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2021 HOUSING ELEMENT AND FAIR SHARE PLAN

BOROUGH OF BERGENFIELD
BERGEN COUNTY, NEW JERSEY

PREPARED FOR:

BOROUGH OF BERGENFIELD PLANNING BOARD
BA# 3484.00

June 8, 2021
Adopted December 21, 2020

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The original document was appropriately signed and sealed on Jun 8, 2021 in accordance with Chapter 41 of Title 13 of the State Board of Professional Planners.

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Borough Engineer
Carlos Fuentes, P.E.
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INTRODUCTION

Historic Overview of the Courts and COAH

In 1975 the New Jersey Supreme Court decided, in So. Burlington Cty. NAACP v. Borough of Mount Laurel (Mount Laurel I), that every developing municipality in the state had an affirmative obligation to provide for its fair share of affordable housing. In a subsequent decision in 1983 (Mount Laurel II), the Court acknowledged that the vast majority of municipalities in the state had ignored their constitutional obligation. The Court refined in that decision the constitutional obligation to focus the obligation primarily on those municipalities that have portions of their boundaries within the growth area as shown on the State Development and Redevelopment Plan, and also called for the state legislature to enact legislation that would save municipalities from the burden of having the courts determine their affordable housing needs. The result was the adoption of the Fair Housing Act in 1985 and the establishment of the New Jersey Council on Affordable Housing (COAH), the State agency responsible for overseeing the manner in which the State's municipalities address their low- and moderate-income housing needs.

COAH proceeded to adopt regulations for the First Round obligation covering the years 1987 to 1993, and established Second Round housing-need numbers that cumulatively covered the years 1987 through 1999. Under both the first and second housing rounds COAH utilized what is commonly referred to a "fair share" methodology.

COAH utilized a different methodology, called "growth share" beginning with their efforts to prepare Third Round housing-need numbers. Their first adopted Third Round substantive and procedural rules occurred in 2004. These regulations were challenged and in January 2007 the Appellate Division invalidated various aspects of the regulations and remanded considerable portions of the rules to COAH with the directive to adopt revised rules.

In May 2008 COAH adopted revised Third Round regulations and published them on June 2, 2008, thereby having them become effective. Coincident to this adoption, COAH proposed amendments to the rules it just adopted, and they went into effect in October 2008.

The rules and regulations adopted in 2008 were challenged, and in an October 2010 decision the Appellate Division invalidated the growth share methodology and indicated that COAH should adopt regulations pursuant to the fair share methodology utilized in Rounds One and Two.

The Supreme Court affirmed this decision in September 2013, invalidating the third iteration of the Third Round regulations, sustaining the invalidation of growth share, and directing COAH to adopt new regulations pursuant to the methodology utilized in Rounds One and Two.

COAH failed in October 2014 to adopt their newly revised Third Round regulations, deadlocking with a 3-3- vote. The Fair Share Housing Center, who was a party in both the 2010 and 2013 cases, responded by filing a motion in aid of litigant's rights with the New Jersey Supreme Court. The Court heard the motion in January 2015 and, on March 10, 2015 issued their ruling. The Court ruled that COAH was effectively dysfunctional, and consequently, returned jurisdiction of affordable housing issues back to the trial-courts where it had been prior to the creation of COAH in 1986.

The Court decision created a process whereby municipalities, like Bergenfield, could file a Declaratory Judgment action with the Court. Those municipalities determined to be participating could be granted temporary immunity against the filing of "builder's remedy" style lawsuits while the Courts established fair share obligations and municipalities prepared new plans designed to affirmatively address their local housing need as may be adjusted by new affordable housing obligations promulgated by the Court, COAH or some other body.

The Borough of Bergenfield chose to participate in this newly sanctioned legal process by filing a Declaratory Judgement action in Superior Court on or about July 8, 2015. The Honorable Menelaos W. Toskos, J.S.C. was originally assigned to Bergenfield's case. Upon the retirement of Judge Toskos, the Honorable Gregg A. Padovano, J.S.C. was assigned Bergenfield's Declaratory Judgement case.

After a series of negotiations and case management conferences with the Court appointed Special Master and Fair Share Housing Center, the parties entered into a Settlement Agreement. The approved Settlement Agreement creates a template for the preparation of this Housing Element and Fair Share Plan. Perhaps the Settlement Agreement greatest contribution to the resolution of Bergenfield's Third Round housing plan is the quantification of Bergenfield's affordable housing obligation. This obligation will be discussed in greater detail in subsequent sections of the HE&FSP.

The Third Round Affordable Housing Obligation and the Borough's Response

The state of the Third Round affordable housing obligations for municipalities throughout New Jersey at present remains a fluid one, given the fact that neither the Courts, COAH, nor the legislature has established a definitive set of housing-need numbers that has been universally accepted. Initially, two sets of numbers were promulgated and widely discussed, inclusive of numbers in COAH's proposed 2014 regulations prepared by Dr. Robert Burchell of Rutgers University, and numbers prepared by David Kinsey, P.P., A.I.C.P. in April 2015 on behalf of Fair Share Housing Center. Their statewide numbers varied dramatically, with Dr. Burchell estimating the need for approximately 52,000 affordable housing units statewide, and Mr. Kinsey estimating the need for approximately 201,000 affordable housing units statewide.

In June 2015, the Borough of Bergenfield, along with roughly 270 other New Jersey municipalities,

entered into a Shared Services Agreement (“SSA”) to retain Rutgers University so that Dr. Burchell could prepare an expert report containing updated fair share calculations for all municipalities, which contract required Rutgers to submit the report by September 30, 2015. Before Dr. Burchell finalized a draft of his report, he suffered a stroke and, on September 11, 2015, Rutgers University, referencing this health crisis, terminated the contract with the municipalities in the SSA.

In an effort to address this unforeseen problem, the consortium of municipalities then entered into a contract with Econsult Solutions, Inc. (“Econsult”) to prepare a second report – the “Solutions Report” – which would calculate fair share obligations for all of the municipalities in the state.

Despite the passage of time and the numerous reports filed by the two experts, the overall status has remained unchanged, statewide there is great disagreement as to the number of affordable housing units needed during the current housing cycle which will terminate in 2025. Significantly, the Econsult numbers reflect the fact that Bergenfield contains minimal developable land, whereas Kinsey’s numbers do not apparently acknowledge this fact.

Notwithstanding this uncertainty, it is in the best interest of Bergenfield to avoid further litigation and achieve a comprehensive settlement of its affordable housing obligation spanning the years 1987-2025, including the Gap Period Present Need, a measure of households formed from 1999-2015 that need affordable housing. It is recognized that these affordable housing figures may be adjusted in the future and such adjustment may necessitate future revision to this plan.

For the purposes of entering into a Settlement Agreement, Bergenfield has agreed to the following affordable housing obligations:

Rehabilitation Obligation:	129 units
Prior Round (1987-1999) Obligation:	87 units
Third Round (1999-2025) Obligation:	<u>140 units</u>
Total Affordable Housing Obligation:	356 units.

As noted above, Bergenfield was assigned a cumulative rehabilitation obligation of 129 units. Bergenfield will continue to work with the Bergen County Home Improvement Program to rehabilitate income qualified, owner occupied dwellings in need of rehabilitation. Funds captured by the Affordable Housing Trust Fund will be used to make any matching payments to the Housing Authority. In addition, in the case of any funding shortfall, Bergenfield will use money in the Affordable Housing Trust Fund to make the necessary repairs.

With regard to rental dwelling rehabilitation, Bergenfield will turn to Brookside Gardens, an affordable senior citizens development. This building was constructed in the mid-to late 1970’s. Significant money has been expended on major building systems such as heating, roofing, elevators and the façade system. As reflected in documents provided to the Borough, over \$1.75 million dollars has

been expended for major system renovation or replacement since 1999. This significant level of spending was deemed necessary to continue to make Brookside Gardens habitable for the low-income seniors who resident there. The money spent on rehabilitation will be credited to the building as a whole. Spending on incidentals like carpeting, furniture or draperies will not qualify for rehabilitation crediting purposes.

Bergenfield's cumulative rehabilitation obligation is fully satisfied through the implementation mechanisms referenced above.

Bergenfield is a mostly developed community in a densely developed portion of Bergen County. The HE&FSP set forth herein includes the preparation of an assessment of vacant land in the Borough pursuant to the prescribed vacant land adjustment ("VLA") process and realistic development potential ("RDP"), to determine the Borough's RDP and adjusted affordable housing obligation. The analysis reveals when environmental constraints and parcels smaller than the minimum size are eliminated, the developable number of acres (i.e. excluding vacant acreage encumbered by small size, wetlands, steep slopes, and floodplain delineations) in the community is reduced to zero acres.

The requirement to produce affordable housing is a constitutional one. In communities like Bergenfield, where vacant, unencumbered land is extremely scarce, the search to identify potential sites suitable for the construction of affordable housing must be expanded to include developed sites with the potential to redevelop and provide affordable housing. Bergenfield's expanded VLA process resulted in the identification of two (2) developed properties which may, if suitable zoning provisions are adopted offer the potential of producing affordable housing. These developed sites include the Foster Village Shopping Center and 51 East Main Street.

To the expanded VLA analysis, the Borough included a property that previously generated affordable housing as a result of a prior Settlement Agreement which resolved an earlier affordable housing lawsuit.

The Borough proposes to address its 18-unit RDP obligation through new construction, application of COAH worthy credits from the constructed Landmark Equities development and the application of bonus credits. Bergenfield will be able to claim credit for five (5) bonus credits.

Bergenfield's new construction obligation has been established at 227 affordable units. The Borough has an Unmet Need obligation of 208 units. Bergenfield will use a number of approaches to address this obligation, including adoption of overlay zoning on certain select commercial zones. The advantage of addressing affordable housing through the use of overlay zoning is the preservation of the underlying zone and the maintenance of existing uses as permitted uses while encouraging the production of affordable housing.

These above noted plan components are detailed in the body of this HE&FSP. Additionally, the vacant land adjustment and realistic development potential calculations are set forth in the body of this report.

The plan is organized into three sections. The first part of this plan, the Housing Element, contains background data on the Borough's population and housing characteristics. The second section describes the Borough's obligation for the provision of affordable housing. The Borough's plan for meeting its affordable housing obligation is contained in the final section, Fair Share Plan. Ancillary aspects of the plan, such as the draft affordable marking plan, draft Spending Plan and draft affordable housing ordinance and a draft ordinance requiring all new residential developments containing 5 or more units to reserve 20% of the total development as COAH credit worthy affordable housing if offered as for-sale units; 15% if rentals are included as appendixes to the HE&FSP. As noted above, the process being followed is fluid and unsettled, and as the Courts respond to the many unresolved issues they need to address, it is recognized that this plan may require future adjustment.

As described earlier in the HE&FSP, the state of affordable housing obligations remains dynamic as a definitive set of affordable housing need numbers has not been established. This plan is being prepared and implementation steps are being taken so Bergenfield will maintain its immunity from builder's remedy style lawsuits. It is specifically noted in the Settlement Agreement and now in this HE&FSP that Bergenfield does not accept the basis of the methodology or calculations proffered by David N. Kinsey, PhD, P.P, F.A.I.C.P. and relied upon by Fair Share Housing Center.

If, at any time while this HE&FSP continues to be in effect, a binding legal determination by the Legislature, the Executive branch or the Judiciary established Bergenfield's affordable housing obligation for the 1999-2025-time period is less than established herein by this HE&FSP, Bergenfield reserves unto itself the right to amend and revise this HE&FSP. In addition, if said determination is made after affordable housing units are constructed, Bergenfield reserves unto itself the right to apply any and all "excess" Third Round credits to upcoming affordable housing cycles.

SECTION I: HOUSING ELEMENT

A. COMMUNITY OVERVIEW

The Borough of Bergenfield occupies an area of 2.9 square miles in the central eastern portion of Bergen County. It is bordered by to the north by Dumont, Tenafly to the east, Teaneck is to the south. New Milford is to the west of Bergenfield. In addition, Bergenfield has a very short border with Cresskill on the east and shares a very short portion of its southern boundary with Englewood.

Bergenfield is predominantly a residential community. This is best illustrated by reviewing the number of property parcels in Bergenfield and noting how many are developed residentially. As displayed in Table 1 below, in 2017 there were 7,286 parcels in the Borough. Of this total, 6,875 were classified as residential, with an additional 48 parcels developed with apartments. As indicated in Table 4, just under 70% of the Borough's housing stock is comprised of one and two-family dwellings. The second largest land use classification after residential was commercial, with 276 properties so classified.

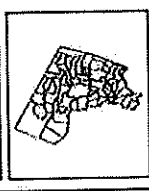
Table 1: Existing Land Use
Bergenfield, New Jersey

Use	# of Parcels	Value
Vacant Land	44	\$7,257,700
Residential	6,875	\$2,218,874,700
Commercial	276	\$267,250,300
Industrial	48	\$42,302,100
Apartment	43	\$114,531,300
TOTAL	7,286	\$2,650,216,100

Source: NJDCA Division of Local Government Services, 2017 figures and values

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 Phone: 856-795-1111
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Housing Element & Fair Share Plan
 BOROUGH OF DUMONT
 2000 1st Avenue, 2nd Floor
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Legend

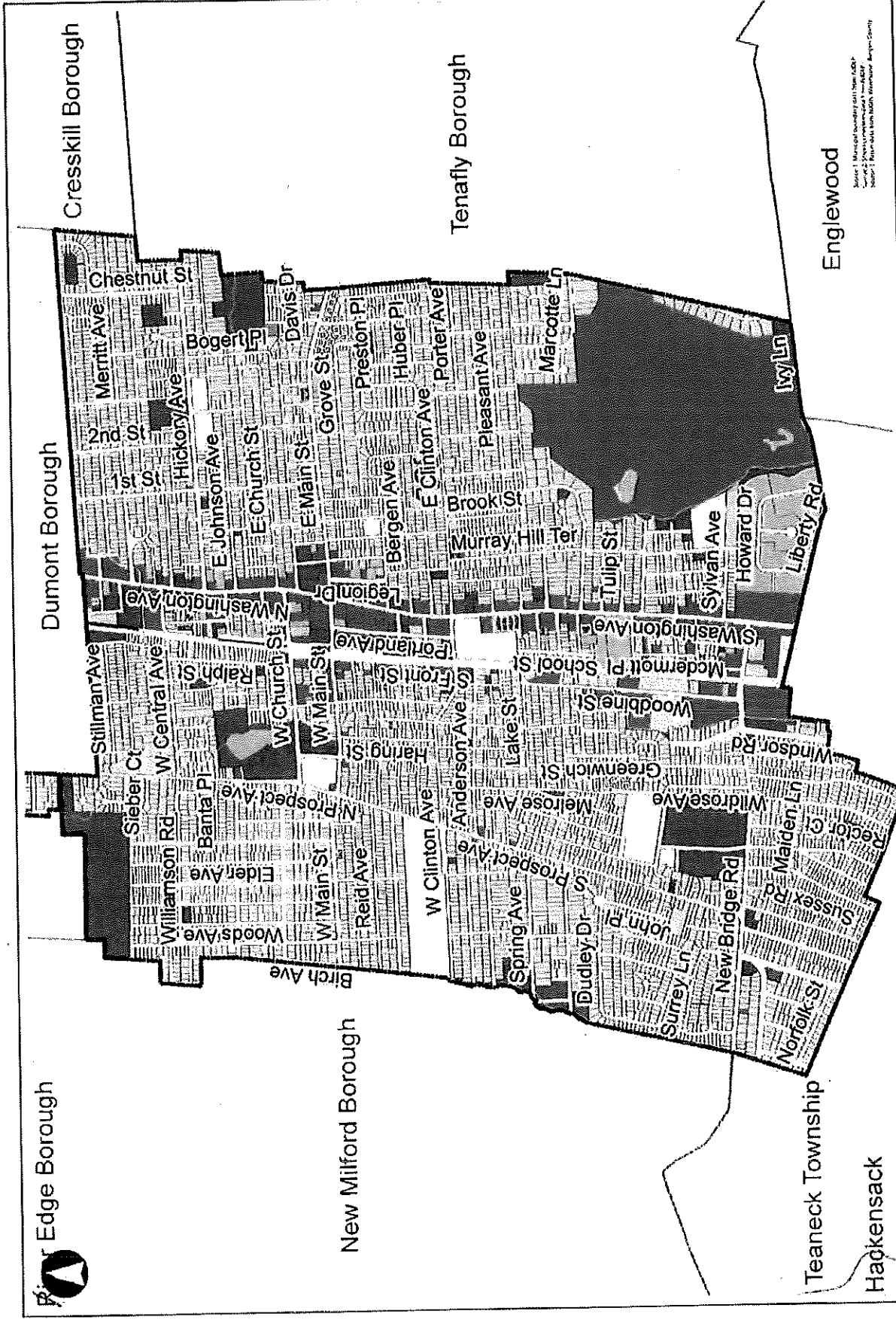
- Borough Boundary
- Municipal Boundaries
- Land Use Category
- Residential
 - 1-4 Family Residential
 - Multifamily
 - Commercial
 - Industrial
- Public School Property
- Other School Property
- Church & Charitable
- Cemeteries
- Other Tax Exempt
- Retained
- Highways
- Streams

Existing Land Use Map

Scale: 1" = 100'

North Arrow

Category	Area (Acres)	Percentage
1-4 Family Residential	1,234	45.2%
Multifamily	567	21.1%
Commercial	345	13.1%
Industrial	234	9.0%
Public School Property	123	4.7%
Other School Property	89	3.4%
Church & Charitable	45	1.7%
Cemeteries	23	0.9%
Other Tax Exempt	12	0.5%
Retained	67	2.6%
Highways	34	1.3%
Streams	18	0.7%
Total	2,735	100.0%



Edge Borough

Dumont Borough

Cresskill Borough

Tenafly Borough

New Milford Borough

Englewood

Teaneck Township

Hackensack

Map 1: Municipal boundaries with 2000 LUPD
 Map 2: Existing Land Use Map
 Map 3: Future use from 2000 LUPD, Borough of Dumont, Bergen County

A. INVENTORY OF MUNICIPAL HOUSING STOCK

This section of the Housing Element provides an inventory of the Borough's housing stock, as required by the Municipal Land Use Law. The inventory details housing characteristics such as age, condition, purchase/rental value, and occupancy. It also details the number of affordable units available to low- and moderate-income households and the number of substandard housing units capable of being rehabilitated.

1. Number of Dwelling Units. As shown in the table below, the Borough's housing stock grew by 394 housing units during the 36 years between 1980 and 2016, increasing from 8,969 in 1980 to 9,363, the estimated number of housing units in 2016. The growth rate has remained significantly under two percent throughout the last 36 years.

Table 2: Dwelling Units (1980 to 2016)
Borough of Bergenfield, New Jersey

Year	Total Dwelling Units	Numerical Change	Percent Change
1980	8,969	---	---
1990	9,035	66	0.73
2000	9,147	112	1.2
2010	9,200	53	0.57
2016	9,363	163	1.77

Sources: 2003 Bergen County Data Book, U.S. Census – 1990 & 2000, American Community Survey 5-Year Estimates.

The following table provides additional detail regarding the tenure and occupancy of the Borough's housing stock. As shown below, nearly 65% of the Borough's housing stock was estimated to be owner-occupied in 2016, down slightly from 69.8 in 2000. This reduction is a function of multi-family rentals that have been built in the community over the last decade. The number of rental units increased from 2,545 units in 1990 to 2,988 units in 2016.

