	FIRST READING	SECOND READING
Introduced by:	Councilwoman Andre	Councilwoman Andre
Seconded by	Councilman Mortimer	Councilman Lane
Roll call vote:	Ayes: 6 Nays: 0	Ayes: 4 Nays: 0
Absent:		Councilman Dierkes & Mortimer
Date:	May 20, 2014	June 17, 2014

ORDINANCE 1219-2014

AN ORDINANCE CREATING A NEW SECTION OF THE LAND USE ORDINANCE OF THE BOROUGH OF MOUNTAINSIDE SECTION 1014, "HOUSING ELEMENT AND FAIR SHARE PLAN"

WHEREAS, the Superior Court of New Jersey, Law Division, by way of Order entered February 26, 2014, has determined that the Housing Plan Element and Fair Share Plan of the Borough of Mountainside satisfies the Borough's obligation to provide a realistic opportunity to satisfy its "fair share" of the regional need for housing affordable to low and moderate income households pursuant to the Fair Housing Act, N.J.S.A. 52:27D-301 et. seq., the substantive regulations of the New Jersey Council on Affordable Housing ("COAH") and other applicable laws for COAH's first and second housing cycles; and

WHEREAS, the Order further provided that upon adoption of the Housing Plan Element and Fair Share Plan, the Borough would be entitled to a Judgment of Compliance and Repose and associated protection from any builders remedy lawsuits for ten (10) years; and

WHEREAS, the Mayor and Council of the Borough of Mountainside, County of Union, State of New Jersey, have determined that the Housing Plan Element and Fair Share Plan is a necessary and proper amendment to the Land Use Ordinance, and desire to adopt same as a new section 1014, "Housing Element and Fair Share Plan," of the Land Use Ordinance of the Borough of Mountainside.

NOW THEREFORE BE IT ORDAINED by the Mayor and Council as follows:

Section 1.

A new section of the Code, to be entitled "Housing Element and Fair Share Plan," shall be added to the Land Use Ordinance of the Borough, as follows:

1. Affordable Housing Obligation

   A. This section is intended to assure that low and moderate income units ("affordable units") are created with controls on affordability over time and that low and moderate income households shall occupy these units. This chapter shall apply except where inconsistent with applicable law.

   B. The Borough of Mountainside 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 Fair Share Plan has been endorsed by the governing body. The Fair Share Plan describes the ways the Borough of Mountainside shall address its fair share for low and moderate income housing as determined by the Council on Affordable Housing (COAH) and documented in the Housing Element.

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

   D. The Borough of Mountainside shall file monitoring reports with COAH in accordance with N.J.A.C. 5:93, tracking the status of the implementation of the Housing Element and Fair Share Plan. Any plan evaluation report of the Housing Element and Fair Share Plan and monitoring prepared by COAH in accordance with N.J.A.C. 5:93 shall be available to the public at the Borough of Mountainside

Municipal Building, Municipal Clerk's Office, 1385 Route 22, Mountainside, New Jersey, 07092 or from COAH at 101 South Broad Street, Trenton, New Jersey, and on COAH's website, www.nj.gov/dca/affiliates/coah.

2. Definitions

The following terms when used in this chapter shall have the meanings given in this section:

Accessory Apartment
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
The Fair Housing Act of 1985, P.L. 1985, c. 222 (N.J.S.A. 52:27D-301 et seq.)

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

Administrative Agent
The entity responsible for the administration of affordable units in accordance with this chapter, 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 median income at which restricted units in an affordable housing development are affordable to low and moderate income households.

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

Affordable Housing Development
A development included in the Housing Element and Fair Share Plan, and includes, but is not limited to, an inclusionary development, a municipal construction project or a one hundred percent affordable development.

Affordable Housing Program(s)
Any mechanism in a municipal Fair Share Plan prepared or implemented to address a municipality's fair share obligation.

Affordable Unit
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
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
A housing unit designed to meet the needs of, and exclusively for, the residents of an age restricted segment of the population, such that all the residents of the development where the unit is situated are 62 years or older; or at least 80% of the units are occupied by at least one person that is 55 years or older and in no units shall there be permanent occupants under the age of 18; or the development has been designated by the Secretary of the U.S. Department of Housing and Urban Development as "housing for older persons" as defined in Section 807(b)(2) of the Fair Housing Act, 42 U.S.C.§ 3607.

Assisted Living Residence
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
A household that has been certified by an administrative agent as a low income household or moderate income household.

COAH
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
The State of New Jersey Department of Community Affairs.

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.

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

Inclusionary Development
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 nonresidential structure to residential and the creation of new affordable units through the reconstruction of a vacant residential structure.

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

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

Major System
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 to low and moderate income households that may sell or rent at any price.

Median Income
The median income by household size for the applicable county, as adopted annually by COAH.

Moderate Income Household
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
A restricted unit that is affordable to a moderate income household.

Municipality
The Borough of Mountainside, Union County, New Jersey.

Nonexempt 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.

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).

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 COAH's adopted Regional Income Limits published annually by COAH.

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

Rent
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.

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

Weatherization
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.

3. Affordable Housing Programs

The Borough of Mountainside has determined that it will use the following mechanisms to satisfy its affordable housing obligations: rehabilitation and new construction.

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

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

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

C. Payments-in-lieu and off-site construction. The standards for the collection of Payments-in-lieu of constructing affordable units or standards for constructing affordable units off-site shall be in accordance with N.J.A.C. 5:93.

