

TOWNSHIP OF VERONA
COUNTY OF ESSEX, NEW JERSEY

ORDINANCE NO. 2023-18

REPEALING ARTICLE XIX OF CHAPTER 150 OF THE CODE
OF THE TOWNSHIP IN ITS ENTIRETY AND REPLACING WITH A NEW
ARTICLE XIX-AFFORDABLE HOUSING

SECTION ONE:

§150-19.1. Purpose.

- A. The purpose of this article is to create the administrative mechanisms needed for the execution of Verona's responsibility to assist in the provision of affordable housing pursuant to the Fair Housing Act of 1985.
- B. This chapter of the Township Code sets forth regulations regarding the low- and moderate-income housing units in the Township consistent with the Township's constitutional obligation to provide a realistic opportunity for the construction of its fair share of the regional need for affordable housing for low- and moderate-income households, the provisions known as the Substantive Rules of the New Jersey Council on Affordable Housing ("COAH rules"), N.J.A.C. 5:93 et seq., and the Uniform Housing Affordability Controls ("UHAC"), N.J.A.C. 5:80-26.1 et seq., except that the requirements for very-low-income affordable housing as established in P.L. 2008, c. 46 (the "Roberts Bill," codified at *N.J.S.A. 52:27D-329.1*) shall supersede those of the UHAC.
- C. This chapter is intended to assure that very-low, low- and moderate-income units ("affordable units") are created with deed restrictions which preserve affordability over time and that very-low-, low- and moderate-income households shall occupy these units. This chapter shall apply to all inclusionary developments and 100% affordable developments (including those funded with low-income housing tax credit financing) except where inconsistent with applicable law.
- D. This chapter implements and incorporates the Housing Element and Fair Share Plan pursuant to the Municipal Land Use Law at *N.J.S.A. 40:55D-1 et seq.* ("Fair Share Plan"), in accordance with the settlement agreement entered into between the Township and the Fair Share Housing Center ("FSHC") on March 10, 2021 and addresses the requirements of N.J.A.C. 5:93, as may be amended and supplemented.
- E. The Township shall file monitoring and status reports with the Superior Court and FSHC and shall place the reports on its municipal website. Any Fair Share Plan evaluation or monitoring report prepared by the Special Master in accordance with N.J.A.C. 5:91 shall be available to the public at the Verona Town Hall, 600 Bloomfield Avenue, Verona, New Jersey 07044.
- F. On or about each anniversary of the Court's filing of the Judgment of Compliance and Repose through the end of the period of Third Round Judgment of Repose (July 1, 2025), the Township will provide annual reporting of the status of all affordable housing activity within the municipality through posting on the municipal website with a copy of such posting provided to all parties to the Township's Court-approved settlement agreements, using forms previously developed for this purpose by the Council on Affordable Housing or any other forms endorsed by the Special Master and FSHC.
- G. The Fair Housing Act includes two provisions regarding action to be taken by the Township during the ten-year period of protection provided in the Township's agreement with FSHC. The Township agrees to comply with those provisions as follows:
 - 1. At the time of a hearing for a Third Round Judgment of Compliance, the Township may provide a realistic opportunity review consistent with the midpoint review provisions at *N.J.S.A. 52:27D-313*, which will consist of 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. In the event the Court determines that a site or mechanism no longer presents a realistic opportunity and should be replaced or supplemented, then the municipality shall have the first opportunity to supplement or revise its plan to correct any deficiency.

2. Within 30 days of the third anniversary of the Judgement of Compliance and Repose, the Township shall prepare a review of compliance with the very-low-income housing requirements required by *N.J.S.A. 52:27D-329.1* and its settlement agreement with Fair Share Housing Center. The Township will post on its municipal website, with a copy provided to FSHC, a status report as to its satisfaction of its very-low-income requirements, including the family very-low-income requirements referenced herein and in the Township's settlement agreement with FSHC. Such posting shall invite any interested party to submit comments to the municipality and FSHC on the issue of whether the municipality has complied with its very-low-income housing obligation.

§150-19.2. Definitions.

As used herein the following terms shall have the following meanings:

ACT

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

ADAPTABLE

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

ADMINISTRATIVE AGENT

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

AFFIRMATIVE MARKETING

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

AFFORDABILITY AVERAGE

The average percentage of median income at which deed-restricted units in an affordable housing development are affordable to low- and moderate-income households.

AFFORDABLE

A sales price or rent within the means of a low- or moderate-income household as defined in N.J.A.C. 5:93-7.4; in the case of an ownership unit, 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, 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 housing development incorporated in the Housing Element and Fair Share Plan, and including, but not limited to, an inclusionary development, a municipal construction project or a 100% affordable development.

AFFORDABLE HOUSING PROGRAM(S)

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

AFFORDABLE UNIT

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

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 where the unit is situated are 62 years old or older; or 2) at least 80% of the units are occupied by one person that is 55 years old or older (except that persons younger than 19 may not be

permanent residents); or 3) the development has been designated by the Secretary of the United States 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(b)(2).

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.*).

ALTERNATIVE LIVING ARRANGEMENT

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 New Jersey Department of Community Affairs; residential health-care facilities as regulated by the New Jersey Department of Health and Senior Services; 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 licensed by the New Jersey Department of Health and Senior Services to provide apartment-style housing and congregate dining for four or more adult persons unrelated to the proprietor and to assure that assisted living services are available when needed 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

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

DCA

The State of New Jersey Department of Community Affairs.

DEFICIENT HOUSING UNIT

A housing unit with health and safety code violations that require the repair or replacement of at least one 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 of a lot or any land, improved or unimproved, which is proposed to be included in a proposed development, including the holder of an option to contract or purchase, or other person having an enforceable proprietary interest in such land.

DEVELOPMENT

The division of a parcel of land into two or more parcels; the construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any use or change in the use of any building or other structure; 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.*

DEVELOPMENT FEE

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

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*).