Table 3: Housing Units by Tenure and Occupancy Status (1990 to 2016)
Borough of Bergenfield, New Jersey

Category	1990		2000		2016	
	No. Units	Percent	No. Units	Percent	No. Units	Percent
Owner-Occupied Units	6,254	69.2%	6,388	69.8%	6,014	64.2%
Renter-Occupied Units	2,545	28.1%	2,593	28.4%	2,988	31.9%
Vacant Units	236	2.6	166	1.8	361	3.9
Total Units	9,035	100.0%	9,147	100.0%	9,363	100.0%

Sources: U.S. Census

2. Housing Characteristics. The following tables provide additional information on the characteristics of the Borough's housing stock, including data on the number of units in structures and the number of bedrooms. As shown below, the housing stock is predominantly characterized by single-family detached units, which represented over 63% of all dwelling units in 2016. This represents a slight decrease from previous periods and reflects the creation of additional two-family units and additional multi-family units, especially in the 5 to 9-unit category of development since 2000.

Table 4: Units in Structure (2000 to 2016)
Borough of Bergenfield, New Jersey

Units in Structure	2000		2010		2016	
	Number	Percent	Number	Percent	Number	Percent
1-unit, detached	6,002	65.6%	6,314	65.3%	5,977	63.8%
1-unit, attached	245	2.6%	266	2.7%	385	4.1%
2 units	1,154	12.6%	1,081	11.1%	1,487	15.9%
3 or 4 units	330	3.6%	266	2.7%	383	4.1%
5 to 9 units	193	2.1%	223	2.3%	390	4.2%
10 to 19 units	497	5.4%	691	7.1%	264	2.8%
20 or more units	726	7.9%	809	8.3%	477	5.1%
Mobile home	0	0.0%	7	0.0%	0	0.0%
Boat, RV, van, etc.	4	0.0%	0	0.0%	0	0.0%
Total	9,147	100.0%	9,657	100.0%	9,363	100.0%

Sources: U.S. Census – 1990 & 2000, American Community Survey 5-Year Estimates.

Table 5: Number of Bedrooms in Housing Units (2000 to 2016)
Borough of Bergenfield, New Jersey

Number of Bedrooms	2000		2010		2016	
	Number	Percent	Number	Percent	Number	Percent
Zero	168	1.8%	35	0.4%	64	0.7%
One	1,525	16.7%	1,752	18.1%	1,608	17.2%
Two	2,021	22.0%	1,954	20.2%	2,127	22.7%
Three	3,683	40.2%	3,564	36.9%	3,531	37.7%
Four	1,462	16.0%	1,845	19.1%	1,632	17.4%
Five or More	288	3.1%	507	5.3%	401	4.3.0%
Total	9,147	100.0%	9,657	100.0%	9,363	100.0%

Sources: U.S. Census – 1990 & 2000, American Community Survey 5-Year Estimates.

3. Housing Age. The following table details the age of the Borough's housing stock. As shown, over 87% of the Borough's housing units were constructed prior to 1980; only 12.5% of Bergenfield's housing stock was constructed after 1980.

Table 6: Year Structure Built
Borough of Bergenfield, New Jersey

Year Built	Number of Units	Percent
2014 or later	9	0.1%
2010 to 2013	3	0.0%
2000 to 2009	220	2.3%
1990 to 1999	406	4.3%
1980 to 1989	547	5.8%
1970 to 1979	671	7.2%
1960 to 1969	1,028	11.0%
1950 to 1959	2,655	28.4%
1940 to 1949	1,381	14.7%
Built 1939 or earlier	2,443	26.1
Total	9,363	100.0%

Sources: U.S. Census – American Community Survey 5-Year Estimates.

4. Housing Conditions. An inventory of the Borough's housing conditions is presented in the following tables. The first table identifies the extent of overcrowding in the Borough, defined as housing units with more than one occupant per room. The data indicates that the number of occupied housing units considered overcrowded is slight (3.2%) and has decreased from 6.1% that was estimated in 2000.

Table 7: Occupants Per Room (2000 to 2016)
Borough of Bergenfield, New Jersey

Occupants Per Room	2000		2010		2016	
	Number	Percent	Number	Percent	Number	Percent
1.00 or less	9,024	94.8%	8,429	97.6%	8,713	96.8%
1.01 to 1.50	288	3.2%	161	1.9%	214	2.4%
1.51 or more	264	2.9%	44	0.5%	75	0.8%
Total	9,002	100.0%	8,634	100.0%	9,002	100.0%

Sources: U.S. Census – 1990 & 2000, American Community Survey 5-Year Estimates.

The table below presents other key characteristics of housing conditions, including the presence of complete plumbing and kitchen facilities and the type of heating equipment used. As shown, the percentage of units lacking complete kitchen and plumbing facilities decreased between 2000 and 2016, and 100% of units have complete kitchen and plumbing facilities. Units lacking standard heating facilities has also been significantly reduced from 0.7% of the housing stock to 0.4% of the housing stock.

Table 8: Equipment and Plumbing Facilities (2000 to 2016)
Borough of Bergenfield, New Jersey

Facilities	2000		2010		2016	
	Number	Percent	Number	Percent	Number	Percent
<u>Kitchen:</u>						
With Complete Facilities	8,959	99.7%	9,107	98.7%	9,002	100.0%
Lacking Complete Facilities	22	0.3%	122	1.3%	0	0.0%
<u>Plumbing:</u>						
With Complete Facilities	8,974	99.9%	9,116	98.8%	9,002	100.0%
Lacking Complete Facilities	7	0.1%	113	1.2%	0	0.0%
<u>Heating Equipment:</u>						
Standard Heating Facilities	8,919	99.3%	9,210	99.8%	8,968	99.6%
Other Means, No Fuel Used	62	0.7%	19	0.2%	26	0.3%

Sources: U.S. Census – 1990 & 2000, American Community Survey 5-Year Estimates.

5. Purchase and Rental Values. As shown in the following table, Bergenfield's rental housing stock has gotten dramatically more expensive with the passage of years. In 2,000, the median monthly rent was \$855, increasing to \$1,148 by 2000. In 2016, the monthly median rental cost in Bergenfield had risen to \$1,252.

Table 9: Gross Rent of Renter-Occupied Housing Units (2000 to 2016)
Borough of Bergenfield, New Jersey

Gross Rent	2000		2010		2016		
	Number	Percent	Number	Percent	Gross Rent	Number	Percent
Less than \$200	78	3.0%	25	0.9%	Less than \$500	209	7.2%
\$200 to \$299	65	2.5%	102	3.9%	\$500-\$999	290	10.0%
\$300 to \$499	56	2.2%	114	4.3%	\$1,000-\$1499	1,565	54.2%
\$500 to \$749	395	15.3%	99	3.7%	\$1,500-\$1,999	629	21.8%
\$750 to \$999	1,234	47.7%	221	8.4%	\$2,000-\$2,499	140	4.8%
\$1,000 to \$1,499	603	23.3%	1,622	62.0%	\$2,500-\$2,999	32	1.1%
\$1,500 or More	93	3.6%	299	11.4%	\$3,000 and up	25	0.9%
No Cash Rent	64	2.5%	132	5.0%	No rent paid	98	
Total	2,588	100%	2,614	100.0%	Total	2,890	100.0%
Median Gross Rent	\$855			\$1,148	\$1,252		
Bergen County Median Gross Rent	\$872				\$1,295		

Sources: U.S. Census – 1990 & 2000, American Community Survey 5-Year Estimates.
Note: 1990 US Census did not include a "\$1,500 or More" gross rent category

Table 10 below shows that between 1990 and 2000 the median value of a dwelling in Bergenfield did not greatly appreciate. Over the course of the next 16 years there was appreciable growth as the median value of owner-occupied dwellings in Bergenfield increased to \$332,700.

Table 10: Value of Owner-Occupied Housing Units (1990 to 2016)
Borough of Bergenfield, New Jersey

Value Range	1990		2000		2016	
	Number	Percent	Number	Percent	Number	Percent
Less than \$50,000	34	0.6%	46	0.8%	136	2.3%
\$50,000 to \$99,999	64	1.2%	38	0.7%	49	0.8%
\$100,000 to \$149,999	535	9.9%	633	11.2%	39	0.6%
\$150,000 to \$199,999	3,139	57.9%	3,106	55.1%	93	1.5%
\$200,000 to \$299,999	1,508	27.8%	1,555	27.6%	1,844	30.7%
\$300,000 to \$499,999	138	2.6%	232	4.1%	3,307	55.0%
\$500,000 to \$999,999	*	0.3%	19	0.3%	480	8.0%
\$1,000,000 or More	---	0.0%	13	0.2%	66	1.1%
Total	5,418	100.0%	5,642	100.0%	6,014	100.0%
Median Value	\$184,000		\$184,400		\$332,700	
Bergen County Median Value	\$227,700		\$250,300		\$433,000	

Sources: U.S. Census – 1990 & 2000, American Community Survey 5-Year Estimates.

Note: 1990 US Census did not include classification above \$300,000* Value Range

6. Number of Units Affordable to Low- and Moderate-Income Households. Bergenfield is in COAH Housing Region No. 1, which is comprised of Bergen, Passaic, Hudson and Sussex counties. Based on the most current COAH regional income limits, the median household income for a three-person household is \$75,980. A three-person moderate-income household, defined as 80% of the median income, would have an income not exceeding \$60,784.

An affordable sales price for a three-person moderate-income household earning 80% of the median income is estimated at approximately \$150,000. This estimate is based on the UHAC affordability controls outlined in N.J.A.C. 5:80-26.3. In 2016, the percentage of housing units in the Borough valued at less than \$150,000 was 3.7%.

For renter-occupied housing, an affordable monthly rent for a three-person household is estimated at approximately \$1,890. According to the most recent U.S. Census data, greater than 95.5% of the Borough's rental units had a gross rent less than \$1,500.

7. Substandard Housing Capable of Being Rehabilitated. The number of units in a community that are in need of rehabilitation and are not likely to experience "spontaneous rehabilitation" has been estimated by FSHC in its July 2015 report. Bergenfield's rehabilitation share is 123 units. The Borough's rehabilitation share is further explored in the Fair Share Plan section of this document.

B. POPULATION ANALYSIS

The MLUL requires that a Housing Element provide data on the municipality's population, including population size, age and income characteristics.

1. Population Size. As seen in the table below, the Borough experienced its greatest prolonged population growth between 1940 and 1960, as Bergenfield's population increased by nearly 17,000 residents over this twenty-year span. According to US Census figures, during the decade of the 1970's, Bergenfield's population declined by 11.8%. Since 1990, the local population has continued to increase and by 2016, Bergenfield had an estimated population of 27,513.

Table 11: Population Growth (1920 to 2016)
Borough of Bergenfield, New Jersey

Year	Population	Population Change	Percent Change
1920	3,667	-	-
1930	8,816	5,149	140.4%
1940	10,275	1,459	16.5%
1950	17,647	7,372	71.7%
1960	27,203	9,556	54.1%
1970	29,000	1,797	6.6%
1980	25,568	-3,432	-11.8%
1990	24,458	-1,110	-4.3%
2000	26,247	1,789	7.3%
2010	26,764	517	1.9%
2016*	27,513	749	2.8%

Sources: U.S. Census

2. Age Characteristics. The Borough's age characteristics are outlined in the table below. As shown, the Borough's population is growing older, consistent with suburban national trends. Bergenfield's median age has increased since 2000 from 39.0 to 39.5 years in 2016. The number of children under the age of 19 years has been decreasing since 2000 from 27% of

the Borough's population to 24.3% in 2016.

Table 12: Age Characteristics (2000 to 2016)
Bergenfield, New Jersey

Age	2000		2010		2016	
	Number	Percent	Number	Percent	Number	Percent
Under 5 years	1,779	6.8	1,750	6.5	1,541	5.6%
5 to 19 years	5,291	20.2	5,330	20.0	5,145	18.7%
20 to 24 years	1,373	5.2	1,614	6.0	1,898	6.9%
25 to 34 years	3,519	13.4	1,859	12.3	3,494	12.7%
35 to 44 years	4,627	17.6	3,692	13.8	3,357	13.2%
45 to 54 years	3,745	14.3	4,207	15.7	3,687	13.4%
55 to 64 years	2,357	9.0	3,385	12.6	4,044	14.7%
65 to 84 years	3,169	12.1	2,954	11	2,256	12.3%
85 years and over	387	1.5	533	2.0	660	2.4%
Total	26,247		26,764		27,513*	
Median Age	37.6		39.0		39.5	

Source: U.S. Census - 1990, 2000, 2010
* may not equal 100% due to rounding

3. Average Household Size: The average household size for the Borough has varied as reflected in the table below. In 1970, average household size in Bergenfield was 3.83 people. By 1990, average size declined to 2.78 members. In 2016, the average size of a household in the Borough was estimated to be 2.94.

Table 13: Average Household Size (1970 to 2016)
Bergenfield, New Jersey

Year	Total Population	Number of Households	Average Household Size
1970	29,000	10,247	3.83
1980	25,568	8,836	2.89
1990	24,458	8,799	2.78
2000	26,247	8,981	2.92
2010	26,247	8,852	3.0
2016	27,513	9,363	2.94

Sources: U.S. Census - 1990, 2000, 2016

4. Household Income: Detailed household income figures are shown in the table below. As shown, nearly a quarter of the Borough's households had an income of \$100,000 or more in

1999, by 2016 the percentage of households earning \$100,000 or more had increased to just under 40%. The Borough's median household income in 2016 was just in excess of \$81,000.

Table 14: Household Income (1999 to 2016)
Bergenfield, New Jersey

Income Category	1999		2009		2016	
	Number	Percent	Number	Percent	Number	Percent
Less than \$10,000	285	3.2%	302	3.3%	417	4.6%
\$10,000 to \$14,999	285	3.2%	321	3.5%	218	2.4%
\$15,000 to \$24,999	721	8.0%	729	7.9%	536	6.0%
\$25,000 to \$34,999	835	9.3%	504	5.5%	562	6.2%
\$35,000 to \$49,999	1,341	14.9%	889	9.6%	869	0.7%
\$50,000 to \$74,999	1,914	21.3%	1,513	16.4%	1,564	17.4%
\$75,000 to \$99,999	1,509	16.8%	1,294	22.3%	1,280	14.2%
\$100,000 to \$149,999	1,568	17.5%	2,054	22.3%	1,806	20.1%
\$150,000 to \$199,999 (plus in 1999)	519	5.8%	875	9.5%	887	9.9%
\$200,000 or more	---	0.0%	748	8.1%	863	9.6%
Total	8,977	100.0%	9,229	100.0%	9,002	100.0%
Median Household Income	\$62,172		\$82,546		\$81,042	
Bergen County Median	\$64,912		\$81,708		\$88,487	

Sources: U.S. Census - 1990 & 2000, American Community Survey 5-Year Estimates.
Note: 1990 Census Survey did not include categories for "\$150,000 to \$199,999" or "\$200,000 or more"

5. Housing cost-burden. Households that pay more than 30% of their income for housing are considered cost burdened and may have difficulty affording necessities such as food, clothing, transportation and medical care. Despite Bergenfield's affluence, the data from the 2010 census reveals that approximately 48% of owner-occupied households and nearly 45% of rental households had housing costs of 30% or more. By 2016, the data indicate a much-improved situation with just 36.6% of owner-occupied households experiencing more than 30% in household costs. Renters in 2016 also experienced less housing stress as 43.8% reported paying more than 30% of their income on housing.

Table 15: Housing Cost as Percentage of Income (2010 VS 2016)
Bergenfield, New Jersey

Percentage of Income	2010				2016			
	Owner-occupied		Renter		Owner-occupied		Renter	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Less than 20 percent	1,912	28.9%	520	19.9%	2,099	34.9%	627	21.0%
20 to 29 percent	1,535	23.2%	758	29.0%	1,696	28.2%	881	29.5%
30 percent or more	3,175	48%	1,174	44.9%	2,201	36.6%	1,309	43.8%
Zero income/no cash rent	0	0	157	6.0	18	0.3	170	5.7
Occupied Units	6,622	100.00%	2,609	100.00%	6,014	100.00%	2,987	100.00%

Sources: U.S. Census – 2000, American Community Survey 5-Year Estimates.

C. EMPLOYMENT ANALYSIS

The MLUL requires that the Housing Element include data on employment levels in the community. The following tables present information on the Borough's employment characteristics.

1. Employment Status. The following table provides information on the employment status of Borough residents age 16 and over. Of those in the labor force in 2010, 3.69% were unemployed. This unemployment rate has trended slightly upward as the decade aged.

Table 16: Employment Status, Population 16 and Over (2000 to 2016)
Bergenfield, New Jersey

Employment Status	2000		2010		2016	
	Number	Percent	Number	Percent	Number	Percent
In labor force	13,731	67.0%	14,851	69.8%	15,486	69.3%
Civilian labor force	13,731	67.0%	14,851	69.8%	15,481	69.2%
Employed	13,241	64.6%	14,045	66.0%	14,605	65.3%
Unemployed	490	2.4%	797	3.7%	876	3.9%
% of civilian labor force		3.6		5.4		5.7
Armed Forces	0	0.0%	0	0.0%	5	0.0%
Not in labor force	6,770	33.0%	6,428	30.2%	6,870	30.7%
Total Population 16 and Over	20,501		21,279		22,356	

Sources: U.S. Census – 1990 & 2000, American Community Survey 5-Year Estimates.

2. Employment Characteristics of Employed Residents. The following two tables detail information on the employment characteristics of employed Bergenfield residents. Table 17 details occupation characteristics, while Table 18 details industry characteristics.

Table 17: Employed Residents Age 16 and Over, By Occupation (2000 to 2016)
Bergenfield, New Jersey

Occupation	2000		2010		2016	
	Number	Percent	Number	Percent	Number	Percent
Management, Professional and related occupations	5,040	38.1%	5,696	40.5%	6,239	42.7%
Service Occupation	1,898	14.3%	2,119	15.1%	2,689	18.4%
Sales and Office Occupations	3,875	29.3%	3,505	24.9%	3,487	23.9%
Natural resources, construction & maintenance occupations	933	7.0%	1,292	9.2%	803	5.5%
Production, transportation and material moving occupations	1,495	11.3%	1,442	10.3%	1,387	9.5%
Total	13,241	100.0%	14,054	100.0%	14,605	100%

Sources: U.S. Census – 1990 & 2000, American Community Survey 5-Year Estimates.

Table 18: Employed Residents Age 16 and Over, By Industry (2000 to 2016)
Bergenfield, New Jersey

Industry	2000		2010		2016	
	Number	Percent	Number	Percent	Number	Percent
Agriculture, forestry, fishing, hunting and mining	11	0.1%	0	0.0%	0	0.0%
Construction	595	4.5%	716	5.1%	687	4.7%
Manufacturing	1,275	9.6%	1,170	8.3%	1,155	7.9%
Wholesale trade	737	5.6%	443	3.2%	514	3.5%
Retail trade	1,638	12.4%	1,202	8.6%	1,550	10.6%
Transportation and warehousing, and utilities	860	6.5%	817	5.8%	702	4.8%
Information	536	4.0%	527	3.7%	309	2.1%
Finance, insurance, real estate and rental and leasing	1,045	7.9%	1,028	7.3%	981	6.7%
Professional, scientific, management, administrative and waste management services	1,287	9.7%	1,551	11.0%	1,535	10.5%
Educational, health and social services	3,359	25.4%	4,570	32.5%	4,833	33.1%
Arts, entertainment, recreation, accommodation and food services	829	6.3%	737	5.2%	1,220	8.4%
Other services	657	5.0%	684	4.9%	702	4.8%
Public administration	412	3.1%	609	4.3%	417	2.9%
Total	13,241	100.0%	14,054	100.0%	14,605	100.0%

Sources: U.S. Census – 1990 & 2000, American Community Survey 5-Year Estimates.

D. HOUSING AND EMPLOYMENT PROJECTIONS

The following section identifies the extent to which recent development has occurred in the community, to assist in the determination of future residential and employment projections.

