

## **ORDINANCE NO. 2019:28**

### **AN ORDINANCE REPEALING AND REPLACING IN ITS ENTIRETY CHAPTER XXXII ENTITLED “AFFORDABLE HOUSING” OF THE REVISED GENERAL ORDINANCES OF THE BOROUGH OF NEW MILFORD, TO ADDRESS THE REQUIREMENTS OF THE FAIR HOUSING ACT AND THE UNIFORM HOUSING AFFORDABILITY CONTROLS (UHAC) AND TO COMPLY WITH THE BOROUGH’S THIRD ROUND AFFORDABLE HOUSING OBLIGATIONS**

**WHEREAS**, the New Milford Borough Planning Board adopted a 2017 Housing Element and Fair Share Plan, which plan was subsequently endorsed by the Mayor and Council of the Borough of New Milford; and

**WHEREAS**, 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;

**NOW THEREFORE BE IT ORDAINED**, the Mayor and Council of the Borough of New Milford hereby repeal and replace Chapter XXXII, entitled “Affordable Housing,” of the Revised General Ordinances of the Borough of New Milford, with the following new Chapter XXXII:

#### **CHAPTER XXXII AFFORDABLE HOUSING**

##### **32-1 AFFORDABLE HOUSING REGULATIONS AND PROCEDURES.**

###### **32-1.1. Purpose and applicability.**

The purpose of this chapter is to include provisions addressing the Borough of New Milford’s constitutional obligation to provide for its fair share of low- and moderate-income housing, as directed by the Supreme 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 chapter is intended to assure compliance with the regulations of the Council on Affordable Housing (“COAH”) set forth at N.J.A.C. 5:93-1 *et seq.*, and the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.1 *et seq.*, including provisions for unit affordability controls as well as eligibility for low- and moderate-income households. This chapter shall apply except where inconsistent with applicable law.

###### **32-1.2. Intent.**

It is the intent of this chapter to regulate the development and management of low- and moderate-income units constructed in compliance with the Housing Plan Element and Fair Share Plan of the Borough of New Milford.

### 32-1.3. Reporting requirements.

- a. Trust fund activity. On the first anniversary of the entry of the order granting New Milford a final judgment of compliance and repose in *In re Borough of New Milford Compliance with Mount Laurel Third Round Affordable Housing Obligation*, 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 Division of 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 Division of 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.
- b. Affordable housing activity. On the first anniversary of the entry of the order granting New Milford a final judgment of compliance and repose in *In re Borough of New Milford Compliance with Mount Laurel Third Round Affordable Housing Obligation*, 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 Borough 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, 2020, 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 affordable housing 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 Borough, 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.
- c. Very low income housing. 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 New Milford a final judgment of compliance and repose in *In re Borough of New Milford Compliance with Mount Laurel Third Round Affordable Housing Obligation*, 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 Borough, with copies provided to Fair Share Housing Center, on the issue of whether the Borough has complied with its very low-income housing obligation.

### 32-1.4. Definitions.

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

#### ACCESSORY APARTMENT

A self-contained residential dwelling unit with a kitchen, sanitary facilities, sleeping quarters and a private entrance, which is created within an existing home, or through the conversion of an existing 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 chapter, the regulations of the Council on Affordable Housing set forth at N.J.A.C. 5:93 *et seq.*, and the Uniform Housing Affordability Controls set forth at N.J.A.C. 5:80-26 *et seq.*

#### AFFIRMATIVE MARKETING

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

#### AFFORDABILITY AVERAGE

The average percentage of median income at which 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 Fair Housing 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.

#### BOROUGH

The Borough of New Milford, in Bergen County, New Jersey.

#### CERTIFIED HOUSEHOLD

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

#### COAH or THE COUNCIL

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.*

## FAIR SHARE PLAN

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

## HOUSING ELEMENT

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

## INCLUSIONARY DEVELOPMENT

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.

#### MUNICIPAL HOUSING LIAISON

The employee charged by the Mayor and Council with the responsibility for oversight and administration of the affordable housing program for New Milford.

#### 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.

### **32-1.5. Inclusionary housing requirements for rezonings and variances.**

Any residential development consisting of five or more dwelling units, at a density above six units per acre, that is permitted pursuant to a variance or rezoning shall produce low- and moderate-income housing on-site or elsewhere in the Borough or pay a fee in lieu of providing affordable units. The number of affordable units to be provided or in lieu payment shall be equal to 20 percent of the residential units in the development, or 15 percent for affordable rental units. The amount of the payment in lieu of providing housing shall be as determined by the appropriate rules of the New Jersey Council on Affordable Housing and any other relevant state regulations.