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

4. Affordable Housing (AH) Districts

A. Purpose. The AH districts are established to provide the opportunity to provide affordable housing in accord with NJ Fair Housing Law. The standards and requirements of the districts are designed to recognize the existing developed neighborhood character and to further the goals of the Borough Master Plan as amended.

B. The following sites and areas shall provide affordable housing units as follows:

a. Block 3A, Lots 17 and 18	6 units
b. Block 14 Lot 14	6 units
c. Block 15I, Lot 48B	4 units
d. LI/OB overlay zone	20% of total approved units

C. The R-2/AH district permits senior citizen development only. The O-B/AH and B/AH district are not age restricted.

D. The L-I/AH and OB/AH (Springfield Avenue) districts are overlay zones. These properties may be maintained and/or developed in accord with L-I and OB district restrictions and standards as set forth in Section 1013 and 1014 respectively or in the alternative developed for affordable units as set forth in this section.

E. Permitted Uses. No building, structure or premises shall be used and no building or structure shall be erected or structurally altered except for the following uses:

   a. Townhouses.

   b. Apartments.

   c. In the B/AH zone non-residential uses limited to and subject to all restrictions and standards of the B zone and as set forth in Section 1100.

   d. In the L-I/AHand OB/AH non-residential uses limited to and subject to all restrictions and standards of the L-I and OB zones and as set forth in Section 1013 and 1014 respectively.

F. Area, yard and building requirements are as follows:

   a. Minimum area – 200,000 sf

   b. Maximum density

      i. R-2/AH and B/AH – 6 dwelling units/acre
      ii. O-B/AH and L-I/AH – 6 dwellings/acre subject to critical area restriction (Section 1003Z)

   c. Bulk and yard requirements.

      i. Maximum percent lot coverage by residential buildings shall be a maximum of twenty-five (25%) percent for the R-2/AH, O-B/AH and L-I/AH zones. The maximum percent lot coverage by residential buildings shall be forty (40%) percent for the B/AH zone. This restriction excludes common facilities such as clubhouses, gazebos, maintenance sheds, shelters and similar structures.
      ii. Maximum percent total impervious coverage is sixty five (65%) percent for R-2/AH, O-B/AH and L-I/AH zones and eighty (80%) percent for the B/AH zone.
      iii. Building height. No buildings shall exceed a height of 2½ stories or thirty-six (36) feet.
      iv. Minimum setback for front yard is fifty (50) feet for R-2/AH, O-B/AH and L-I/AH zones, five (5) feet for non-residential and mixed use buildings and thirty (30) feet for residential buildings in the B/AH zone. Minimum setback for side and rear yard is twenty-five (25) feet.
      v. Off-street parking. Off-street parking spaces shall be provided in accordance with applicable Residential Site Improvement Standards (RSIS) N.J.S.A. 5:21-4.14 (parking).

   d. In the L-I/AH non-residential uses limited to and subject to all restrictions and standards of the L-I zone and as set forth in Section 1013.

   e. No parking shall be permitted in the required side and rear yard setback area.

f. Lighting standards for common areas shall conform to standards as set forth in this chapter.

g. Roads. All interior roads shall be private streets and conform to applicable RSIS standards.

h. Signs. Project ID sign shall be permitted at maximum of 50 sf in size.

G. Establishment of owners association. Where units are sold the developer shall provide for an organization for the ownership and maintenance of any common facilities and recreation facilities, landscaped areas, internal roadways and other amenities in the development for the benefit of owners and residents of the development. The documentation establishing such owner's association shall be subject to the approval of the Borough Attorney.

H. Recreation facilities.

a. The areas within the common open space shall provide recreation facilities appropriate for the size of the development.

b. The common open space and recreation facilities located on the development shall be available on an equal basis to all residents of the development.

c. The recreation facilities may include a central recreation complex, swimming pool, tennis courts, picnic areas and similar facilities.

d. The recreation facilities shall include meandering open space and trail system linking residential dwellings and other structures located within and without the development.

I. Sidewalk and walkways.

a. A system of contiguous walkways shall be provided throughout the development, including its common areas, for safe pedestrian movement.

b. Walkways within common areas shall connect to sidewalks along streets.

J. Buffers.

a. Buffers must be a minimum of twenty-five (25) feet from all property lines of the tract where abutting existing single family homes. These shall either be preserved with natural vegetation or landscaped to provide a visual buffer from adjacent properties.

b. Buffering shall provide a year-round visual screen in order to minimize adverse impacts on the site from adjacent areas. Buffering shall also ensure privacy for dwelling units and minimize adverse impacts from traffic, noise and light.

c. Buffering shall consist of a berm and either fencing or evergreens or combinations of materials to achieve the stated buffering objectives.

K. Low and moderate income housing requirement. Required percentage of affordable units to be constructed on-site. The developer shall designate and set aside twenty (20%) percent of the total dwelling units as affordable to low and moderate income households.

L. Permitted Accessory Building and Uses. Accessory uses customary and incidental to the principal use, including but not limited to those specified. The term accessory use shall not include a business nor any building or unit not located on the same lot with the principal building to which it is accessory.

a. Private garages and carports.

b. Private swimming pools and tennis courts provided such uses shall comply with the minimum required yard depth requirement for ht principal building.

c. Outdoor barbecue structures.

d. Storage buildings.

M. Conditional uses. None.

5. New Construction

The following general guidelines apply to all newly constructed developments that contain low and moderate income housing units, including any currently unanticipated future developments that will provide low and moderate income housing units.

