

Introduced: December 30, 2019

Adopted: January 27, 2020

THE TOWNSHIP OF SOUTH ORANGE VILLAGE

ORDINANCE #2019-28

AN ORDINANCE TO AMEND THE CODE OF THE TOWNSHIP OF SOUTH ORANGE VILLAGE, TO REVISE CHAPTER 185, LAND DEVELOPMENT, TO REPEAL ARTICLES 185-XXXIII AND 185-XXXIV IN THEIR ENTIRETY AND CREATE A NEW PART 15, "AFFORDABLE HOUSING" WITH THE ADDITION OF NEW ARTICLES XXXVI, XXXVII, XXXVIII AND XXXIV, TO REVISE "AFFORDABLE HOUSING" PROVISIONS OF THE CODE OF THE TOWNSHIP OF SOUTH ORANGE VILLAGE TO ADDRESS THE REQUIREMENTS OF THE NJ SUPERIOR COURT

WHEREAS, upon referral of this Ordinance to the Village's Planning Board; the Village's Planning Board conducted a meeting on January 6, 2020 due notice of said meeting having been given in accordance with New Jersey Statutes, the Open Public Meetings Act, and the Municipal Land Use Law, and a quorum of the Planning Board having been present, the Planning Board reviewed and considered the proposed amendments to the Zoning Ordinance to determine the consistency with the Master Plan and Re-Examination Report; and

WHEREAS, in a Resolution dated January 10, 2020 memorializing the Planning Board's actions on January 6, 2020, the Planning Board did make the following report to the Governing Body of the Municipality:

1. The purpose of the proposed ordinance is to assure that very-low, low and moderate income units are created with controls on affordability and that very-low, low and moderate income households shall occupy those units;
2. The proposed Ordinance is consistent with the South Orange Village Master Plan;
3. The Planning Board recommends that the Village periodically re-examine whether the Payment-In-Lieu amount required by the Ordinance is adequate to generate additional affordable housing in the Village;
4. The Planning Board recommends that the Village should promptly utilize funds collected from payments-in-lieu in order to provide additional affordable units in the Village; and
5. The Planning Board recommends that the Village Trustees consider requiring an increased percentage of on-site affordable units; and

WHEREAS, at the January 27, 2020 meeting of the Village's Board of Trustees, the Village's Counsel recommended that the aforementioned "WHEREAS" clauses be added to this Ordinance.

NOW THEREFORE BE IT ORDAINED by the Board of Trustees of the Township of South Orange Village, a municipal corporation of New Jersey located in Essex County thereof, as follows:

Section 1. Article 185-XXXIII, Sections 185-193 to 185-209, "Affordable Housing" and Article 185-XXXIV, Section 185-210 to 185-219, "Development Fees" are repealed in their entirety.

Section 2. Chapter 185 is amended by the addition of a new Part 15 "Affordable Housing", Articles XXXVI through XXXVIV in the code of the Township of South Orange as follows:

**Chapter 185-
Land
Development
PART 15-
AFFORDABLE
HOUSING**

**ARTICLE XXXVI
General Program Purposes,
Procedures**

§185-222. Affordable Housing Obligation.

- A. This section of the Village Code sets forth regulations regarding the low and moderate income housing units in the Village consistent with the provisions known as the "Substantive Rules of the New Jersey Council on Affordable Housing", N.J.A.C. 5:93 et seq., the Uniform Housing Affordability Controls ("UHAC"), N.J.A.C. 5:80-26.1 et seq., except where modified by the requirements for very-low income housing as established in P.L. 2008, c.46 (the "Roberts Bill", codified at N.J.S.A. 52:27D-329.1) as reflected in the terms of a Settlement Agreement between the Village and Fair Share Housing Center ("FSHC") such that the statutory requirement to provide very-low income units equal to 13% of affordable units approved and constructed after July 17, 2008, to be affordable to households at 30% of the regional median income, overrides the UHAC requirement that 10% of all low- and moderate-income units must be affordable at 35% of the regional median income, and the Village's constitutional obligation to provide a fair share of affordable housing for low and moderate income households.
- B. This Ordinance 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 Ordinance 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.

- C. The South Orange Village Joint Land Use Board has adopted a Housing Element and Fair Share Plan pursuant to the Municipal Land Use Law at N.J.S.A. 40:55D-1, et seq. The Plan has also been endorsed by the Village Council of the Village of South Orange. The Fair Share Plan describes the ways the Village shall address its fair share for low- and moderate-income housing as determined by the Superior Court and documented in the Housing Element.
- D. This Ordinance implements and incorporates the Fair Share Plan and addresses the requirements of N.J.A.C. 5:93, as may be amended and supplemented.
- E. The Village shall file monitoring and status reports with Fair Share Housing Center ("FSHC") and place the reports on its municipal website. Any plan evaluation report of the Housing Element and Fair Share Plan and monitoring evaluation report prepared by the Special Master in accordance with N.J.A.C. 5:91 shall be available to the public at the South Orange Municipal Building, 500 West Crescent Avenue, South Orange, New Jersey 07401.
- F. On or about September 15 of each year through the end of the period of Third Round Judgment of Repose, the Village 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 Village'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 Village during the ten-year period of protection provided in the Village's Court-approved agreement with FSHC. The Village agrees to comply with those provisions as follows:
 - 1. By July 1, 2020, the Village must prepare a midpoint realistic opportunity review, as required pursuant to N.J.S.A. 52:27D-313, which the Village will post on its municipal website, with a copy provided to FSHC, a status report as to its implementation of its Plan and an analysis of whether any unbuilt sites or unfulfilled mechanisms continue to present a realistic opportunity. Such posting shall invite any interested party to submit comments to the municipality, with 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. 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 opportunity to supplement or revise its plan to correct any deficiency.
 - 2. Within 30 days of September 15, 2020 and September 15, 2024 the Village 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 Court- approved Settlement Agreement with FSHC. The Village 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 Village'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.