FAIR SHARE PLAN

The plan that describes the mechanisms, strategies and the funding sources, if any, by which the Township 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.

GREEN BUILDING STRATEGIES

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.

HOUSING ELEMENT

The portion of the municipality'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 Township's fair share obligation.

INCLUSIONARY DEVELOPMENT

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

LOW-INCOME HOUSEHOLD

A household with a total gross annual household income equal to 50% or less of the median household income for the applicable COAH housing region.

LOW-INCOME UNIT

A deed-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 residential building, which includes, but is not limited to, weatherization, roofing, plumbing (including wells), heating, electricity, sanitary plumbing (including septic systems), lead paint abatement or load-bearing structural systems.

MARKET-RATE UNITS

Housing not restricted to low- and moderate-income households that may sell or rent at any price.

MEDIAN INCOME

The median income by household size for the applicable COAH housing region, as approved by the New Jersey Superior Court.

MODERATE-INCOME HOUSEHOLD

A household with a total gross annual household income in excess of 50% but less than 80% of the median household income for the applicable COAH housing region.

MODERATE-INCOME UNIT

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

NONEXEMPT SALE

Any sale or transfer of ownership other than the transfer of ownership between spouses; 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 (e.g., by lottery) by which 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.

REGIONAL ASSET LIMIT

The maximum housing value in each COAH housing region affordable to a four-person household with an income of at 80% of the regional median as defined by adopted/approved regional income limits.

REHABILITATION

The repair, renovation, alteration or reconstruction of any building or structure, pursuant to the Rehabilitation Subcode, N.J.A.C. 5:23-6, which, for purposes of affordable housing credit, involves at least one major system of the building or structure.

RENT

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

RESTRICTED UNIT

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

SPECIAL MASTER

An expert appointed by a Superior Court Judge to assist the Court, the municipality and any intervenors or other interested parties in applying the Mount Laurel Doctrine, including a determination of municipal fair share and an evaluation of the effectiveness of the municipality's Fair Share Plan.

UHAC

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

VERY-LOW-INCOME-HOUSEHOLD

A household with a total gross annual household income equal to 30% or less of the median household income within the applicable COAH housing region.

VERY-LOW-INCOME UNIT

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

WEATHERIZATION

Building insulation (for attic, exterior walls and crawl space), siding to improve energy efficiency, replacement storm windows, replacement storm doors, replacement windows and replacement doors, and is considered a major system for rehabilitation crediting purposes.

§150-19.3. New Construction.

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

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

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

Maximum Percentage of Market-Rate Units Completed	Minimum Percentage of Low- and Moderate-Income Units Completed
50	50
75	75
90	100

B. Design. In inclusionary developments, to the extent possible, low- and moderate-income units shall be integrated with the market units and shall be no further distant, on average, from common amenities provided in the development than market-rate units.

C. Payments in lieu and off-site construction. The standards for the collection of payments in lieu of constructing affordable units or standards for constructing affordable units off site shall be in accordance with the requirements below:

1. The base dollar amount of the payment in lieu of constructing an affordable unit at the time of adoption of this chapter shall be pursuant to COAH's regulations and/or the amount in a development pro forma on file with the Township Clerk. This amount shall be adjusted periodically by the Township to reflect the most current and accurate market conditions or better cover the cost to the Township to subsidize affordable housing construction. The payment shall be imposed as a condition of development approval by the Planning Board.
2. During the development approval process, a developer may demonstrate to the governing body that the actual construction cost of an affordable unit less estimated capitalized revenue at the development in question is lower than the imposed payment in lieu in §150-19.1.A1. At its discretion, the governing body may impose a payment in lieu amount equal or proximate to the amount estimated by the developer.

D. Utilities.

1. Affordable units shall utilize the same type of heating source as market units within the affordable development.
2. 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 the Section 8 program.

E. 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.
 - (a) Within rental developments, of the total number of affordable rental units, at least 13% shall be affordable to very-low-income households.
2. In each affordable development, at least 50% of the restricted units within each bedroom distribution shall be low-income units, including at least 13% very-low income.
3. 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% of the total low- and moderate-income units;
 - (b) At least 30% of all low- and moderate-income units shall be two-bedroom units;
 - (c) At least 20% of all low- and moderate-income units shall be three-bedroom units; and

- (d) The remaining units may be allocated among two- and three-bedroom units at the discretion of the developer.
4. Affordable developments that are age-restricted shall be structured such that the number of bedrooms shall equal the number of age-restricted low- and moderate-income units within the inclusionary development. The standard may be met by having all one-bedroom units or by having a two-bedroom unit for each efficiency unit.
- F. Accessibility requirements:
1. The first floor of all new restricted townhouse dwelling units and all restricted multistory dwelling units attached to at least one other dwelling unit shall be subject to the technical design standards of the Barrier Free Subcode, N.J.A.C. 5:23-7.
 2. All restricted townhouse dwelling units and all restricted multistory dwelling units attached to at least one other dwelling unit shall have the following features:
 - (a) An adaptable toilet and bathing facility on the first floor;
 - (b) An adaptable kitchen on the first floor;
 - (c) An interior accessible route of travel on the first floor;
 - (d) An interior accessible route of travel shall not be required between stories within an individual unit;
 - (e) 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
 - (f) An accessible entranceway as set forth at P.L. 2005, c. 350 (*N.J.S.A. 52:27D-311a et seq.*), and the Barrier Free Subcode, N.J.A.C. 5:23-7, or evidence that the Township has collected funds from the developer sufficient to make 10% of the adaptable entrances in the development accessible.
 - (1) Where a unit has been constructed with an adaptable entrance, upon the request of a disabled person who is purchasing or will reside in the dwelling unit, an accessible entrance shall be installed.
 - (2) To this end, the builder of restricted units shall deposit funds within the Township of Verona's affordable housing trust fund sufficient to install accessible entrances in 10% of the affordable units that have been constructed with adaptable entrances.
 - (3) The funds deposited under Subsection §150-19.1.F.2. (f)(2) herein shall be used by the Township for the sole purpose of making the adaptable entrance of any affordable unit accessible when requested to do so by a person with a disability who occupies or intends to occupy the unit and requires an accessible entrance.
 - (4) The developer of the restricted units shall submit a design plan and cost estimate for the conversion from adaptable to accessible entrances to the construction official of the Township of Verona.
 - (5) Once the construction official has determined that the design plan to convert the unit entrances from adaptable to accessible meets the requirements of the Barrier Free Subcode, N.J.A.C. 5:23-7, and that the cost estimate of such conversion is reasonable, payment shall be made to the Township of Verona's affordable housing trust fund in care of the Municipal Treasurer, who shall ensure that the funds are deposited into the affordable housing trust fund and appropriately earmarked for the intended purpose.
 - (g) Full compliance with the foregoing provisions shall not be required where an entity can demonstrate that it is site impracticable to meet the requirements on the site. Determinations of site impracticability shall be in compliance with the Barrier Free Subcode, N.J.A.C. 5:23-7.