1. Probable Future Employment and Regional or Community Factors Impacting Upon Future Municipal Employment. Employment has generally trended upward over the past ten years in the Borough, between 4,078 jobs in 2007 to a high of 4,635 which was recorded in 2015. This trend of slow growth is anticipated to continue into the future, despite the slight decrease in employment recorded in 2016.

Table 19: Covered Employment Trends 2007-2016
Bergenfield, New Jersey

Year	Number of Jobs	Change in Number of Jobs	Percent Change
2007	4,079	--	--
2008	4,079	0	0
2009	4,414	335	8.2%
2010	4,267	-147	-3.3%
2011	4,422	155	3.6%
2012	4,502	80	1.8%
2013	4,541	39	0.9%
2014	4,584	43	0.9%
2015	4,635	51	1.1%
2016	4,611	-24	-0.5%

Sources: Department of Labor and Workforce Development

2. Projection of the Municipality's Housing Stock. With limited acreage remaining in the municipality that may be developed for residential use, it is anticipated that the Borough's residential growth will remain modest, as reflected in the recent annual data shown below. The only anticipated developments of consequence are the proposed redevelopment of the 51 East Main Street site and the potential redevelopment of the Foster Village shopping center. The Borough hopes to incentivize redevelopment activities along Washington Avenue as well.

Table 20: Trend in Residential Development
 Analysis of Certificates of Occupancy and Demolition Permits, 2004-2018
 Bergenfield, New Jersey

Year	COs Issued	Demo Permits Issued	Net Growth
2004	0	13	-13
2005	20	18	2
2006	13	10	3
2007	8	15	-7
2008	101	7	94
2009	5	32	-27
2010	5	3	2
2011	4	2	2
2012	33	3	30
2013	2	6	-4
2014	4	9	-5
2015	12	13	-1
2016	19	5	14
2017	26	1	25
2018	20	6	14
15 YR Total	272	143	129
15 YR Average	18.1	9.5	-
Yearly Average			8.6

SECTION II: FAIR SHARE OBLIGATION

A. SUMMARY OF FAIR SHARE OBLIGATION

The state of the Third Round affordable housing obligations for municipalities throughout New Jersey at present remains a fluid one, given the fact that neither the Courts, COAH, nor the legislature has established a definitive set of housing-need numbers that has been universally accepted. Initially, two sets of numbers were promulgated and widely discussed, inclusive of numbers in COAH's proposed 2014 regulations prepared by Dr. Robert Burchell of Rutgers University, and numbers prepared by David Kinsey, P.P., A.I.C.P. in April 2015 on behalf of Fair Share Housing Center. Their statewide numbers varied dramatically, with Dr. Burchell estimating the need for approximately 52,000 affordable housing units statewide, and Mr. Kinsey estimating the need for approximately 201,000 affordable housing units statewide. Similarly, their estimated affordable housing obligations assigned to Bergenfield diverge significantly as well.

Significantly, the Econsult numbers reflect the fact that Bergenfield contains minimal developable land, whereas Kinsey's numbers do not apparently acknowledge this fact. For this reason, as well as others, the Borough's plan at this time relies upon the affordable housing obligation contained in the signed Settlement Agreement. It is recognized that these figures may be adjusted in the future by the Court, COAH or the legislature, and thus may necessitate revision to the plan.

B. VACANT LAND ADJUSTMENT

Bergenfield's affordable housing obligation is also informed by a vacant land adjustment and the imposition of a realistic development potential (RDP) analysis that was undertaken pursuant to the Second Round regulations. The vacant land analysis identified all vacant sites of minimally 0.83 acres in size, imposed wetland, steep slope and flood plain information pursuant to the applicable regulations, and calculated the remaining acreage that is to be utilized to determine the Borough's RDP.

The analysis reveals there are 5.01 total acres of vacant land in the community. A total of zero (0) acres are comprised of sites that are minimally 0.83 acres in size. Pursuant to the applicable regulations, a minimum presumptive density of 6 dwelling units per acre were imposed on these zero acres, and then a twenty percent set-aside was imposed on that calculation. This formula resulted in an affordable housing obligation of zero units.

We then adjusted this figure by including two parcels that have the potential to be developed or redeveloped with affordable housing. The first of these parcels is identified as Landmark Equities (Block 84 Lot 14 & Block 87 Lots 1 & 6). This property was the subject of an earlier Settlement Agreement that authorizes the construction of sixty-two (62) dwelling units, nine (9) of which are to be deeded restricted as affordable housing. The second parcel is located at 51 East Main Street. This parcel recently received Zoning Board approval authorizing the construction of twenty-six (26)

apartments, four (4) of which must be deed restricted as affordable housing.

The Borough's vacant land assessment is presented in the accompanying map and table on the following pages.

Table 21: Vacant Land Assessment
 Borough of Bergenfield, New Jersey

BERGENFIELD VACANT LAND ASSESSMENT

March 27, 2019

ID	Block	Lot	Property Class	Location	Owner	6 u n i t / a c r e a r e s	A r e a (A c r e s	Deve lopa ble	Dev elop able Acr es	Co mm ent_ 1	Comment_2	Yie ld (aff ord abl e uni ts)
1	104	6	1	W CLINTON AVENUE	HEDGES, JAMES J	0.83	0.06	N	0.00	Lot too small		0
2	10701	3	1	ROOSEVELT AVENUE	ARANCIBIA, RICARDO	0.83	0.05	N	0.00	Lot too small		0
3	127	3	1	PORTLAND AVENUE	ROESE, WALTER F, III	0.83	0.11	N	0.00	Lot too small		0
4	13	2	1	230 N WASHINGTON AVE	230 N WASHINGTON REAL EST ASSOC	0.83	0.06	N	0.00	Lot too small		0
5	135	1	1	ARLINGTON AVENUE	MC KOY, CRAIG	0.83	0.06	N	0.00	Lot too small		0

ID	Block	Lot	Property Class	Location	Owner	6 u n i t/ a c r e a r e a t h r e s h o l d	A r e a (A c r e s)	Deve lop a b l e	Dev elop a b l e A c r e s	Co m m e n t_ 1	Comment_2	Yield (aff ord abl e uni ts)
6	136	1	1	BEDFORD AVENUE	BERGEN REGENCY LLC	0.83	0.20	N	0.00	Lot too small		0
7	138	8	1	BEDFORD AVENUE	KNAPP, KENNETH J	0.83	0.12	N	0.00	Lot too small		0
8	140	7	1	68 DELFORD AVENUE	STEDJAN, ERLING	0.83	0.11	N	0.00	Lot too small		0
9	154	4	1	N SUMMIT STREET	ESPINA, STEVE & DAMATO, JOSEPH	0.83	0.18	N	0.00	Lot too small		0
10	156	1	1	N WOODSIDE AVENUE	HEFFERMAN SUPPLY CO., INC.	0.83	0.13	N	0.00	Lot too small		0
11	171	1	1	BERGEN AVENUE	JOSE M GARCIA FOUNDATION, INC.	0.83	0.11	N	0.00	Lot too small	Env. Constraint: stream	0
12	171	1	1	HUGHES ROAD	HABITAT FOR HUMANITY OF BC INC	0.83	0.14	N	0.00	Lot too small		0
13	184	8	1	MARTIN STREET	ANDERSON, ANDERS	0.83	0.00	N	0.00	Lot too small	Env. Constraint: stream	0

ID	Block	Lot	Property Class	Location	Owner	6 u n i t / a c r e a r e s	A r e a (A c r e s	Deve lopa ble	Dev elop able Acr es	Co mm ent_ 1	Comment_2	Yie ld (aff ord abl e uni ts)
				T	B & MARGA RETL		9			1		
14	20	1	1	NEW JERSEY AVENUE	GIAMO, RICHARD & ANNA E	0.83	0.12	N	0.00	Lot too small	Env. constraint: stream & 100 yr floodplain	0
15	220	2	1	VAN VALKENBURGH AVENUE	BERTHOLD, HELEN	0.83	0.14	N	0.00	Lot too small		0
16	228	2	1	WOODBINE STREET	BANK OF AMERICA, ATT: CORP. REAL EST.	0.83	0.29	N	0.00	Lot too small		0
17	247	1	1	PHELPS AVENUE	RAMIREZ, HENAO G (GERMAN)	0.83	0.05	N	0.00	Lot too small		0
18	245	4	1	O'NEIL STREET	VAN TASSEL-NEWMAN FUNERAL SERV PROP	0.83	0.17	N	0.00	Lot too small		0
19	248	1	1	WASHINGTON	DAPPER, JOEL & IRVOLIN	0.83	0.1	N	0.00	Lot too small		0

ID	Block	Lot	Property Class	Location	Owner	6 unit/acre area at hold	Area (Acres)	Developable	Developable Acres	Comment_1	Comment_2	Yield (affordable units)
				AVENUE	O,NICOLE		6			1		
20	268	85	1	MARCO TTE LANE	KAPLAN (ETALS), MARGA RETR	0.83	0.50	N	0.00	Lot too small		0
21	268	107	1	MACKAY DRIVE	SANKHOLKAR, DEEPAK & RACHNA	0.83	0.07	N	0.00	Lot too small		0
22	302	3	1	NEW BRIDGE ROAD	POWER, T L C/O WESTING	0.83	0.06	N	0.00	Lot too small		0
23	302	1	1	NEW BRIDGE ROAD	HUTCHINS, AUGUSTUS	0.83	0.06	N	0.00	Lot too small		0
24	323	4	1	WEST MINSTER AVENUE	DESPOSITO, LEONARD J & JEAN A	0.83	0.02	N	0.00	Lot too small		0
25	324	10	1	NORFOLK STREET	RAPOPORT, MICHAEL R & DEBORAH L	0.83	0.04	N	0.00	Lot too small		0
26	328	22	1	GREENBRIAR STREET	SHANAHAN, PATRICK T & SUSAN J	0.83	0.04	N	0.00	Lot too small		0
2	3	4	1	FULTO	REILLY,	0.83	0.00	N	0.00	Lot		0

ID	Block	Lot	Property Class	Location	Owner	6 u n i t / a c r e a r e s	A r e a (A c r e s)	Deve lopa ble	Dev elop able Acr es	Co mm ent_ 1	Comment_2	Yie ld (aff ord abl e uni ts)
7	32			N STREE T	THOMAS SR & THOMAS M JR	83	.03			too small		
28	332	1	1	MAIDE N LANE	TEANEC K WINDSO R LLC	0.83	0.14	N	0.00	Lot too small	Env. constraint: 100 yr floodplain & wetlands	0
29	332	3	1	FULTO N STREE T	REILLY, THOMAS SR & THOMAS M JR	0.83	0.11	N	0.00	Lot too small		0
30	333	1	1	WINDS OR ROAD	TEANEC K WINDSO R LLC	0.83	0.50	N	0.00	Lot too small	Env. constraint: 100 yr floodplain & wetlands	0
31	345	9	1	WARR EN STREE T	NEW BRIDGE MGMT LLC	0.83	0.17	N	0.00	Lot too small		0
32	345	402	1	7 FOSTE R STREE T	KINDER GAN, DANIEL	0.83	0.12	N	0.00	Lot too small		0
33	349	12	1	MURR AY HILL TERRA CE	DI BLASI, SALVAT ORE	0.83	0.07	N	0.00	Lot too small		0
35	413	1	1	PHHELP S AVEN	UNKNO WN	0.83	0.00	N	0.00	Lot too small		0

ID	Block	Lot	Property Class	Location	Owner	6 units/acre	Area (Acres)	Developable	Developable Acres	Comment_1	Comment_2	Yield (affordable units)
				UE			4			1		
36	41	12	1	MERRITT AVENUE	PINNEL, ALISON C/O MERRITT REALTY	0.83	0.06	N	0.00	Lot too small		0
37	54	20	1	89 RIVER EDGE ROAD	COSTA, PAUL	0.83	0.13	N	0.00	Lot too small		0
38	60	901	1	RIVER EDGE ROAD	GARCES, OLIZAR L & EMILDA S	0.83	0.09	N	0.00	Lot too small		0
39	76	3	1	N PROSPECT AVENUE	MILTON HADIKS CRAFTED INTERIORS	0.83	0.11	N	0.00	Lot too small	Env. constraint: 100 yr floodplain	0
40	84	14	1	15 W JOHNSON AVENUE	LANDMARK EQUITIES LLC	0.83	0.19	Y	0.19	Developable		12.4
41	87	1	1	N RAILROAD AVENUE	LANDMARK EQUITIES LLC	0.83	0.33	Y	0.33	Developable		
42	87	6	1	ANNE X PLACE	LANDMARK EQUITIES S, LLC	0.83	0.12	Y	0.12	Developable		

I D	B l o c k	L o t	P r o p e r t y C l a s s	Locatio n	Owner	6 u n i t / a c r e a r e s	A r e (A c r e s)	Deve lopa ble	Dev elop able Acr es	Co mm ent_ 1	Comment_2	Yie ld (aff ord abl e uni ts)
4 3	1 5 4	2	4 A	51 E MAIN STREE T	SHANTY LLC	0. 8 3	0 .4 1	Y	0.41	Dev elop able		5.2
					Total Vacant Land Analysis Parcel Area							
								Total Deve lopa ble Area	1.05			
											Total Yield (affordable units)	17. 6, say 18

Burgis Associates, Inc.
1000 North 10th Street
P.O. Box 1000
Pittsburgh, PA 15206
Tel: 412.326.1000
Fax: 412.326.1001
www.burgis.com

Vacant Land Analysis

Legend

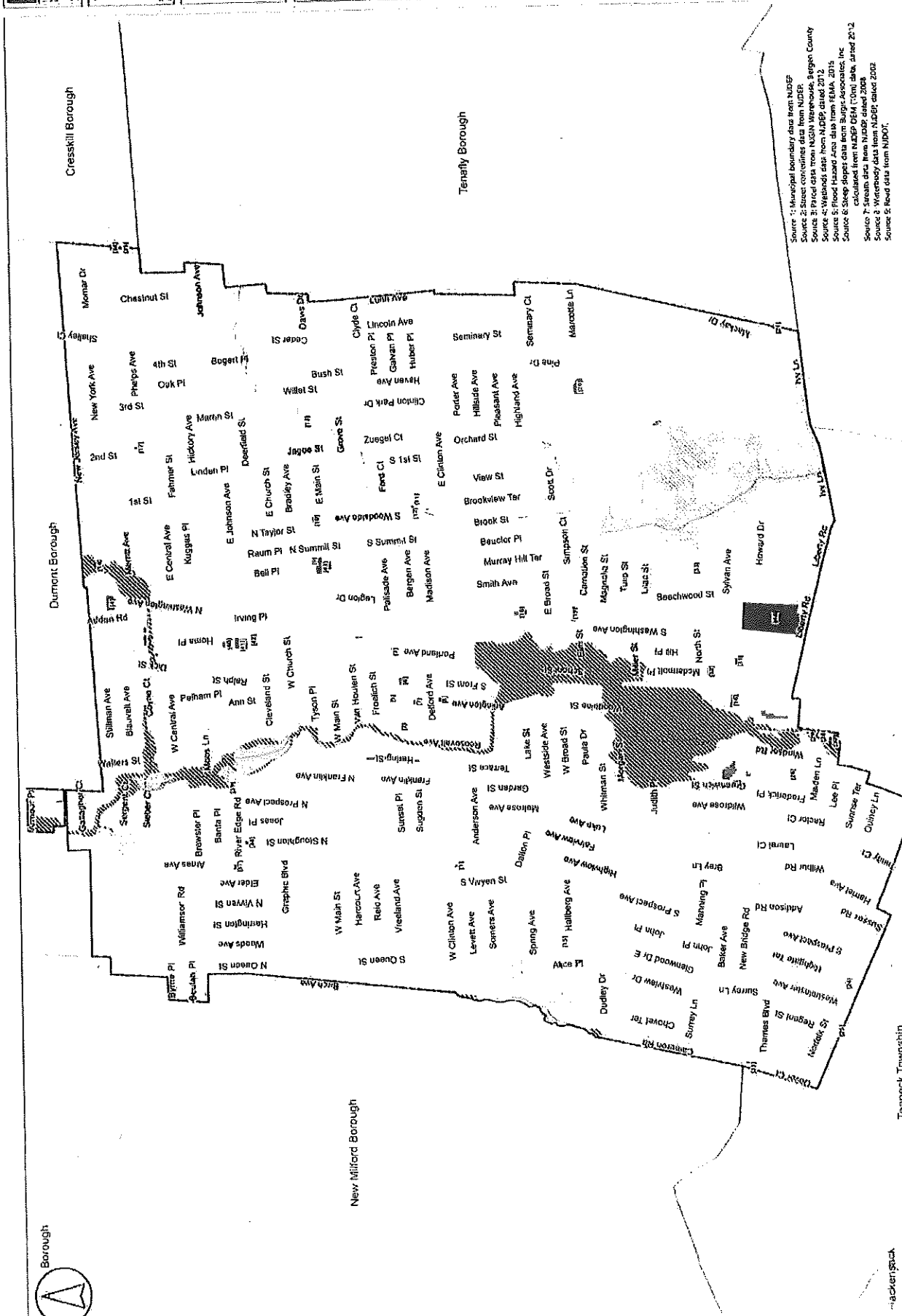
- Surrounding Municipality
- Municipal Boundary
- Parcel
- V.L.A. Parcel
- Stream
- Waterbody
- Wetland
- 500 yr floodplain
- 100 yr floodplain
- 0 - 15% slope
- 15% - upper limit slope

Vacant Land Analysis

Scale: 1" = 500'

North Arrow

Source 1: Municipal boundary data from NIDEP
Source 2: Street centerlines data from NIDEP
Source 3: Parcel data from NSGN Warehouse, Bergen County
Source 4: Wetlands data from NIDEP dated 2012
Source 5: Flood Hazard Area data from FEMA, 2015
Source 6: Slope data from Burgis Associates, Inc. calculated from NAD83 DEM (30m data, dated 2012)
Source 7: Stream data from NIDEP
Source 8: Wetland data from NIDEP, dated 2002
Source 9: Road data from NIDEP



SECTION III: FAIR SHARE PLAN

A. PLAN SUMMARY

The HE&FSP identifies the manner in which the Borough's fair share affordable housing obligations – inclusive of a 129-unit rehabilitation obligation, 87-unit Prior Round Obligation, and 140-unit Third Round RDP housing obligation, as adjusted through the vacant land process – are to be addressed. This is summarized below.

1. Rehabilitation Share. The Borough intends to satisfy its 129-unit rehabilitation (present need) obligation through credits received from rehabilitation work already completed at Brookside Gardens and through continued participation in the Bergen County Home Improvement Program. These two strategies will allow Bergenfield to completely discharge its rehabilitation obligation during the pendency of the Third Round. These approaches will be discussed in more detail later in this section.
2. New Construction Obligation. Bergenfield's prior round obligation has been calculated to be 87 units. Bergenfield has also been assigned a Third Round (1999-2025) obligation of 140 units. Bergenfield will meet its new construction obligation, in part, with a vacant land adjustment. Bergenfield has demonstrated it has a lack of land and is therefore eligible to reduce its new construction obligation to its Realistic Development Potential (RDP). Bergenfield has a Realistic Development Potential of 18 units. This obligation will be satisfied through a combination of a credits from previous approved, but not yet constructed inclusionary housing sites. Additional details will be provided later in this Housing Element and Fair Share Plan.
3. Addressing the Unmet Need. Communities that are able to demonstrate through a Vacant Land Adjustment that they are unable to fully address the new construction obligation, are not relieved of the balance of the obligation. The remaining obligation, after removal of the RDP, is reclassified as "Unmet Need". Municipalities must affirmatively act to address this component of the obligation. Bergenfield will seek credits for several supportive housing group homes that currently operate within Bergenfield. In supportive housing environments, individual bedrooms are what determines crediting. In Bergenfield's case the supportive housing environment supply twenty (20) bedrooms, thus Bergenfield is entitled to claim twenty (20) credits from these homes.