§185-223. Definitions. As used herein the following terms shall have the following meanings:

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

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

"Administrative agent" means the entity responsible for the administration of affordable units in accordance with this ordinance, 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" means 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" means the average percentage of median income at which restricted units in an affordable housing development are affordable to low- and moderate-income households.

"Affordable" means, 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, 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" means a housing development all or a portion of which consists of restricted units.

"Affordable housing development" means a development included in the Housing Element and Fair Share Plan, and includes, but is not limited to, an inclusionary development, a municipal construction project or a 100% affordable development.

"Affordable housing program(s)" means any mechanism in a municipal Fair Share Plan prepared or implemented to address a municipality's fair share obligation.

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

"Agency" means 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" means 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" means a structure in which households live in distinct bedrooms, yet share kitchen and plumbing facilities, central heat and common areas. Alternative living arrangement includes, but is 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; 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" means 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" means a household that has been certified by an Administrative Agent as a low-income household or moderate-income household.

"COAH" means 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" means the State of New Jersey Department of Community Affairs.

"Deficient housing unit" means 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" means 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" means 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.

"Development Fee" means money paid by a developer for the improvement of property as permitted in N.J.A.C. 5:93-8.

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

"Fair Share Plan" means the plan that describes the mechanisms, strategies and the funding sources, if any, by which the Village 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" means those strategies that minimize the impact of development on the environment and enhance the health, safety and well-being of residents by producing durable, low-maintenance, resource-efficient housing while making optimum use of existing infrastructure and community services.

"Housing Element" means the portion of the Village'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 Village's fair share obligation.

"Inclusionary development" means 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 non-residential structure to residential and the creation of new affordable units through the reconstruction of a vacant residential structure.

"Low-income household" means a household with a total gross annual household income equal to 50% or less of the median household income.

"Low-income unit" means a restricted unit that is affordable to a low-income household.

"Major system" means 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" means housing not restricted to low- and moderate-income households that may sell or rent at any price.

"Median income" means the median income by household size for the applicable county, as adopted annually by COAH or approved by the NJ Superior Court.

"Moderate-income household" means 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" means a restricted unit that is affordable to a moderate-income household.

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

"Random selection process" means 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" means 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 adopted/approved Regional Income Limits.

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

"Rent" means 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" means 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.

"Special master" means an expert appointed by a judge to make sure that judicial

orders are followed. A master's function is essentially investigative, compiling evidence or documents to inform some future action by the court.

"UHAC" means the Uniform Housing Affordability Controls set forth in N.J.A.C. S:80-26.1 et seq.

"Very-low income household" means a household with a total gross annual household income equal to 30% or less of the median household income.

"Very-low income unit" means a restricted unit that is affordable to a very-low income household.

"Weatherization" means 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.

§185-224. New Construction. The following requirements shall apply to all new or planned developments that contain low- and moderate- income housing units.

- A. **Quantification of Affordable Housing Obligation for Multifamily Developers.** Any multi-family residential development providing a minimum of five (5) new housing units created through any municipal rezoning, planning board, or zoning board action, use or density variance, or redevelopment plan is required to include an affordable housing set-aside in accordance with the requirements of this section. This requirement does not give any developer the right to any such rezoning, variance or other relief, or establish any obligation on the part of the Village of South Orange or its Zoning Board to grant such rezoning, variance or other relief. No subdivision shall be permitted or approved for the purpose of avoiding compliance with this requirement. All zones or districts shall be subject to a mandatory set-aside of affordable dwelling units and shall provide affordable dwellings on site in accordance with the requirements of this section.
- B. Any multifamily residential development of five (5) or more dwelling units, whether sold in fee simple or leased ("for sale" or "for-rent" units) shall provide a twenty percent (20%) affordable housing set-aside. For example, if five (5) units are proposed on a site, at least one (1) affordable unit must be constructed on site.
- C. Where the set-aside requirement of twenty (20%) percent results in fractional unit obligation, the affordable housing set-aside requirement shall be rounded upwards to the next whole number, with no exceptions, for units to be constructed on or off site. In all other cases, the fractional obligation shall be converted to a monetary payment-in-lieu of constructing affordable housing based upon the payment in lieu provisions set forth in Section §185-225 (E) below. For example, a thirteen-unit (13 unit) development creates an affordable housing obligation of 2.6 units (13 times .20 = 2.60). In that case, the developer would owe a fractional obligation of 0.60 units. According to Section §185-225 (E) below, therefore, the fractional payment in lieu would be \$60,000.00.