A. 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. 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
iv. The remaining units may be allocated among two and three bedroom units at the discretion of the developer

d. Affordable developments that are age restricted shall be structured such that the number of bedrooms shall equal the number of age restricted low and moderate income units within the inclusionary development. The standard may be met by having all one bedroom units or by having a two bedroom unit for each efficiency unit.

B. Accessibility requirements:

a. The first floor of all restricted townhouse dwelling units and all restricted units in all other multistory buildings shall be subject to the technical design standards of the Barrier Free Subcode, N.J.A.C. 5:23-7 and N.J.A.C. 5:93.

b. All restricted townhouse dwelling units and all restricted units in other multistory buildings in which a restricted dwelling unit is attached to at least one other dwelling unit shall have the following features:

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
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 and N.J.A.C. 5:93, or evidence that the Borough of Mountainside 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 Mountainside'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 Subsection B(2)(f)[2] above shall be used by the Borough of Mountainside 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 Mountainside.
5. Once the Construction Official has determined that the design plan to convert the unit entrances from adaptable to accessible meet the requirements of the Barrier Free Subcode, N.J.A.C. 5:23-7 and N.J.A.C. 5:93, and that the cost estimate of such conversion is reasonable, payment shall be made to the Borough of Mountainside'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 and N.J.A.C. 5:93.

C. 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 in COAH, utilizing the regional income limits established by COAH.

b. The maximum rent for restricted rental units within each affordable development shall be affordable to households earning no more than 80% 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.

d. The maximum sales price of restricted ownership units within each affordable development shall be affordable to households earning no more than 80% 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 used:

   i. A studio 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
   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 used:

   i. A studio 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 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.

j. The rent of low and moderate income units may be increased annually based on the percentage increase in the Housing Consumer Price Index for the United States. This increase shall not exceed 9% in any one year. Rents for units constructed pursuant to low income housing tax credit regulations shall be indexed pursuant to the regulations governing low income housing tax credits.

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.

6. Guidelines for all Developments

The following general guidelines apply to all developments that contain low and moderate income housing units, including any currently unanticipated future developments that will provide low and moderate income housing units.

A. Affirmative marketing requirements.

a. The Borough of Mountainside shall adopt by resolution an affirmative marketing plan, compliant with N.J.A.C. 5:80-26.15, as may be amended and supplemented.

b. The affirmative marketing plan is a regional marketing strategy designed to attract buyers and/or renters of all majority and minority groups, regardless of race, creed, color, national origin, ancestry, marital or familial status, gender, affectional or sexual orientation, disability, age or number of children to housing units which are being marketed by a developer, sponsor or owner of affordable housing. The affirmative marketing plan is also intended to target those potentially eligible persons who are least likely to apply for affordable units in that region. It is a continuing program that directs all marketing activities toward COAH Housing Region 2 and covers the period of deed restriction.

c. The affirmative marketing plan shall provide a regional preference for all households that live and/or work in COAH Housing Region 2.

d. The administrative agent designated by the Borough of Mountainside shall assure the affirmative marketing of all affordable units is consistent with the affirmative marketing plan for the municipality.

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

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

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

B. Occupancy standards.

a. In referring certified households to specific restricted units, to the extent feasible, and without causing an undue delay in occupying the unit, the administrative agent shall strive to:

i. Provide an occupant for each bedroom
ii. Provide children of different sex with separate bedrooms
iii. Prevent more than two persons from occupying a single bedroom

b. Additional provisions related to occupancy standards (if any) shall be provided in the municipal operating manual.

C. Control periods for restricted ownership units and enforcement mechanisms.

a. Control periods for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.5, as may be amended and supplemented, and each restricted ownership unit shall remain subject to the requirements of this chapter until the Borough of Mountainside elects to release the unit from such requirements; however, and prior to such an election, a restricted ownership unit must remain subject to the requirements of N.J.A.C. 5:80-26.1, as may be amended and supplemented, for at least 30 years.

b. The affordability control period for a restricted ownership unit shall commence on the date the initial certified household takes title to the unit.

c. Prior to the issuance of the initial certificate of occupancy for a restricted ownership unit and upon each successive sale during the period of restricted ownership, the administrative agent shall determine the restricted price for the unit and shall also determine the nonrestricted, fair market value of the unit based on either an appraisal or the unit's equalized assessed value.

d. At the time of the first sale of the unit, the purchaser shall execute and deliver to the administrative agent a recapture note obligating the purchaser (as well as the purchaser's heirs, successors and assigns) to repay, upon the first nonexempt sale after the unit's release from the requirements of this chapter, an amount equal to the difference between the unit's nonrestricted fair market value and its restricted price, and the recapture note shall be secured by a recapture lien evidenced by a duly recorded mortgage on the unit.

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

f. 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.

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

a. The initial purchase price for a restricted ownership unit shall be approved by the administrative agent.

b. The administrative agent shall approve all resale prices, in writing and in advance of the resale, to assure compliance with the foregoing standards.

