

**TOWNSHIP OF FRANKLIN
GLOUCESTER COUNTY, NEW JERSEY**

ORDINANCE # 13- 23

**AN ORDINANCE SUPPLEMENTING CHAPTER 138, ENTITLED
AFFORDABLE HOUSING, BY ADDING SECTION 138-11 ENTITLED
“AFFORDABLE HOUSING REGULATIONS” OF THE CODE OF THE
TOWNSHIP OF FRANKLIN TO ADDRESS THE REQUIREMENTS OF
THE FAIR HOUSING ACT, THE UNIFORM HOUSING
AFFORDABILITY CONTROLS, AND THE TOWNSHIP’S
AFFORDABLE HOUSING OBLIGATIONS.**

WHEREAS, , in furtherance of the Supreme Court’s March 10, 2015, decision captioned In re Adoption of N.J.A.C. 5:96 & 5:97 by N.J. Council on Affordable Housing, 221 N.J. 1 (2015) (the “Supreme Court Decision”), the Township of Franklin (hereinafter ‘the Township’) filed a complaint for declaratory and injunctive relief seeking a judgment of compliance and repose on July 2, 2015 under Docket number GLO-L-901-15 (hereinafter the “Litigation”); and

WHEREAS, the Township agreed to settle the said Litigation with all parties through a negotiated Settlement Agreement (hereinafter the “Settlement Agreement”) on May 26, 2022; and

WHEREAS, the Settlement Agreement was approved by the Superior Court of New Jersey, Gloucester County Law Division after a Fairness Hearing and issuance of an Order dated November 2, 2022 (the “Order”); and

WHEREAS, the Franklin Township Planning Board has adopted a Housing Element and Fair Share Plan (“HEFSP”) in compliance with the Settlement Agreement and Order, and pursuant to the Municipal Land Use Law, N.J.S.A. 40:55D-1, *et seq.*; and

WHEREAS, as a condition of the Settlement Agreement, Order, and HEFSP the Township agreed to update Chapter 138, entitled “Affordable Housing,” of the Township Code; and

WHEREAS, having considered the proposed amendment, the Township Committee concurs that the proposed amendment to Chapter 138, to create Article II, does conform to the agreed upon terms of the Settlement Agreement and Order, the Master Plan, and the previously adopted Amended Housing Element and Fair Share Plan and will provide realistic opportunity for the construction of affordable housing units in the Township.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Committee of the Township of Franklin, in the County of Gloucester and State of New Jersey, that:

SECTION 1. Chapter 138, “Affordable Housing,” Article II, entitled, “**Affordable Housing Obligations**,” of the Code of the Township of Franklin, is hereby established and shall be added as follows:

Article II Affordable Housing Obligations

§ 138-11 Share of units

The Township of Franklin has a constitutional obligation to provide affordable housing to its regional fair share of very-low, low-, and moderate-income households in accordance with the Fair Housing Act.

§ 138-12 Affordable housing requirements.

A. Affordable housing obligation.

- (1) This section is intended to assure that very-low, low- and moderate-income units ("affordable units") are created with controls on affordability over time and that very-low, low- and moderate-income households shall occupy these units. This section shall apply except where inconsistent with applicable law.
- (2) The Township of Franklin Planning Board has adopted a Housing Element and Fair Share Plan ("Fair Share Plan") pursuant to the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq. The Fair Share Plan has been endorsed by the governing body. The Fair Share Plan describes the ways the Township of Franklin shall address its fair share for very-low, low- and moderate-income housing as determined by the settlement agreement between the Township and Fair Share Housing Center and Order of the Superior Court, Gloucester County Law Division entered in the case IMO Franklin Township (Docket number GLO-L-901-15) approving said settlement agreement.
- (3) This section implements and incorporates the Fair Share Plan and addresses the requirements of N.J.A.C. 5:93, UHAC (N.J.A.C. 5:80-26.1), any provisions under N.J.A.C. 5:97 that were not invalidated by Mount Laurel IV, and any successor regulations.

B. Definitions. All definitions contained in N.J.A.C. 5:96-1.1 et seq., as may be amended by the decision in In re Adoption of N.J.A.C. 5:96 & 5:97 by N.J. Council on Affordable Housing, 221 N.J. 1 (2015) ("Mount Laurel IV") or a court of competent jurisdiction, Procedural Rules of the New Jersey Council on Affordable Housing, N.J.A.C. 5:93-1.1. et seq. and N.J.A.C. 5:97-1.1. et seq., as may be amended by the decision in Mount Laurel IV or a court of competent jurisdiction, Substantive Rules of the New Jersey Council on Affordable Housing, are hereby incorporated and adopted as if set forth in full herein. For convenience, the following definitions are provided for reference purposes. In the event of any conflict or amendment to the New Jersey Administrative Code (N.J.A.C.), the definitions and rules duly promulgated pursuant to the Administrative Procedures Act shall govern this chapter. The following terms when used in this section shall have the meanings given in this subsection:

ACCESSORY APARTMENT

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

ACT

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

ADAPTABLE

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

ADMINISTRATIVE AGENT

The entity responsible for the administration of affordable units in accordance with this section, N.J.A.C. 5:96, 5:97 and 5:80-26.1 et seq. as designated by the Township of Franklin, or in the absence of such appointment by the Township, as appointed by the developer, sponsor, or owner of affordable housing.

AFFIRMATIVE MARKETING

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

AFFORDABILITY AVERAGE

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

AFFORDABLE

A sales price or rent within the means of a very-low, low-, or moderate-income household as defined in N.J.A.C. 5:97-9; in the case of an ownership unit, that the sales price for the unit conforms to the standards set forth in N.J.A.C. 5:80-26.6, as may be amended and supplemented, and, in the case of a rental unit, that the rent for the unit conforms to the standards set forth in N.J.A.C. 5:80-26.12, as may be amended and supplemented.

AFFORDABLE DEVELOPMENT, AFFORDABLE HOUSING DEVELOPMENT

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

AFFORDABLE HOUSING PROGRAM

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 UHAC (N.J.A.C. 5:80-26.1), any provisions under N.J.A.C. 5:97 that were not invalidated by Mount Laurel IV and any successor regulations., 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 where the unit is situated are 62 years or older; or
- (2) At least 80% of the units are occupied by one person that is 55 years or older; or
- (3) The development has been designated by the Secretary of the U.S. Department of Housing and Urban Development as "housing for older persons" as defined in Section 807(b)(2) of the Fair Housing Act, 42 U.S.C. § 3607.