In addition to addressing the Unmet Need through group homes, Bergenfield has already or will adopt affordable housing overlay districts. The first location selected for an overlay zone is the Foster Village Shopping Center. This 6.6-acre parcel is to be the subject of an overlay zone that will allow residential development on this parcel, but only in exchange for creating a specified percentage of affordable housing. The percentage of affordable units is dependent on whether the affordable units are offered for sale or for rent.

Portions of both the B-1 and B-2 zones along Washington Avenue are also expected to produce affordable housing. To encourage the production of affordable housing opportunities, Bergenfield anticipates creating a second overlay zone. The creation of both new market-rate and affordable housing above stores and shops is expected to provide additional rental income to property owners and an expanded customer pool of potential shoppers for downtown Bergenfield merchants.

The Borough proposes to partially address its Unmet Need obligation through the creation of an overlay zone that would be limited to a portion of the B-1 zone and a portion of the B-2 zone. Like the approach taken with the Foster Village property, the percentage of affordable units to be constructed will vary depending if the affordable units are offered for sale or for rent.

As detailed above, the HE&FSP can accommodate the entirety of the community's housing obligation through 2025 in a manner that affirmatively addresses the assigned obligation while at the same time maintaining the overall character of the community.

As noted above, the process being followed is fluid, and as the Courts respond to the myriad issues that they need to address, it is recognized that this plan may require adjustment.

B. MINIMUMS/MAXIMUMS TO BE ADDRESSED

This plan seeks to address the Borough's affordable housing obligation by application of COAH Second Round (1993-1999) rules to the RDP portion of the obligation, since COAH had re-adopted these rules in 2011 and extended their use until October 2016. Additionally, the Supreme Court in a recent affordable housing decision endorsed use of this methodology by COAH. As such, the following minimum requirements and maximum limitations, as set forth in COAH's second round rules, will be addressed within the plan:

-
- a. Age-Restricted Units. Pursuant to N.J.A.C.5:93-5.14.a.1 and N.J.A.C.5:93-5.14.a.2, Bergenfield is permitted to age-restrict up to 25 percent of its 18-unit RDP. Bergenfield will not seek credits for age-restricted housing as part of this plan.
 - b. Rental Unit Obligation. N.J.A.C. 5:93-5.15.a, requires Bergenfield to address at least 25 percent of its 18-unit RDP with rental housing. In fact, Bergenfield is seeking to address the entirety of its 18-unit RDP through rental units.

- c. Rental Bonus Credits. Bergenfield is permitted to seek a 2:1 rental bonus credit for creating rental affordable units. Bergenfield will claim credit for five (5) bonus credits.

The table below summarizes the above parameters for both the Prior Round and Third Round RDP obligations.

Table 22: Plan Minimums and Maximums
Borough of Bergenfield, New Jersey

Requirement	New Construction Min/Max Limit	Number of Units Proposed	Complies (Yes/No)
Max. Age-Restricted Units	Not to exceed 5	0	Yes
Min. Rental Units	Not less than 5	9	Yes
Max. Rental Bonus Credits (Total)	Not to exceed 5	5	Yes

C. PLAN COMPONENTS

This section of the plan details the projects, mechanisms and funding sources which will be used to meet the Borough's affordable housing obligations, as discussed above. The Plan Components Map included at the end of this plan illustrates the location of all existing and proposed developments identified herein.

Rehabilitation Share. The Borough has a rehabilitation share of 129 units. Bergenfield plans to continue to participate in the Bergen County Home Improvement Program to address this obligation while utilizing funds from its affordable housing trust fund, expected to be adopted as part of Bergenfield's implementation process to provide any necessary match of funds. Bergenfield's rental rehabilitation obligation has been and is satisfied by rehabilitation work that has, and will continue, at Brookside Gardens, a HUD sponsored senior affordable housing development constructed in the mid 1970's. Since 1999, over \$1.75 million has been expended at Brookside Gardens.

In addition, Bergenfield believes the rehabilitation obligation assigned it is greater than the need. As such, Bergenfield, as permitted pursuant to COAH regulations, has performed a so-called 'windshield survey'. This survey performed by Bergenfield's administrative agent Community Grants, Planning and Housing, found the rehabilitation obligation should be reduced to thirty-six (36) units. This obligation has been fully satisfied by maintenance work performed at Brookside Gardens.

Bergenfield will first look to its affordable housing trust fund to supply any necessary rehabilitation funds. Bergenfield is expected to adopt a development fee ordinance as part of its Third Round affordable housing activities. As this HE&FSP is being drafted, Bergenfield has not established an affordable housing trust fund.

1. RDP Obligation. As previously identified in this plan, Bergenfield is a highly developed community with limited land available for development, and as such qualifies for a Vacant Land Adjustment. The Borough's RDP is eighteen (18) units. This obligation will be affirmatively addressed by two developments, both having received local Board approval but neither yet constructed, but construction is anticipated during the Third Round.
 - a. Landmark Equities ("Landmark") entered into a Settlement Agreement with Bergenfield. Pursuant to the Settlement Agreement, Landmark is authorized to construct an inclusionary housing development containing nine (9) family rental units, five (5) of the affordable units will be reserved for low-income households, four (4) for moderate-income households. Further, as set forth in the Settlement Agreement seven (7) affordable units will contain two-bedrooms. The remaining two (2) units will each contain one-bedroom.
 - b. 51 East Main Street has secured Zoning Board approval to construct an inclusionary development containing four (4) affordable dwellings. One of the affordable dwellings will be restricted to a very low-income household. Half of all affordable units will contain two-bedrooms, the remaining half will contain one-bedroom.

The above two developments, along with associated bonus credits the municipality is entitled to completely discharge Bergenfield's new construction RDP. Attention now shifts to mechanisms addressing the Unmet Need obligation.

**Table 23: Plan Components Addressing RDP Obligation
Bergenfield, New Jersey**

Plan Components	# of Affordable Units	Rental Credits	Bonus	Total Credits
Landmark Equities	9	4		13
51 E. Main Street	4	1		5
TOTAL CREDITS				18

2. Unmet Need Obligation. This plan addresses Unmet Need utilizing two different approaches. First, Bergenfield will seek Court approval of twenty (20) credits for twenty (20) bedrooms of

supportive housing. This is detailed in the table below.

Table 24:
Group Homes
Borough of Bergenfield, New Jersey

Development Names	Unit Type	# of Affordable Housing Units
Spectrum for Living	Supportive Housing	3
ARC of Bergen/Passaic Cty.	Supportive Housing	5
Community Center Mental Health	Supportive Housing	6
ARC of Bergen/Passaic Cty.	Supportive Housing	6
TOTAL CREDITS		20

In addition to seeking Unmet Need credits generated by group homes, Bergenfield has or will adopted zoning ordinance amendments with the anticipation that these ordinances will create a realistic opportunity to foster the construction of new affordable housing.

The first zoning amendments will establish an overlay zone on Block 351 Lot 8, also known as the Foster Village Shopping Center. The proposed overlay zone will permit the construction of inclusionary housing at this site. Proposed densities and affordable housing setasides are depending on whether units are offered for sale or for rent. All affordable housing constructed on this property will be provided in accordance with the Uniform Housing Affordability Controls except that this overlay zone will require at least 30% of all affordable units shall contain no less than three (3) bedrooms.

The second zoning amendment will create an overlay zone on selected portions of the B-1 zone and B-2 zone along Washington Avenue. Density and the percentage of the mandatory affordable housing setaside are dependent on whether dwellings are to be offered for sale or for rent.

An additional zoning ordinance amendment is not zone specific. This fourth amendment to Chapter 186 will require all future multi-family residential or mixed-use developments, regardless of which zone the property is in, containing a residential component of five (5) or more dwellings to include an affordable housing setaside of fifteen (15) percent if dwellings are rental and a twenty (20) percent affordable housing setaside if dwellings are offered for sale.

APPENDICES

- A-1: Development Fee Ordinance
- A-2: Affordable Housing Zoning Regulations
- A-3: Affirmative Marketing Plan
- A-4 Spending Plan

A-1 Proposed Development Fee Ordinance

**BOROUGH OF BERGENFIELD
PUBLIC NOTICE**

The following Ordinance which was introduced at a meeting of the Mayor and Council of the Borough of Bergenfield on Tuesday, August 18, 2020 was adopted at a Work Session meeting of the Mayor and Council on Tuesday, October 6, 2020 as amended:

ORDINANCE 20-2568 - AN ORDINANCE TO AMEND, SUPPLEMENT, AND REVISE THE CODE OF THE BOROUGH OF BERGENFIELD, LAND USE, CHAPTER 186 ENTITLED "LAND DEVELOPMENT ORDINANCE OF THE BOROUGH OF BERGENFIELD"

Marie Quinones
Borough Clerk
October 12, 2020

ORDINANCE NO. 20-2568
BOROUGH OF BERGENFIELD
COUNTY OF BERGEN
STATE OF NEW JERSEY

AN ORDINANCE TO AMEND, SUPPLEMENT AND REVISE THE CODE OF THE BOROUGH OF BERGENFIELD, LAND USE, CHAPTER 186 ENTITLED "LAND DEVELOPMENT ORDINANCE OF THE BOROUGH OF BERGENFIELD"

BE IT ORDAINED by the Borough Council of the Borough of Bergenfield, County of Bergen, State of New Jersey, that the following amendments and revisions are made to the Land Development Ordinance of the Borough of Bergenfield, Chapter 186 entitled "Land Development Ordinance of the Borough of Bergenfield".

Section 1

ARTICLE VI: Development Fees for Affordable Housing is hereby established and incorporated into the Land Development Ordinance.

Section 186-63.1

- 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 (N.J.S.A. 52:27D-329.2) and the Statewide Non-Residential Development Fee Act (N.J.S.A. 40:55D-8.1 through 40:55D-8.7), COAH was authorized to adopt and promulgate regulations necessary for the establishment, implementation, review, monitoring and enforcement of municipal affordable housing trust funds and corresponding spending plans. Municipalities that are under the jurisdiction of the Council or court of competent jurisdiction and have a COAH or Court approved spending plan may retain fees collected from nonresidential developments.
- C. This article establishes standards for the collection, maintenance, and expenditures of development fees pursuant to P.L. 2008, c. 46, Sections 8 and 32 through 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 article shall be used for the sole purpose of providing low-and moderate-income housing in accordance with a Court-approved Spending Plan.

D. This article shall not be effective until approved by the Court. Bergenfield shall not spend development fees until the Court has approved a plan for spending such fees.

Section 186-63.2 Definitions.

The following terms, as used in this article, shall have the following meanings:

DEVELOPMENT FEE- Money paid by a developer for the improvement of property as permitted in N.J.A.C. 5:97-8.3.

EQUALIZED ASSESSED VALUE- The assessed value of a property divided by the current average ratio of assessed to true value for the municipality in which the property is situated, as determined in accordance with Sections 1, 5, and 6 of P.L. 1973, c. 123 (N.J.S.A.54:1-35a through 54:1-35c).

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

Section 186-63.3 Residential development fees.

A. Imposed fees.

- (1) Within the zoning districts allowing residential development, residential developers, except for developers of the types of development specifically exempted below, shall pay a fee of 1½% of the equalized assessed value for residential development, provided that no increased density is permitted.
- (2) 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 shall 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 of 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.
- (3) Example: If an approval allows four units to be constructed on a site that was zoned for two units, the fees could equal 1½% of the equalized value on the first two units; and the specified higher percentage up to 6% of the equalized assessed value for the two additional units. Provided that the zoning on the site has not changes during the two-year period preceding the filing of such a variance application.

B. Eligible exactions, ineligible exactions and exemptions for residential development.

- (1) Affordable housing developments and developments where the developer has made a payment in lieu of on-site construction of affordable units shall be exempt from development fees.

- (2) 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.
- (3) Development fees shall be imposed and collect 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.
- (4) Development fees shall not be imposed and collected on single-family and two-family detached residential structures.

Section 186-63.4 Nonresidential development fees.

A. Imposed fees.

- (1) Within all zoning districts, nonresidential developers, except for developers of the types of development specifically exempted, shall pay a fee equal to 2½% of the equalized assessed value of land and improvements for all new nonresidential construction on an improved lot or lots.
- (2) Nonresidential developers, except for developers of the types of development specifically exempted, shall also pay a fee equal to 2½% of the increase in equalized assessed value resulting from any additions to existing structures to be used for nonresidential purposes.
- (3) Development fees shall be imposed and collected when an existing structure is demolished and replaced. The development fee of 2½% shall be calculated on the difference between the equalized assessed value of the preexisting land and improvement and the equalized assessed value of the newly improved structure, i.e., land and improvement, at the time of final certificate of occupancy is issued. If the calculation required under this section results in a negative number, the nonresidential development fee shall be zero.

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

- (1) The nonresidential portion of a mixed-use inclusionary or market-rate development shall be subject to the development fee of 2½% unless otherwise exempted below.
- (2) The fee of 2½% shall not apply to an increase in equalized assessed value resulting from alterations, changes in use within existing footprint, reconstruction, renovations and repairs.
- (3) Nonresidential developments shall be exempt from the payment of nonresidential development fees in accordance with the exemptions required pursuant to P.L. 2008, c. 46, as specified in the Form N-RDF, State of New Jersey Non-Residential Development Certification/Exemption Form. Any exemption claimed by a developer shall be substantiated by that developer.

- (4) A developer of a nonresidential development exempted from the nonresidential development fee pursuant to P.L. 2008, c. 46 shall be subject to it at such time as the basis for the exemption no longer applies, and shall make the payment of the nonresidential development fee, in that event, within three years after that event or after the issuance of the final certificate of occupancy of the nonresidential development, whichever is later.
- (5) If a property which was exempted from the collection of a nonresidential development fee thereafter ceases to be exempt from property taxation, the owner of the property shall remit the fees required pursuant to this section within 45 days of the termination of the property tax exemption. Unpaid nonresidential development fees under these circumstances may be enforceable by the Borough of Bergenfield as a lien against the real property of the owner.
- (6) Developers of municipal buildings and houses of worship shall be exempt from paying a development fee.

Section 186-63.5 Collection procedures.

- A. Upon the granting of a preliminary, final or other applicable approval for a development, the applicable approving authority shall direct its staff to notify the construction official responsible for the issuance of a building permit.
- B. For nonresidential developments only, the developer shall also be provided with a copy of Form N-RDF, State of New Jersey Non-Residential Development Certification/Exemption, to be completed as per the instructions provided. The developer of a nonresidential development shall complete Form N-RDF as per the instructions provided. The construction official shall verify the information submitted by the nonresidential developer as per the instructions provided in the Form N-RDF. The tax assessor shall verify exemptions and prepare estimated and final assessments as per the instructions provided in Form N-RDF.
- C. The construction official responsible for the issuance of a building permit shall notify the local tax assessor of the issuance of the first building permit for a development which is subject to a development fee.
- D. Within 90 days of receipt of that notice, the municipal tax assessor, based on the plans filed, shall provide an estimate of the equalized assessed value of the development.
- E. The construction official responsible for the issuance of a final certificate of occupancy notifies the local assessor of any and all requests for the scheduling of a final inspection on property which is subject to a development fee.
- F. Within 10 business days of a request for the scheduling of a final inspection, the municipal assessor shall confirm or modify the previously estimated equalized assessed value of the improvements of the development, calculate the development fee, and thereafter notify the developer of the amount of the fee.
- G. Should the Borough of Bergenfield fail to determine or notify the developer of the amount of the development fee within 10 business days of the request for final inspection, the developer may estimate the amount due and pay that

estimated amount consistent with the dispute process set forth in Subsection b of Section 37 of P.L. 2008, c. 46 (N.J.S.A. 40:55D-8.6).

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

Section 186-63.6 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 fee collected from residential and nonresidential 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 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 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 of Bergenfield's affordable housing program. In the event of a failure by the Borough of Bergenfield 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 judgement of compliance or a revocation of the judgement 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 expenditures 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 practical, be utilized for affordable housing programs within the Borough of Bergenfield, or, if not practical, 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 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.

- C. All interest accrued in the Housing Trust Fund shall only be used on eligible affordable housing activities approved by the Court.

Section 186-63.8 Use of Funds.

- A. The expenditure of all funds shall conform to a spending plan approved by the Court. Funds deposited in the Housing Trust Fund may be used for any activity approved by the Court to address the Borough of Bergenfield'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 nonresidential buildings to create new affordable units, green building strategies designed to be cost saving and in accordance with accepted national or state standards, purchase of land for affordable housing, improvement of land to be used for affordable housing, extensions or improvements of roads and infrastructure to affordable housing sites, financial assistance designed to increase affordability, administration necessary for implementation of the Housing Element and Fair Share Plan, or any other activity as permitted by the Court and specified in the approved Spending Plan.
- B. Funds shall not be expended to reimburse the Borough of Bergenfield for past housing activities.
- C. At least 30% of all development fees collected and interest earned shall be used to provide affordability assistance to low-and moderate-income households in affordable units included in the municipal Fair Share Plan. One-third of the affordable assistance portion of development fees collected shall be used to provide affordability assistance to those households earning 30% or less of median income by region.
 - (1) Affordability assistance programs may include down payment assistance, security deposit assistance, low-interest loans, rental assistance, assistance with homeowner's association or condominium fees and special assessments, and assistance with emergency repairs.

- (2) Affordability assistance to households earning less than 30% of median income by region 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% or less of median income. The use of development fees in this manner may entitle the Borough of Bergenfield to bonus credits pursuant to N.J.A.C. 5:97-3.7.
- (3) Payments in lieu of constructing affordable units on site and funds from the sale of units with extinguishing controls shall be exempt from the affordability assistance requirement.
- D. The Borough of Bergenfield 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% 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% 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 monitoring requirements. Legal or other fees related to litigation opposing affordable housing sites or objecting to COAH regulations and/or actions are not eligible use of the Affordable Housing Trust Fund.

Section 186-63.9 Monitoring.

The Borough of Bergenfield 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 provide 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 amount 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 housing units on site (if permitted by Ordinance or by agreement with Bergenfield), funds from the sale of units with extinguishing 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 Bergenfield's affordable housing programs, as well as an accounting of the expenditures of revenues and implementation of the Spending Plan approved by the Court.

Section 186-63.10 Ongoing collection of fees.

The ability for the Borough of Bergenfield to impose, collect and expend development fees shall expire with its repose period covered by its Judgement of Compliance unless Bergenfield has 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 approved 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. If the Borough of Bergenfield fails to renew its ability to impose and collect development fees prior to the expiration of its Judgement of Compliance, it may be subject to forfeiture of any or all funds remaining within its municipal 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 (N.J.S.A. 52:27D0320). The Borough of Bergenfield shall not impose a residential development on a development that receives preliminary or final site plan approval after the expiration of its Judgement of Compliance, nor shall Bergenfield retroactively impose a development fee on such a development. The Borough of Bergenfield shall not expend development fees after the expiration of its Judgement of Compliance.

Section 2

All Ordinances of the Borough of Bergenfield which are inconsistent with the provisions of this Ordinance are hereby repealed to the extent of such inconsistency.

Section 3


If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional or invalid, such decision shall not affect the remaining portions of this Ordinance.

Section 4

This Ordinance shall take effect immediately upon final passage, approval and publication as required by law.

