER
PRESIDENT OF COUNCIL

APPROVED BY THE MAYOR:

DAVID ZAPPARIELLO
MAYOR

MARYANN CORALUZZO
BOROUGH CLERK

DATE: 08/27/18