§185-225. Permissible Manner of Satisfaction Of Affordable Housing Obligation Of Residential Developers

- A. Unless otherwise exempt due to preceding and conflicting governmental approvals, executed agreements, or other vested rights, for all residential developments described above, an applicant shall presumptively satisfy its affordable housing production obligation through on-site housing production in connection with the residential project, which is one of the mechanisms permitted pursuant to COAH's regulations. Notwithstanding the aforementioned presumption, however, the applicant may request to satisfy a maximum of fifty percent (50%) of its non-fractional affordable housing obligation off-site, subject to consent by the Village in its sole discretion. For example, in the 13-unit development referenced above, the applicant would be presumptively required to satisfy its 2-unit affordable housing obligation on site; or may secure consent of the Village to construct one unit on site and one unit off-site. The fractional payment in lieu would be unaffected.
- B. If the applicant secures permission from the Village to provide offsite construction of affordable housing as referenced in paragraph A above, it must satisfy its off-site obligation either through:
1. "Market to Affordable" buy-downs pursuant to N.J.A.C. 5:93-5.10 (for vacant or "never-occupied" units) and/or N.J.A.C. 5:93-5.11 (for the "write down/buy down" of previously occupied units); or
 2. A \$100,000 per-unit Payment In Lieu of constructing the units pursuant to the provisions set forth in Section E below.
- B. Full and complete satisfaction of the affordable housing requirements of this section shall be a specific, automatic, essential and non-severable condition of all land use approvals. Pursuant to this condition, the applicant must demonstrate that it has satisfied the affordable housing condition of approval prior to obtaining the first building permit and compliance with the affordable housing condition shall be a continuing condition of all Board approvals for development.
- C. 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
50	50
75	75
90	100

- D. Design. In inclusionary developments, low- and moderate- income units shall be integrated with the market units.
- E. 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 ("payment-in-lieu") at the time of adoption of this Ordinance shall be \$100,000, unless the developer can demonstrate to the satisfaction the Governing Body that a payment-in-lieu of \$100,000 per affordable unit would render the proposed inclusionary development economically unfeasible. Developers seeking a lower per-unit payment-in-lieu amount must present, at a minimum, verifiable information, such as pro formas, Phase 1 and 2 environmental studies, and any other relevant facts to aid the Village in applying its discretion regarding the Developer's request for an adjusted payment-in-lieu. In addition to the above-referenced information, the Developer must provide the Village with a proposed adjusted payment-in-lieu amount that, if accepted by the Village, would maintain the economic feasibility of the proposed inclusionary development. The Village shall not adjust the payment-in-lieu amount adjustment lower than \$75,000 per affordable unit.
 2. The Village shall render decisions regarding an applicant's request for an adjusted payment-in-lieu amount on a case-by-case basis and based upon the unique facts of each case. The Village shall be under no obligation to provide an explanation, or otherwise justify its decisions, but may do so at its sole discretion. Decisions rendered by the Village in the past shall be irrelevant to, and therefore non-binding upon, subsequent applications.
 3. At its sole discretion, the Village may periodically adjust the payment-in-lieu amount applicable to inclusionary developments to reflect the cost of constructing a new affordable unit at 52 percent of median income in the region, which shall include the sum of development hard costs, related soft costs and developer's fees pursuant to the cost-containment provisions of N.J.A.C. 5:43-2.4(a)1 through 6 and land costs equal to 25 percent of the first quartile of new construction costs as reported to the New Jersey Homeowner Warranty Program.
 4. The payment-in-lieu, whether or not adjusted by the Village as set forth above, shall be imposed as a condition of development approval by the Joint Land Use Board.
 5. Such payments shall be tendered as follows:
 - i. Fifty percent (50%) prior to the first building permit; and
 - ii. Fifty percent (50%) prior to issuance of a certificate of occupancy for each unit.

6. Specific Developments Exempted From/Limited In Making Payments in Lieu of Construction. the following development sites are specifically exempted from this section and must rely upon the applicable Redevelopment Plan:

- i. 270 Irvington: pursuant to the applicable Redevelopment Plan, 270 Irvington is prohibited from making payments in lieu of construction.
 - ii. Lustbator: pursuant to the applicable Redevelopment Plan and Settlement Agreement with Fair Share Housing Center, Lustbator may make a payment in lieu of \$75,000.00 per unit, pursuant to the payment schedule set forth in subsection (G)5 of this section.
- F. Utilities. Affordable units shall utilize the same type of heating source as market units within the affordable development.
- G. Low/Moderate Split and Bedroom Distribution of Affordable Housing Units. All developments involving the construction of affordable housing shall conform, in all respects, with relevant COAH and UHAC regulations and relevant provisions of the New Jersey FHA, including but not limited to:
 1. The fair share obligation shall be divided equally between low- and moderate- income units, except that where there is an odd number of affordable housing units, the extra unit shall be a low income unit.
 2. In each affordable development, at least 50% of the restricted units within each bedroom distribution shall be low-income units.
 3. At least 13 percent of all restricted rental units within each bedroom distribution shall be very low income units (affordable to a household earning 30 percent or less of regional median income by household size). The very low income units shall be counted as part of the required number of low income units within the development.
 4. Affordable developments that are not age-restricted shall be structured in conjunction with realistic market demands such that:
 - i. The combined number of efficiency and one-bedroom units shall be no greater than 20% of the total low- and moderate-income units;
 - ii. At least 30% of all low- and moderate-income units shall be two bedroom units;
 - iii. At least 20% of all low- and moderate-income units shall be three bedroom units; and
 - iv. The remaining units may be allocated among two and three bedroom units at the discretion of the developer.