ATTEST:

BOROUGH OF BERGENFIELD
COUNTY OF BERGEN
STATE OF NEW JERSEY


Marie Quinones, Borough Clerk


Arvin Amatorio, Mayor

A-2 Current Affordable Housing Regulations

ORDINANCE NO. _____

BOROUGH OF BERGENFIELD
COUNTY OF BERGEN
STATE OF NEW JERSEY

AN ORDINANCE TO AMEND, SUPPLEMENT AND REVISE THE CODE OF THE BOROUGH OF BERGENFIELD, CHAPTER 186 ENTITLED "ZONING"

BE IT ORDAINED by the Borough Council of the Borough of Bergenfield, County of Bergen, State of New Jersey, that the following amendments and revisions are made to the Revised General Ordinances of the Borough Bergenfield, Chapter 186 entitled "Land Development Ordinance of the Borough of Bergenfield, New Jersey".

Section 1

- A. The list of zones identified in Article VI Zoning Regulations and Establishment of Zones, Section 186-36, Enumeration of Zones is hereby amended to include:
 - IH Inclusionary Housing Zone.
- B. §186-38 Zoning Map is herein amended and supplemented to depict the Inclusionary Housing Zone on the following property:
 - Block 154 Lot 2

Section 2

The Land Development Ordinance is hereby amended to include the following Article:

ARTICLE VIIB
IH Inclusionary Housing Zone

§186-63.5 Objectives.

- A. Objectives. The provisions of this section are intended to encourage the construction of inclusionary housing consistent with smart growth design principles in a location adjacent to the Washington Avenue commercial corridor.
- B. Permitted uses for Block 154 Lot 2 shall be limited to inclusionary housing. The exact percentage of affordable units shall be determined based on tenure type. Developments offering for-sale units shall reserve no less than 20% of the total number of dwellings as affordable as defined and further regulated by the Borough's affordable housing ordinance. Developments in which units are to be offered for rent shall reserve no less than 15% of the total number of dwellings as affordable as defined and further regulated by the Borough's affordable housing ordinance.

§186-63.6 Design requirements.

All developments constructed in this zone shall comply with the area and bulk requirements pursuant to Schedule B. In addition, all developments shall comply with the following zoning provision:

- A. The maximum number of dwelling units shall not exceed twenty-six (26).
- B. Ground floor use is limited to parking, lobbies, mechanical and trash rooms, stairways and elevator areas.
- C. All developments in this zone shall install new curb, sidewalk and shade trees in the adjacent public right of way, if deemed necessary by the Borough engineer.
- D. Minimum required lot size is 15,000 square feet.
- E. Minimum required lot width is 100 feet. If a corner lot, the required minimum lot width must be complied with on at least one street frontage.
- F. Front yard building setbacks are designed to provide a presence along the street and shall be a minimum of five (5) feet.
- G. Side and rear yard building setbacks shall be a minimum of four (4) feet.
- H. Building height shall not exceed three (3) stories and thirty-eight (38) feet.
- I. Maximum improved lot coverage shall not exceed eighty-five (85) percent. Maximum lot coverage is limited to a maximum of seventy-five (75) percent.
- J. A minimum of 20% of all dwellings developed on this property shall be deed restricted affordable dwellings as defined in N.J.A.C.5:93-1.3. Affordable housing dwellings shall be priced so that 50% of all such units are available to low-income households with 13% of all affordable dwellings affordable to very-low income households. Affordable units shall not be restricted to senior citizens, although income qualified seniors shall not be excluded from occupancy.

§186-63.7 Miscellaneous Provisions.

- A. Affordable housing units shall be designed, constructed, marketed and maintained in strict compliance with Bergenfield's Affordable Housing Ordinance.
- B. Occupancy of affordable dwellings shall be limited to income qualified households, furthermore all such dwellings shall be marketed, priced and deed restricted in compliance with all applicable

regulations promulgated by the State of New Jersey or in accordance with any requirements established by Court order.

Section 3

Schedule B is and shall be amended by the addition of the following row, in all other respects Schedule B continues unaltered.

Zone District	Min. Required Lot Area	Min. Required Lot Width	Max. Improved Lot Coverage	Max. Lot Coverage	Max. Building Height	Min. Front Yard	Min. Side Yard	Min. Rear Yard
IH	15,000 sq. ft.	100 ft.	85%	75%	38 feet/3 sty.	5 ft.	4 ft	4 ft.

Section 4

All Ordinances of the Borough of Bergenfield which are inconsistent with the provisions of this Ordinance are hereby repealed to the extent of such inconsistency.

Section 5

If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional or invalid, such decision shall not affect the remaining portions of this Ordinance.

Section 6

This Ordinance shall take effect immediately upon final passage, approval and publication as required by law.

ATTEST:

BOROUGH OF BERGENFIELD
 COUNTY OF BERGEN
 STATE OF NEW JERSEY

 Marie Quinones, Borough Clerk

By: _____
 Norman Schmelz, Mayor

**BOROUGH OF BERGENFIELD
PUBLIC NOTICE**

The following Ordinance which was introduced at a meeting of the Mayor and Council of the Borough of Bergenfield on Tuesday, August 18, 2020 was adopted at a Work Session meeting of the Mayor and Council on Tuesday, October 6, 2020:

ORDINANCE 20-2567 – AN ORDINANCE TO AMEND, SUPPLEMENT, AND REVISE THE CODE OF THE BOROUGH OF BERGENFIELD, LAND USE, CHAPTER 186 ENTITLED “LAND DEVELOPMENT ORDINANCE OF THE BOROUGH OF BERGENFIELD”

Marie Quinones
Borough Clerk
October 12, 2020

ORDINANCE NO. 20-2567
BOROUGH OF BERGENFIELD
COUNTY OF BERGEN
STATE OF NEW JERSEY

AN ORDINANCE TO AMEND, SUPPLEMENT AND REVISE THE CODE OF THE BOROUGH OF BERGENFIELD, LAND USE, CHAPTER 186 ENTITLED "LAND DEVELOPMENT ORDINANCE OF THE BOROUGH OF BERGENFIELD"

BE IT ORDAINED by the Borough Council of the Borough of Bergenfield, County of Bergen, State of New Jersey, that the following amendments and revisions are made to the Land Development Ordinances of the Borough of Bergenfield, Chapter 186.

Section 1

Article VI Zoning Regulations and Establishment of Zones is hereby amended in the following particulars only.

Section 186-40. **Regulations applicable to all zones** is amended by the inclusion of a new sub-paragraph as detailed herein.

- P. Every development that creates or generates five (5) or more new residential units in a multifamily housing or mixed-use development shall deed restrict at least 20% of the total number of housing units in a for-sale development as housing affordable to low-and moderate-income households as these terms are defined in N.J.A.C.5:93. The affordable housing rental setaside is hereby established at 15% of the total number of housing units. This requirement is unwaivable. Any effort on the part of a developer to produce less than a 20% affordable housing setaside for future developments not in the Settlement Agreement or Fair Share Plan is contrary to the public good and is a prima facie basis for the reviewing board to deny the development application in full. All such affordable housing generated pursuant to this provision shall fully comply with Bergenfield's Affordable Housing Ordinance, applicable Council on Affordable Housing regulations and the Uniform Housing Affordability Controls rules (N.J.A.C. 5:80-26.1 et seq.) with the understanding that 13% of all affordable units must be offered to households earning 30% of regional median income.

Where the calculation of the number of affordable units results in a fraction of 0.5 or greater, the affordable housing obligation shall be rounded up to the next whole number. If less than 0.5, the developer may elect to make a payment-in-lieu to Bergenfield's affordable housing trust account for the fractional obligation at a

cost of \$200,000.00 per unit. By way of example, a 0.3-unit affordable housing obligation would result in a payment-in-lieu of \$6,000.00.

This provision does not give any developer the right to any rezoning, variance or other relief, or establish any obligation on the part of Bergenfield or its Boards or agencies to grant such rezoning, variance or other relief to a developer.

Section 2

All Ordinances of the Borough of Bergenfield which are inconsistent with the provisions of this Ordinance are hereby repealed to the extent of such inconsistency.


Section 3

If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional or invalid, such decision shall not affect the remaining portions of this Ordinance.

Section 4

This Ordinance shall take effect immediately upon final passage, approval and publication as required by law.

ATTEST:


Marie Quinones, Borough Clerk

BOROUGH OF BERGENFIELD
COUNTY OF BERGEN
STATE OF NEW JERSEY


Arvin Amatorio, Mayor

BOROUGH OF BERGENFIELD
BERGEN COUNTY, NEW JERSEY

ORDINANCE NO. 20-_____

**AN ORDINANCE REPLACING THE ENTIRE CONTENTS OF THE EXISTING
AFFORDABLE HOUSING ORDINANCE OF THE BOROUGH OF BERGENFIELD
TO ADDRESS THE REQUIREMENTS OF THE FAIR HOUSING ACT AND THE
UNIFORM HOUSING AFFORDABILITY CONTROLS (UHAC) REGARDING
COMPLIANCE WITH THE BOROUGH'S AFFORDABLE HOUSING
OBLIGATIONS**

BE IT ORDAINED by the governing body of the Borough of Bergenfield, Bergen County, New Jersey, that the Code of the Borough of Bergenfield is hereby replaced to include provisions addressing Bergenfield's constitutional obligation to provide for its fair share of low- and moderate-income housing, as directed by the Superior Court and consistent with N.J.A.C. 5:93-1, et seq., as amended and supplemented, N.J.A.C. 5:80-26.1, et seq., as amended and supplemented, and the New Jersey Fair Housing Act of 1985. This Ordinance is intended to provide assurances 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 those units. This Ordinance shall apply except where inconsistent with applicable law.

The Bergenfield Borough Planning Board has adopted a Housing Element and Fair Share Plan pursuant to the Municipal Land Use Law at N.J.S.A. 40:55D-1, et seq. The Housing Element and Fair Share Plan have been endorsed by the governing body. This Ordinance implements and incorporates the adopted and endorsed Housing Element and Fair Share Plan and addresses the requirements of N.J.A.C. 5:93-1, et seq., as amended and supplemented, N.J.A.C.5:80-26.1, et seq. as amended and supplemented, and the New Jersey Fair Housing Act of 1985.

On the first anniversary of the entry of the Order granting Bergenfield a Final Judgment of Compliance and Repose in IMO Application of the Borough of Bergenfield, Docket No.: BER-L-6715-15, and every anniversary thereafter through the end of the Repose period, the Borough shall provide annual reporting of its Affordable Housing Trust Fund activity to the 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 source and amount of funds collected and the amount and purpose for which any funds have been expended.

On the first anniversary of the entry of the Order granting Bergenfield a Final Judgment of Compliance and Repose in IMO Application of the Borough of Bergenfield, Docket No.: BER-L-6715-15, and every anniversary thereafter through the end of the Repose period, the Borough shall provide annual reporting of the status of all affordable housing activity within the municipality through posting on the municipal website,

with copies provided to Fair Share Housing Center, using forms previously developed for this purpose by the Council on Affordable Housing or any other forms endorsed by the Court-appointed Special Master and Fair Share Housing Center. For the midpoint realistic opportunity review due on July 1, 2022, as required pursuant to N.J.S.A. 52:27D-313, the Borough shall post on its municipal website, with copies provided to Fair Share Housing Center, 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 copies provided to Fair Share Housing Center, regarding whether any sites no longer present a realistic opportunity and should be replaced. Any interested party may by motion request a hearing before the Court regarding these issues.

For the review of very low income housing requirements required by N.J.S.A. 52:27D-329.1, within 30 days of the third anniversary of the entry of the Order granting Bergenfield a Final Judgment of Compliance and Repose in IMO Application of the Borough of Bergenfield, Docket No.: BER-L-6715-15, and every third year thereafter, the Borough will post on its municipal website, with copies provided to Fair Share Housing Center, a status report as to its satisfaction of its very low income requirements, including the family very low-income requirements referenced herein. Such posting shall invite any interested party to submit comments to the municipality, with copies provided to Fair Share Housing Center, on the issue of whether the municipality has complied with its very low-income housing obligation.

Section I:

A. Purpose.

The purpose of this ordinance is to provide for and regulate affordable housing in the Borough.

B. Definitions.

The following terms when used in this Ordinance 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 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 designated by the Borough to administer affordable units in accordance with this Ordinance, N.J.A.C. 5:93, and UHAC (N.J.A.C. 5:80-26).

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 new restricted units in an affordable housing development are affordable to low- and moderate-income households.

AFFORDABLE

A sales price or rent level that is within the means of a low- or moderate-income household as defined within N.J.A.C. 5:93-7.4, and, 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 HOUSING DEVELOPMENT

A development included in or approved pursuant to the Housing Element and Fair Share Plan or otherwise intended to address the Borough's fair share obligation, and includes, but is not limited to, an inclusionary development, a municipal construction project or a 100 percent affordable housing 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 and approved for crediting by the Court 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: 1) all the residents of the development wherein the unit is situated are 62 years of age or older; or 2) at least 80 percent of the units are occupied by one person who is 55 years of age 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 ARRANGEMENTS

A structure in which households live in distinct bedrooms, yet share kitchen and plumbing facilities, central heat and common areas. Alternative living arrangements include, but are not limited to: transitional facilities for the homeless; Class A, B, C, D and E boarding homes as regulated by the State of 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

A facility that is 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, as established by 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 requires 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 included in a proposed development including the holder of an option to contract to 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 limited to: new construction, the conversion of a non-residential structure to residential use and the creation of new affordable units through the gut rehabilitation or reconstruction of a vacant residential structure.

LOW-INCOME HOUSEHOLD

A household with a total gross annual household income equal to 50 percent or less of the regional median household income by household size.

LOW-INCOME UNIT

A restricted unit that is affordable to a low-income household.

MAJOR SYSTEM

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 and 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 housing region, as adopted annually by COAH or a successor entity approved by the Court.

MODERATE-INCOME HOUSEHOLD

A household with a total gross annual household income in excess of 50 percent but less than 80 percent of the regional median household income by household size.

MODERATE-INCOME UNIT

A restricted unit that is affordable to a moderate-income household.

MULTIFAMILY UNIT

A structure containing five or more dwelling units.

NON-EXEMPT SALE

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

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 percent of the regional median as defined by duly adopted Regional Income Limits published annually by COAH or a successor entity.

REHABILITATION

The repair, renovation, alteration or reconstruction of any building or structure, pursuant to the Rehabilitation 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 an ownership unit, that is subject to the affordability controls of N.J.A.C. 5:80-26.1, as 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, et seq.

VERY LOW-INCOME HOUSEHOLD

A household with a total gross annual household income equal to 30 percent or less of the regional median household income by household size.

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 purposes of a rehabilitation program.

C. Applicability.

The provisions of this Ordinance shall apply to all affordable housing developments and affordable housing units that currently exist and that are proposed to be created within the Borough of Bergenfield pursuant to the Borough's most recently adopted Housing Element and Fair Share Plan, except to the extent these regulations may be superseded by HUD regulations applicable to Brookside Gardens, an existing HUD funded senior housing development.

D. Alternative Living Arrangements.

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

1. Affirmative marketing (N.J.A.C. 5:80-26.15), provided, however, that the units or bedrooms may be affirmatively marketed by the provider in accordance with an alternative plan approved by the Court.
2. Affordability average and bedroom distribution (N.J.A.C. 5:80-26.3).

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

1. 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.

E. Inclusionary Zoning:

- A. To implement the fair share plan in a manner consistent with the terms of the settlement agreement, ensure the efficient use of land through compact forms of development and to create realistic opportunities for the construction of affordable housing, inclusionary zoning shall be permitted consistent with the provisions of the Borough of Bergenfield's Housing Plan Element and Fair Share Plan, the Bergenfield Zoning Ordinance and the terms of the settlement agreement:
- B. Any and every townhouse complex, garden apartment, mixed use development or other multiple family residential development, containing five or more dwelling units approved subsequent to the Superior Court sponsored Fairness Hearing shall comply with the following:
1. A minimum of 15 percent of the total number of units shall be set aside as affordable housing units if the affordable units will be for rent. If the calculation of the total number of affordable units required yields a fraction of less than 0.5 then either a pro-rated payment in lieu or one additional unit shall be provided. If the calculation of the total number of affordable units required yields a fraction greater than 0.5, the obligation shall be rounded up and the additional unit shall be provided.
 2. A minimum of 20 percent of the total number of units shall be set aside as affordable housing units if the affordable units will be for sale. If the calculation of the total number of affordable units required yields a fraction of less than 0.5, then either a pro-rated payment in lieu or one additional unit shall be provided. If the calculation of the total number of affordable units required yields a fraction of greater than 0.5, the obligation shall be rounded up and the additional unit shall be provided.
 3. At least half of all affordable units shall be affordable to low-income households, and the remainder may be affordable to moderate-income households. Within rental developments, at least 13 percent of the affordable units shall be affordable to very low-income households, with the very low-income units counted as part of the low-income requirement.
- C. Any and every townhouse complex, garden apartment, mixed use development or other multiple family residential development, containing five or more dwelling units approved subsequent to the Superior Court sponsored Fairness Hearing within a designated redevelopment property shall provide a minimum affordable housing set-aside of fifteen percent (15%) of the total number of units, if the affordable units will be for rent and twenty percent (20%) of the total number of units, if the affordable units will be for sale. The provisions of paragraph B.3. above shall also apply.
- D. Any property in the Borough of Bergenfield that is currently zoned for nonresidential uses and that is subsequently rezoned for residential purposes or receives a use variance to permit residential development, or that is currently zoned for residential uses and that receives a zoning change or a density variance to permit higher density multi-family residential development at a density of at least six (6) units per acre and not less than twice the previously permitted density, shall provide an affordable housing set-aside of 15 percent if the affordable units will be for rent and 20 percent

if the affordable units will be for sale. The provisions of paragraph B.3. above shall also apply.

F. New Construction.

A. Low/Moderate Split and Bedroom Distribution of Affordable Housing Units:

1. The fair share obligation shall be divided equally between low- and moderate-income units, except that where there is an odd number of affordable housing units, the extra unit shall be a low-income unit. At least 13 percent of all restricted rental units shall be very low-income units (affordable to a household earning 30 percent or less of median income). The very low-income units shall be counted as part of the required number of low income units within the development.
2. At least 25 percent of the obligation shall be met through rental units, including at least half in rental units available to families.
3. A maximum of 25 percent of the Borough's obligation may be met with age restricted units. At least half of all affordable units in the Borough's Plan shall be available to families.
4. In each affordable development, at least 50 percent of the restricted units within each bedroom distribution shall be low-income units.
5. Affordable developments that are not age-restricted shall be structured such that:
 - (a) The combined number of efficiency and one-bedroom units shall be no greater than 20 percent of the total low- and moderate-income units;
 - (b) At least 30 percent of all low-and moderate-income units shall be two-bedroom units;
 - (c) At least 20 percent of all low-and moderate-income units shall be three-bedroom units; and
 - (d) The remaining units may be allocated among two and three-bedroom units at the discretion of the developer.
6. 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. This standard may be met by having all one-bedroom units or by having a two-bedroom unit for each efficiency unit.

B. Accessibility Requirements:

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

2. All restricted townhouse dwelling units and all restricted units in other multistory buildings in which a restricted dwelling unit is attached to at least one other dwelling unit shall have the following features:
- (a) An adaptable toilet and bathing facility on the first floor; and
 - (b) An adaptable kitchen on the first floor; and
 - (c) An interior accessible route of travel on the first floor; and
 - (d) An adaptable room that can be used as a bedroom, with a door or the casing for the installation of a door, on the first floor; and
 - (e) If not all of the foregoing requirements in b.1) through b.4) can be satisfied, then an interior accessible route of travel must be provided between stories within an individual unit, but if all of the terms of paragraphs b.1) through b.4) above have been satisfied, then an interior accessible route of travel shall not be required between stories within an individual unit; and
 - (f) An accessible entranceway as set forth at P.L. 2005, c. 350 (N.J.S.A. 52:27D-311a, et seq.) and the Barrier Free SubCode, N.J.A.C. 5:23-7, or evidence that Bergenfield has collected funds from the developer sufficient to make 10 percent of the adaptable entrances in the development accessible:
 - (1) Where a unit has been constructed with an adaptable entrance, upon the request of a person with disabilities 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 Bergenfield's Affordable Housing Trust Fund sufficient to install accessible entrances in 10 percent of the affordable units that have been constructed with adaptable entrances.
 - (3) The funds deposited under paragraph 6) b) above shall be used by the Borough of Bergenfield for the sole purpose of making the adaptable entrance of an affordable unit accessible when requested to do so by a person with a disability who occupies or intends to occupy the unit and requires an accessible entrance.
 - (4) The developer of the restricted units shall submit a design plan and cost estimate to the Construction Official of the Borough of Bergenfield for the conversion of adaptable to accessible entrances.
 - (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's Affordable Housing Trust Fund in care of the Borough Chief Financial Officer who shall ensure that the funds are deposited into the Affordable Housing Trust Fund and appropriately earmarked.