G. 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 and by the Superior Court, utilizing the established regional income limits.
2. The maximum rent for restricted rental units within each affordable development shall be affordable to households earning no more than 60% of median income, and the average rent for restricted low- and moderate-income units shall be affordable to households earning no more than 52% of median income.
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.
 - (a) At least 13% of all low- and moderate-income rental units shall be affordable to households earning no more than 30% of median income.
4. The maximum sales price of restricted ownership units within each affordable development shall be affordable to households earning no more than 70% of median income, and each affordable development must achieve an affordability average of 55% for restricted ownership units; in achieving this affordability average, moderate-income ownership units must be available for at least three different prices for each bedroom type, and low-income ownership units must be available for at least two different prices for each bedroom type.
5. In determining the initial sales prices and rents for compliance with the affordability average requirements for restricted units other than assisted living facilities, the following standards shall be met:
 - (a) A studio or efficiency unit shall be affordable to a one-person household;
 - (b) A one-bedroom unit shall be affordable to a 1 1/2 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 4 1/2 person household; and
 - (e) A four-bedroom unit shall be affordable to a six-person household.
6. In determining the initial rents for compliance with the affordability average requirements for restricted units in assisted living facilities, the following standards shall be met:
 - (a) A studio or efficiency unit shall be affordable to a one-person household;
 - (b) A one-bedroom unit shall be affordable to a 1 1/2 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% of the purchase price and the Federal Reserve H.15 rate of interest), taxes, homeowner and private mortgage insurance and condominium or homeowner association fees do not exceed 28% of the eligible monthly income of the appropriate size household as determined under N.J.A.C. 5:80-26.4, as may be amended and supplemented; provided, however, that the price shall be subject to the affordability average requirement of N.J.A.C. 5:80-26.3, as may be amended and supplemented.
8. The initial rent for a restricted rental unit shall be calculated so as not to exceed 30% of the eligible monthly income of the appropriate household size as determined under N.J.A.C. 5:80-26.4, as may be amended and supplemented; provided, however, that the rent shall be subject to the affordability average requirement of N.J.A.C. 5:80-26.3, as may be amended and supplemented.

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.

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

- (a) Regional income limits shall be established for the Region 2 based on the median income by household size, which shall be established by a regional weighted average of the uncapped Section 8 income limits published by HUD. To compute this regional income limit, the HUD determination of median county income for a family of four is multiplied by the estimated households within the county according to the most recent decennial Census. The resulting product for each county within the housing region is summed. The sum is divided by the estimated total households from the most recent decennial census in Region 2. This quotient represents the regional weighted average of median income for a household of four. The income limit for a moderate-income unit for a household of four shall be 80% of the regional weighted average median income for a family of four. The income limit for a low-income unit for a household of four shall be 50% of the HUD determination of the regional weighted average median income for a family of four. The income limit for a very-low-income unit for a household of four shall be 30% of the regional weighted average median income for a family of four. These income limits shall be adjusted by household size based on multipliers used by HUD to adjust median income by household size. In no event shall the income limits be less than those for the previous year.
 - (b) The income limits calculated each year shall be the result of applying the percentages set forth in Subsection **G(9)(a)** above to HUD's determination of median income for the relevant fiscal year, and shall be utilized until the Township updates the income limits after HUD has published revised determinations of median income for the next fiscal year.
 - (c) The regional asset limit used in determining an applicant's eligibility for affordable housing pursuant to N.J.A.C. 5:80-26.16(b)3 shall be calculated by the Township annually by taking the percentage increase of the income limits calculated pursuant to Subsection **G(9)(a)** above over the previous year's income limits, and applying the same percentage increase to the regional asset limit from the prior year. In no event shall the regional asset limit be less than that for the previous year.
10. The rent levels of very-low-, low- and moderate-income units may be increased annually based on the percentage increase in the Housing Consumer Price Index for the Northeast Urban Area, upon its publication for the prior calendar year. This increase shall not exceed 9% in any one year. 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.

H. Condominium and homeowners' association fees.

1. For any affordable housing unit that is part of a condominium association and/or homeowner's association, the master deed shall reflect that the association fee assessed for each affordable housing unit shall be established at 100% of the market rate fee.

§150-19.4. Affordability Controls and Requirements

A. Purpose.

1. The requirements of this section apply to all developments that contain affordable

housing units, including any currently unanticipated future developments that will provide low- and moderate-income housing units.