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

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

E. Buyer income eligibility.

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

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

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

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

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

G. Control periods for restricted rental units.

a. Control periods for restricted rental units shall be in accordance with N.J.A.C. 5:80-26.11, as may be amended and supplemented, and each restricted rental unit shall remain subject to the requirements of this chapter until the Borough of Mountainside elects to release the unit from such requirements pursuant to action taken in compliance with N.J.A.C. 5:80-26.1, as may be amended and supplemented, and prior to such an election, 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, for at least 30 years.

b. Deeds of all real property that includes 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 Union. A copy of the filed document shall be provided to the administrative agent within 30 days of the receipt of a certificate of occupancy.

c. A restricted rental unit shall remain subject to the affordability controls of this chapter, despite the occurrence of any of the following events:

i. Sublease or assignment of the lease of the unit
ii. Sale or other voluntary transfer of the ownership of the unit
iii. The entry and enforcement of any judgment of foreclosure

H. Price restrictions for rental units; leases.

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

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

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

I. Tenant income eligibility.

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

i. Very low income rental units shall be reserved for households with a gross household income less than or equal to 30% of median income
ii. Low income rental units shall be reserved for households with a gross household income less than or equal to 50% of median income
iii. Moderate income rental units shall be reserved for households with a gross household income less than 80% of median income

b. The administrative agent shall certify a household as eligible for a restricted rental unit when the household is a very low income, low income 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:

i. 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
ii. 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
iii. The household is currently in substandard or overcrowded living conditions
iv. The household documents the existence of assets with which the household proposes to supplement the rent payments
v. The household documents proposed third party assistance from an outside source such as a family member in a form acceptable to the administrative agent and the owner of the unit

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

J. Administration.

a. The position of Municipal Housing Liaison (MHL) for the Borough of Mountainside is established by this chapter. The Borough of Mountainside shall make the actual appointment of the MHL by means of a resolution.

i. The MHL must be either a full-time or part-time employee of the Borough of Mountainside.

ii. The person appointed as the MHL must be reported to COAH for approval.
iii. The MHL must meet all COAH requirements for qualifications, including initial and periodic training.
iv. The Municipal Housing Liaison shall be responsible for oversight and administration of the affordable housing program for the Borough of Mountainside, including the following responsibilities which may not be contracted out to the administrative agent:

1. Serving as the municipality's primary point of contact for all inquiries from the state, affordable housing providers, administrative agents and interested households
2. The implementation of the affirmative marketing plan and affordability controls
3. When applicable, supervising any contracting administrative agent
4. Monitoring the status of all restricted units in the Borough of Mountainside's Fair Share Plan
5. Compiling, verifying and submitting annual reports as required by COAH
6. Coordinating meetings with affordable housing providers and administrative agents, as applicable
7. Attending continuing education opportunities on affordability controls, compliance monitoring and affirmative marketing as offered or approved by COAH

b. The Borough of Mountainside shall designate by resolution of the Township Council, subject to the approval of COAH, one or more administrative agents to administer newly constructed affordable units in accordance with N.J.A.C. 5:93, N.J.A.C. 5:93 and UHAC.

c. An operating manual shall be provided by the administrative agent(s) to be adopted by resolution of the governing body and subject to approval of COAH. The operating manuals shall be available for public inspection in the Office of the Municipal Clerk and in the office(s) of the administrative agent(s).

d. 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, 26.16 and 26.18 thereof, which includes:

i. Attending continuing education opportunities on affordability controls, compliance monitoring, and affirmative marketing as offered or approved by COAH
ii. Affirmative marketing
iii. Household certification
iv. Affordability controls
v. Records retention
vi. Resale and re-rental
vii. Processing requests from unit owners
viii. Enforcement, though the ultimate responsibility for retaining controls on the units rests with the municipality
ix. The administrative agent shall have authority to take all actions necessary and appropriate to carry out its responsibilities hereunder

K. 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:

    i. 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:

        1. A fine of not more than $1,000. 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
        2. 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 Mountainside affordable housing trust fund of the gross amount of rent illegally collected
        3. 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

    ii. The municipality may file a court action in the Superior Court seeking a judgment which would result in the termination of the owner's equity or other interest in the unit, in the nature of a mortgage foreclosure. Any judgment shall be enforceable as if the same were a judgment of default of the first purchase money mortgage and shall constitute a lien against the low and moderate income unit.

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

d. The proceeds of the Sheriff's sale shall first be applied to satisfy the first purchase money mortgage lien and any prior liens upon the low and moderate income unit. The excess, if any, shall be applied to reimburse the municipality for any and all costs and expenses incurred in connection with either the court action resulting in the judgment of violation or the Sheriff's sale. In the event that the proceeds from the Sheriff's sale are insufficient to reimburse the municipality in full as aforesaid, the violating owner shall be personally responsible for and to the extent of such deficiency, in addition to any and all costs incurred by the municipality in

connection with collecting such deficiency. In the event that a surplus remains after satisfying all of the above, such surplus, if any, shall be placed in escrow by the municipality for the owner and shall be held in such escrow for a maximum period of two years or until such earlier time as the owner shall make a claim with the municipality for such. Failure of the owner to claim such balance within the two year period shall automatically result in a forfeiture of such balance to the municipality. Any interest accrued or earned on such balance while being held in escrow shall belong to and shall be paid to the municipality, whether such balance shall be paid to the owner or forfeited to the municipality.

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

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

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

h. The owner shall remain fully obligated, responsible and liable for complying with the terms and restrictions of governing affordable housing units until such time as title is conveyed from the owner.

L. Appeals. Appeals from all decisions of an administrative agent designated pursuant to this chapter shall be filed in writing with the Executive Director of COAH.

Section 2.

A new section of the Code, to be entitled "Affirmative Action Marketing Plan," shall be added to the Land Use Ordinance of the Borough, directly following the "Housing Element and Fair Share Plan," as follows:

1. Purpose

A. The Borough of Mountainside has a total fair share obligation of 123 units as calculated by COAH (published October 20, 2008) for the period 1987-1999. These affirmative marketing regulations shall apply to all developments that contain low and moderate income housing units.