5. 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.

H. Accessibility Requirements:

1. The first floor of all new restricted townhouse dwelling units and all restricted multistory dwelling units attached to at least one (1) 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 (1) 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 Village 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 Village of South Orange'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 paragraph (2) herein, shall be used by the Village 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 Village of South Orange.
- (5) Once the Construction Official has determined that the design plan to convert the unit entrances from adaptable to accessible meet the requirements of the Barrier Free Subcode, N.J.A.C. 5:23-7, and that the cost estimate of such conversion is reasonable, payment shall be made to the Village of South Orange's affordable housing trust fund in care of the Municipal Treasurer who shall ensure that the funds are deposited into the affordable housing trust fund and appropriately earmarked.
- (6) Full compliance with the foregoing provisions shall not be required where an entity can demonstrate that it is site impracticable to meet the requirements. Determinations of site impracticability shall be in compliance with the Barrier Free Subcode, N.J.A.C. 5:23-7.

I. Maximum Rents and Sales Prices.

1. In establishing rents and sales prices of affordable housing units, the Administrative Agent shall follow the procedures set forth in UHAC, utilizing the most recently published regional weighted average of the uncapped Section 8 income limits published by HUD and using calculation procedures approved by the Court.
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 one and one-half person household;
- (c) A two-bedroom unit shall be affordable to a three-person household;
- (d) A three-bedroom unit shall be affordable to a four and one-half person household; and
- (e) A four-bedroom unit shall be affordable to a six-person household.

6. In determining the initial 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 one and one-half person household; and
- (c) A two-bedroom unit shall be affordable to a two-person household or to two and one-half person household.

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 shall be updated by the Village 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 percent 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 percent 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 percent 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 paragraph (a) above to HUD's determination of median income for the relevant fiscal year, and shall be utilized until the Village 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 Village 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.

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 nine percent in any one year. Rents for units constructed pursuant to low income housing tax credit regulations shall be indexed pursuant to the regulations governing low income housing tax credits.
11. Tenant-paid utilities that are included in the utility allowance shall be so stated in the lease and shall be consistent with the utility allowance approved by DCA for its Section 8 program.

§185-226. Condominium and Homeowners Association Fees.

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.

§185-227. Reserved.

§185-228. Reserved.

§185-229. Reserved.

§185-230. Reserved.

ARTICLE XXXVII

**Affordable Unit Controls and
Requirements**

§185-231. Purpose.

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.

§185-232. Affirmative Marketing.

- A. The Village 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.
- B. The affirmative marketing plan is a regional marketing strategy designed to attract buyers and/or renters of all majority and minority groups, regardless of race, creed, color, national origin, ancestry, marital or familial status, gender, affectional or sexual orientation, disability, age or number of children to housing units which are being marketed by a developer, sponsor or owner of affordable housing. The affirmative marketing plan is also intended to target those potentially eligible persons who are least likely to apply for affordable units in that region. It is a continuing program that directs all marketing activities toward COAH Housing Region 2 and covers the period of deed restriction.
- C. The affirmative marketing plan shall provide a regional preference for all households that live and/or work in COAH Housing Region 2, comprised of Essex, Morris, and Union Counties.
- D. The Administrative Agent designated by the Village shall assure the affirmative marketing of all affordable units is consistent with the Affirmative Marketing Plan for the municipality.
- E. The Village shall add to the list of community and regional organizations in its affirmative marketing plan, pursuant to N.J.A.C. 5:80-26.15(f)(5), Fair Share Housing Center, the New Jersey State Conference of the NAACP, the Latino Action Network, Oranges and Maplewood NAACP, Newark NAACP, Morris County NAACP, Elizabeth NAACP, and the Supportive Housing Association, and shall, as part of its regional affirmative marketing strategies during its implementation of this plan, provide notice to those organizations of all available affordable housing units. The Village also agrees to notice other entities, including developers or other companies retained to do affirmative marketing, to comply with this paragraph.
- F. In implementing the affirmative marketing plan, the Administrative Agent shall provide a list of counseling services to low- and moderate-income applicants on subjects such as budgeting, credit issues, mortgage qualification, rental lease requirements, and landlord/tenant law.
- G. The affirmative marketing process for available affordable units shall begin at least four months prior to the expected date of occupancy.
- H. 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 Village of South Orange.

§185-233. 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 separate bedrooms for parents and children;
 - 3. Provide children of different sexes with separate bedrooms; and
 - 4. 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.

§185-234. Selection of Occupants of Affordable Housing Units.

- A. The administrative agent shall use a random selection process to select occupants of low- and moderate- income housing.
- B. A waiting list of all eligible candidates will be maintained in accordance with the provisions of N.J.A.C. 5:80-26 et seq.

§185-235. 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, and each restricted ownership 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.
- B. Rehabilitated owner-occupied housing units that are improved to code standards shall be subject to affordability controls for a period of 10 years.
- C. The affordability control period for a restricted ownership unit shall commence on the date the initial certified household takes title to the unit.
- D. The affordability controls set forth in this Ordinance shall remain in effect despite the entry and enforcement of any judgment of foreclosure with respect to restricted ownership units.
- E. 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.