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

C. Design:

1. In inclusionary developments, to the extent possible, low- and moderate-income units shall be integrated with the market units.
2. In inclusionary developments, low- and moderate-income units shall have access to all of the same common elements and facilities as the market units.

D. Maximum Rents and Sales Prices:

1. In establishing rents and sales prices of affordable housing units, the Administrative Agent shall follow the procedures set forth in UHAC, utilizing the regional income limits established by COAH or a successor entity.
2. The maximum rent for restricted rental units within each affordable development shall be affordable to households earning no more than 60 percent of median income, and the average rent for restricted rental units shall be affordable to households earning no more than 52 percent of median income.
3. The developers and/or municipal sponsors of restricted rental units shall establish at least one rent for each bedroom type for both low-income and moderate-income units, provided that at least 13 percent of all low- and moderate-income rental units shall be affordable to very low-income households, earning 30 percent or less of the regional median household income, with such very low-income units counted toward the low-income housing requirement.
4. The maximum sales price of restricted ownership units within each affordable development shall be affordable to households earning no more than 70 percent of median income, and each affordable development must achieve an affordability average of 55 percent for restricted ownership units; in achieving this affordability average, moderate-income ownership units must be available for at least three different sales prices for each bedroom type, and low-income ownership units must be available for at least two different sales prices for each bedroom type.
5. In determining the initial sales prices and rent levels for compliance with the affordability average requirements for restricted

units other than assisted living facilities and age-restricted developments, the following standards shall be used:

- (a) A studio shall be affordable to a one-person household;
- (b) A one-bedroom unit shall be affordable to a one and one-half person household;
- (c) A two-bedroom unit shall be affordable to a three-person household;
- (d) A three-bedroom unit shall be affordable to a four and one-half person household; and
- (e) A four-bedroom unit shall be affordable to a six-person household.

6. In determining the initial sales prices and rents for compliance with the affordability average requirements for restricted units in assisted living facilities and age-restricted developments, the following standards shall be used:

- (a) A studio shall be affordable to a one-person household;
- (b) A one-bedroom unit shall be affordable to a one and one-half person household; and
- (c) A two-bedroom unit shall be affordable to a two-person household or to two one-person households.

7. The initial purchase price for all restricted ownership units shall be calculated so that the monthly carrying cost of the unit, including principal and interest (based on a mortgage loan equal to 95 percent 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 percent of the eligible monthly income of the appropriate size household as determined under N.J.A.C. 5:80-26.4, as may be amended and supplemented; provided, however, that the price shall be subject to the affordability average requirement of N.J.A.C. 5:80-26.3, as may be amended and supplemented.

8. The initial rent for a restricted rental unit shall be calculated so as not to exceed 30 percent of the eligible monthly income of the appropriate size household, including an allowance for tenant paid utilities, as determined under N.J.A.C. 5:80-26.4, as may be amended and supplemented; provided, however, that the rent shall be subject to the affordability average requirement of N.J.A.C. 5:80-26.3, as may be amended and supplemented.

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

10. The rent of low- and moderate-income units may be increased annually based on the permitted percentage increase in the Regional Income Limits chart. 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.

G. Utilities.

- A. Affordable units shall utilize the same type of heating source as market units within an inclusionary development.
- B. Tenant-paid utilities included in the utility allowance shall be set forth in the lease and shall be consistent with the utility allowance approved by HUD for its Section 8 program.

H. An Accessory Apartment Program

- (1) All accessory apartments shall meet the following conditions:

- (a) Accessory apartments as may be permitted pursuant to the Bergenfield Zoning Ordinance for various zoning districts, provided the units are affordable to low-and moderate-income households. Accessory apartments may be developed as low-income or moderate-income units (accessory apartments may be limited to only low- or only moderate-income units as determined in the Fair Share Plan).
- (b) Accessory apartments shall comply with all applicable statutes and regulations of the State of New Jersey in addition to all building codes.
- (c) At the time of initial occupancy of the unit and for at least 10 years thereafter, the accessory apartment shall be rented only to a household which is either a low- or moderate-income household.
- (d) Rents of accessory apartments shall be affordable to low- or moderate-income households as per COAH and UHAC regulations.
- (e) There shall be a recorded deed or declaration of covenants and restrictions applied to the property upon which the accessory apartment is located running with the land and limiting its subsequent rental or sale of the unit and the accessory apartment.
- (f) The appropriate utility authority must certify that there is water and sewer infrastructure with sufficient capacity to serve the proposed accessory apartment. Where the proposed location is served by an individual well and/or septic system, the additional capacity necessitated by the new unit must meet the appropriate NJDEP standards.
- (g) The Borough of Bergenfield accessory apartment program shall not restrict the number of bedrooms in any accessory apartment.
- (h) No accessory apartment created as a result of this article or these regulations shall exceed the gross floor area of the existing principal dwelling on the lot.
- (i) Municipal building permit fees shall be waived in all cases involving affordable accessory apartment development under this section. An annual license and inspection fee, if required, shall be paid by unit owners.

- (2) The maximum number of creditable accessory apartments shall be equal to no more than 10.
- (3) The Borough of Bergenfield shall designate an administrative entity to administer the accessory apartment program that shall have the following responsibilities:
 - (a) The administrative agent shall administer the accessory apartment program, including advertising, income-qualifying prospective renters, setting rents and annual rent increases, maintaining a waiting list, distributing the subsidy, securing certificates of occupancy, qualifying properties, handling application forms, filing deed restrictions and monitoring reports and affirmatively marketing the affordable accessory apartment program in accordance with the UHAC.
 - (b) The administrative entity shall only deny an application for an accessory apartment if the project is not in conformance with COAH's requirements and/or the provisions of this section/article. All denials shall be in writing with the reasons clearly stated.
 - (c) In accordance with COAH requirements, the Borough of Bergenfield shall provide at least \$25,000 per unit to subsidize the creation of each low-income accessory apartment or \$20,000 per unit to subsidize the creation of each moderate-income accessory apartment. Subsidy may be used to fund actual construction costs and/or provide compensation for reduced rental rates.
- (4) Property owners wishing to apply to create an accessory apartment shall submit to the administrative entity:
 - (a) A sketch of floor plan(s) showing the location, size and relationship of both the accessory apartment and the primary dwelling within the building or in another structure;
 - (b) Rough elevations showing the modifications of any exterior building façade to which changes are proposed; and
 - (c) A site development sketch showing the location of the existing dwelling and other existing buildings; all property lines; proposed addition, if any, along with the minimum building setback lines; the required parking spaces for dwelling units; and any man-made conditions which might affect construction.

I. Occupancy Standards.

- A. In referring certified households to specific restricted units, the Administrative Agent shall, to the extent feasible and without causing an undue delay in the occupancy of a unit, strive to:
 - 1. Provide an occupant for each bedroom;
 - 2. Provide children of different sexes with separate bedrooms;
 - 3. Provide separate bedrooms for parents and children; and
 - 4. Prevent more than two persons from occupying a single bedroom.

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

- 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 Ordinance for a period of at least thirty (30) years, until Bergenfield takes action to release the unit from such requirements; prior to such action, a restricted ownership unit shall remain subject to the requirements of N.J.A.C. 5:80-26.1, as may be amended and supplemented, except that, for any units approved after October 13, 2016, such controls shall be for at least 50 years, or until such time after the initial 50 year period as the Borough of Bergenfield elects to release the unit from such requirements.

- 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 non-restricted, fair market value of the unit based on either an appraisal or the unit's equalized assessed value without the restrictions in place.
- D. At the time of the initial sale of the unit, the initial purchaser shall execute and deliver to the Administrative Agent a recapture note obligating the purchaser (as well as the purchaser's heirs, successors and assigns) to repay, upon the first non-exempt sale after the unit's release from the restrictions set forth in this Ordinance, an amount equal to the difference between the unit's non-restricted fair market value and its restricted price, and the recapture note shall be secured by a recapture lien evidenced by a duly recorded mortgage on the unit.
- E. 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.
- 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 following the removal of the restrictions provided under N.J.A.C. 5:80-26.5(a), as may be amended and supplemented.
- K. Price Restrictions for Restricted Ownership Units, Homeowner Association Fees and Resale Prices.**
- A. 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 master deeds of inclusionary developments shall provide no distinction between the condominium or homeowner association fees and special assessments paid by low- and moderate-income purchasers and those paid by market purchasers.

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 anticipated capital improvements. Eligible capital improvements shall be those that render the unit suitable for a larger household or the addition of a bathroom. See Section 3 -16.

L. 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 percent of median income and moderate-income ownership units shall be reserved for households with a gross household income less than 80 percent of median income.
- B. Notwithstanding the foregoing, however, the Administrative Agent may, upon approval by the Borough Council, and subject to the Court's approval, permit moderate-income purchasers to buy low-income units in housing markets if the Administrative Agent determines that there is an insufficient number of eligible low-income purchasers to permit prompt occupancy of the units. All such low-income units to be sold to moderate-income households shall retain the required pricing and pricing restrictions for low-income units.
- C. A certified household that purchases a restricted ownership unit must occupy it as the certified household's principal residence and shall not lease the unit; provided, however, that the Administrative Agent may permit the owner of a restricted ownership unit, upon application and a showing of hardship, to lease the restricted unit to another income certified household for a period not to exceed one year.
- D. 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 percent of the household's eligible monthly income.

M. Limitations on Indebtedness Secured by Ownership Unit; Subordination.

- A. Prior to incurring any indebtedness to be secured by a restricted ownership unit, the owner shall apply to the Administrative Agent for a determination in writing that the proposed indebtedness complies with the provisions of this Section, and the Administrative Agent shall issue such determination prior to the owner incurring such indebtedness.
- B. With the exception of First Purchase Money Mortgages, 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 percent of the maximum allowable resale price of the unit, as such price is determined by the Administrative Agent in accordance with N.J.A.C.5:80-26.6(b).

N. Capital Improvements To Ownership Units.

A. The owners of restricted ownership units may apply to the Administrative Agent to increase the maximum sales price for the unit on the basis of capital improvements made since the purchase of the unit. Eligible capital improvements shall be those that render the unit suitable for a larger household or that adds an additional bathroom. In no event shall the maximum sales price of an improved housing unit exceed the limits of affordability for the larger household.

B. Upon the resale of a restricted ownership unit, all items of property that are permanently affixed to the unit or were included when the unit was initially restricted (for example, refrigerator, range, washer, dryer, dishwasher, wall-to-wall carpeting) shall be included in the maximum allowable resale price. Other items may be sold to the purchaser at a reasonable price that has been approved by the Administrative Agent at the time of the signing of the agreement to purchase. The purchase of central air conditioning installed subsequent to the initial sale of the unit and not included in the base price may be made a condition of the unit resale provided the price, which shall be subject to 10-year, straight-line depreciation, has been approved by the Administrative Agent. Unless otherwise approved by the Administrative Agent, the purchase of any property other than central air conditioning shall not be made a condition of the unit resale. The owner and the purchaser must personally certify at the time of closing that no unapproved transfer of funds for the purpose of selling and receiving property has taken place at the time of or as a condition of resale.

O. Control Periods for Restricted Rental Units.

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 Ordinance for a period of at least 30 years, until Bergenfield takes action to release the unit from such requirements. Prior to such action, a restricted rental unit shall remain subject to the requirements of N.J.A.C. 5:80-26.1, as may be amended and supplemented, except that, for any units approved after October 13, 2016, such controls shall be for at least 50 years, or until such time after the initial 50 year period as the Borough of Bergenfield elects to release the unit from such requirements. For new projects receiving nine percent Low Income Housing Tax Credits, a control period of not less than a 30 year compliance period plus a 15 year extended use period shall be required.

B. 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 Bergen. The deed shall also identify each affordable unit by apartment number and/or address and whether that unit is designated as a very low, low or moderate income unit. Neither the unit nor its affordability designation shall change throughout the term of the deed restriction. 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 Ordinance despite the occurrence of any of the following events:

1. Sublease or assignment of the lease of the unit;

2. Sale or other voluntary transfer of the ownership of the unit; or
3. The entry and enforcement of any judgment of foreclosure on the property containing the unit.

P. Rent Restrictions for Rental Units; Leases.

- A. A written lease shall be required for all restricted rental units and tenants shall be responsible for security deposits and the full amount of the rent as stated on the lease. A copy of the current lease for each restricted rental unit shall be provided to the Administrative Agent.
- 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 five percent 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.
- D. No rent control ordinance or other pricing restriction shall be applicable to either the market units or the affordable units in any development in which at least 15 percent of the total number of dwelling units are restricted rental units in compliance with this Ordinance.

Q. Tenant Income Eligibility.

- A. Tenant income eligibility shall be in accordance with N.J.A.C. 5:80-26.13, as may be amended and supplemented, and shall be determined as follows:
 1. Very low-income rental units shall be reserved for households with a gross household income less than or equal to 30 percent of median income.
 2. Low-income rental units shall be reserved for households with a gross household income less than or equal to 50 percent of median income.
 3. Moderate-income rental units shall be reserved for households with a gross household income less than 80 percent 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 household, low-income household or a moderate-income household, as applicable to the unit, and the rent proposed for the unit does not exceed 35 percent (40 percent for age-restricted units) of the household's eligible monthly income as determined pursuant to N.J.A.C. 5:80-26.16, as may be amended and supplemented; provided, however, that this limit may be exceeded if one or more of the following circumstances exists:
 1. The household currently pays more than 35 percent (40 percent for households eligible for age-restricted units) of its gross household income for rent, and the proposed rent will reduce its housing costs;

2. The household has consistently paid more than 35 percent (40 percent for households eligible for age-restricted units) of eligible monthly income for rent in the past and has proven its ability to pay;
 3. The household is currently in substandard or overcrowded living conditions;
 4. The household documents the existence of assets with which the household proposes to supplement the rent payments; or
 5. The household documents reliable anticipated third-party assistance from an outside source such as a family member in a form acceptable to the Administrative Agent and the owner of the unit.
- C. The applicant shall file documentation sufficient to establish the existence of the circumstances in 1.a. through 2.e. above with the Administrative Agent, who shall counsel the household on budgeting.
- R. Municipal Housing Liaison.**
- A. The Borough of Bergenfield shall appoint a specific municipal employee to serve as a Municipal Housing Liaison responsible for administering the affordable housing program, including affordability controls, the Affirmative Marketing Plan, monitoring and reporting, and, where applicable, supervising any contracted Administrative Agent. Bergenfield shall adopt an Ordinance creating the position of Municipal Housing Liaison. Bergenfield shall adopt a Resolution appointing a Municipal Housing Liaison. The Municipal Housing Liaison shall be appointed by the governing body and may be a full or part time municipal employee. The Municipal Housing Liaison shall be approved by the Court and shall be duly qualified through a training program sponsored by Affordable Housing Professionals of New Jersey before assuming the duties of Municipal Housing Liaison.
 - B. The Municipal Housing Liaison shall be responsible for oversight and administration of the affordable housing program for Bergenfield, including the following responsibilities which may not be contracted out to the Administrative Agent:
 1. Serving as Bergenfield's primary point of contact for all inquiries from the State, affordable housing providers, Administrative Agents and interested households;
 2. Monitoring the status of all restricted units in Bergenfield's Fair Share Plan;
 3. Compiling, verifying and submitting annual monitoring reports as may be required by the Court;
 4. Coordinating meetings with affordable housing providers and Administrative Agents, as needed; and
 5. Attending continuing education opportunities on affordability controls, compliance monitoring and affirmative marketing at least annually and more often as needed.
 - C. Subject to the approval of the Court, the Borough of Bergenfield shall designate one or more Administrative Agent(s) to administer newly constructed affordable units in

accordance with UHAC. An Operating Manual for each affordable housing program shall be provided by the Administrative Agent(s) to be adopted by resolution of the governing body and subject to approval of the Court. The Operating Manual(s) shall be available for public inspection in the office of the Borough Clerk, in the office of the Municipal Housing Liaison, and in the office(s) of the Administrative Agent(s). The Municipal Housing Liaison shall supervise the contracting Administrative Agent(s).

S. Administrative Agent.

The Administrative Agent shall be an independent entity serving under contract to and reporting to the municipality. For new sale and rental developments, all of the fees of the Administrative Agent shall be paid by the owners of the affordable units for which the services of the Administrative Agent are required. For resales, single-family homeowners and condominium homeowners shall be required to pay three percent of the sales price for services provided by the Administrative Agent related to the resale of their homes. That fee shall be collected at closing and paid directly to the Administrative Agent. The Administrative Agent shall perform the duties and responsibilities of an Administrative Agent as set forth in UHAC, including those set forth in Sections 5:80-26.14, 16 and 18 thereof, which include:

A. Affirmative Marketing:

1. Conducting an outreach process to affirmatively market affordable housing units in accordance with the Affirmative Marketing Plan of the Borough of Bergenfield and the provisions of N.J.A.C. 5:80-26.15; and
2. Providing counseling or contracting to provide counseling services to low- and moderate-income applicants on subjects such as budgeting, credit issues, mortgage qualification, rental lease requirements, and landlord/tenant law.

B. Household Certification:

1. Soliciting, scheduling, conducting and following up on interviews with interested households;
2. Conducting interviews and obtaining sufficient documentation of gross income and assets upon which to base a determination of income eligibility for a low- or moderate-income unit;
3. Providing written notification to each applicant as to the determination of eligibility or non-eligibility;
4. Requiring that all certified applicants for restricted units execute a certificate substantially in the form, as applicable, of either the ownership or rental certificates set forth in Appendices J and K of N.J.A.C. 5:80-26.1 et seq.;
5. Creating and maintaining a referral list of eligible applicant households living in the housing region and eligible applicant households with members working in the housing region where the units are located; and
6. Employing a random selection process as provided in the Affirmative Marketing Plan of the Borough of Bergenfield when referring households for

certification to affordable units.

C. Affordability Controls:

1. Furnishing to attorneys or closing agents forms of deed restrictions and mortgages for recording at the time of conveyance of title of each restricted unit;
2. Creating and maintaining a file on each restricted unit for its control period, including the recorded deed with restrictions, recorded mortgage and note, as appropriate;
3. Ensuring that the removal of the deed restrictions and cancellation of the mortgage note are effectuated and properly filed with the Bergen County Register of Deeds or County Clerk's office after the termination of the affordability controls for each restricted unit;
4. Communicating with lenders regarding foreclosures; and
5. Ensuring the issuance of Continuing Certificates of Occupancy or certifications pursuant to N.J.A.C. 5:80-26.10.

D. Resales and Rerentals:

1. Instituting and maintaining an effective means of communicating information between owners and the Administrative Agent regarding the availability of restricted units for resale or rental; and
2. Instituting and maintaining an effective means of communicating information to low- and moderate-income households regarding the availability of restricted units for resale or re-rental.