ALTERNATIVE LIVING ARRANGEMENT

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 licensed by the New Jersey Department of Health and Senior Services to provide apartment-style housing and congregate dining and to assure that assisted living services are available when needed for four or more adult persons unrelated to

the proprietor and that offers units containing, at a minimum, one unfurnished room, a private bathroom, a kitchenette and a lockable door on the unit entrance.

CERTIFIED HOUSEHOLD

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

COUNCIL

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

DCA

The State of New Jersey Department of Community Affairs.

DEFICIENT HOUSING UNIT

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

DEVELOPER

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

DEVELOPMENT

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

FAIR SHARE PLAN

The plan that describes the mechanisms and the funding sources, if applicable, by which a municipality 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.

FHA

The New Jersey Fair Housing Act, N.J.S.A. 52:27D-301 et seq.

HOUSING PLAN ELEMENT

The portion of the Township's Master Plan required by the Municipal Land Use Law (MLUL), N.J.S.A. 40:55D-28b(3) and other legislation.

INCLUSIONARY DEVELOPMENT

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

LOW-INCOME HOUSEHOLD

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

LOW-INCOME UNIT

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

MAJOR SYSTEM

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

MARKET-RATE UNITS

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

MEDIAN INCOME

The median income by household size for the applicable county, as adopted annually by the most recently published regional weighted average of the uncapped Section 8 income limits published by HUD and by the 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.

MODERATE-INCOME UNIT

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

MUNICIPAL HOUSING LIAISON

A municipal employee responsible for oversight of the municipal affordable housing program, including overseeing the administration of affordability controls, the Affirmative Marketing Plan, monitoring and reporting, and supervising any contracted Administrative Agent.

NONEXEMPT SALE

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

PRESENT NEED

An estimate of low- and moderate-income households living in substandard housing as calculated through the use of census surrogates.

PRIOR ROUND HOUSING OBLIGATION

The 1987 – 1999 fair share based on N.J.A.C. 5:93-1.

RANDOM SELECTION PROCESS

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

REGIONAL ASSET LIMIT

The maximum housing value in each housing region affordable to a four-person household with an income at 80% of the regional median as defined by the most recently published regional weighted average of the uncapped Section 8 income limits

published by the Affordable Housing Professionals of New Jersey or a successor entity approved by the Court.

REHABILITATION

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

RENT

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

RESTRICTED UNIT

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

SETTLEMENT AGREEMENT

The settlement agreement between the Township and Fair Share Housing Center (“FSHC”) dated May 26, 2022 entered pursuant to In the Matter of the Application of the Township of Franklin, Docket No. GLO-901-15.

THIRD ROUND HOUSING OBLIGATION

The 1999 – 2025 housing obligation as determined by the Superior Court.

UHAC

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

VERY-LOW-INCOME HOUSEHOLD

A household with a total gross annual household income equal to 30% or less of the median household income.

VERY-LOW-INCOME UNIT

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

WEATHERIZATION

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

C. Monitoring and Reporting Requirements

The Township of Franklin shall comply with the following monitoring and reporting requirements regarding the status of the implementation of its Court-approved Housing Element and Fair Share Plan:

1. Beginning on the first anniversary of the Township’s Judgment of Compliance and Repose, and on every anniversary of that date through July 2, 2025, the Township agrees to provide annual reporting of its Affordable Housing Trust Fund activity to the New Jersey Department of Community Affairs, Council on Affordable Housing, or Local Government Services, Superior Court of New Jersey, or other entity designated by the State of New Jersey, with a copy provided to Fair Share Housing Center (FSHC) and posted on the municipal website, using forms developed for this purpose by the New Jersey Department of Community Affairs (NJCA), Council on Affordable Housing (COAH), or Local Government Services (NJLGS). 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.

2. Beginning on the first anniversary of the Township's Judgment of Compliance and Repose, and on every anniversary of that date through July 2, 2025, the Township agrees to 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 FSHC and the Superior Court of New Jersey (or other entity designated by the State of New Jersey) using forms previously developed for this purpose by COAH or any other forms endorsed by the Special Master and FSHC.
3. By July 1, 2023, as required pursuant to N.J.S.A. 52:27D-313 and the Township's Settlement Agreement with FSHC, the Township will post on its municipal website, with a copy provided to FSHC and the Superior Court of New Jersey (or other entity designated by the State of New Jersey), 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 and whether any mechanisms to meet unmet need should be revised or supplemented. Such posting shall invite any interested party to submit comments to the municipality, with a copy to FSHC, regarding whether any sites no longer present a realistic opportunity and should be replaced and whether any mechanisms to meet unmet need should be revised or supplemented. Any interested party may by motion request a hearing before the Court regarding these issues.
4. Within 30 days of the third anniversary of the Township's Judgment of Compliance and Repose, and every third year thereafter, as required by N.J.S.A. 52:27D-329.1, the Township will post on its municipal website, with a copy provided to FSHC and the Superior Court of New Jersey (or other entity designated by the State of New Jersey), a status report as to its satisfaction of its very low-income requirements, including its family very low-income requirements. 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 and family very low-income housing obligations.

D. Applicability

(1) The provisions of this Ordinance shall apply:

- (a) To all affordable housing developments and affordable housing units that currently exist;
- (b) To all affordable housing development and affordable housing units that are proposed to be created within the Township of Franklin pursuant to the Township's most recently adopted Housing Element and Fair Share Plan
- (c) To all unanticipated future developments that will provide affordable housing for low- and moderate-income households; and
- (d) To any property in the Township that is currently zoned for nonresidential uses and that is subsequently rezoned for multifamily residential purposes, and to all approvals for multifamily residential development granted by the Township Planning Board or Zoning Board of Adjustment, including approvals of use or density variances, site plans, or subdivisions, and redevelopment projects subject to a redevelopment plan adopted by the Township governing body governing the development and redevelopment of designated areas in need of rehabilitation or areas in need of redevelopment in the township, including substantial revisions to previously approved developments, where such rezoning, approval or revision results in or increases the number of residential units by five (5) or more units.