B. The affirmative marketing plan is a regional marketing strategy designed to attract income eligible households of all majority and minority groups, regardless of sex, age or number of children, for the purpose of buying or renting affordable housing units. The plan shall address the requirements of N.J.A.C. 5:93-11. In addition, the plan prohibits discrimination in the sale, rental, financing, etc., on the basis of race, color, sex, religion, handicap, age, familial status/size or national origin. The Borough of Mountainside is in the housing region consisting of Essex, Morris, Union and Warren Counties.

2. Advertising

The affirmative marketing plan is a continuing program and shall meet the following requirements:

A. The Borough of Mountainside shall adopt by resolution an Affirmative Marketing Plan compliant with N.J.A.C. 5:80-26.15, as may be amended and supplemented.

B. The affirmative marketing plan is a regional marketing strategy designed to attract buyers and/or renters of all majority and minority groups, regardless of race, creed, color, national origin, ancestry, marital or familial status, gender, affectional or sexual orientation, disability, age or number of children to housing units which are being marketed by a developer, sponsor or owner of affordable housing. The affirmative marketing plan is also intended to target those potentially eligible persons who are least likely to apply for affordable units in that region. It is a continuing program that directs all marketing activities toward COAH Housing Region 2 and covers the period of deed restriction.

C. The affirmative marketing plan shall provide a regional preference for all households that live and/or work in COAH Housing Region 2 comprised of Essex, Union, Warren and Morris counties.

D. The Administrative Agent designated by the Borough of Mountainside shall assure the affirmative marketing of all affordable units consistent with the Affirmative Marketing Plan for the municipality.

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

F. The affirmative marketing process for available affordable units shall begin at least four (4) months prior to the expected date of occupancy.

G. 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 Mountainside.

H. Affordable housing applications, brochures, announcements and/or posters will be forwarded to and posted at the following locations:

i. Developer's sales office
ii. Municipal Building and Library
iii. County Library

I. Quarterly informational circulars and applications shall be sent to each of the following agencies for publication in their journals and for circulating among their members:

i. Board of Realtors in Essex County
ii. Board of Realtors in Morris County
iii. Board of Realtors in Union County

iv. Board of Realtors in Warren County

J. Additional quarterly informational circulars and applications shall be sent to the nonprofit, religious, governmental, fraternal, civic, community action agencies in Essex, Morris, Union and Warren Counties:

K. The following is a description of the random selection method that will be used to select occupants of low and moderate income housing: The random selection method to be used will be a lottery based upon a categorization of the number of bedroom units, and whenever there are more applicants in a particular category than units, the random selection method will be utilized.

3. Administrative Agency

A. NJ Housing and Mortgage Finance Agency (HMFA) will be the agency under contract with the Borough of Mountainside to administer the affordable housing units. Each developer has the responsibility to advertise, to income qualify low and moderate income households; to place eligible households in low and moderate income units upon initial occupancy; to continue to qualify households for reoccupancy of units as they become vacant and to enforce the terms of the deed restriction. HMFA will provide counseling services to low and moderate income applicants on subjects such as budgeting, credit issues, mortgage qualifications, rental lease requirements and landlord-tenant law.

B. In addition, the Borough of Mountainside is designating the Borough Administrator and assigns as "housing officer" to act as liaison between COAH, the municipality and HMFA. The municipal liaison will be responsible for tracking the progress of affordable housing, fielding inquiries regarding affordable housing from the public and COAH, complying with COAH monitoring and reporting requirements as per N.J.A.C. 5:93-11.6 and 5:93-12.1.

4. Developer Responsibilities

A. Developers/builders/sponsors of low and moderate income housing units shall be required by the Borough of Mountainside to provide the advertising of affordable units in their respective developments in accordance with the preceding sections. Such advertising must be coordinated with the housing officer and is subject to the approval of the Borough of Mountainside.

B. Borough of Mountainside, in conjunction with HMFA, may delegate other specific tasks to a developer/building/sponsor (such as interviewing applicants, prescreening households, etc.), provided that copies of all applications, income verification documents, sales records, etc., of the low and moderate income units are returned to HMFA for reporting purposes and to aid with future resales.