### **32-1.6. 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.
  2. At least 13 percent of all restricted rental units within each bedroom distribution 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.
  3. At least 25 percent of the obligation shall be met through rental units, including at least half in rental units available to families.
  4. 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.
  5. In each affordable development, at least 50 percent of the restricted units within each bedroom distribution shall be low-income units including that 13% shall be very-low income.
  6. Affordable developments that are not age-restricted shall be structured in conjunction with realistic market demands such that:
    - (a) The combined number of efficiency and one-bedroom units shall be no greater than 20 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.
  7. 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.
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 2.(a) through 2.(d) can be satisfied, then an interior accessible route of travel must be provided between stories within an individual unit, but if all of the terms of paragraphs 2.(a) through 2.(d) above have been satisfied, then an interior accessible route of travel shall not be required between stories within an individual unit; and
  - (f) An accessible entranceway as set forth at P.L. 2005, c. 350 (N.J.S.A. 52:27D-311a *et seq.*) and the Barrier Free Subcode, N.J.A.C. 5:23-7, or evidence that the Borough 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 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 (f)(2) above shall be used by the Borough 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 Borough Construction Official 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. 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 most recently published regional weighted average of the uncapped Section 8 income limits published by HUD and by the Superior Court.
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 unit shall be affordable to a one-person household;
  - (b) A one-bedroom unit shall be affordable to a one and one-half person household;
  - (c) A two-bedroom unit shall be affordable to a three-person household;
  - (d) A three-bedroom unit shall be affordable to a four and one-half person household; and
  - (e) A four-bedroom unit shall be affordable to a six-person household.
6. In determining the initial 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.

#### **32-1.7. 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.

#### **32-1.8. 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.

#### **32-1.9. Control periods for restricted ownership units and enforcement mechanisms.**

- a. Control periods for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.5, as may be amended and supplemented, and each restricted ownership unit shall remain subject to the requirements of this chapter for a period of at least thirty (30) years and thereafter until the Borough takes action by ordinance 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.

- 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 chapter, 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 chapter shall remain in effect despite the entry and enforcement of any judgment of foreclosure with respect to restricted ownership units.
- f. A restricted ownership unit shall be required to obtain a continuing certificate of occupancy or a certified statement from the Construction Official stating that the unit meets all Uniform Construction 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.

**32-1.10. 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.

#### **32-1.11. 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 Mayor and 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 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.

#### **32-1.12. 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).

### **32-1.13. 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.

### **32-1.14. Control periods for restricted rental units.**

- a. Control periods for restricted rental units shall be in accordance with N.J.A.C. 5:80-26.11, as may be amended and supplemented, and each restricted rental unit shall remain subject to the requirements of this chapter for a period of at least 30 years and thereafter until the Borough takes action by ordinance 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. 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 chapter 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.

**32-1.15. 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 chapter.

**32-1.16. 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 b.1 through 5 above with the administrative agent, who shall counsel the household on budgeting.

### **32-1.17. Municipal housing liaison.**

- a. The Borough 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. The Borough shall adopt an ordinance creating the position of municipal housing liaison. The Borough 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 the Borough, including the following responsibilities which may not be contracted out to the administrative agent:

1. Serving as the Borough'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 the Borough'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 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).

### **32-1.18. Administrative agent.**

The administrative agent shall be an independent entity serving under contract to and reporting to the Borough. 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 Borough's affirmative marketing plan 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 when referring households for certification to affordable units.
7. Notifying the following entities of the availability of affordable housing units in the Borough of New Milford: Fair Share Housing Center, the New Jersey State Conference of the NAACP, the Latino Action Network, the Supportive Housing Association, and the New Jersey Housing Resource Center.

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 rentals:
    1. Instituting and maintaining an effective means of communicating information between owners and the administrative agent regarding the availability of restricted units for resale or 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 chapter;
    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 Borough 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 Borough 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. 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 Borough'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 Mayor and 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.