E. Alternative Living Arrangements.

1. The administration of an alternative living arrangement shall be in compliance with N.J.A.C. 5:93-5.8 and UHAC, with the following exceptions:
 - a. Affirmative marketing (N.J.A.C. 5:80-26.15), provided, however, that the units or bedrooms may be affirmatively marketed by the provider in accordance with an alternative plan approved by the Court;
 - b. Affordability average and bedroom distribution (N.J.A.C. 5:80-26.3).
2. With the exception of units established with capital funding through a 20-year operating contract with the Department of Human Services, Division of Developmental Disabilities, alternative living arrangements shall have at least 30-year controls on

affordability in accordance with UHAC, unless an alternative commitment is approved by the Court.

3. The service provider for the alternative living arrangement shall act as the Administrative Agent for the purposes of administering the affirmative marketing and affordability requirements for the alternative living arrangement.
- F. Affordable housing programs. The Township of Franklin has determined that it will use the following mechanisms to satisfy its affordable housing obligations:
- (1) Rehabilitation program.
 - (a) The Township of Franklin rehabilitation program shall be designed to renovate deficient housing units occupied by very-low, low- and moderate-income households such that, after rehabilitation, these units will comply with the New Jersey State Housing Code pursuant to N.J.A.C. 5:28.
 - (b) Both owner-occupied and renter-occupied units shall be eligible for rehabilitation funds. The Township shall participate in Gloucester County's housing rehabilitation program.
 - (c) All rehabilitated units shall remain affordable to very-low, low- and moderate-income households for a period of 10 years (the control period). For owner-occupied units the control period will be enforced with a lien and for renter-occupied units the control period will be enforced with a deed restriction.
 - (d) The Township of Franklin shall dedicate an average of \$10,000 for each unit to be rehabilitated through this program, reflecting the minimum hard cost of rehabilitation for each unit.
 - (e) The Township of Franklin shall designate, subject to the approval of the Superior Court of New Jersey, one or more administrative agents to administer the rehabilitation program in accordance with N.J.A.C. 5:96 and 5:97. The administrative agent(s) shall provide a rehabilitation manual for the owner occupancy rehabilitation program and a rehabilitation manual for the rental occupancy rehabilitation program to be adopted by resolution of the governing body and subject to approval of the Superior Court of New Jersey. Both rehabilitation manuals shall be available for public inspection in the office of the Municipal Clerk and in the office(s) of the administrative agent(s).
 - (f) Units in a rehabilitation program shall be exempt from N.J.A.C. 5:97-9 and Uniform Housing Affordability Controls (“UHAC”), but shall be administered in accordance with the following:
 - [1] If a unit is vacant, upon initial rental subsequent to rehabilitation, or if a renter-occupied unit is re-rented prior to the end of controls on affordability, the deed restriction shall require the unit to be rented to a low- or moderate-income household at an affordable rent and affirmatively marketed pursuant to N.J.A.C. 5:93-11 and UHAC.
 - [2] If a unit is renter-occupied, upon completion of the rehabilitation, the maximum rate of rent shall be the lesser of the current rent or the maximum permitted rent pursuant to N.J.A.C. 5:93-7.4 and UHAC.
 - [3] Rents in rehabilitated units may increase annually based on the standards in N.J.A.C. 5:93-9.15.
 - [4] Applicant and/or tenant households shall be certified as income eligible in accordance with N.J.A.C. UHAC, except that households in owner-occupied units shall be exempt from the regional asset limit.
 - (2) Mandatory Set-Aside. A mandatory affordable housing set-aside requirement shall apply to any residential development, including the residential portion of a mixed use

project, which consists of five (5) or more new residential units in compliance with Section 138-12(G) below.

(3) Inclusionary development.

- (a) Phasing Schedule. In inclusionary developments the following schedule for the issuance of certificates of occupancy for the required affordable housing units relative to the issuance of certificates of occupancy for the permitted market units shall be followed:

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

- (b) Fractional Units. In the event the number of affordable housing units to be provided includes a fraction, the number shall be rounded up if the fractional amount is 0.5 or greater and rounded down if the fractional amount is less than 0.5. For inclusionary projects, the developer shall provide a payment in lieu of constructing affordable units for the fraction of a unit less than 0.5. The payment in lieu shall be based on the amounts established in N.J.A.C. 5:97-6.4(c) as increased by updated development cost documentation on file in the Township.

- (d) Nothing in this Article precludes the municipality from imposing an affordable housing set-aside in accordance with applicable law in a development not required to have a set-aside pursuant to this Article.

(4) Design.

- [1] In inclusionary developments, very-low-, low- and moderate-income units shall be integrated with the market units, and the affordable units shall not be concentrated in separate building(s) or in separate area(s) or floor(s), from the market-rate units. In buildings with multiple dwelling units, this shall mean that the affordable units shall be generally distributed within each building with market rate units.
- [2] The affordable units shall also be of the same type as the market-rate units (e.g., if the market-rate units are non-age-restricted family units, the affordable units shall also be non-age-restricted family units).
- [3] The residents of the affordable units shall have full and equal access to all of the amenities, common areas, and recreation areas and facilities as the residents of market-rate units.

(5) 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.

G. Mandatory Affordable Housing Set Aside

- (1) **Background.** The State of New Jersey has a longstanding and well-established commitment to maximizing the opportunities for the development of housing affordable for very-low-, low-, and moderate-income households.

The provision of “safe, decent and attractive housing that [lower-income households] can afford serves the community’s interest in achieving an integrated, just and free society and promotes the general welfare of all citizens.” De Simone v. Greater Englewood Hous. Corp., 56 N.J. 428, 441 (1970).

Notably, in the Mount Laurel decisions, the New Jersey Supreme Court held that the State’s Constitution makes it “plain beyond dispute that proper provision for adequate housing of all categories of people is certainly an absolute essential in promotion of the general welfare required in all local land use regulation.” S. Burlington Cty. NAACP v. Mount Laurel, 67 N.J. 151, 179 (1975) (Mount Laurel I).

The Court thus found that “each . . . municipality [must] affirmatively . . . plan and provide, by its land use regulations, the reasonable opportunity for an appropriate variety and choice of housing, including, of course, low and moderate cost housing, to meet the needs, desires and resources of all categories of people who may desire to live within its boundaries.” Ibid.