5. Preference to Region 2 Residents

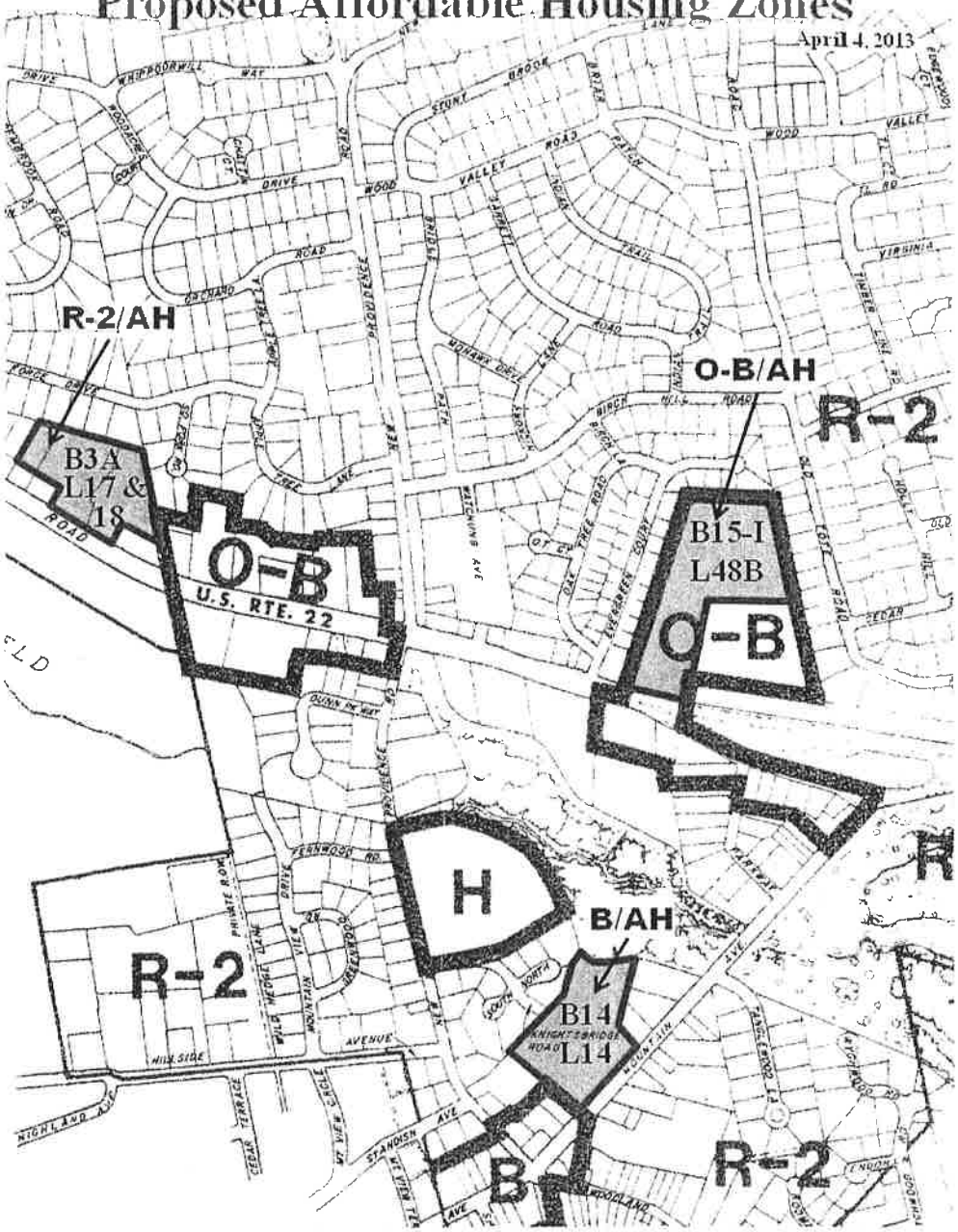
Households who live or work in the housing region of Essex, Morris, Union and Warren Counties may be given preference for the affordable housing units within the municipality. Applicants living outside the housing region shall have an equal opportunity for units after intraregional applicants have been processed. Borough of Mountainside intends to comply with N.J.A.C. 5:93-11.7.

6. Effective Date of Affirmative Action Marketing Plan

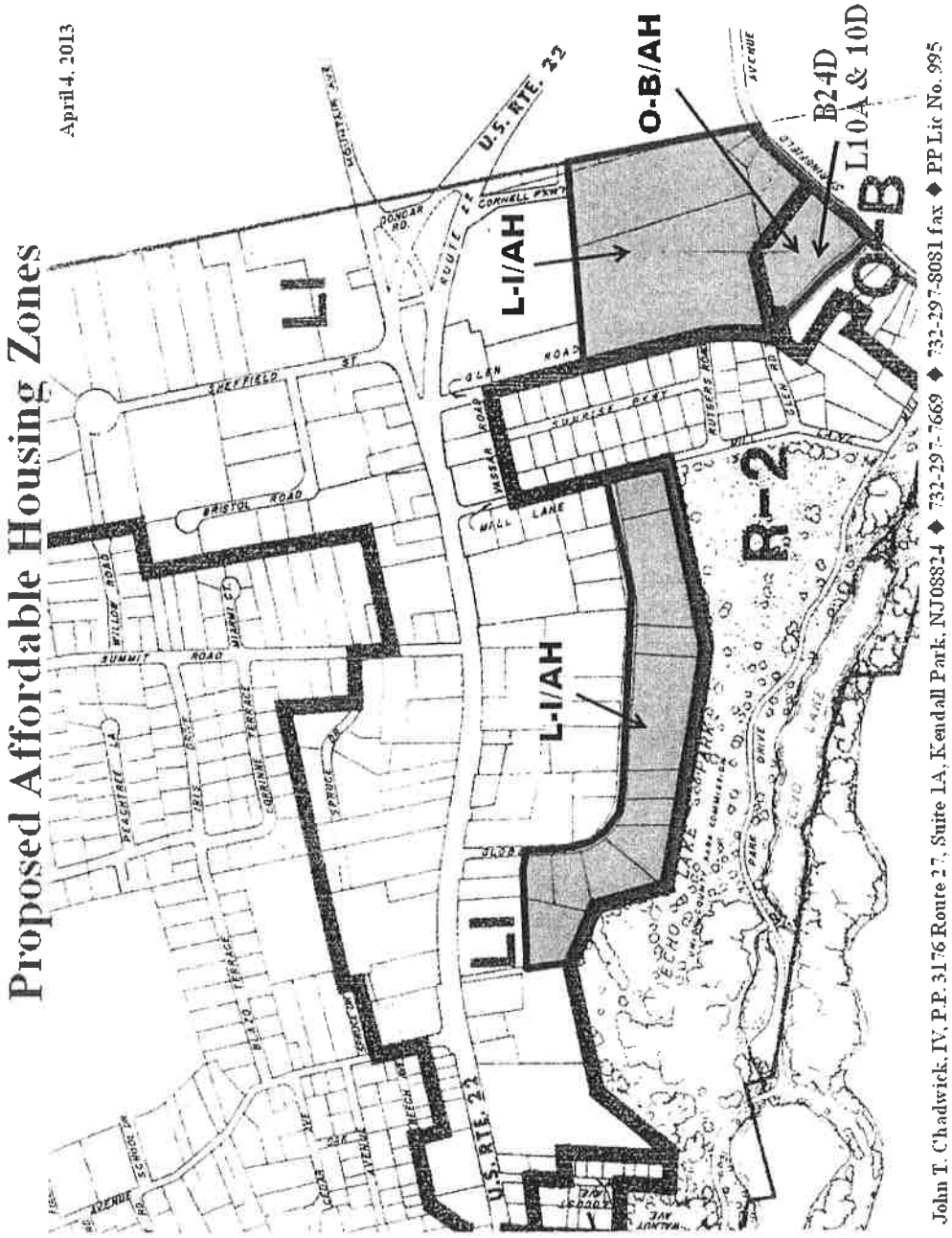
The affirmative marketing plan for new units shall commence 120 days before the issuance of either temporary or permanent certificates of occupancy. Affirmative marketing shall continue until all low and moderate income housing units are initially occupied. Affirmative marketing for existing units shall continue on an as-needed basis for as long as affordable units are deed restricted.