B. Affirmative marketing.

1. The Township shall adopt by resolution an affirmative marketing plan, subject to approval of the Superior Court, compliant with N.J.A.C. 5:80-26.15, as may be amended and supplemented.
2. The affirmative marketing plan is a regional marketing strategy designed to attract buyers and/or renters of all majority and minority groups, regardless of race, creed, color, national origin, ancestry, marital or familial status, gender, affectional or sexual orientation, disability, age or number of children to housing units which are being marketed by a developer, sponsor or owner of affordable housing. The affirmative marketing plan is also intended to target those potentially eligible persons who are least likely to apply for affordable units in that region. It is a continuing program that directs all marketing activities toward COAH Housing Region 2 and covers the period of deed restriction.
3. The affirmative marketing plan shall provide a regional preference for all households that live and/or work in COAH Housing Region 2, composed of Essex, Morris, Union, and Warren Counties.
4. 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 re-rentals. The administrative agent designated by the Township of Verona shall implement the affirmative marketing plan to assure the affirmative marketing of all affordable units.
5. The administrative agent designated by the Township shall assure the affirmative marketing of all affordable units is consistent with the affirmative marketing plan for the municipality.
6. 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.
7. 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.
8. The affirmative marketing process for available affordable units shall begin at least four months (or 120 days) prior to the expected date of occupancy.
9. 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. Applications shall be mailed to prospective applicants upon request.
10. The costs of advertising and affirmative marketing of the affordable units shall be the responsibility of the developer, sponsor or owner, unless otherwise determined or agreed to by the Township of Verona.

C. Occupancy standards.

1. In referring certified households to specific restricted units, to the extent feasible, and without causing an undue delay in occupying the unit, the administrative agent shall strive to:
 - (a) Provide an occupant for each bedroom;
 - (b) Provide separate bedrooms for parents and children;
 - (c) Provide children of different sexes with separate bedrooms; and
 - (d) Prevent more than two persons from occupying a single bedroom.
2. Additional provisions related to occupancy standards (if any) shall be provided in the municipal operating manual.

- D. Selection of occupants of affordable housing units.
1. The administrative agent shall use a random selection process to select occupants of low- and moderate-income housing.
 2. A waiting list of all eligible candidates will be maintained in accordance with the provisions of N.J.A.C. 5:80-26.1 et seq.
- E. Control periods for restricted ownership units and enforcement mechanisms.
1. Control periods for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.5, and each restricted ownership unit shall remain subject to the controls on affordability for a period of at least 30 years and until the municipality takes action thereafter to release the controls on affordability.
 2. Rehabilitated owner-occupied housing units that are improved to code standards shall be subject to affordability controls for a period of 10 years.
 3. The affordability control period for a restricted ownership unit shall commence on the date the initial certified household takes title to the unit.
 4. The affordability controls set forth in this chapter shall remain in effect despite the entry and enforcement of any judgment of foreclosure with respect to restricted ownership units.
 5. A restricted ownership unit shall be required to obtain a continuing certificate of occupancy or a certified statement from the construction official stating that the unit meets all code standards upon the first transfer of title that follows the expiration of the applicable minimum control period provided under N.J.A.C. 5:80-26.5(a), as may be amended and supplemented.
- F. Price restrictions for restricted ownership units, homeowners' association fees and resale prices.
1. Price restrictions for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.1 et seq., as may be amended and supplemented, including:
 - (a) The initial purchase price for a restricted ownership unit shall be approved by the administrative agent.
 - (b) The administrative agent shall approve all resale prices, in writing and in advance of the resale, to assure compliance with the foregoing standards.
 - (c) The method used to determine the condominium association fee amounts and special assessments shall be indistinguishable between the low- and moderate-income unit owners and the market unit owners.
 - (d) The owners of restricted ownership units may apply to the administrative agent to increase the maximum sales price for the unit on the basis of capital improvements. Eligible capital improvements shall be those that render the unit suitable for a larger household or the addition of a bathroom.
 - (e) 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 ten-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.
- G. Buyer income eligibility.
1. Buyer income eligibility for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.1 et seq., as may be amended and supplemented, such that low-

income ownership units shall be reserved for households with a gross household income less than or equal to 50% of median income, and moderate-income ownership units shall be reserved for households with a gross household income less than 80% of median income.

2. Notwithstanding the foregoing, the administrative agent may, upon approval by the Township Council, and subject to the Court's approval, permit a moderate-income purchaser to buy a low-income unit if and only if the administrative agent can demonstrate that there is an insufficient number of eligible low-income purchasers in the housing region to permit prompt occupancy of the unit and all other reasonable efforts to attract a low-income purchaser, including pricing and financing incentives, have failed. Any such low-income unit that is sold to a moderate-income household shall retain the required pricing and pricing restrictions for a low-income unit.
3. A certified household that purchases a restricted ownership unit must occupy it as the certified household's principal residence and shall not lease the unit; provided, however, that the administrative agent may permit the owner of a restricted ownership unit, upon application and a showing of hardship, to lease the restricted unit to another certified household for a period not to exceed one year.
4. The administrative agent shall certify a household as eligible for a restricted ownership unit when the household is a low-income household or a moderate-income household, as applicable to the unit, and the estimated monthly housing cost for the particular unit (including principal, interest, taxes, homeowner and private mortgage insurance and condominium or homeowners' association fees, as applicable) does not exceed 33% of the household's certified monthly income.