### **32-1.19. Affirmative marketing requirements.**

- a. The Borough 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, the affirmative marketing plan shall maintain certain notification requirements. 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, Passaic and Sussex Counties.
- d. In accordance with N.J.S.A. 52:27D-311 (j) the Borough and Developer or residential development owner may enter into an agreement to provide a preference for affordable housing to low to moderate income veterans who served in time of war or other emergency, as defined in section 1 of P.L. 1963, c. 171 (C.54:4-8.10), of up to fifty (50) percent of the affordable units in that particular project. This preference shall be established in the applicant selection process for affordable units so that applicants who are veterans who served in time of war or other emergency, as referenced in this subsection, and who apply within ninety (90) days of the initial marketing period shall receive preference for the rental of the agreed-upon percentage of affordable units. After the first ninety (90) days of the initial 120-day marketing period, if any of those units subject to the preference remain available, then applicants from the general public shall be considered for occupancy. Following the initial 120-day marketing period, previously qualified applicants and future qualified applicants who are veterans who served in time of war or other emergency, as referenced in this subsection, shall be placed on a special waiting list as well as the general waiting list. The veterans on the special waiting list shall be given preference for affordable units, as the units become available, whenever the percentage of preference-occupied units falls below the agreed upon percentage. Any agreement to provide affordable housing preferences for veterans pursuant to this subsection shall not affect a municipality's ability to receive credit for the unit for the New Jersey Council of Affordable Housing or its successor.
- e. The Borough 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 shall implement the affirmative marketing plan to assure the affirmative marketing of all affordable units.
- f. 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.
- g. 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.
- h. The affirmative marketing process for available affordable units shall begin at least four months (120 days) prior to the expected date of occupancy.
- i. 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 Borough in which the units are located; and the developer's rental office. Pre-applications shall be emailed or mailed to prospective applicants upon request.

- j. In addition to other affirmative marketing strategies, the Administrative Agent shall provide specific notice of the availability of affordable housing units in New Milford, and copies of the applications forms, to the following entities: Fair Share Housing Center, the New Jersey State Conference of the NAACP, the Latino Action Network, the Supportive Housing Association, and the New Jersey Housing Resource Center.
- k. The costs of advertising and affirmative marketing of the affordable units shall be the responsibility of the developer, sponsor or owner.

### **32-1.20. 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 Borough 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 Borough 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 Borough 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 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 Borough 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 Borough, 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 Borough, 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 Borough 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 Borough 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 Borough 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 Borough 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 Borough 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 Borough. Any interest accrued or earned on such balance while being held in escrow shall belong to and shall be paid to the Borough, whether such balance shall be paid to the owner or forfeited to the Borough.
  - (c) Foreclosure by the Borough 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 Borough 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 Borough shall obligate the owner to accept an offer to purchase from any qualified purchaser which may be referred to the owner by the Borough, 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.

### **32-1.21. Appeals.**

Appeals from all decisions of an administrative agent appointed pursuant to this chapter shall be filed in writing with the court.

## **32-2 DEVELOPMENT FEES.**

### **32-2.1. Purpose.**

In Holmdel Builder's Association v. Holmdel Township, 121 N.J. 550 (1990), the New Jersey Supreme Court determined that mandatory development fees are authorized by the Fair Housing Act of 1985, N.J.S.A. 52:27D-301 et seq., and the State Constitution, subject to COAH developing rules as amended from time to time and/or in accordance with the enacted legislation and/or in accordance with directives from the courts. The purpose of this section is to establish standards for the collection, maintenance and expenditure of development fees pursuant to the above. Fees

collected pursuant to this section shall be used for the sole purpose of providing low- and moderate-income housing.

### **32-2.2. Definitions.**

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

#### **AFFORDABLE HOUSING DEVELOPMENT**

A development included in the Housing Element and Fair Share Plan, and includes, but is not limited to, an inclusionary development, a municipal construction project or a one hundred (100%) percent affordable development.

#### **COAH**

The New Jersey Council on Affordable Housing.

#### **DEVELOPER**

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

#### **DEVELOPMENT FEES**

Money paid by a developer for the improvement of property as permitted in N.J.A.C. 5:93-8.

#### **EQUALIZED ASSESSED VALUE**

The value of a property determined by the Municipal Tax Assessor through a process designed to ensure that all property in the municipality is assessed at the same assessment ratio or ratios required by law. Estimates at the time of issuance of a building permit may be obtained utilizing estimates for construction cost. Final equalized assessed value will be determined at project completion by the Municipal Tax Assessor.