Proposed Affordable Housing Zones

April 4, 2013



John T. Chadwick, IV, P.P. 3176 Route 27, Suite 1A, Kendall Park, NJ 08824 ♦ 732-297-7669 ♦ 732-297-8081 fax ♦ PP Lic No. 995



Section 3.

This ordinance shall take effect twenty days after the first publication hereof after final passage.

Paul N. Mirabelli, Mayor

Martha Lopez, Borough Clerk

	FIRST READING	SECOND READING
Introduced by:	Councilman Mortimer	Councilman Lane
Seconded by:	Councilman Turner	Councilman Turner
Roll call vote:	Ayes: 6 Nays: 0	Ayes: 4 Nays: 0
Absent:		Councilman Dierkes & Mortimer
Date:	May 20, 2014	June 17, 2014

ORDINANCE 1220-2014

AN ORDINANCE CREATING A DEVELOPMENT FEE, AND ESTABLISHING STANDARDS FOR THE COLLECTION, MAINTENANCE, AND EXPENDITURE OF DEVELOPMENT FEES

WHEREAS, the Mayor and Council of the Borough of Mountainside, County of Union, and State of New Jersey, as a result of a builders remedy suit filed against the Borough, have been working with a Special Master to create an approved affordable housing plan for the Borough; and

WHEREAS, the Mayor and Council of the Borough of Mountainside have determined that the adoption of a Development Fee to coincide with such affordable housing plan is in the interest of the Borough.

NOW THEREFORE BE IT ORDAINED by the Mayor and Council as follows: _____, a new section of the Borough Code is hereby adopted as follows:

1. Purpose

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

b) 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 is authorized to adopt and promulgate regulations necessary for the establishment, implementation, review, monitoring and enforcement of municipal affordable housing trust funds and corresponding spending plans. Municipalities that are under the jurisdiction of the Council or court of competent jurisdiction and have a COAH-approved spending plan may retain fees collected from non-residential development.

c) This ordinance establishes standards for the collection, maintenance, and expenditure of development fees in accordance P.L.2008, c.46, Sections 8 and 32-38. Fees collected pursuant to this ordinance shall be used for the sole purpose of providing low- and moderate-income housing. This ordinance shall be interpreted within the framework of the rules on development fees, codified at N.J.A.C. 5:97-8.

2. Basic requirements

a) This ordinance shall not be effective until approved by the COAH pursuant to N.J.A.C. 5:96-5.1.

b) The Borough of Mountainside shall not spend development fees until COAH has approved a plan for spending such fees in conformance with N.J.A.C. 5:97-8.10 and N.J.A.C. 5:96-5.3.

3. Definitions

a) The following terms, as used in this ordinance, shall have the following meanings:

i. "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 development.

ii. "COAH" or the "Council" means the New Jersey Council on Affordable Housing established under the Fair Housing Act which previously had primary jurisdiction for the administration of housing obligations in accordance with sound regional planning consideration in the State.

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

iv. "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.

v. "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).

vi. "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.

4. Residential Development fees

a) Imposed fees

i. Within the affordable housing district(s), residential developers, except for developers of the types of development specifically exempted below, shall pay a fee of 1% of the equalized assessed value for residential development provided no increased density is permitted.

ii. When an increase in residential density pursuant to N.J.S.A. 40:55D-70d(5) (known as a "d" variance) has been permitted, developers may be required to pay a development fee of 6% of the equalized assessed value for each additional unit that may be realized. However, if the zoning on a site has changed during the two-year period preceding the filing of such a variance application, the base density for the purposes of calculating the bonus development fee shall be the highest density permitted by right during the two-year period preceding the filing of the variance application.

b) Eligible exactions, ineligible exactions and exemptions for residential development

i. Affordable housing developments, developments where the developer is providing for the construction of affordable units elsewhere in the municipality, and developments where the developer has made a payment in lieu of on-site construction of affordable units shall be exempt from development fees.

ii. Developments that have received preliminary or final site plan approval prior to the adoption of a municipal development fee ordinance shall be exempt from development fees, unless the developer seeks a substantial change in the approval. Where a site plan approval does not apply, a zoning and/or building permit shall be synonymous with preliminary or final site plan approval for this purpose. The fee percentage shall be vested on the date that the building permit is issued.

iii. Owner-occupied residential structures demolished and replaced as a result of a fire, flood, or natural disaster shall be exempt from paying a development fee.

iv. 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.