§185-236. Price Restrictions for Restricted Ownership Units, Homeowner Association Fees and Resale Prices.

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

- A. The initial purchase price for a restricted ownership unit shall be approved by the Administrative Agent.
- B. The Administrative Agent shall approve all resale prices, in writing and in advance of the resale, to assure compliance with the foregoing standards.
- C. The method used to determine the condominium association fee amounts and special assessments shall be indistinguishable between the low- and moderate-income unit owners and the market unit owners.
- D. The owners of restricted ownership units may apply to the Administrative Agent to increase the maximum sales price for the unit on the basis of capital improvements. Eligible capital improvements shall be those that render the unit suitable for a larger household or the addition of a bathroom.

§185-237. 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 unit 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.

§185-238. 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).

§185-239. 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, 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.
 - 1. Restricted rental units created as part of developments receiving nine percent (9%) Low Income Housing Tax Credits must comply with a control period of not less than a 30-year compliance period plus a 15-year extended use period.
- B. Rehabilitated renter-occupied housing units that are improved to code standards shall be subject to affordability controls for a period of 10 years.
- C. 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.
- D. A restricted rental unit shall remain subject to the affordability controls of this Ordinance, despite the occurrence of any of the following events:
 - 1. Sublease or assignment of the lease of the unit;
 - 2. Sale or other voluntary transfer of the ownership of the unit; or
 - 3. The entry and enforcement of any judgment of foreclosure.

§185-240. 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 Ordinance.

§185-241. 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:
2. Very-low-income rental units shall be reserved for households with a gross household income less than or equal to 30% of median income.
3. Low-income rental units shall be reserved for households with a gross household income less than or equal to 50% of median income.
4. Moderate-income rental units shall be reserved for households with a gross household income less than 80% of median income.
5. 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:
6. 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;
7. 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;
8. The household is currently in substandard or overcrowded living conditions;
9. The household documents the existence of assets with which the household proposes to supplement the rent payments; or
10. 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.
11. The applicant shall file documentation sufficient to establish the existence of the circumstances in (b)1 through 5 above with the Administrative Agent, who shall counsel the household on budgeting.

§185-242. Conversions.

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

§185-243. Alternative Living Arrangements.

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

§185-244. Reserved.

§185-245. Reserved.

**ARTICLE XXXVIII
Administration**

§185-246. Municipal Housing Liaison.

- A. The position of Municipal Housing Liaison for the Village of South Orange is hereby established. The Municipal Housing Liaison shall be appointed by duly adopted resolution of the Village Council and be subject to the approval by the Superior Court.
- B. The Municipal Housing Liaison must be either a full-time or part-time employee of the Village of South Orange.
- C. The Municipal Housing Liaison must meet the requirements for qualifications, including initial and periodic training found in N.J.A.C. 5:93.
- D. The Municipal Housing Liaison shall be responsible for oversight and administration of the affordable housing program for the Village of South Orange, 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 Village of South Orange's Fair Share Plan;
5. Compiling, verifying and submitting annual reports as required by the Superior Court;
6. Meeting with affordable housing developers 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 Superior Court.

§185-247. Administrative Agent.

- A. The Village shall designate by resolution of the Village Council, subject to the approval of the Superior Court, one or more Administrative Agents to administer newly constructed affordable units in accordance with N.J.A.C. 5:93 and UHAC.
- B. 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 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).
- C. 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, 16 and 18 thereof, which includes:
 1. Attending continuing education opportunities on affordability controls, compliance monitoring, and affirmative marketing as offered or approved by the Superior Court;
 2. Affirmative Marketing;
 3. Household Certification;
 4. Affordability Controls;

5. Records retention;
6. Resale and re-rental;
7. Processing requests from unit owners; and
8. Enforcement, although the ultimate responsibility for retaining controls on the units rests with the municipality.
9. The Administrative Agent shall, as delegated by the Village Council, have the authority to take all actions necessary and appropriate to carry out its responsibilities, hereunder.

§185-248. Enforcement of Affordable Housing Regulations.

- A. Upon the occurrence of a breach of any of the regulations governing the affordable unit by an Owner, Developer or Tenant, the municipality shall have all remedies provided at law or equity, including but not limited to foreclosure, tenant eviction, municipal fines, a requirement for household recertification, acceleration of all sums due under a mortgage, recoupment of any funds from a sale in the violation of the regulations, injunctive relief to prevent further violation of the regulations, entry on the premises, and specific performance.
- B. After providing written notice of a violation to an Owner, Developer or Tenant of a low- or moderate-income unit and advising the Owner, Developer or Tenant of the penalties for such violations, the municipality may take the following action against the Owner, Developer or Tenant for any violation that remains uncured for a period of 60 days after service of the written notice:
 1. The municipality may file a court action pursuant to N.J.S.A. 2A:58-11 alleging a violation, or violations, of the regulations governing the affordable housing unit. If the Owner, Developer or Tenant is 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:
 - (a) A fine of not more than \$500.00 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;
 - (b) 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 Village of South Orange Affordable Housing Trust Fund of the gross amount of rent illegally collected;
 - (c) 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.