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

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

I. Control periods for restricted rental units.

1. Control periods for restricted rental units shall be in accordance with N.J.A.C. 5:80-26.11, and each restricted rental unit shall remain subject to the controls on affordability for a period of at least 30 years, until the municipality takes action to release the controls on affordability. Prior to such action, a restricted rental unit must remain subject to the requirements of N.J.A.C. 5:80-26.1 et seq., as may be amended and supplemented.
 - (a) Restricted rental units created as part of developments receiving 9% low-income-housing tax credits must comply with a control period of not less than a thirty-year compliance period plus a fifteen-year extended use period.
2. Rehabilitated renter-occupied housing units that are improved to code standards shall be subject to affordability controls for a period of 10 years.
3. Deeds of all real property that include restricted rental units shall contain deed restriction language. The deed restriction shall have priority over all mortgages on the property, and the deed restriction shall be filed by the developer or seller with the records office of the County of Essex. A copy of the filed document shall be provided to the administrative agent within 30 days of the receipt of a certificate of occupancy.
4. A restricted rental unit shall remain subject to the affordability controls of this chapter, despite the occurrence of any of the following events:
 - (a) Sublease or assignment of the lease of the unit;
 - (b) Sale or other voluntary transfer of the ownership of the unit; or
 - (c) The entry and enforcement of any judgment of foreclosure.

J. Price restrictions for rental units; leases.

1. A written lease shall be required for all restricted rental units, except for units in an assisted living residence, and tenants shall be responsible for security deposits and the full amount of the rent as stated on the lease. A copy of the current lease for each restricted rental unit shall be provided to the administrative agent.
2. No additional fees or charges shall be added to the approved rent (except, in the case of units in an assisted living residence, to cover the customary charges for food and services) without the express written approval of the administrative agent.
3. Application fees (including the charge for any credit check) shall not exceed 5% of the monthly rent of the applicable restricted unit and shall be payable to the administrative agent to be applied to the costs of administering the controls applicable to the unit as set forth in this chapter.

K. Tenant income eligibility.

1. Tenant income eligibility shall be in accordance with N.J.A.C. 5:80-26.13, as may be amended and supplemented, and shall be determined as follows:
 - (a) Very-low-income rental units shall be reserved for households with a gross household income less than or equal to 30% of median income.
 - (b) Low-income rental units shall be reserved for households with a gross household income less than or equal to 50% of median income.
 - (c) Moderate-income rental units shall be reserved for households with a gross household income less than 80% of median income.
2. The administrative agent shall certify a household as eligible for a restricted rental unit when the household is a very-low-income 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% (40% for age-restricted units) of the household's eligible monthly income as determined pursuant to N.J.A.C. 5:80-26.16, as may be amended and supplemented; provided, however, that this limit may be exceeded if one or more of the following circumstances exist:
 - (a) The household currently pays more than 35% (40% for households eligible for age-restricted units) of its gross household income for rent, and the proposed rent will reduce its housing costs;
 - (b) The household has consistently paid more than 35% (40% for households eligible for age-restricted units) of eligible monthly income for rent in the past and has proven its ability to pay;
 - (c) The household is currently in substandard or overcrowded living conditions;
 - (d) The household documents the existence of assets with which the household proposes to supplement the rent payments; or
 - (e) The household documents proposed third-party assistance from an outside source such as a family member in a form acceptable to the administrative agent and the owner of the unit.
3. The applicant shall file documentation sufficient to establish the existence of the circumstances in Subsection K.2(a) through (e) above with the administrative agent, who shall counsel the household on budgeting.

L. Conversions.

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

M. Alternative living arrangements.

1. The administration of an alternative living arrangement shall be in compliance with N.J.A.C. 5:93-5.8 and UHAC, with the following exceptions:
 - (a) Affirmative marketing (N.J.A.C. 5:80-26.15); provided, however, that the units or bedrooms may be affirmatively marketed by the provider in accordance with an alternative plan approved by the Court;
 - (b) Affordability average and bedroom distribution (N.J.A.C. 5:80-26.3).

2. With the exception of units established with capital funding through a twenty-year operating contract with the Department of Human Services, Division of Developmental Disabilities, alternative living arrangements shall have at least thirty-year controls on affordability in accordance with UHAC, unless an alternative commitment is approved by the Court.
3. The service provider for the alternative living arrangement shall act as the administrative agent for the purposes of administering the affirmative marketing and affordability requirements for the alternative living arrangement.

§150-19.5. Administration

A. Establishment of Municipal Housing Liaison position and compensation; powers and duties.

1. Establishment of position of Municipal Housing Liaison. There is hereby established the position of the Municipal Housing Liaison for Verona.
2. Subject to the approval of the Superior Court (Court), the Municipal Housing Liaison shall be appointed by the governing body and may be a full- or part-time municipal employee.
3. The Municipal Housing Liaison shall be responsible for oversight and administration of the affordable housing program for Verona, including the following responsibilities which may not be contracted out:
 - (a) Serving as Verona's primary point of contact for all inquiries from the state, affordable housing providers, administrative agents, and interested households;
 - (b) The implementation of affirmative marketing plans and affordability controls;
 - (c) Monitoring the status of all restricted units in Verona's fair share plan;
 - (d) Compiling, verifying, and submitting annual reporting as required by the Court;
 - (e) Coordinating meetings with affordable housing providers and administrative agents, as applicable;
 - (f) Attending continuing education programs as may be required by the Court;
 - (g) If applicable, serving as the administrative agent for some or all of the restrictive units in Verona as described in Subsection 6 below or supervising and coordinating with any contracted administrative agent.
4. Compensation. Compensation shall be fixed by the governing body at the time of the appointment of the Municipal Housing Liaison.

B. Administrative Agent

1. Subject to approval by COAH, any successor agency, or a Court of competent jurisdiction, Verona may contract with or authorize a consultant, authority, government or any agency charged by the governing body, which entity shall have the responsibility of administering the affordable housing program of Verona. If Verona contracts with another entity to administer all or part of the affordable housing program, including the affordability controls and affirmative marketing plan, the Municipal Housing Liaison shall supervise the contracting administrative agent.
2. Administrative powers and duties assigned to the Municipal Housing Liaison or contracted administrative agent shall be as follows:
 - (a) Affirmative marketing.
 - (1) Conducting an outreach process to ensure affirmative marketing of affordable housing units in accordance with the affirmative marketing plan of Verona and the provisions of N.J.A.C. 5:80-26.15.