5. Collection procedures

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

i Appeal of development fees

1) 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. 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 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. 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.

6. Affordable Housing trust fund

a) There is hereby created a separate, interest-bearing housing trust fund to be maintained by the chief financial officer for the purpose of depositing development fees collected from residential and non-residential developers and proceeds from the sale of units with extinguished controls.

b) The following additional funds shall be deposited in the Affordable Housing Trust Fund and shall at all times be identifiable by source and amount:

1. payments in lieu of on-site construction of affordable units;
2. developer contributed funds to make ten percent (10%) of the adaptable entrances in a townhouse or other multistory attached development accessible;
3. rental income from municipally operated units;
4. repayments from affordable housing program loans;
5. recapture funds;
6. proceeds from the sale of affordable units; and
7. any other funds collected in connection with the Borough's affordable housing program.

c) Within seven days from the opening of the trust fund account, the Borough shall provide COAH with written authorization, in the form of a three-party escrow agreement between the municipality, the bank, and COAH to permit COAH to direct the disbursement of the funds as provided for in N.J.A.C. 5:97-8.13(b).

d) All interest accrued in the housing trust fund shall only be used on eligible affordable housing activities approved by COAH.

8. Use of funds

a) The expenditure of all funds shall conform to a spending plan approved by COAH. Funds deposited in the housing trust fund may be used for any activity approved by COAH to address the Borough's fair share obligation and may be set up as a grant or revolving loan program. Such activities include, but are not limited to: preservation or purchase of housing for the purpose of maintaining or implementing affordability controls, rehabilitation, new construction of affordable housing units and related costs, accessory apartment, market to affordable, or regional housing partnership programs, conversion of existing non-residential buildings to create new affordable units, green building strategies designed to be cost saving and in accordance with accepted national or state standards, purchase of land for affordable housing, improvement of land to be used for affordable housing, extensions or improvements of roads and infrastructure to affordable housing sites, financial assistance designed to increase affordability, administration necessary for implementation of the Housing Element and Fair Share Plan, or any other activity as permitted pursuant to N.J.A.C. 5:97-8.7 through 8.9 and specified in the approved spending plan.

b) Funds shall not be expended to reimburse the Borough for past housing activities.

c) At least 30 percent of all development fees collected and interest earned shall be used to provide affordability assistance to low- and moderate-income households in affordable units included in the municipal Fair Share Plan. One-third of the affordability assistance portion of development fees collected shall be used to provide affordability assistance to those households earning 30 percent or less of median income by region.

i. 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.

ii. 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.

iii. 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.

d) The Borough may contract with a private or public entity to administer any part of its Housing Element and Fair Share Plan, including the requirement for affordability assistance, in accordance with N.J.A.C. 5:96-18.

e) No more than 20 percent of all revenues collected from development fees, may be expended on administration, including, but not limited to, salaries and benefits for municipal employees or consultant fees necessary to develop or implement a new construction program, a Housing Element and Fair Share Plan, and/or an affirmative marketing program. In the case of a rehabilitation program, no more than 20 percent of the revenues collected from development fees shall be expended for such administrative expenses. Administrative funds may be used for income qualification of households, monitoring the turnover of sale and rental units, and compliance with COAH's monitoring requirements. Legal or other fees related to litigation opposing affordable housing sites or objecting to the Council's regulations and/or action are not eligible uses of the affordable housing trust fund.

9. Monitoring

a) The Borough shall complete and return to COAH all monitoring forms included in monitoring requirements related to 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 Borough's housing program, as well as to the expenditure of revenues and implementation of the plan approved by the court. All monitoring reports shall be completed on forms designed by COAH.

10. Ongoing collection of fees

a) The ability for the Borough to impose, collect and expend development fees shall expire with its judgment of compliance unless the Borough has filed an adopted Housing Element and Fair Share Plan with the COAH, has petitioned for substantive certification, and has received COAH's approval of its development fee ordinance. If the Borough fails to renew its ability to impose and collect development fees prior to the expiration of the judgment of compliance, it may be subject to forfeiture of any or all funds remaining within its municipal trust fund. Any funds so forfeited shall be deposited into the "New Jersey Affordable Housing Trust Fund" established pursuant to section 20 of P.L.1985, c.222 (C. 52:27D-320). The Borough shall not impose

a residential development fee on a development that receives preliminary or final site plan approval after the expiration of its substantive certification or judgment of compliance, nor shall the Borough retroactively impose a development fee on such a development. The Borough shall not expend development fees after the expiration of its substantive certification or judgment of compliance.

AND BE IT FURTHER ORDAINED THAT all ordinances or parts of ordinances inconsistent with the provisions of this ordinance are hereby repealed to the extent of such inconsistency.

This ordinance shall take effect immediately upon final adoption and publication and in the manner provided by law.

Martha Lopez, Borough Clerk

Paul N. Mirabelli, Mayor