2. The municipality may file a court action in the Superior Court seeking a judgment, which would result in the termination of the Owner's equity or other interest in the unit, in the nature of a mortgage foreclosure. Any judgment shall be enforceable as if the same were a judgment of default of the First Purchase Money Mortgage and shall constitute a lien against the low- and moderate-income unit.
- C. Such judgment shall be enforceable, at the option of the municipality, by means of an execution sale by the Sheriff, at which time the low- and moderate-income unit of the violating Owner shall be sold at a sale price which is not less than the amount necessary to fully satisfy and pay off any First Purchase Money Mortgage and prior liens and the costs of the enforcement proceedings incurred by the municipality, including attorney's fees. The violating Owner shall have the right to possession terminated as well as the title conveyed pursuant to the Sheriff's sale.
 - D. The proceeds of the Sheriff's sale shall first be applied to satisfy the First Purchase Money Mortgage lien and any prior liens upon the low- and moderate-income unit. The excess, if any, shall be applied to reimburse the municipality for any and all costs and expenses incurred in connection with either the court action resulting in the judgment of violation or the Sheriff's sale. In the event that the proceeds from the Sheriff's sale are insufficient to reimburse the municipality in full as aforesaid, the violating Owner shall be personally responsible for and to the extent of such deficiency, in addition to any and all costs incurred by the municipality in connection with collecting such deficiency. In the event that a surplus remains after satisfying all of the above, such surplus, if any, shall be placed in escrow by the municipality for the Owner and shall be held in such escrow for a maximum period of two years or until such earlier time as the Owner shall make a claim with the municipality for such. Failure of the Owner to claim such balance within the two-year period shall automatically result in a forfeiture of such balance to the municipality. Any interest accrued or earned on such balance while being held in escrow shall belong to and shall be paid to the municipality, whether such balance shall be paid to the Owner or forfeited to the municipality.
 - E. Foreclosure by the municipality due to violation of the regulations governing affordable housing units shall not extinguish the restrictions of the regulations governing affordable housing units as the same apply to the low- and moderate- income unit. Title shall be conveyed to the purchaser at the Sheriff's sale, subject to the restrictions and provisions of the regulations governing the affordable housing unit. The Owner determined to be in violation of the provisions of this plan and from whom title and possession were taken by means of the Sheriff's sale shall not be entitled to any right of redemption.
 - F. If there are no bidders at the Sheriff's sale, or if insufficient amounts are bid to satisfy the First Purchase Money Mortgage and any prior liens, the municipality may acquire title to the low- and moderate-income unit by satisfying the First Purchase Money Mortgage and any prior liens and crediting the violating owner with an amount equal to the difference between the First Purchase Money Mortgage and any prior liens and costs of the enforcement proceedings, including legal fees and the maximum resale price for which the low- and moderate-income unit could have been sold under the terms of the

regulations governing affordable housing units. This excess shall be treated in the same manner as the excess which would have been realized from an actual sale as previously described.

- G. Failure of the low- and moderate-income unit to be either sold at the Sheriff's sale or acquired by the municipality shall obligate the Owner to accept an offer to purchase from any qualified purchaser which may be referred to the Owner by the municipality, with such offer to purchase being equal to the maximum resale price of the low- and moderate-income unit as permitted by the regulations governing affordable housing units.
- H. The Owner shall remain fully obligated, responsible and liable for complying with the terms and restrictions of governing affordable housing units until such time as title is conveyed from the Owner.

§185-249. Appeals. Appeals from all decisions of an Administrative Agent designated pursuant to this Ordinance shall be filed in writing with the Village.

Article XXXVIV Developer Fees

§185-250. Purpose

- A. In Holmdel Builder's Association V. Holmdel Township, 121 N.J. 550 (1990), the New Jersey Supreme Court determined that mandatory development fees are authorized by the Fair Housing Act of 1985 (the Act), N.J.S.A. 52:27d-301 et seq., and the State Constitution, subject to the Council on Affordable Housing's (COAH's) adoption of rules.
- B. Pursuant to P.L.2008, c.46 section 8 (C. 52:27D-329.2) and the Statewide Non-Residential Development Fee Act (C. 40:55D-8.1 through 8.7), COAH is authorized to adopt and promulgate regulations necessary for the establishment, implementation, review, monitoring and enforcement of municipal affordable housing trust funds and corresponding spending plans. Municipalities that are under the jurisdiction of the Council or court of competent jurisdiction and have a COAH-approved spending plan may retain fees collected from non-residential development.
- C. In Re: Adoption of N.J.A.C. 5:96 and 5:97 by the New Jersey Council on Affordable Housing, 221 N.J. 1 (2015), also known as the Mount Laurel IV decision, the Supreme Court remanded COAH's duties to the Superior Court. As a result, affordable housing development fee collections and expenditures from the municipal affordable housing trust funds to implement municipal Third Round Fair Share Plans through July 1, 2025 are under the Court's jurisdiction and are subject to approval by the Court.
- D. This ordinance establishes standards for the collection, maintenance, and expenditure of development fees pursuant to COAH's regulations and in accordance P.L.2008, c.46, Sections 8 and 32-38. Fees collected pursuant to this ordinance shall be used for the sole purpose of providing low- and moderate-income housing. This ordinance shall be

interpreted within the framework of COAH's rules on development fees, codified at N.J.A.C. 5:93-8.