- (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 very-low, 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 Appendixes 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 the random selection process as provided in the affirmative marketing plan of Verona when referring households for certification to affordable units.
- (7) Notifying the following entities of the availability of affordable housing units in the Township of Verona: the Fair Share Housing Center, the New Jersey State Conference of the NAACP, the Latino Action Network, the Newark NAACP, the Oranges and Maplewood NAACP, Morris County NAACP, Elizabeth NAACP, and the Supportive Housing Association.

(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 appropriate county's 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 certificates pursuant to N.J.A.C. 5:80-26.10.

(d) Records retention.

(e) Resale and rental.

- (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 very-low, low-, and moderate-income households regarding the availability of restricted units for resale or re-rental.

- (f) Communicating with 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 so 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 municipality of an owner's intent to sell a restricted unit; and
 - (4) Processing requests and making determinations on requests by owners of restricted units for hardship waivers.
- (g) Enforcement.
 - (1) Ensure that all restricted units are identified as affordable within the Tax Assessor's office and any municipal utility authority (MUA) and upon notification to the administrative agent of change in billing address, payment delinquency of two consecutive billing cycles, transfer of title, or institution of a writ of foreclosure on all affordable units, 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 acknowledgment 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 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 or other appropriate municipal fund approved by the DCA;
 - (6) Establishing a rent-to-equity program;
 - (7) Creating and publishing a written operating manual, as approved by the Township Council and COAH, its successor agency, or Court of competent jurisdiction, setting forth procedures for administering such affordability controls; and
 - (8) Providing annual reports to COAH, its successor agency, or Court of competent jurisdiction as required.
- (h) The administrative agent shall have authority to take all actions necessary and appropriate to carry out its responsibilities hereunder.

C. Enforcement of affordable housing regulations.

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

the premises, and specific performance.

2. After providing written notice of a violation to an owner, developer or tenant of a low- or moderate-income unit and advising the owner, developer or tenant of the penalties for such violations, the municipality may take the following action against the owner, developer or tenant for any violation that remains uncured for a period of 60 days after service of the written notice:
 - (a) The municipality may file a court action pursuant to *N.J.S.A. 2A:58-11* alleging a violation, or violations, of the regulations governing the affordable housing unit. If the owner, developer or tenant is found by the Court to have violated any provision of the regulations governing affordable housing units, the owner, developer or tenant shall be subject to one or more of the following penalties, at the discretion of the Court:
 - (1) A fine of not more than \$500 or imprisonment for a period not to exceed 90 days, or both. Each and every day that the violation continues or exists shall be considered a separate and specific violation of these provisions and not as a continuing offense;
 - (2) In the case of an owner who has rented his or her low- or moderate-income unit in violation of the regulations governing affordable housing units, payment into the Township of Verona affordable housing trust fund of the gross amount of rent illegally collected;
 - (3) In the case of an owner who has rented his or her low- or moderate-income unit in violation of the regulations governing affordable housing units, payment of an innocent tenant's reasonable relocation costs, as determined by the Court.
 - (b) The municipality may file a court action in the Superior Court seeking a judgment, which would result in the termination of the owner's equity or other interest in the unit, in the nature of a mortgage foreclosure. Any judgment shall be enforceable as if the same were a judgment of default of the first purchase money mortgage and shall constitute a lien against the low- and moderate-income unit.
3. Such judgment shall be enforceable, at the option of the municipality, by means of an execution sale by the Sheriff, at which time the low- and moderate-income unit of the violating owner shall be sold at a sale price which is not less than the amount necessary to fully satisfy and pay off any first purchase money mortgage and prior liens and the costs of the enforcement proceedings incurred by the municipality, including attorney's fees. The violating owner shall have the right to possession terminated as well as the title conveyed pursuant to the Sheriff's sale.
4. The proceeds of the Sheriff's sale shall first be applied to satisfy the first purchase money mortgage lien and any prior liens upon the low- and moderate-income unit. The excess, if any, shall be applied to reimburse the municipality for any and all costs and expenses incurred in connection with either the court action resulting in the judgment of violation or the Sheriff's sale. In the event that the proceeds from the Sheriff's sale are insufficient to reimburse the municipality in full as aforesaid, the violating owner shall be personally responsible for and to the extent of such deficiency, in addition to any and all costs incurred by the municipality in connection with collecting such deficiency. In the event that a surplus remains after satisfying all of the above, such surplus, if any, shall be placed in escrow by the municipality for the owner and shall be held in such escrow for a maximum period of two years or until such earlier time as the owner shall make a claim with the municipality for such. Failure of the owner to claim such balance within the two-year period shall automatically result in a forfeiture of such balance to the municipality. Any interest accrued or earned on such balance while being held in escrow shall belong to and shall be paid to the municipality, whether such balance shall be paid to the owner or forfeited to the municipality.
5. Foreclosure by the municipality due to violation of the regulations governing affordable housing units shall not extinguish the restrictions of the regulations

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

6. If there are no bidders at the Sheriff's sale, or if insufficient amounts are bid to satisfy the first purchase money mortgage and any prior liens, the municipality may acquire title to the low- and moderate-income unit by satisfying the first purchase money mortgage and any prior liens and crediting the violating owner with an amount equal to the difference between the first purchase money mortgage and any prior liens and costs of the enforcement proceedings, including legal fees and the maximum resale price for which the low- and moderate-income unit could have been sold under the terms of the regulations governing affordable housing units. This excess shall be treated in the same manner as the excess which would have been realized from an actual sale as previously described.
7. Failure of the low- and moderate-income unit to be either sold at the Sheriff's sale or acquired by the municipality shall obligate the owner to accept an offer to purchase from any qualified purchaser which may be referred to the owner by the municipality, with such offer to purchase being equal to the maximum resale price of the low- and moderate-income unit as permitted by the regulations governing affordable housing units.
8. The owner shall remain fully obligated, responsible and liable for complying with the terms and restrictions of governing affordable housing units until such time as title is conveyed from the owner.