### **32-2.3. Residential Development Fees.**

#### *a. Imposed Fees.*

1. Within all zone districts, developers of residential housing, except for developers of the types of development specifically exempted below, shall pay a fee of one and one-half (1 1/2%) percent of the equalized assessed value for residential development, provided that no increased density is permitted.
2. When an increase in residential density has been permitted pursuant to N.J.S.A. 40:55D-70d (known as a "d" variance) or pursuant to zoning amendment or pursuant to the adoption of a redevelopment plan pursuant to New Jersey Local Redevelopment and Housing Law (N.J.S.A. 40A-12-1 et seq.), developers shall be required to pay a development fee of a maximum of six (6%) percent of the equalized assessed value for each additional unit that may be realized.

b. *Eligible Exactions, Ineligible Exactions and Exemptions for Residential Development.*

1. The housing portion of affordable housing developments, developments where the developer is providing for the construction of affordable units elsewhere in the municipality, and developments where the developer has made a payment in lieu of on-site construction of affordable units shall be exempt from development fees. Other site improvements ancillary or accessory to an affordable housing development shall pay the fee.
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 or the developer has accepted responsibility to pay a development fee. 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. A development fee shall be based on the percentage that applies on the date that a building permit is issued, regardless of the time of collection of the fee.
3. Owner-occupied residential structures demolished and replaced as a result of a fire, flood, or natural disaster shall be exempt from paying a development fee.
4. Development fees shall be imposed and collected when an existing structure undergoes a change that results in an increased assessed value, not exempt as set forth in subsection 32-2.3b5 below. The development fee shall be calculated on the increase in the equalized assessed value of the improved structure.
5. The development fee shall not apply to the expansion of a single- or two-family home where the net increase interior floor area is less than fifteen (15%) percent of the existing structure. In no event shall the development fee be collected where the total increase in floor area is five hundred (500) square feet or less. Upon the request of the Zoning Officer, the property owner shall produce, within thirty (30) days, a set of certified plans signed by a licensed architect, confirming the amount of previously existing and as-built conditions.

**32-2.4. 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 two and one-half (2.5%) percent of the equalized assessed value of the land and improvements for all new nonresidential construction.
2. Nonresidential developers, except for developers of the types of development specifically exempted, shall also pay a fee equal to two and one-half (2.5%)

percent of the increase in equalized assessed value resulting from any additions to existing structures to be used for nonresidential purposes.

3. Development fees shall be imposed and collected when an existing structure is demolished and replaced. The development fee of two and one-half (2.5%) percent 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 the 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 two and one-half (2.5%) percent development fee, unless otherwise exempted below.
  2. The two and one-half (2.5%) percent fee shall not apply to an increase in equalized assessed value resulting from alterations, change 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 Nonresidential 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 the basis for the exemption no longer applies and shall make the payment of the nonresidential development fee, in that event, within three (3) 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 forty-five (45) days of the termination of the property tax exemption. Unpaid nonresidential development fees under these circumstances may be enforceable by the Borough of New Milford as a lien against the real property of the owner.

### **32-2.5. Collection of Fees.**

a. *Collection Procedures.*

1. 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.
2. For nonresidential developments only, the developer shall also be provided with a copy of Form N-RDF, State of New Jersey Nonresidential 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.
3. 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.
4. Within ninety (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.
5. 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.
6. Within ten (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.
7. Should the Borough of New Milford fail to determine or notify the developer of the amount of the development fee within ten (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).
8. Fifty (50%) percent of the development fee shall be collected at the time of issuance of the building permit. The remaining portion shall be collected at the issuance of the certificate of occupancy. The developer shall be responsible for paying the difference between the fee calculated at building permit and that determined at issuance of certificate of occupancy.

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

c. *Retention of Fees.*

Any fees collected prior to the adoption or amendment of this section shall be retained by the Borough of New Milford pursuant to COAH's rules regarding the retention of development fees.

**32-2.6. Contested Fees.**

Imposed and collected development fees that are challenged shall be placed in an interest bearing escrow account by Borough of New Milford. If all or a portion of the contested fees are returned to the developer, the accrued interest on the returned amount shall also be returned.

**32-2.7. Affordable Housing Trust Fund.**

- a. There is hereby created a separate, interest-bearing housing trust fund in a bank utilized by the Borough for its ordinary business purposes, for the purpose of depositing development fees collected from residential and nonresidential developers, any other payments made pursuant to this section from residential and nonresidential developers and proceeds from the sale of units with extinguished controls. All development fees paid by developers pursuant to this section shall be deposited into this fund.
- b. The following additional funds shall be deposited in the affordable housing trust fund and shall at all times be identifiable by source and amount:
  1. Payments in lieu of on-site construction of affordable units;

2. Developer-contributed funds to make 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 New Milford's affordable housing program.