§185-251. Basic requirements

- A. This ordinance shall not be effective until approved by Superior Court approves the Borough's development fee ordinance in accordance with N.J.A.C. 5:93-8.
- B. The Township of South Orange Village shall not spend development fees until the Superior Court has approved a plan for spending such fees in conformance with *N.J.A.C. 5:93-8*.

§185-252. Definitions

- A. The following terms, as used in this ordinance, shall have the following meanings:
 1. **"Affordable housing development"** means a development included in the Housing Element and Fair Share Plan, and includes, but is not limited to, an inclusionary development, a municipal construction project or a 100 percent affordable development.
 2. **"COAH"** or the **"Council"** means the New Jersey Council on Affordable Housing established under the Act which has primary jurisdiction for the administration of housing obligations in accordance with sound regional planning consideration in the State. Pursuant to the opinion and order of the New Jersey Supreme Court dated March 10, 2015, in the matter of "In re Adoption of N.J.A.C. 5:96 and 5:97 by N.J. Council on Affordable Housing (M-392-14) 067126," any reference to COAH or the Council shall be understood to refer to the Superior Court of New Jersey, Law Division-Essex County.
 3. **"Development fee"** means money paid by a developer for the improvement of property as permitted in *N.J.A.C. 5:97-8.3*.
 4. **"Developer"** means the legal or beneficial owner or owners of a lot or of any land proposed to be included in a proposed development, including the holder of an option or contract to purchase, or other person having an enforceable proprietary interest in such land.
 5. **"Equalized assessed value"** means the assessed value of a property divided by the current average ratio of assessed to true value for the municipality in which the property is situated, as determined in accordance with sections 1, 5, and 6 of P.L.1973, c.123 (C.54:1-35a through C.54:1-35c).
 6. **"Green building strategies"** means those strategies that minimize the impact of development on the environment, and enhance the health, safety and well-being of residents by producing durable, low-maintenance, resource-efficient housing while making optimum use of existing infrastructure and community services.

§185-253. Residential Development Fees

A. Imposed fees

1. Within all zoning districts, residential developers, except for developers of the types of development specifically exempted below, shall pay a fee of one and a half percent (1.5%) of the equalized assessed value for residential development provided no increased density is permitted.
2. When an increase in residential density pursuant to N.J.S.A. 40:55D-70d(5) (known as a "d" variance) has been permitted, developers may be required to pay a development fee of six percent (6%) of the equalized assessed value for each additional unit that may be realized. However, if the zoning on a site has changed during the two-year period preceding the filing of such a variance application, the base density for the purposes of calculating the bonus development fee shall be the highest density permitted by right during the two-year period preceding the filing of the variance application.

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

1. Affordable housing developments, developments where the developer is providing for the construction of affordable units elsewhere in the municipality, and developments where the developer has made a payment in lieu of on-site construction of affordable units shall be exempt from development fees.
2. Developments that have received preliminary or final site plan approval prior to the adoption of a municipal development fee ordinance shall be exempt from development fees, unless the developer seeks a substantial change in the approval. Where a site plan approval does not apply, a zoning and/or building permit shall be synonymous with preliminary or final site plan approval for this purpose. The fee percentage shall be vested on the date that the building permit is issued.
3. Owner-occupied residential structures demolished and replaced as a result of a fire, flood, or natural disaster shall be exempt from paying a development fee.
4. Development fees shall be imposed and collected when an existing structure undergoes a change to a more intense use, is demolished and replaced, or is expanded, if the expansion is not otherwise exempt from the development fee requirement. The development fee shall be calculated on the increase in the equalized assessed value of the improved structure.

§185-254. Non-residential Development Fees

A. Imposed fees

1. 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 percent (2.5%) of the equalized assessed value of the land and improvements, for all new non-residential construction on an unimproved lot or lots.

2. Non-residential developers, except for developers of the types of development specifically exempted, shall also pay a fee equal to two and one-half percent (2.5%) of the increase in equalized assessed value resulting from any additions to existing structures to be used for non-residential purposes.
 3. Development fees shall be imposed and collected when an existing structure is demolished and replaced. The development fee of two and one-half 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.
- B. Eligible exactions, ineligible exactions and exemptions for non-residential development
1. 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.
 2. 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.
 3. Non-residential developments shall be exempt from the payment of non-residential development fees in accordance with the exemptions required pursuant to P.L.2008, c.46, as specified in the Form N-RDF "State of New Jersey Non-Residential Development Certification/Exemption" Form. Any exemption claimed by a developer shall be substantiated by that developer.
 4. A developer of a non-residential development exempted from the non-residential development fee pursuant to P.L.2008, c.46 shall be subject to it at such time the basis for the exemption no longer applies, and shall make the payment of the non-residential development fee, in that event, within three years after that event or after the issuance of the final certificate of occupancy of the non-residential development, whichever is later.
 5. If a property which was exempted from the collection of a non-residential 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 non-residential development fees under these circumstances may be enforceable by the Township of South Orange Village as a lien against the real property of the owner.