The New Jersey Legislature itself affirmed this commitment when it enacted the Fair Housing Act of 1985, which established that it is in the State’s interest “to maximize the number of low and moderate units by creating new affordable housing and by rehabilitating existing, but substandard, housing in the State.” N.J.S.A. 52:27D-302.

Accordingly, the New Jersey Supreme Court has determined that “[a]ffordable housing is a goal that is no longer merely implicit in the notion of the general welfare. It has been expressly recognized as a governmental end and codified under the FHA.” Holmdel Builders Ass’n v. Holmdel, 121 N.J. 550, 567 (1990).

Since then, New Jersey’s courts have consistently recognized that “[t]he public policy of this State has long been that persons with low and moderate incomes are entitled to affordable housing,” because “[t]here cannot be the slightest doubt that shelter, along with food, are the most basic human needs.” Homes of Hope, Inc. v. Eastampton Tp. Land Use Planning Bd., 409 N.J. Super. 330, 337 (App. Div. 2009) (quoting Mount Laurel I, 67 N.J. at 178).

(2) **20% Affordable Housing Set-Aside.** A twenty percent (20%) mandatory affordable housing set-aside requirement shall apply beginning with the effective date of this ordinance to any residential development, including the residential portion of a mixed-use project, which consists of five (5) or more new residential units at six (6) units per acre or higher, or equivalent, which results, in whole or in part, from: (i) a municipal rezoning or zoning amendment adopted after the effective date of this Ordinance; (ii) any variance pursuant to N.J.S.A. 40:55D-70(d), including but not limited to any use variance or a density variance increasing the permissible density; and (iii) the adoption of a new or amended redevelopment plan or rehabilitation plan.

(3) **Additional Incentives for Affordable Housing.** A developer subject to the mandatory affordable housing set-aside may request, and the appropriate approving authority may, at its discretion, grant additional incentives for affordable housing, including but not limited to a density bonus, a reduction in the off-street parking spaces otherwise required, and/or a reduction in the minimum setback requirements.

(4) **Other Terms Applicable.** The following terms shall apply to any residential development subject to the mandatory affordable housing set-aside:

1. All subdivision and site plan approvals of qualifying developments shall be conditioned upon compliance with the provisions of the mandatory affordable housing set-aside.
2. No subdivision shall be permitted or approved for the purpose of avoiding compliance with the mandatory affordable housing set-aside. A developer may not, for example, subdivide a project into two lots and then plan each of them to

produce a number of units below the threshold. The approving authority may impose any reasonable conditions to ensure such compliance.

3. In the event the number of affordable housing units to be provided includes a fraction, the number shall be rounded up if the fractional amount is 0.5 or greater and rounded down if the fractional amount is less than 0.5. The developer shall provide a payment in lieu of constructing affordable units for the fraction of a unit less than 0.5. The payment in lieu shall be based on the amounts established in N.J.A.C. 5:97-6.4(c).
4. All affordable units created shall fully comply with the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.1, et seq. (“UHAC”), including but not limited to the required bedroom and income distribution, with the sole exception that thirteen percent (13%) of the affordable units shall be required to be restricted for very-low-income households earning thirty percent (30%) or less of the median income pursuant to the Fair Housing Act, N.J.S.A. 52:27D-301, et seq. (“FHA”).
5. At least fifty percent (50%) of the affordable units within each bedroom distribution shall be affordable to low-income households, inclusive of the at least thirteen percent (13%) of units affordable to very-low-income households.
6. The very-low-income affordable units shall be proportionately distributed within each bedroom distribution. In a family non-age-restricted development, at no time shall the number of one-bedroom very-low-income units exceed the number of three-bedroom very-low-income units.
7. Affordable units shall be integrated with the market-rate units, and the affordable units shall not be concentrated in separate building(s) or in separate area(s) from the market-rate units. In buildings with multiple dwelling units, this shall mean that the affordable units shall be generally distributed within each building with market-rate units. The affordable units shall also be of the same type as the market-rate units (e.g., if the market-rate units are non-age-restricted family units, the affordable units shall be non-age-restricted family units as well). The residents of the affordable units shall have full and equal access to all of the amenities, common areas, and recreation areas and facilities as the residents of the market-rate units.
8. Affordable units shall be subject to affordability controls of at least thirty (30) years from the date of initial occupancy and affordable deed restrictions as otherwise provided for by UHAC, with the sole exception that very low income shall be defined as at or below thirty percent (30%) of median income pursuant to the Fair Housing Act, and the affordability controls shall remain unless and until the municipality, in its sole discretion, takes action to extend or release the unit from such controls after at least thirty (30) years.
9. Construction of the affordable and market units shall be phased in compliance with N.J.A.C. 5:93-5.6(d).
10. Affordable units shall be affirmatively marketed in accordance with UHAC and applicable law. The affirmative marketing shall include posting of all affordable units on the New Jersey Housing Resource Center website in accordance with applicable law.
11. The mandatory affordable housing set-aside shall not give any developer the right to any rezoning, variance, redevelopment designation or redevelopment or rehabilitation plan approval, or any other such relief, or establish any obligation on the part of the municipality to grant such rezoning, variance, redevelopment designation, redevelopment or rehabilitation plan approval, or other such or further relief.

12. No developer may make a payment in lieu of constructing affordable units on site, except for fractional units as noted in Paragraph 3, above.
13. Nothing in this ordinance precludes the municipality from imposing an affordable housing set-aside in a development not required to have a set-aside pursuant to this Ordinance.

H. New construction.

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

(1) Low/moderate split and bedroom distribution of affordable housing units:

- (a) The fair share obligation shall be divided equally between low- and moderate-income units, except that where there is an odd number of affordable housing units, the extra unit shall be a low-income unit.
- (b) In each affordable development, at least 50% of the restricted units within each bedroom distribution shall be low-income units. At least 13% of all affordable units shall be very-low-income units (affordable to a household earning 30% or less of regional median income by household size). The very-low income units shall count as a portion of the share of low income units.
- (c) Affordable developments that are not age-restricted shall be structured in conjunction with realistic market demands such that:
 - [1] The combined number of efficiency and one-bedroom units shall be no greater than 20% of the total affordable units;
 - [2] At least 30% of all affordable units shall be two-bedroom units;
 - [3] At least 20% of all affordable units shall be three-bedroom units; and
 - [4] The remaining units may be allocated among two- and three-bedroom units at the discretion of the developer.
- (d) Affordable developments that are age-restricted shall be structured such that the number of bedrooms shall equal the number of age-restricted low- and moderate-income units within the inclusionary development. This standard may be met by having all one-bedroom units or by having a two-bedroom unit for each efficiency unit.