D. Appeals

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

§150-19.6. Affordable housing set-aside.

- A. Any site plan or subdivision application that creates five (5) or more new dwelling units shall set-aside 15% of the new units in a rental development, and 20% of the new units in a for-sale development, for low- and moderate-income households consistent with the requirements of this Article. No property shall be subdivided so as to avoid compliance with this requirement. Moreover, this provision governs municipal actions and shall not entitle any property owner or developer to such action by the Township.

Article XXI

Development Fee

§ 150-21.1 Purpose.

In *Holmdel Builders' Association v. Holmdel Township*, 121 N.J. 550 (1990), the New Jersey Supreme Court determined that mandatory development fees are authorized by the Fair Housing Act of 1985, *N.J.S.A. 52:27d-301 et seq.*, and the State Constitution, subject to the Council on Affordable Housing's (COAH's) adoption of rules. This article establishes the standards for the collection, maintenance, and expenditure of development fees pursuant to COAH's rules. Fees collected pursuant to this article shall be used for the sole purpose of providing low- and moderate-income housing. This article shall be interpreted within the framework of COAH's rules on development fees.

§ 150-21.2 Basic requirements.

The Township of Verona shall not spend development fees until the Superior Court (Court) has approved a plan for spending such fees and the Township of Verona has received third round substantive certification from COAH or a judgment of compliance from the Court.

§ 150-21.3 Residential development fees.

- A. Within all of the Township of Verona Zoning Districts, residential developers shall pay a fee of 1% of the equalized assessed value for residential development, provided no increased

density is permitted.

- B. When an increase in residential density pursuant to *N.J.S.A. 40:55D-70d(5)* (known as a "d" variance) has been permitted, developers may be required to pay a development fee of 6% of the equalized assessed value for each additional unit that may be realized.

Example: If an approval allows for four units to be constructed on a site that was zoned for two units, the fees could equal 1% of the equalized assessed value on the first two units, and 6% of the equalized assessed value for the additional two units. However, if the zoning on the site has changed during the two-year period preceding the filing of such a variance application, the 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.

§ 150-21.4 Residential development fees - Eligible exactions; ineligible exactions and exemptions.

- A. Affordable housing developments shall be exempt from development fees. All other forms of new construction shall be subject to development fees unless exempted below.
- B. Developments that have received preliminary or final approval prior to the imposition of a Township development fee shall be exempt from development fees unless the developer seeks a substantial change in the approval.
- C. Development fees shall be imposed and collected when an existing structure is expanded or undergoes a change to a more intense use. The development fee shall be calculated on the increase in the equalized assessed value of the improved structure.
- D. Developers of tax-exempt or not-for-profit projects shall be subject to a reduced development fee of 1%.
- E. Developers of existing single family residential dwellings shall be exempt from development fees, including additions, renovations, rebuilding or replacement of an existing single-family dwelling and the construction of accessory buildings or other structures on the same lot as the principal dwelling, provided no increase in density is permitted.

§ 150-21.5 Nonresidential development fees.

- A. Within all zoning districts, non-residential 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 non-residential construction on an unimproved lot or lots.
- B. Non-residential 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 non-residential purposes.
- C. Development fees shall be imposed and collected when an existing structure is demolished and replaced. The development fee of two and a half percent (2.5%) shall be calculated on the difference between the equalized assessed value of the pre-existing land and improvement and the equalized assessed value of the newly improved structure, i.e land and improvement, at the time final certificate of occupancy is issued. If the calculation required under this section results in a negative number, the non-residential development fee shall be zero.

§ 150-21.6 Nonresidential development fees - Eligible exactions; ineligible exactions and exemptions.

- F. The non-residential portion of a mixed-use inclusionary or market rate development shall be subject to the two and a half (2.5) percent development fee, unless otherwise exempted below.
- G. The 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.
- H. Nonresidential developments shall be exempt from the payment of nonresidential development fees in accordance with the exemptions required pursuant to the Statewide

Non-Residential Development Fee Act (*N.J.S.A. 40:55D-8.1 through 8.7*), as specified in Form N-RDF "State of New Jersey Non-Residential Development Certification/Exemption." Any exemption claimed by a developer shall be substantiated by that developer.

- I. A developer of a nonresidential development exempted from the nonresidential development fee pursuant to the Statewide Non-Residential Development Fee Act shall be subject to the fee at such time as the basis for the exemption no longer applies, and shall make the payment of the nonresidential development fee, in that event, within three years after that event or after the issuance of the final certificate of occupancy for the nonresidential development, whichever is later.
- J. 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 Township of Verona as a lien against the real property of the owner.

§ 150-21.7 Collection of fees.

- A. Upon the granting of a preliminary, final or other applicable approval for a development, the applicable approving authority or entity shall notify or direct its staff to notify the construction official responsible for the issuance of a building permit.
- B. For non-residential developments only, the developer shall also be provided with a copy of Form N-RDF "State of New Jersey Non-Residential Development Certification/Exemption" to be completed as per the instructions provided. The developer of a non-residential development shall complete Form N-RDF as per the instructions provided. The construction official shall verify the information submitted by the non-residential developer as per the instructions provided in the Form N-RDF. The Tax assessor shall verify exemptions and prepare estimated and final assessments as per the instructions provided in Form N-RDF.
- 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 shall notify 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 Township of Verona 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 time of 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 the issuance of the certificate of occupancy. No certificate of occupancy shall be issued to the developer until all remaining developer fees have been paid in full.

§ 150-21.8 Contested fees.

- A. A developer may challenge residential development fees imposed by filing a challenge with the County Board of Taxation. Pending a review and determination by the Board, collected fees shall be placed in an interest-bearing escrow account by Verona Township. Appeals from a determination of the Board may be made to the tax court in accordance with the provisions of the State Tax Uniform Procedure Law, R.S.54:48-1 et seq., within 90

days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.