E. Processing Requests from Unit Owners:

1. Reviewing and approving requests for determination from owners of restricted units who wish to take out home equity loans or refinance during the term of their ownership that the amount of indebtedness to be incurred will not violate the terms of this Ordinance;
2. Reviewing and approving requests to increase sales prices from owners of restricted units who wish to make capital improvements to the units that would affect the selling price, such authorizations to be limited to those improvements resulting in additional bedrooms or bathrooms and the depreciated cost of central air conditioning systems;
3. Notifying the municipality of an owner's intent to sell a restricted unit; and
4. Making determinations on requests by owners of restricted units for hardship waivers.

F. Enforcement:

1. Securing annually from the municipality a list of all affordable housing units

for which tax bills are mailed to absentee owners, and notifying all such owners that they must either move back to their unit or sell it;

2. Securing from all developers and sponsors of restricted units, at the earliest point of contact in the processing of the project or development, written acknowledgement of the requirement that no restricted unit can be offered, or in any other way committed, to any person, other than a household duly certified to the unit by the Administrative Agent;
3. The posting annually in all rental properties, including two-family homes, of a notice as to the maximum permitted rent together with the telephone number of the Administrative Agent where complaints of excess rent or other charges can be made;
4. Sending annual mailings to all owners of affordable dwelling units, reminding them of the notices and requirements outlined in N.J.A.C. 5:80-26.18(d)4;
5. Establishing a program for diverting unlawful rent payments to the municipality's Affordable Housing Trust Fund; and
6. Creating and publishing a written operating manual for each affordable housing program administered by the Administrative Agent, to be approved by the Borough Council and the Court, setting forth procedures for administering the affordability controls.

G. Additional Responsibilities:

1. The Administrative Agent shall have the authority to take all actions necessary and appropriate to carry out its responsibilities hereunder.
2. The Administrative Agent shall prepare monitoring reports for submission to the Municipal Housing Liaison in time to meet any monitoring requirements and deadlines imposed by the Court.
3. The Administrative Agent shall attend continuing education sessions on affordability controls, compliance monitoring, and affirmative marketing at least annually and more often as needed.

T. Affirmative Marketing Requirements.

- A. The Borough of Bergenfield shall adopt by resolution an Affirmative Marketing Plan, subject to approval of the Court that is compliant with N.J.A.C. 5:80-26.15, as may be amended and supplemented.
- 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 intended to target those potentially eligible persons who are least likely to apply for affordable units in that region. In addition, as a result of the Settlement Agreement with FSHC, the Affirmative Marketing Plan shall require the notification of the New Jersey State NAACP, the Trenton Branch of the NAACP, FSHC, Supportive Housing Association and the Latino Action

Network of affordable housing opportunities. It is a continuing program that directs marketing activities toward Housing Region 1 and is required to be followed throughout the period of restriction.

- C. The Affirmative Marketing Plan shall provide a regional preference for all households that live and/or work in Housing Region 1, comprised of Bergen, Hudson, Sussex and Passaic Counties.
- D. The municipality has the ultimate responsibility for adopting the Affirmative Marketing Plan and for the proper administration of the Affirmative Marketing Program, including initial sales and rentals and resales and rerentals. The Administrative Agent designated by the Borough of Bergenfield shall implement the Affirmative Marketing Plan to assure the affirmative marketing of all affordable units.
- 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 Plan shall describe the media to be used in advertising and publicizing the availability of housing. In implementing the Affirmative Marketing Plan, the Administrative Agent shall consider the use of language translations where appropriate.
- G. The affirmative marketing process for available affordable units shall begin at least four months (120 days) prior to the expected date of occupancy.
- H. Applications for affordable housing shall be available in several locations, including, at a minimum, the County Administration Building and/or the County Library for each county within the housing region; the municipal administration building and the municipal library in the municipality in which the units are located; and the developer's rental office. Pre-applications shall be emailed or mailed to prospective applicants upon request.
- I. The costs of advertising and affirmative marketing of the affordable units shall be the responsibility of the developer, sponsor or owner.
- U. **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, a requirement for household recertification, acceleration of all sums due under a mortgage, recuperation of any funds from a sale in violation of the regulations, injunctive relief to prevent further violation of the regulations, entry on the premises, and specific performance.
 - 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(s) against the Owner, Developer or Tenant for any violation that remains uncured for a period of 60 days after service of the written notice:

1. The municipality may file a court action pursuant to N.J.S.A. 2A:58-11 alleging a violation or violations of the regulations governing the affordable housing unit. If the Owner, Developer or Tenant is adjudged by the Court to have violated any provision of the regulations governing affordable housing units the Owner, Developer or Tenant shall be subject to one or more of the following penalties, at the discretion of the Court:
 - (a) A fine of not more than \$500.00 per day or imprisonment for a period not to exceed 90 days, or both, provided that each and every day that the violation continues or exists shall be considered a separate and specific violation of these provisions and not a continuation of the initial offense;
 - (b) In the case of an Owner who has rented a low- or moderate-income unit in violation of the regulations governing affordable housing units, payment into the Borough of Bergenfield Affordable Housing Trust Fund of the gross amount of rent illegally collected;
 - (c) In the case of an Owner who has rented a low- or moderate-income unit in violation of the regulations governing affordable housing units, payment of an innocent tenant's reasonable relocation costs, as determined by the Court.

2. The municipality may file a court action in the Superior Court seeking a judgment that would result in the termination of the Owner's equity or other interest in the unit, in the nature of a mortgage foreclosure. Any such judgment shall be enforceable as if the same were a judgment of default of the First Purchase Money Mortgage and shall constitute a lien against the low- or moderate-income unit.
 - (a) The 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 his right to possession terminated as well as his title conveyed pursuant to the Sheriff's sale.
 - (b) The proceeds of the Sheriff's sale shall first be applied to satisfy the First Purchase Money Mortgage lien and any prior liens upon the low- 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 the full extent of such deficiency, in addition to any and all costs incurred by the municipality in connection with collecting such deficiency. In the event that a surplus remains after satisfying all of the above, such surplus, if any, shall be placed in escrow by the municipality for the

Owner and shall be held in such escrow for a maximum period of two years or until such earlier time as the Owner shall make a claim with the municipality for such. Failure of the Owner to claim such balance within the two-year period shall automatically result in a forfeiture of such balance to the municipality. Any interest accrued or earned on such balance while being held in escrow shall belong to and shall be paid to the municipality, whether such balance shall be paid to the Owner or forfeited to the municipality.

- (c) Foreclosure by the municipality due to violation of the regulations governing affordable housing units shall not extinguish the restrictions of the regulations governing affordable housing units as 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.
- (d) If there are no bidders at the Sheriff's sale, or if insufficient amounts are bid to satisfy the First Purchase Money Mortgage and any prior liens, the municipality may acquire title to the low- 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.
- (e) 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.
- (f) The Owner shall remain fully obligated, responsible and liable for complying with the terms and restrictions of governing affordable housing units until such time as title is conveyed from the Owner.

V. Appeals.

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

SECTION II

All Ordinances or parts of Ordinances inconsistent herewith are repealed as to such inconsistencies.

SECTION III

If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

SECTION IV

This Ordinance shall take effect upon passage and publication as provided by law.

ATTEST:

BOROUGH OF BERGENFIELD
COUNTY OF BERGEN
STATE OF NEW JERSEY

Marie Quinones, Borough Clerk

Arvin Amatorio, Mayor

B-1 & B-2 AFFORDABLE HOUSING OVERLAY ZONE

ORDINANCE NO. _____

BOROUGH OF BERGENFIELD
COUNTY OF BERGEN
STATE OF NEW JERSEY

AN ORDINANCE TO AMEND, SUPPLEMENT AND REVISE THE CODE OF THE BOROUGH OF BERGENFIELD, CHAPTER 186 ENTITLED "Land Development Ordinance of the Borough of Bergenfield, New Jersey"

BE IT ORDAINED by the Borough Council of the Borough of Bergenfield, County of Bergen, State of New Jersey, that the following amendments and revisions are made to the Revised General Ordinances of the Borough of Bergenfield, Chapter 186 entitled "Land Development Ordinance of the Borough of Bergenfield, New Jersey".

Section 1

- A. §186-3 The following term shall be added in correct alphabetic order:
INCLUSIONARY DEVELOPMENT—A development containing both affordable units, as defined in the Fair Housing Act, as amended, and market-rate units.
- B. The list of zones provided in Article VI Zoning Regulations and Establishment of Zones, Section 186-36, Enumeration of Zones established is hereby amended to include:
- | | |
|---------|--------------------------------------|
| B-1 AHO | B-1 Affordable Housing Overlay Zone. |
| B-2 AHO | B-2 Affordable Housing Overlay Zone. |
- C. §186-37 "Schedule A" is amended by the addition of the following two zones:
- | | |
|---------|--------------------------------------|
| B-1 AHO | B-1 Affordable Housing Overlay Zone. |
| B-2 AHO | B-2 Affordable Housing Overlay Zone |

Permitted uses for each zone are:

1. All principal permitted uses, accessory uses and conditional uses for the underlying zone are allowed.
 2. Inclusionary developments on upper floors only as a principal use. No residential use shall be permitted on the ground or first floor of any property in the B-1 or B-2 Overlay zones.
- D. §186-38.1 Zoning Map is herein amended and supplemented to depict the B-1 Affordable Housing Overlay Zone on the following properties:
All properties with Washington Avenue frontage in the B-1 zone north of Clinton Avenue to the municipal boundary line.
- §186-38.1 Zoning Map is herein further amended and supplemented to depict the B-2 Affordable Housing Overlay Zone on the following properties:

All properties with Washington Avenue frontage in the B-2 zone north of Clinton Avenue to the municipal boundary line.

- E. §186-49 Off street parking and loading areas is hereby amended to delete existing paragraph N and replace this paragraph with the following:
 - N. All residential parking shall comply with the New Jersey Residential Site Improvement Standards. Pursuant to N.J.A.C.5:21-4.14(e), when housing is included in mix-use development, a shared parking approach to the provision of parking shall be permitted. Furthermore, if applicants can demonstrate there is sufficient overnight on-street parking in proximity to their site, applicants can apply those available spaces to their development on a non-exclusive basis.

Section 2

The following Article is hereby included in the Land Development Ordinance:

ARTICLE VIIIA
 B-1 AHO Affordable Housing Overlay Zone
 B-2 AHO Affordable Housing Overlay Zone

§186-63.5 Objectives.

- A. Objectives. The provisions of this section are intended to foster the planning and redevelopment of the above noted Washington Avenue properties into a vibrant mixed-use development, and to promote the health, safety, and general welfare of the public and the Borough of Bergenfield through the utilization of overlay zoning techniques, encouraging the construction of inclusionary housing consistent with smart growth design principles by supplementing the existing B-1 and B-2 zone regulations which continue to remain in effect.

§186-63.6 Design requirements.

All mixed-use inclusionary developments shall comply with the following design requirements and standards.

- A. Area and Bulk Standards. Schedule B of the Bergenfield Zoning Ordinance is hereby amended through the addition of the following two (2) new rows.

Zone District	Min. Lot Area	Min. Lot Width (5)	Maximum Improved Lot Coverage (4)	Maximum Lot Coverage (6)	Maximum Building Height Feet/Stories	Min. Front Yard	Min. Side Yard (one/both)	Min. Rear Yard
B-1 Affordable Housing Overlay	N/A	N/A	85	65	40/3	10	5/10	15

B-2 Affordable Housing Overlay	10,000	100	85	55	40/3	10	5/10	15
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- B. The intent in adopting the B-1 Affordable Housing Overlay Zone and B-2 Affordable Housing Overlay Zone is to maximize development opportunities to locate inclusionary housing in upper floors in both existing and new buildings. Residential development is expressly prohibited in the first floor of any building with frontage upon Washington Avenue. Upper floor elevations, regardless if existing or proposed, are permitted to be occupied residentially.
- C. Affordable housing as defined in NJAC 5:80-26.2 shall be developed in accordance with the price stratification and bedroom distribution as required by N.J.A.C. 5:93.

§ 186-63.7 Yards.

All new buildings shall comply with the appropriate setbacks and coverages as detailed on Schedule B. In the B-1 Affordable Housing Overlay Zone or the B-2 Affordable Housing Overlay Zone buildings with non-conforming setbacks shall be permitted upper story expansion if exclusively designed for and occupied as an inclusionary development provided that the upper floor(s) setback is not less than the existing non-conforming building and post-expansion the property will comply with all coverage limitations as required in Schedule B.

§186-63.8 Miscellaneous Provisions.

- A. Density as defined in NJSA:40-55D-4 shall not exceed 15 dwelling units per acre if units are to be offered as for-sale dwellings. Affordable housing setaside of ownership units shall be a minimum of 20%. Maximum permitted density shall not exceed 20 dwelling units per acre if the dwellings are to be offered for rent. Affordable housing setaside of rental units shall be a minimum of 15%.
- B. Affordable housing units shall be designed, constructed, marketed and maintained in strict compliance with Bergenfield's Affordable Housing Ordinance and applicable regulations of the State of New Jersey or Court Order.
- C. Occupancy of affordable dwellings shall be limited to income qualified households, marketed, priced and deed restricted in compliance with all applicable regulations promulgated by the State of New Jersey, applicable Bergenfield ordinances or in accordance with any requirements established by Court order.
- D. Maximum building height shall not exceed three (3) stories or 40 feet.

Section 3

All Ordinances of the Borough of Bergenfield which are inconsistent with the provisions of this Ordinance are hereby repealed to the extent of such inconsistency.

Section 4

If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional or invalid, such decision shall not affect the remaining portions of this Ordinance.

Section 5

This Ordinance shall take effect immediately upon final passage, approval and publication as required by law.

ATTEST:

BOROUGH OF BERGENFIELD
COUNTY OF BERGEN
STATE OF NEW JERSEY

Marie Quinones, Borough Clerk

By: _____
Norman Schmelz, Mayor

AFFORDABLE HOUSING UNMET NEED OVERLAY ZONE

ORDINANCE NO. _____

BOROUGH OF BERGENFIELD
COUNTY OF BERGEN
STATE OF NEW JERSEY

AN ORDINANCE TO AMEND, SUPPLEMENT AND REVISE THE CODE OF THE BOROUGH OF BERGENFIELD, CHAPTER 186 ENTITLED "ZONING"

BE IT ORDAINED by the Borough Council of the Borough of Bergenfield, County of Bergen, State of New Jersey, that the following amendments and revisions are made to the Revised General Ordinances of the Borough Bergenfield, Chapter 186 entitled "Land Development Ordinance of the Borough of Bergenfield, New Jersey".

Section 1

- A. The list of zones provided in Article VI Zoning Regulations and Establishment of Zones, Section 186-36, Enumeration of Zones established is hereby amended to include:
AHO Affordable Housing Unmet Need Overlay Zone.
- B. §186-38 Zoning Map is herein amended and supplemented to depict the Affordable Housing Unmet Need Overlay Zone on the following property:
Block 351 Lot 18
- C. §186-49 Off street parking and loading areas is hereby amended to delete existing paragraph N and replace this paragraph with the following:

N. All residential parking shall comply with the New Jersey Residential Site Improvement Standards. Pursuant to N.J.A.C.5:21-4.14(e), when housing is included in mix-use development, a shared parking approach to the provision of parking shall be permitted. Furthermore, if applicants can demonstrate there is sufficient overnight on-street parking in proximity to their site, applicants can apply those available spaces to their development on a non-exclusive basis.

Section 2

The following Article is hereby included in the Land Development Ordinance:

ARTICLE VIIA
AHO Affordable Housing Unmet Need Overlay Zone

§186-63.1 Objectives.

- A. Objectives. The provisions of this section are intended to encourage the planning and redevelopment of the above noted property into a vibrant mixed-use development, promote the

health, safety, and general welfare of the public and the Borough of Bergenfield and encourage the construction of inclusionary housing consistent with smart growth design principles.

- B. Permitted uses for Block 351 Lot 18 shall continue to be defined and limited by Schedule A of the Land Development Ordinance of the Borough of Bergenfield. In addition, first floor residential occupancy as part of an inclusionary development is permitted in this overlay zone in all buildings setback 200 feet or more from South Washington Avenue and 100 feet or more from Liberty Road.

§186-63.2 Design requirements.

As a minimum, all mixed-use developments shall comply with the following design requirements and standards.

- A. Site Area. All developments constructed pursuant to this section shall be on a site of no less than five (5) acres and shall have a width of at least 500 feet fronting on a public street. Lot area shall be computed to include all land area within the site.
- B. The intent in adopted the Affordable Housing Unmet Need Overlay Zone is to maximize the site's development opportunities to locate inclusionary housing in new buildings and above the first floor of existing buildings.
- C. Ground floor occupancy of any building located within 200 feet of the public right of way of South Washington Avenue and within 100 feet of Liberty Road shall not be residential, but be pursuant to, and consistent with, the B-1 zone list of principal permitted uses. Ground floor residential occupancy of any building setback 200 or more feet from South Washington and 100 feet or more from Liberty Road is permitted in the AHO zone as part of an inclusionary development.
- D. Setback from the eastern lot line of Block 351 Lot 1 shall be forty (40) feet for any building greater in height than 3 stories.
- E. Maximum building height of any building within 200 feet of South Washington Avenue or 100 feet of Liberty Road shall be limited pursuant to, and consistent with, Schedule B of the Land Development Ordinance of the Borough of Bergenfield. Any building setback 200 feet or more from South Washington Avenue and 100 feet or more from Liberty Road is permitted a maximum height of 4 stories and 45 feet.
- F. Affordable housing as defined in NJAC 5:80-26.2 shall be supplied in accordance with the price stratification and bedroom distribution as required by NJAC 5:93, except that no less than 30% of all affordable dwellings in this zone shall contain three (3) bedrooms.

§ 186-63.3 Yards.

Vertical extension of existing buildings with non-conforming setbacks solely designed for upper floor occupancy as an inclusionary development is permitted provided that the upper floor(s) extension is no closer to a property line than the existing non-conforming building, except that the setback requirement shall be forty (40) feet along the eastern property line for all buildings greater than 3 stories in height.

§186-63.4 Miscellaneous Provisions.

- A. Density as defined in NJSA:40-55D-4 shall not exceed 35 dwelling units per acre if units are to be offered as for-sale dwellings. Affordable housing setaside of ownership units shall be a minimum of 20%. Maximum permitted density shall not exceed 40 dwelling units per acre if the dwellings are to be offered for rent. Affordable housing setaside of rental units shall be a minimum of 15%.
- C. Affordable housing units shall be designed, constructed, marketed, deed restricted and maintained in strict compliance with Bergenfield's Affordable Housing Ordinance, applicable regulations adopted by the State of New Jersey or Court order.
- D. Occupancy of affordable dwellings shall be limited to income qualified households, priced and deed restricted in compliance with all applicable regulations promulgated by the State of New Jersey or in accordance with any requirements established by Court order.
- E. Maximum building height shall not exceed four (4) stories or 45 feet.

Section 3

All Ordinances of the Borough of Bergenfield which are inconsistent with the provisions of this Ordinance are hereby repealed to the extent of such inconsistency.

Section 4

If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional or invalid, such decision shall not affect the remaining portions of this Ordinance.

Section 5

This Ordinance shall take effect immediately upon final passage, approval and publication as required by law.