(2) Accessibility requirements.

- (a) The first floor of all restricted townhouse dwelling units and all restricted units in all other multistory buildings shall be subject to the technical design standards of the Barrier Free Sub-code, N.J.A.C. 5:23-7 and 5:97-3.14.
- (b) All restricted townhouse dwelling units and all restricted units in other multistory buildings in which a restricted dwelling unit is attached to at least one other dwelling unit shall have the following features:
 - [1] An adaptable toilet and bathing facility on the first floor;
 - [2] An adaptable kitchen on the first floor;
 - [3] An interior accessible route of travel on the first floor;
 - [4] An interior accessible route of travel shall not be required between stories within an individual unit;
 - [5] 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

- [6] 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 Sub-code, N.J.A.C. 5:23-7 and 5:97-3.14, or evidence that the Township of Franklin has collected funds from the developer sufficient to make 10% of the adaptable entrances in the development accessible:
- [a] 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.
 - [b] To this end, the builder of restricted units shall deposit funds within the Township of Franklin Affordable Housing Trust Fund sufficient to install accessible entrances in 10% of the affordable units that have been constructed with adaptable entrances.
 - [c] The funds deposited under Subsection D(2)(b)[6][b] above shall be used by the Township of Franklin 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.
 - [d] 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 Franklin.
 - [e] 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 Sub-code, N.J.A.C. 5:23-7 and 5:97-3.14, and that the cost estimate of such conversion is reasonable, payment shall be made to the Township of Franklin 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.
- (c) Full compliance with the foregoing provisions shall not be required where an entity can demonstrate that it is site impracticable to meet the requirements. Determinations of site impracticability shall be in compliance with the Barrier Free Subcode, N.J.A.C. 5:23-7 and 5:97-3.14.

(3) Income limits; maximum rents and sales prices.

- (a) In establishing rents and sales prices of affordable housing units, the administrative agent shall follow the procedures set forth in UHAC utilizing the regional income limits established by the most recently published regional weighted average of the uncapped Section 8 income limits published by the Affordable Housing Professionals of New Jersey or a successor entity approved by the Court, as detailed below:
 - [1] Regional income limits shall be established for the region in which the Township is located (in this case, Region 5) 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 the Township's housing region. 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.

- [2] The income limits are the result of applying the percentages set forth in paragraph (a) above to HUD's determination of median income for the current 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.
- [3] 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 paragraph (a) above over the previous year's income limits, and applying the same percentage increase to the Regional Asset Limit from the prior year. In no event shall the regional asset limit be less than that for the previous year.
- (b) The maximum rent for restricted-rental units within each affordable development shall be affordable to households earning no more than 60% of median income, and the average rent for restricted very-low, low- and moderate-income units shall be affordable to households earning no more than 52% of median income.
- (c) The developers and/or municipal sponsors of restricted-rental units shall establish at least one rent for each bedroom type for very-low, low-income and moderate-income units.
- (d) The maximum sales price of restricted-ownership units within each affordable development shall be affordable to households earning no more than 70% of median income, and each affordable development must achieve an affordability average of 55% for restricted-ownership units; in achieving this affordability average, moderate-income ownership units must be available for at least three different prices for each bedroom type, and low-income-ownership units must be available for at least two different prices for each bedroom type.
- (e) In determining the initial sales prices and rents for compliance with the affordability average requirements for restricted units other than assisted living facilities, the following standards shall be used:
- [1] A studio shall be affordable to a one-person household;
- [2] A one-bedroom unit shall be affordable to a one-and-one-half-person household;
- [3] A two-bedroom unit shall be affordable to a three-person household;
- [4] A three-bedroom unit shall be affordable to a four-and-one-half-person household; and
- [5] A four-bedroom unit shall be affordable to a six-person household.
- (f) In determining the initial rents for compliance with the affordability average requirements for restricted units in assisted living facilities, the following standards shall be used:
- [1] A studio shall be affordable to a one-person household;
- [2] A one-bedroom unit shall be affordable to a one-and-one-half-person household; and

[3] A two-bedroom unit shall be affordable to a two-person household or to two one-person households.

- (g) The initial purchase price for all restricted-ownership units shall be calculated so that the monthly carrying cost of the unit, including principal and interest (based on a mortgage loan equal to 95% of the purchase price and the Federal Reserve H.15 rate of interest), taxes, homeowner and private mortgage insurance and condominium or homeowner association fees do not exceed 28% of the eligible monthly income of the appropriate size household as determined under N.J.A.C. 5:80-26.4, as may be amended and supplemented; provided, however, that the price shall be subject to the affordability average requirement of N.J.A.C. 5:80-26.3, as may be amended and supplemented.
 - (h) The initial rent for a restricted-rental unit shall be calculated so as not to exceed 30% of the eligible monthly income of the appropriate household size as determined under N.J.A.C. 5:80-26.4, as may be amended and supplemented; provided, however, that the rent shall be subject to the affordability average requirement of N.J.A.C. 5:80-26.3, as may be amended and supplemented.
 - (i) The price of owner-occupied low- and moderate-income units may increase annually based on the percentage increase in the regional median income limit for each housing region. In no event shall the maximum resale price established by the administrative agent be lower than the last recorded purchase price.
 - (j) The rent of low- and moderate-income units may be increased annually based on the percentage increase in the Housing Consumer Price Index for the United States. This increase shall not exceed 9% in any one year. Rents for units constructed pursuant to low-income housing tax credit regulations shall be indexed pursuant to the regulations governing low-income housing tax credits.
 - (k) Utilities. Tenant-paid utilities that are included in the utility allowance shall be so stated in the lease and shall be consistent with the utility allowance approved by HUD for its Section 8 program.
- I. The following general guidelines apply to all developments that contain very-low, low- and moderate-income housing units, including any currently unanticipated future developments that will provide low- and moderate-income housing units:
- (1) Occupancy standards.
 - (a) In referring certified households to specific restricted units, to the extent feasible, and without causing an undue delay in occupying the unit, the administrative agent shall strive to:
 - [1] Provide an occupant for each bedroom;
 - [2] Provide children of different sex with separate bedrooms; and
 - [3] Prevent more than two persons from occupying a single bedroom.
 - (b) Additional provisions related to occupancy standards (if any) shall be provided in the municipal operating manual.
 - (2) 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 section until the Township of Franklin elects to release the unit from such requirements, however, and prior to such an election, a restricted-ownership unit must remain subject to the requirements of N.J.A.C. 5:80-26.1, as may be amended and supplemented, for at least 30 years.
 - (b) The affordability control period for a restricted-ownership unit shall commence on the date the initial certified household takes title to the unit.