### **32-2.8. Use of funds.**

- a. Money deposited in a housing trust fund may be used for any activity approved by COAH or in accordance with any directives from the courts for addressing the Borough of New Milford's low- and moderate-income housing obligation. Such activities may include, but are not necessarily limited to: housing rehabilitation; new construction; the purchase of land for low- and moderate-income housing; preservation or purchase of housing for the purpose of maintaining or implementing affordability controls, including the extension of controls, accessory apartment, market to affordable, or regional housing partnership programs, conversion of existing nonresidential buildings to create new affordable units, extensions and/or improvements of roads and infrastructure to low- and moderate-income housing sites; assistance designed to render units to be more affordable to low- and moderate-income households; and administrative costs necessary to implement the Borough of New Milford's housing element. The expenditure of all money shall conform to a spending plan approved by COAH or by the courts.
- b. At least thirty (30%) percent of all development fees collected and interest earned shall be used to provide affordability assistance to low- and moderate-income households in affordable units included in the municipal Fair Share Plan. One-third (1/3) of the affordability assistance portion of development fees collected shall be used to provide affordability assistance to those households earning thirty (30%) percent 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 homeowners' association or condominium fees and special assessments, and assistance with emergency repairs.
  2. Affordability assistance to households earning thirty (30%) percent or less of median income may include buying down the cost of low- or moderate-income

units in the municipal Fair Share Plan to make them affordable to households earning thirty (30%) percent or less of median income.

3. Payments in lieu of constructing affordable units on site and funds from the sale of units with extinguished controls shall be exempt from the affordability assistance requirement.
- c. The Borough of New Milford 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.
- d. No more than twenty (20%) percent of all revenues collected from development fees may be expended on administration, including but not limited to salaries and benefits for municipal employees or consultant fees necessary to develop or implement a new construction program, a Housing Element and Fair Share Plan, and/or an affirmative marketing program. In the case of a rehabilitation program, no more than twenty (20%) percent of the revenues collected from development fees shall be expended for such administrative expenses. Administrative funds may be used for income qualification of households, monitoring the turnover of sale and rental units, and compliance with COAH's or the courts monitoring requirements. Legal or other fees related to litigation opposing affordable housing sites or objecting to the Council's regulations and/or action are not eligible uses of the affordable housing trust fund.
- e. Funds shall not be expended to reimburse the Borough of New Milford for housing activities carried out prior to the establishment of the Affordable Housing Trust Fund.
- f. This section is intended to be interpreted and applied consistent with the Statewide Non-Residential Development Fee Act (N.J.S.A. 40:55D-8.1 et seq.). In the event of any inconsistency, this section shall be read so as to comply with the Act.

### **32-2.9. Monitoring.**

The Borough of New Milford shall complete and return to COAH or to the courts all monitoring forms included in monitoring requirements related to the collection of development fees from residential and nonresidential developers, payments in lieu of constructing affordable units on site, funds from the sale of units with extinguished controls, barrier-free escrow funds, rental income, repayments from affordable housing program loans, and any other funds collected in connection with the Borough of New Milford's housing program, as well as to the expenditure of revenues and implementation of the plan certified by COAH or the courts. All monitoring reports shall be completed on forms designed by COAH or the courts.

### **32-2.10. Ongoing collection of fees.**

The ability for the Borough of New Milford to impose, collect and expend development fees shall expire with its substantive certification or judgment of compliance unless New Milford has filed an adopted Housing Element and Fair Share Plan with COAH, has petitioned for substantive



certification, and has received COAH's approval of its development fee ordinance. If the Borough of New Milford fails to renew its ability to impose and collect development fees prior to undetermined date in 2018, it may resume the imposition and collection of development fees only by complying with requirements of N.J.A.C. 5:94-6. The Borough of New Milford shall not impose a development fee on a development that receives a building permit after the expiration of its substantive certification or judgment of compliance on such a development. The Borough of New Milford will not expend development fees after the expiration of its substantive certification or judgment of compliance on undetermined date.

**BE IT FURTHER ORDAINED** that this ordinance shall become effective upon passage and publication in accordance with law and that the remainder of this ordinance remains unchanged.