ATTEST:

BOROUGH OF BERGENFIELD
COUNTY OF BERGEN
STATE OF NEW JERSEY

Marie Quinones, Borough Clerk

By: _____
Arvin Amatorio, Mayor

A-3: Affirmative Marketing Plan

**RESOLUTION OF THE MAYOR AND COUNCIL OF THE BOROUGH OF
BERGENFIELD, COUNTY OF BERGEN, STATE OF NEW JERSEY ADOPTING AN
AFFIRMATIVE MARKETING PLAN PERTAINING TO LOW-AND
MODERATE-INCOME HOUSING FOR THE BOROUGH OF BERGENFIELD**

WHEREAS, in accordance with the regulations of COAH pursuant to N.J.A.C. 5:93-1, et seq., the New Jersey Uniform Housing Affordability Controls pursuant to N.J.A.C. 5:80-26., et seq., and in the Matter of the Application of the Borough of Bergenfield, County of Bergen, Docket No. BER-L-6715-15 regarding In re. N.J.A.C. 5:96 and 5:97, 221 N.J. 1, 30 (2015) ("Mount Laurel IV"), the Borough of Bergenfield is required to adopt by resolution an Affirmative Marketing Plan to ensure that all affordable housing units created, including those created by the rehabilitation of rental housing units within the Borough of Bergenfield, are affirmatively marketed to low and moderate income households, particularly those living and/or working within Housing Region 1, which encompasses the Borough of Bergenfield

NOW, THEREFORE, BE IT RESOLVED, that the Mayor and Council of the Borough of Bergenfield, County of Bergen, State of New Jersey, do hereby adopt the following Affirmative Marketing Plan:

Affirmative Marketing Plan

- A. All affordable housing units in the Borough of Bergenfield shall be marketed in accordance with the provisions herein unless otherwise provided in COAH's Rules at N.J.A.C. 5:93-1, et seq.
- B. The Borough of Bergenfield has a Third Round obligation. This Affirmative Marketing Plan shall apply to all developments that contain or will contain low-and moderate-income units, including those that are part of the Borough's current Housing Element and Fair Share Plan and those that may be constructed in future developments not contemplated in the Borough's Housing Element and Fair Share Plan. This Affirmative Marketing Plan shall also apply to any rehabilitated rental units that are vacated and re-rented during the applicable period of controls for rehabilitated rental units.
- C. The Affirmative Marketing Plan shall be implemented by the Administrative Agent under contract to the Borough of Bergenfield. All costs of advertising and affirmatively marketing affordable housing units shall be borne by the developer/seller/owner of the affordable unit(s).

- D. In implementing the Affirmative Marketing Plan, the Administrative Agent, acting on behalf of the Borough of Bergenfield, shall undertake the following strategies:
1. Publication of one advertisement in a newspaper of general circulation within the housing region.
 2. Broadcast of one advertisement by a radio or television station broadcasting throughout the housing region.
 3. At least one additional regional marketing strategy using one of the other sources listed below.
- E. 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 the region. It is a continuing program that directs all marketing activities toward the COAH Housing Region in which the Borough is located and covers the entire period of deed restriction for each restricted housing unit. The Borough of Bergenfield is located in COAH Housing Region 1, and is comprised of Bergen, Hudson, Passaic and Sussex Counties.
- F. The Affirmative Marketing Plan is a continuing program intended to be followed throughout the entire period of restrictions and shall meet the following requirements:
1. All newspaper articles, announcements and requests for application for low- and moderate-income units shall appear in the Bergen Record and Star Ledger.
 2. The primary marketing shall take the form of at least one press release and a paid display advertisement in the above newspapers once a week for four consecutive weeks. Additional advertising and publicity shall be on an "as needed" basis. The developer/owner shall disseminate all public service announcements and pay for display advertisements. The developer/owner shall provide proof of publication to the Borough's Administrative Agent. All press releases and advertisements shall be approved in advance by the Borough's Administrative Agent.
 3. The advertisement shall include a description of the:

1. Location of the units;
 - ii. Direction of 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 households may obtain an application; and
 - viii. Application fees.
4. Newspaper articles, announcements and information on where to request applications for low and moderate income housing shall appear at least once a week for four consecutive weeks in at least four locally oriented weekly newspapers within the region, one of which shall be circulated primarily in Bergen County and the other three of which shall be circulated primarily outside of Bergen County but within the housing region.
5. Four or more of the following regional cable television stations or regional radio stations shall be used during the first month of advertising. The developer must provide satisfactory proof of public dissemination:
- i. 2 WCBS-TV (CBS Broadcasting, Inc.)
 - ii. 4 WNBC (NBC Telemundo License Co., General Electric)
 - iii. 5 WNYW (Fox Television Stations, Inc., News Corp.)
 - iv. 7 WABC-TV (American Broadcasting Companies, Inc., Walt Disney)
 - v. 9 WWOR-TV (Fox Television Stations, Inc., News Corp.)
 - vi. 10 WCAU (NBC Telemundo License Co., General Electric)
 - vii. 11 WPIX (WPIX, Inc., Tribune)
 - viii. 13 WNET (Educational Broadcasting Corporation)

- ix. 58 WNJB (New Jersey Public Broadcasting Authority)
6. Applications, brochure(s), sign(s), and/or poster(s) used as part of the affirmative marketing program shall be available/posted in the following locations:
- i. Bergenfield Municipal Building
 - ii. Bergenfield Municipal Library
 - iii. Developer's Sales/Rental Office
 - iv. Bergen County Administration Building
 - v. Hudson, County Administration Building
 - vi. Passaic County Administration Building
 - vii. Sussex County Administration Building
 - viii. Fair Share Housing Center
 - ix. The New Jersey State Conference of the
NAACP
 - x. Bergen County NAACP
 - xi. Bergen County Urban League
 - xii. Bergen County Housing Coalition
 - xiii. The Latino Action Network, and
 - xiv. Supportive Housing Association.

Applications shall be mailed by the Administrative Agent to the prospective applications upon request. Also, applications shall be made available at the developer's sales/rental office and shall be mailed to prospective applicants upon request.

7. The administrative Agent shall develop, maintain and update a list of community contact person(s) and/or organization(s) in Bergen, Hudson, Passaic and Sussex Counties that will aid in the affirmative marketing program with particular

emphasis on contacts that will reach out to groups that are least likely to apply for housing within the region, including major regional employers.

1. Quarterly informational flyers and applications shall be sent to each of the following agencies for publication in their journals and for circulation among their members:

Bergen County Board of Realtors

Hudson County Board of Realtors

Passaic County Board of Realtors

Sussex County Board of Realtors

- ii. Quarterly informational circulars and applications shall be sent to the administrators of each of the following agencies in the counties of Bergen, Hudson, Passaic and Sussex:

Welfare or Social Service Board

Rental Assistance Office (local office of DCA)

Office on Aging

Housing Authority

Community Action Agencies

Community Development Departments

- iii. Quarterly informational circulars and applications shall be sent to the chief personnel administrators of all the major employers within the region in accordance with the Region 1 Affirmative Marketing Plan.

- iv. Quarterly informational circulars and applications shall be sent to the following additional community and regional organizations:

Fair Share Housing Center

Bergen County Housing Coalition

The New Jersey State Conference of the NAACP

The Bergen County NAACP

Bergen Urban League

The Latino Action Network

8. A random selection method to select occupants of low- and moderate-income housing will be used by the Administrative Agent in conformance with N.J.A.C. 5:80-26.16(1). The Affirmative Marketing Plan shall provide a regional preference for all households that live and/or work COAH Housing Region 1 comprised of Bergen, Hudson, Passaic and Sussex Counties.
9. The Administrative Agent shall administer the Affirmative Marketing Plan. The Administrative Agent 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 re-occupancy 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. 5:80-26.1, et seq.
10. The Administrative Agent shall provide or 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 and shall develop, maintain and update a list of entities and lenders willing and able to perform such services.
11. All developers/owners of low-and moderate-income housing units shall be required to undertake and pay the costs of the marketing of the affordable units in their respective developments, subject to the direction and supervision of the Administrative Agent. In the alternative, the Borough's Administrative Agent may, at the request of the developers/owner of affordable housing, assume this responsibility with all required and customary costs and fees to be paid for by the developers/owners of affordable housing. Prior to the Borough Administrative Agent assuming this responsibility, the developers/owners shall establish, and as necessary replenish, a suitable escrow account with the Borough of Bergenfield.
12. The implementation of the Affirmative Marketing Plan for a development that includes affordable housing shall commence at least 120 days before the issuance

of either a temporary or permanent certificate of occupancy. The implementation of the Affirmative Marketing Plan shall continue until all low-income housing units are initially occupied and for as long as affordable units exist that remain deed restricted and for which the occupancy or re-occupancy of units continues to be necessary.

13. The Administrative Agent shall provide the Affordable Housing Liaison with the information required to comply with monitoring and reporting requirements pursuant to N.J.A.C.5:80-26-1, et seq.

Marie Quinones,
Clerk of the Borough of
Bergenfield

Approved: _____
Arvin Amatorio,
Mayor of the Borough of Bergenfield

I certify the foregoing to be a true and correct abstract of a resolution regularly passed at a meeting of the Council of the Borough of Bergenfield, held and in that respect a true and correct copy of its minutes.

A-4 Spending Plan

June 2021
Borough of Bergenfield
Affordable Housing Trust Fund Spending Plan

INTRODUCTION

The Borough of Bergenfield (hereinafter the "Borough"), Bergen County, has prepared a Housing Element and Fair Share Plan that addresses its regional fair share of the affordable housing need for the years 1987 through June 2025, the end of the Third Round housing cycle, in accordance with the Municipal Land Use Law (N.J.S.A. 40:55D-1 et seq.), the Fair Housing Act (FHA) (N.J.S.A. 52:27D-301) the regulations of the Council on Affordable Housing (COAH) (N.J.A.C. 5:91-1 et seq. and N.J.A.C. 5:93-1 et seq.) and the settlement agreement entered into between Fair Share Housing Center ("FSHC") and the Borough. Bergenfield has deferred adopting a Development Fee Ordinance until this time. Adoption of a Development Fee Ordinance is now considered desirable as it will establish a dedicated and continuing revenue source to fund local affordable housing activities. All monies generated by the Development Fee Ordinance will be deposited in the Borough of Bergenfield's affordable housing trust fund. Money deposited in the affordable housing trust fund will only be spent as directed by the Affordable Housing Trust Fund Spending Plan.

1. REVENUES FOR CERTIFICATION PERIOD

It is anticipated that Bergenfield will adopt the Development Fee Ordinance in the first half of 2021 and that funds will be collected through the end of June 30, 2025, which is the period that the Borough will have a Third Round Judgment of Compliance and Repose (hereinafter "JOR"), the Borough is anticipating the collection of \$484,659 for deposit into its Affordable Housing Trust Fund. This is detailed below.

- (a) Development fees: The Borough of Bergenfield anticipates that \$484,659 in development fees will be generated between mid-2021 and June 30, 2025 based upon a revenue analysis of building permit value data over the past five years which estimates an average collection rate of \$104,375.00 in development fees per full calendar year. Additionally, Bergenfield anticipates collecting between \$8,500 and \$15,000 as payments in lieu of construction annually. As interest rates are anticipated to remain historically low, Bergenfield expects to collect a minimal amount of interest payments through the end of the JOR.
- (b) Payment in lieu (PIL): The Borough of Bergenfield anticipates the contribution of a minimal amount of payments in lieu toward the municipal Affordable Housing Trust Fund during the period of its Third Round Judgment of Repose. Bergenfield will only collect payment in lieu fees when there is a partial unit affordable housing requirement of half a unit or less. Whenever there is more than half an affordable unit requirement, the Borough expects the developer to create affordable housing and not make a payment in lieu.

- (c) Other Funds: The Borough of Bergenfield does not currently anticipate the contribution of any other funds toward the municipal Affordable Housing Trust Fund during the period of its Third Round JOR.
- (d) Projected interest: It is anticipated that once collections begin that the Borough will collect approximately \$3,660 in total interest over the period covered by this Spending Plan.

SOURCE OF FUNDS	PROJECTED REVENUES - AFFORDABLE HOUSING TRUST FUND 2021 THROUGH 2025						
	6/30/2021	2022	2023	2024	6/30/2025	Total	
(a) Development fees:	\$52,187	\$104,375	\$104,375	\$104,375	\$52,187	\$417,499	
(b) Payments in Lieu of Construction	\$8,500	\$15,000	\$15,000	\$15,000	\$10,000	\$63,500	
(c) Other Funds	-	-	-	-	-	-	
(d) Interest	\$260	\$850	\$850	\$850	\$850	\$3,660	
Total	\$60,947	\$120,225	\$120,225	\$120,225	\$63,037	\$484,659	

In sum, the Borough of Bergenfield projects a total of \$484,659 in revenue to be collected between mid-calendar year 2021 and June 30, 2025. All interest earned on the account shall be used only for the purposes of affordable housing as detailed in this Spending Plan.

2. ADMINISTRATIVE MECHANISM TO COLLECT AND DISTRIBUTE FUNDS

The following procedural sequence for the collection and distribution of development fee revenues shall be followed by the Borough:

- (a) Collection of development fee revenues: Collection of development fee revenues shall be consistent with Bergenfield's development fee ordinance for both residential and non-residential developments in accordance with applicable COAH's rules and P.L.2008, c.46, sections 8 (C. 52:27D-329.2) and 32-38 (C. 40:55D-8.1 through 8.8), and as may be amended.
- (b) Distribution of development fee revenues: A request for the expenditure of development fee revenues will be submitted to the Chief Financial Officer (CFO) of Bergenfield. Requests for expenditure of funds may come from administrative agencies, developers, contractors, or other entities engaged in the development or rehabilitation of affordable housing in Bergenfield. The CFO will review the request in the context of the Borough's Spending Plan, and, if deemed a valid utilization of development fee funds, will submit a report and request for approval to Bergenfield's governing body. If approved by the governing body, the funds will be distributed by the CFO.

3. DESCRIPTION OF ANTICIPATED USE OF AFFORDABLE HOUSING FUNDS

- (a) Rehabilitation. The Borough has a rental rehabilitation obligation which has been fully satisfied. The Borough seeks to continue to offer a rehabilitation program for owner occupied dwellings. To continue the implementation of this program, Bergenfield will partner with an experienced rehabilitation entity, such as the Bergen County Home Improvement Program ("BCHIP"), or some similar entity. Bergenfield will utilize funds from the Borough's affordable housing trust fund to assist, as necessary, with the continued funding these programs.

COAH's rules require municipalities to set aside sufficient funds to address one-third of their rehabilitation obligation within one year of approval of their plan. In addition, municipalities are required to set aside sufficient funds to address one-sixth of their rehabilitation obligation each subsequent year of the substantive certification period. As such the Borough will set aside for the first year of approval then one sixth each subsequent year of approval until the rehabilitation requirement is addressed with the understanding that this figure may be adjusted and may be supplemented by BCHIP funds for housing rehabilitation.

- (b) Affordability Assistance. Pursuant to N.J.A.C. 5:93-8.16(c). As shown in the table below, the Borough will dedicate funding available for affordability assistance in the amount of. Such affordability assistance may include down payment assistance, special condominium fees and assessment assistance, emergency repair assistance, emergency/hardship mortgage payment assistance, and rental assistance.

Actual development fees + interest through 12/2020		\$ 0
Development fees projected 7/1/21-6/30/25	+	\$480,999
Interest projected 7/1/2021-6/30/25	+	\$ 3,660
Less rehab & housing activity expenditures through 1/1/2021	-	\$ 0
Less rehab & housing activity expenditures 2021-2025	=	\$255,000
Total	=	\$229,659
30 percent requirement	x 0.30	\$68,898
	=	
Less affordability assistance expenditures through 3/31/20	-	\$ 0
PROJECTED MINIMUM Affordability Assistance Requirement 6/30/21-6/30/2025	=	\$ 68,898
PROJECTED MINIMUM Very Low-Income Affordability Assistance Requirement 6/30/2020-6/30/2025	÷ 3 =	\$ 22,966

(c) Administrative Expenses. Per N.J.A.C. 5:93-8.16(e), no more than 20% of the revenues collected from development fees shall be expended on administration. The Borough projects that a maximum of \$96,932 of housing trust funds is available pursuant to the COAH approved formula. Projected administrative expenditures, subject to the 20% cap, include the salaries and benefits for municipal employees and consultant fees necessary to develop or implement the following:

1. An updated Housing Element and Fair Share Plan.
2. A rehabilitation program.
3. An affirmative marketing program.
4. An affordability assistance program.
5. Other affordable housing activities that do not involve litigation.

Actual development fees + interest through 12/31/2020		\$ 0
Development fees projected 6/30/21-6/30/25	+	\$ 480,999
Interest projected 6/30/21-12/31/25	+	\$ 3,660
Less RCA expenditures through 12/31/17	-	\$ 0
Total	=	\$ 484,659
20 percent requirement	x 0.20 =	\$ 96,932
Less administrative expenditures through 12/31/17	-	\$ 0
PROJECTED MAXIMUM Administrative Expenses Requirement 06/30/21-6/30/2025	=	\$96,932

4. EXPENDITURE SCHEDULE

The Borough of Bergenfield intends to use affordable housing trust fund revenues for the creation and/or rehabilitation of housing units. Where applicable, the creation/rehabilitation funding schedule below parallels the implementation schedule set forth in the Housing Element and Fair Share Plan and is summarized as follows.

PROJECTS/PROGRAMS	Number of Units Projected	PROJECTED EXPENDITURE SCHEDULE 2018 -2025						Total
		2021	2022	2023	2024	2025		
Rehabilitation	17	\$ 0	\$ 30,000	\$60,000	\$ 90,000	\$75,000	\$ 255,000	
Affordability Assistance		\$ 12,000	\$23,311	\$23,311	\$ 23,311	\$15,000	\$ 96,933	
Very-low Income Affordability Assistance		\$ 5,000	\$ 7,264	\$ 7,265	\$ 7,265	\$ 9,000	\$ 35,794	
Administration		\$ 19,386	\$ 19,387	\$ 19,387	\$ 19,386	\$ 19,386	\$ 96,932	
Total		\$ 36,386	\$ 79,962	\$ 109,963	\$ 139,962	\$ 118,386	\$ 484,659	

5. EXCESS OR SHORTFALL OF FUNDS

In the event that a shortfall of anticipated revenues occurs, the Borough of Bergenfield will revise the spending plan to eliminate any potential shortfall of funds. The revised spending plan will be submitted to the Court, on notice to Fair Share Housing Center, for Court approval. Due to the difficulty in projecting future development fee collections during a pandemic, Bergenfield reserves the ability to update and revise this spending plan annually, if conditions so warrant.

In the event of excess funds, or in the event that the amount spent on administration is less than projected, any remaining funds above the amount necessary to satisfy the municipal affordable housing obligation will be dedicated toward its rehabilitation program and/or affordability assistance program and/or additional affordable housing activity.

SUMMARY

The Borough of Bergenfield intends to spend affordable housing trust fund revenues pursuant to N.J.A.C. 5:93-8.16 and consistent with the housing programs outlined in the Borough's Housing Element and Fair Share Plan.

The Borough of Bergenfield anticipates \$484,659 in revenues through June 2025. During the period of the Borough's Third Round JOR through June 2025, the Borough will agree to fund an average of \$15,000.00 per unit towards rehabilitation of housing units and expects to fund 17 rehabilitation projects. Bergenfield will not exceed a maximum of \$96,932.00 towards administrative costs.

The municipality will dedicate any excess funds or remaining balance toward its rehabilitation program and/or affordability assistance program and/or additional affordable housing activity necessary to address its affordable housing obligation.

SPENDING PLAN SUMMARY		
Balance as of March 31, 2020		\$0
PROJECTED REVENUE 4/1/2020-12/31/2025		
Development fees	+	\$417,499.00
Payments in lieu of construction	+	\$ 63,500
Other funds	+	\$ 0
Interest	+	\$3,660
SUBTOTAL REVENUE	=	\$484,659
TOTAL REVENUE = 484,659		
EXPENDITURES		
Funds used for Rehabilitation	-	\$255,000
Affordability Assistance	-	\$ 132,727
Administration	-	\$ 96,932
TOTAL PROJECTED EXPENDITURES	=	\$ 484,659
REMAINING BALANCE	=	\$ 0
Excess Funds or Remaining Balance Reserved for Additional Rehabilitation Expenditures and/or Affordability Assistance	=	\$ 0