- (c) Prior to the issuance of the initial certificate of occupancy for a restricted-ownership unit and upon each successive sale during the period of restricted ownership, the administrative agent shall determine the restricted price for the unit and shall also determine the non-restricted, fair-market value of the unit based on either an appraisal or the unit's equalized assessed value.
 - (d) At the time of the first sale of the unit, the purchaser shall execute and deliver to the administrative agent a recapture note obligating the purchaser (as well as the purchaser's heirs, successors and assigns) to repay, upon the first nonexempt sale after the unit's release from the requirements of this section, 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 section shall remain in effect despite the entry and enforcement of any judgment of foreclosure with respect to restricted-ownership units.
 - (f) A restricted-ownership unit shall be required to obtain a continuing certificate of occupancy or a certified statement from the Construction Official stating that the unit meets all code standards upon the first transfer of title that follows the expiration of the applicable minimum control period provided under N.J.A.C. 5:80-26.5(a), as may be amended and supplemented.
- (3) Price restrictions for restricted-ownership units, homeowner association fees and resale prices. Price restrictions for restricted-ownership units shall be in accordance with N.J.A.C. 5:80-26.1, as may be amended and supplemented, including:
- (a) The initial purchase price for a restricted-ownership unit shall be approved by the administrative agent.
 - (b) The administrative agent shall approve all resale prices, in writing and in advance of the resale, to assure compliance with the foregoing standards.
 - (c) The method used to determine the condominium association fee amounts and special assessments shall be indistinguishable between the low- and moderate-income-unit owners and the market-unit owners.
 - (d) The owners of restricted-ownership units may apply to the administrative agent to increase the maximum sales price for the unit on the basis of capital improvements made since the purchase of the unit. Eligible capital improvements shall be those that render the unit suitable for a larger household or the addition of a bathroom. In no event shall the maximum sales price of an improved housing unit exceed the limits of affordability for the larger household.
 - (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 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.

(4) Buyer income eligibility.

- (a) Buyer income eligibility for restricted-ownership units shall be in accordance with N.J.A.C. 5:80-26.1, as may be amended and supplemented, such that low-income-ownership units shall be reserved for households with a gross household income less than or equal to 50% of median income and moderate-income-ownership units shall be reserved for households with a gross household income less than 80% of median income.
 - (b) The administrative agent shall certify a household as eligible for a restricted-ownership unit when the household is a low-income household or a moderate-income household, as applicable to the unit, and the estimated monthly housing cost for the particular unit (including principal, interest, taxes, homeowner and private mortgage insurance and condominium or homeowner association fees, as applicable) does not exceed 33% of the household's certified monthly income.
 - (c) Notwithstanding the foregoing, the Administrative Agent may, upon approval by the Township Committee, 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.
 - (d) 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.
 - (e) The Administrative Agent shall certify a household as eligible for a restricted ownership unit when the household is very low-income household, 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 eligible monthly income.
- (5) Limitations on indebtedness secured by ownership unit; subordination.
- (a) Prior to incurring any indebtedness to be secured by a restricted-ownership unit, the administrative agent shall determine in writing that the proposed indebtedness complies with the provisions of this section.
 - (b) With the exception of original purchase money mortgages, during a control period neither an owner nor a lender shall at any time cause or permit the total indebtedness secured by a restricted-ownership unit to exceed 95% of the maximum allowable resale price of that unit, as such price is determined by the administrative agent in accordance with N.J.A.C. 5:80-26.6(b).
- (6) 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 section until the Township of Franklin elects to release the unit from such requirements pursuant to action taken in compliance with N.J.A.C. 5:80-26.1, as may be amended and supplemented, and prior to such an election, a restricted-rental unit must remain subject to the requirements of N.J.A.C. 5:80-26.1, as may be amended and supplemented, for at least 30 years.

- (b) Deeds of all real property that 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 Gloucester. 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 section, 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.

(7) Price restrictions for rental units; leases.

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

(8) 100% Affordable Projects.

All 100% affordable projects, including projects funded through Low Income Housing Tax Credits, shall comply with the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.1, et. seq., except as modified by the terms of the settlement agreement executed between the Township of Franklin and Fair Share Housing Center (FSHC), as such settlement agreement may be further amended and supplemented. All such projects shall be required to have an initial thirty (30) year affordability control period plus a fifteen (15) year extended use period.

(9) 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% of median income.
 - [2] Low-income rental units shall be reserved for households with a gross household income less than or equal to 50% of median income.
 - [3] Moderate-income rental units shall be reserved for households with a gross household income less than 80% of median income.
- (b) The administrative agent shall certify a household as eligible for a restricted-rental unit when the household is a very-low-income, low-income household or a moderate-income household, as applicable to the unit, and the rent proposed for the unit does not exceed 35% (40% for age-restricted units) of the household's eligible monthly income as determined pursuant to N.J.A.C. 5:80-26.16, as may be amended and supplemented; provided, however, that this limit may be exceeded if one or more of the following circumstances exists:

- [1] 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;
 - [2] 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 continuing 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 Subsection I(9)(b)[1] through [5] above with the administrative agent, who shall counsel the household on budgeting.