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

§ 150-21.9 Affordable housing trust fund.

- A. There is hereby created a separate, interest-bearing housing trust fund in Investors Bank for the purpose of depositing development fees collected from residential and nonresidential developers and proceeds from the sale of units with extinguished controls. All development fees paid by developers pursuant to this article shall be deposited into this fund. 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 Verona's affordable housing program.
- B. Within seven days from the opening of the trust fund account, Township of Verona shall provide the Court with written authorization, in the form of a three-party escrow agreement between the Township, Investors Bank, and a Court-approved entity to permit the Court-approved entity to direct the disbursement of the funds as provided for in N.J.A.C. 5:93-8. The Superior Court shall now have such jurisdiction to direct the disbursement of the Township's trust funds per N.J.A.C. 5:93-8.
- C. No funds shall be expended from the affordable housing trust fund unless the expenditure conforms to a spending plan approved by the Court. All interest accrued in the housing trust fund shall only be used on eligible affordable housing activities approved by the Court.

§ 150-21.10 Use of funds.

- A. Funds deposited in the housing trust fund may be used for any activity approved by the Court to address the Township's fair share. 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, 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 pursuant to N.J.A.C. 5:93-8 and specified in the approved spending plan. The expenditure of all funds shall conform to a spending plan approved by the Court.
- B. Funds shall not be expended to reimburse Township of Verona for past housing activities.
- C. After subtracting development fees collected to finance an RCA, a rehabilitation program or

a new construction project that are necessary to address the Township of Verona's affordable housing obligation, at least 30% of the balance remaining shall be used to provide affordability assistance to low- and moderate-income households in affordable units included in the municipal fair share plan. One-third of the affordability assistance portion of development fees collected shall be used to provide affordability assistance to those households earning 30% or less of median income by region.

- (1) Affordability assistance programs may include down payment assistance, security deposit assistance, low interest loans, and rental assistance.
 - (2) Affordability assistance to households earning 30% or less of median income may include buying down the cost of low- or moderate-income units in the third-round municipal fair share plan to make them affordable to households earning 30% 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.
- D. Township of Verona may contract with a private or public entity to administer any part of its housing element and fair share plan, including the requirement for affordability assistance, in accordance with N.J.A.C. 5:93-8.16.
- E. No more than 20% of the revenues collected from development fees each year, exclusive of the fees used to fund an RCA, shall 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 of the Court-approved Settlement Agreement with Fair Share Housing Center. Development fee administrative costs are calculated and may be expended at the end of each year or upon receipt of the fees. 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.

§ 150-21.11 Monitoring.

On the anniversary of the Judgment of Compliance and Repose for every year through 2025, Verona shall provide annual reporting of trust fund activity to the New Jersey Department of Community Affairs ("DCA"), COAH, or Local Government Services ("LGS"), 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 DCA, COAH, or LGS. This reporting shall include an accounting of all housing trust fund activity, including the collection of development fees from 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 Verona's housing program, as well as to the expenditure of revenues and implementation of the plan approved by the Court.

§ 150-21.12 Ongoing collection of fees.

The ability for the Township of Verona to impose, collect and expend development fees shall expire with its Judgment Of Compliance and Repose, unless the Township of Verona has filed an adopted housing element and fair share plan with the Court or other appropriate jurisdiction, has petitioned for declaratory judgment or substantive certification, and has received the Court's approval of its development fee ordinance. If the Township of Verona fails to renew its ability to impose and collect development fees prior to the expiration of its Judgment of Compliance and Repose or substantive certification, it may be subject to forfeiture of any or all funds remaining within its municipal trust fund. Any funds so forfeited shall be deposited into the New Jersey Affordable Housing Trust Fund established pursuant to Section 20 of P.L. 1985, c. 222 (N.J.S.A. 52:27D-320).

SECTION TWO: REPEAL OF INCONSISTENT PROVISIONS

All ordinances or parts thereof in conflict or inconsistent with this Ordinance are hereby repealed, but only to the extent of such conflict or inconsistency, it being the legislative intent that all such ordinances or part of ordinances now existing or in effect unless the same are in conflict or inconsistent with any provision of this Ordinance shall remain in effect.

SECTION THREE: SEVERABILITY

The provisions of this Ordinance are declared to be severable and if any section, subsection, sentence, clause or phrase thereof for any reason be held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining sections, subsections, sentences, clauses and phrases of this Ordinance, but shall remaining in effect; it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

SECTION FOUR: EFFECTIVE DATE

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

SECTION FIVE: CODIFICATION

This ordinance shall be a part of the Code of the Township of Verona as though codified and fully set forth therein. The Municipal Clerk shall have this ordinance codified and incorporated in the official copies of the Code.

The Municipal Clerk and the Township Attorney are authorized and directed to change any Chapter, Article and/or Section number of the Code of the Township of Verona in the event that -the codification of this Ordinance reveals that there is a conflict between the numbers and the existing Code, and in order to avoid confusion and possible accidental repealers of existing provisions not intended to be repealed.



ATTEST:

Jennifer Kiernan
JENNIFER KIERNAN
MUNICIPAL CLERK

I HEREBY CERTIFY THAT THE AFOREMENTIONED ORDINANCE WAS PUBLISHED IN THE STAR LEDGER, A NEWSPAPER PUBLISHED IN THE COUNTY OF ESSEX AND CIRCULATED IN THE TOWNSHIP OF VERONA, IN THE ISSUE OF MAY 30, 2023 AND JUNE 16, 2023.

**JENNIFER KIERNAN
MUNICIPAL CLERK**

INTRODUCTION: May 1, 2023
PUBLIC HEARING: June 12, 2023
EFFECTIVE DATE: July 2, 2023