J. Administration.

- (1) Municipal Housing Liaison. The position of Municipal Housing Liaison (MHL) for the Township of Franklin is established by this section. The Township Committee shall make the actual appointment of the MHL by means of a resolution.
- (a) The MHL must be either a full-time or part-time employee of Township of Franklin.
 - (b) The person appointed as the MHL must be reported to the New Jersey Superior Court for approval.
 - (c) The MHL must meet all applicable requirements for qualifications, including initial and periodic training.
 - (d) The Municipal Housing Liaison shall be responsible for oversight and administration of the affordable housing program for the Township of Franklin, including the following responsibilities which may not be contracted out to the administrative agent:
 - [1] Serving as the municipality's primary point of contact for all inquiries from the state, affordable housing providers, administrative agents and interested households;
 - [2] The implementation of the affirmative marketing plan and affordability controls;
 - [3] When applicable, supervising any contracting administrative agent;
 - [4] Monitoring the status of all restricted units in the Township of Franklin Fair Share Plan;
 - [5] Compiling, verifying and submitting annual reports as required by the New Jersey Superior Court;
 - [6] Coordinating meetings with affordable housing providers and administrative agents, as applicable; and
 - [7] Attending continuing education opportunities on affordability controls, compliance monitoring and affirmative marketing as offered or approved by the New Jersey Superior Court.
- (2) Administrative Agent. The Township of Franklin shall designate by resolution of the Township Committee, subject to the approval of the New Jersey Superior Court, one

or more administrative agents to administer newly constructed affordable units in accordance with N.J.A.C. 5:96, 5:97 and UHAC.

(a) An Administrative Agent may either be an independent entity serving under contract to and reporting to the municipality, or the municipality itself, through a designated municipal employee, department, board, agency or committee, pursuant to N.J.A.C. 5:80-26.14(c). ***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.*** The Administrative Agent shall be qualified through a training program sponsored by the Affordable Housing Professionals of New Jersey before assuming the duties. The administrative agent shall perform the duties and responsibilities of an administrative agent as are set forth in UHAC and which are described in full detail in the operating manual, including those set forth in N.J.A.C. 5:80-26.14, 5:80-26.16 and 5:80-26.18 thereof, which includes:

[1] Attending continuing education opportunities on affordability controls, compliance monitoring, and affirmative marketing as offered or approved by the New Jersey Superior Court;

[2] Affirmative marketing:

- a. Conducting an outreach process to affirmatively market affordable housing units in accordance with the Affirmative Marketing Plan of the Township and the provisions of N.J.A.C. 5:80-26.15;
- b. Notifying the following entities of the availability of affordable housing units in the Township of Franklin: Fair Share Housing Center, the New Jersey State Conference of the NAACP, the Latino Action Network, Gloucester County and Salem County branches of the NAACP, Senior Citizens United Community Services (S.C.U.C.S.), the New Jersey Housing Resource Center, and the Supportive Housing Association;

[3] Household certification

- a. Soliciting, scheduling, conducting and following up on interviews with interested households;
- b. 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;
- c. Providing written notification to each applicant as to the determination of eligibility or non-eligibility;
- d. 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.;
- e. 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 (Housing Region 5) comprising Burlington, Camden and Gloucester Counties;
- f. Employing a random selection process as provided in the Affirmative Marketing Plan of the Township when referring households for certification to affordable units; and
- g. Providing counseling or contracting to provide counseling services to very low-, low- and moderate-income applicants on subjects such as budgeting, credit issues, mortgage qualification, rental lease requirements, and landlord/tenant law.

[4] Affordability controls

- a. 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;
- b. 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;
- c. Ensuring that the removal of the deed restrictions and cancellation of the mortgage note are effectuated and properly filed with the Gloucester County Clerk's office after the termination of the affordability controls for each restricted unit;
- d. Communicating with lenders regarding foreclosures; and
- e. Ensuring the issuance of continuing certificates of occupancy or certifications pursuant to N.J.A.C. 5:80-26.10.

[5] Records retention;

[6] Resale and re-rental

- a. Instituting and maintaining an effective means of communicating information between owners and the Administrative Agent regarding the availability of restricted units for resale or re-rental; and
- b. 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.

[7] Processing requests from unit owners

- a. 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 article;
- b. 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;
- c. Notifying the municipality of an owner's intent to sell a restricted unit; and
- d. Making determinations on requests by owners of restricted units for hardship waivers.

[8] Enforcement, though the ultimate responsibility for retaining controls on the units rests with the municipality.

- a. Securing annually from the municipality a list of all for-sale 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;
- b. 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;
- c. The posting annually in all rental properties, including legal two-family homes, of a notice as to the maximum permitted rent for affordable units,

together with the telephone number of the Administrative Agent where complaints of excess rent or other charges can be made;

- d. 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;
- e. Establishing a program for diverting unlawful rent payments to the municipality's Affordable Housing Trust Fund; and
- f. Creating and publishing a written operating manual for each affordable housing program administered by the Administrative Agent, to be approved by the Township Committee and the Court, setting forth procedures for administering the affordability controls.

[9] Additional responsibilities

- a. The administrative agent shall have authority to take all actions necessary and appropriate to carry out its responsibilities hereunder.
- b. The Administrative Agent shall prepare monitoring reports for submission to the Municipal Housing Liaison in time to meet the Court-approved monitoring and reporting requirements in accordance with the deadlines set forth in this Article.
- c. The Administrative Agent shall attend continuing education sessions on affordability controls, compliance monitoring, and affirmative marketing at least annually and more often as needed.

(3) Operating Manuals. An operating manual shall be provided by the administrative agent(s) to be adopted by resolution of the governing body and subject to approval of the New Jersey Superior Court. The operating manuals shall be available for public inspection in the office of the Municipal Clerk and in the office(s) of the administrative agent(s).

K. Affirmative marketing plan. The Township of Franklin 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 and the FHA, as may be amended and supplemented. The affirmative marketing plan is a regional marketing strategy designed to attract buyers and/or renters of all majority and minority groups, regardless of sex, age or number of children, to housing units which are being marketed by a developer/sponsor, municipality and/or designated administrative agency of affordable housing. The plan will address the requirements of N.J.A.C. 5:96 et seq. In addition, the plan prohibits discrimination in the sale, rental, financing or other services related to housing on the basis of race, color, sex, religion, handicap, age, familial status/size or national origin. The Township of Franklin is in the housing region consisting of Burlington, Camden, and Gloucester Counties. The affirmative marketing program is a continuing program and will meet the following requirements:

- (1) All newspaper articles, announcements and requests for applications for low- and moderate-income units will appear in the Courier Post and the Gloucester County Times, and may appear on the local cable television station. In implementing the affirmative marketing plan, the administrative agent shall consider the use of language translations where appropriate. The costs of advertising and affirmative marketing of the affordable units shall be the responsibility of the developer, sponsor or owner.
- (2) The primary marketing will take the form of at least one press release each sent to the above publications and a paid display advertisement in the above publications. Additional advertising and publicity will be on an as-needed basis. The advertisement will include the:
 - (a) Street address;
 - (b) Direction to housing units;

- (c) Number of bedrooms per unit;
 - (d) Range of selling prices/rents;
 - (e) Size of units;
 - (f) Household income limits; and
 - (g) Location of applications including business hours and where/how applications may be obtained.
- (3) The following is the location of applications, brochure(s), sign(s), and/or poster(s) used as part of the affirmative marketing program including specific employment centers within the region:
- (a) Municipal building.
 - (b) Municipal library.
 - (c) Developer's sales/rental office on site.
 - (d) Senior center.
 - (e) Libraries in Burlington, Camden, and Gloucester Counties.
- (4) The following is a list of community organization(s) that will aid in the affirmative marketing program with particular emphasis on contacts that will reach out to groups that are least likely to apply for housing within the region: County Offices in Burlington, Camden, and Gloucester Counties, Fair Share Housing Center, the New Jersey State Conference of the NAACP, the Latino Action Network, Gloucester County NAACP, Salem County NAACP, Senior Citizens United Community Services, the state of New Jersey Housing Resource Center, and Supportive Housing Association. The Township also agrees to require any other entities, including developers or persons or companies retained to do affirmative marketing, to comply with this subsection.
- (5) 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. Additionally, applications will be sent to the chief administrative employees of each of the following agencies in the counties of Burlington, Camden, and Gloucester:
- (a) County Department of Human and Social Services.
 - (b) County Department of Community Development.
- (6) The following is a description of the random selection method that will be used to select occupants of low- and moderate-income housing: There will be a period in which to complete and submit applications. The names of households that have completed applications in that time frame and who are income eligible will be randomly selected to see the apartments. Each landlord will select the renter for his/her unit from the eligible list of applicants provided by the administrative agent.
- (7) Franklin Township is ultimately responsible for administering the affirmative marketing program. Franklin Township has delegated this responsibility to an affordable housing consultant to be appointed on an annual basis which will income qualify low- and moderate-income households; place income-eligible households in very-low, low- and moderate-income units upon initial occupancy; provide for the initial occupancy of very-low, low- and moderate-income units with income-qualified households; continue to qualify households for re-occupancy of units as they become vacant during the period of affordability controls; assist with advertising and outreach to low- and moderate-income households if in contract; and enforce the terms of the

deed restriction and mortgage loan as per the Uniform Housing Affordability Controls (UHAC).

- (8) In implementing the affirmative marketing plan, the administrative agent shall provide a list of counseling services to very-low, low- and moderate-income applicants on subjects such as budgeting, credit issues, mortgage qualification, responsibilities of home ownership, rental lease requirements and landlord/tenant law. Applications will be mailed to prospective applicants upon request.
- (9) Households who live or work in the housing region may be given preference for rental units constructed within that housing region. Applicants living outside the housing region will have an equal opportunity for units after regional applicants have been initially serviced. Franklin Township intends to comply with UHAC.
- (10) Developers of low- and moderate-income housing units may assist in the marketing of the affordable units in their respective developments if so designated by Franklin Township.
- (11) The marketing program will commence at least 120 days before the issuance of either temporary or permanent certificates of occupancy. The marketing program will continue until all low- and moderate-income housing units are initially occupied and for as long as affordable units are deed restricted and occupancy or re-occupancy of units continues to be necessary.

L. Enforcement of affordable housing regulations.

- (1) By accepting state funds for affordable housing purposes, or by submitting to the jurisdiction of the Superior Court of New Jersey, a municipality shall be deemed to have delegated to its administrative agent the day-to-day responsibility for implementing practices and procedures designed to ensure effective compliance with the controls set forth in this section. The municipality, however, shall retain the ultimate responsibility for ensuring effective compliance with this section.
- (2) 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.
- (3) 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 \$1,000 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 very-low, low- or moderate-income unit in violation of the regulations governing affordable housing units, payment into the Township of Franklin 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 very-low, 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.
- (4) Such judgment shall be enforceable, at the option of the municipality, by means of an execution sale by the Sheriff, at which time the very-low, 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.
- (5) 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.
- (6) 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.
- (7) 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.
- (8) Failure of the very-low, 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 very-low, low- and moderate-income unit as permitted by the regulations governing affordable housing units.

- (9) 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.

M. Appeals. Appeals from all decisions of an administrative agent designated pursuant to this section shall be filed in writing with the New Jersey Housing and Mortgage Finance Agency (NJHMFA). HMFA shall have 15 days to render a written decision of an appeal, which shall be considered to be final.

SECTION 2. This Ordinance shall be in full force and effect from and after its adoption and any publication as required by law.

SECTION 3. All Ordinances or parts of Ordinances inconsistent herewith are repealed as to such inconsistencies.

SECTION 4. This Ordinance shall be referred to the Township Planning Board for review pursuant to N.J.S.A. 40A:55D-26A.

SECTION 5. Upon adoption of this Ordinance after public hearing thereon, the Township Clerk is further directed to publish notice of the passage thereof and to file a copy of this Ordinance with the County Planning Board, the Pinelands Commission and other agencies as required by law.

SECTION 6. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

SECTION 7. This Ordinance shall take effect upon final passage and publication according to law.

Attest:

Township of Franklin

Barbara Freijomil, Clerk

John Bruno, Mayor

CERTIFICATION

I, Barbara Freijomil, Clerk of the Township of Franklin, County of Gloucester, do here certify that the foregoing Ordinance was introduced at the Regular Meeting of the Township of Franklin held on July 11, 2023 and thereafter duly advertised in the legal newspaper of the Township at least seven (7) days prior to it being considered for final passage and adoption at a subsequent meeting to be held on August 8, 2023 at which time any person interested therein will be given an opportunity to be heard.

Barbara Freijomil, Municipal Clerk

Introduced July 11, 2023

Name	Motion	Second	Yes	No	Abstain	Absent
Doyle						
Flaim						
Keen						
Marsh						
Bruno						

Adopted August 8, 2023

Name	Motion	Second	Yes	No	Abstain	Absent
Doyle						
Flaim						
Keen						
Marsh						
Bruno						