§185-255. Collection Procedures

- A. Upon the granting of a preliminary, final or other applicable approval, for a development, the applicable approving authority shall direct its staff to notify the construction official responsible for the issuance of a building permit.
- B. For 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 notifies the local assessor of any and all requests for the scheduling of a final inspection on property which is subject to a development fee.
- F. Within 10 business days of a request for the scheduling of a final inspection, the municipal assessor shall confirm or modify the previously estimated equalized assessed value of the improvements of the development; calculate the development fee; and thereafter notify the developer of the amount of the fee.
- G. Should the Township of South Orange Village 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 (C.40:55D-8.6).
- H. Fifty percent of the development fee shall be collected at the time of issuance of the building permit. The remaining portion shall be collected at the issuance of the certificate of occupancy. The developer shall be responsible for paying the difference between the fee calculated at building permit and that determined at issuance of certificate of occupancy.
- I. Appeal of development fees
 - 1. A developer may challenge residential development fees imposed by filing a challenge with the County Board of Taxation. Pending a review and determination by the Board, collected fees shall be placed in an interest bearing escrow account by

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

2. A developer may challenge non-residential development fees imposed by filing a challenge with the Director of the Division of Taxation. Pending a review and determination by the Director, which shall be made within 45 days of receipt of the challenge, collected fees shall be placed in an interest bearing escrow account by the Township of South Orange Village. 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.

§185-256. Affordable Housing Trust Fund

- A. There is hereby created a separate, interest-bearing housing trust fund to be maintained by the chief financial officer for the purpose of depositing development fees collected from residential and non-residential developers and proceeds from the sale of units with extinguished controls.
- B. The following additional funds shall be deposited in the Affordable Housing Trust Fund and shall at all times be identifiable by source and amount:
 1. Payments in lieu of on-site construction of affordable units;
 2. Developer contributed funds to make ten percent (10%) of the adaptable entrances in a townhouse or other multistory attached development accessible;
 3. Rental income from municipally operated units;
 4. Repayments from affordable housing program loans;
 5. Recapture funds;
 6. Proceeds from the sale of affordable units; and
 7. Any other funds collected in connection with the Township of South Orange Village's affordable housing program.
- C. In the event of a failure by the Township of South Orange Village to comply with trust fund monitoring and reporting requirements or to submit accurate monitoring reports; or a failure to comply with the conditions of the judgment of compliance or a revocation of the judgment of compliance; or a failure to implement the approved Spending Plan and to expend funds within the applicable required time period as set forth in In re Tp. of Monroe, 442 N.J. Super. 565 (Law Div. 2015) (aff'd 442 N.J. Super. 563); or the expenditure of

funds on activities not approved by the Court; or for other good cause demonstrating the unapproved use(s) of funds, the Court may authorize the State of New Jersey, Department of Community Affairs, Division of Local Government Services (LGS), to direct the manner in which the funds in the Affordable Housing Trust Fund shall be expended, provided that all such funds shall, to the extent practicable, be utilized for affordable housing programs within the Township of South Orange Village, or, if not practicable, then within the County or the Housing Region.

- D. Any party may bring a motion before the Superior Court presenting evidence of such condition(s), and the Court may, after considering the evidence and providing the municipality a reasonable opportunity to respond and/or to remedy the non-compliant condition(s), and upon a finding of continuing and deliberate non-compliance, determine to authorize LGS to direct the expenditure of funds in the Trust Fund. The Court may also impose such other remedies as may be reasonable and appropriate to the circumstances.
- E. All interest accrued in the housing trust fund shall only be used on eligible affordable housing activities approved by the Court.

§185-257. Use of funds

- A. The expenditure of all funds shall conform to a spending plan approved by the Court. Funds deposited in the housing trust fund may be used for any activity approved by the Court to address the Township of South Orange Village's fair share obligation and may be set up as a grant or revolving loan program. Such activities include, but are not limited to: preservation or purchase of housing for the purpose of maintaining or implementing affordability controls, rehabilitation, new construction of affordable housing units and related costs, accessory apartment, market to affordable, or regional housing partnership programs, conversion of existing non-residential buildings to create new affordable units, green building strategies designed to be cost saving and in accordance with accepted national or state standards, purchase of land for affordable housing, improvement of land to be used for affordable housing, extensions or improvements of roads and infrastructure to affordable housing sites, financial assistance designed to increase affordability, administration necessary for implementation of the Housing Element and Fair Share Plan, or any other activity as permitted pursuant to N.J.A.C. 5:93-8 and specified in the approved spending plan.
- B. Funds shall not be expended to reimburse the Township of South Orange Village for past housing activities.
- C. At least thirty percent (30%) of all development fees collected and interest earned shall be used to provide affordability assistance to low- and moderate-income households in affordable units included in the municipal Fair Share Plan, One-third of the affordability assistance portion of development fees collected shall be used to provide affordability assistance to those households earning thirty percent (30%) or less of median income by region.
 - 1. Affordability assistance programs may include down payment assistance, security deposit assistance, low interest loans, rental assistance, assistance with homeowners

association or condominium fees and special assessments, and assistance with emergency repairs.

2. Affordability assistance to households earning thirty percent (30%) or less of median income may include buying down the cost of low or moderate income units in the municipal Fair Share Plan to make them affordable to households earning thirty percent (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. The Township of South Orange Village 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. 5:94-7.
- E. No more than twenty percent (20%) of all revenues collected from development fees, may be expended on administration, including, but not limited to, salaries and benefits for municipal employees or consultant fees necessary to develop or implement a new construction program, a Housing Element and Fair Share Plan, and/or an affirmative marketing program. In the case of a rehabilitation program, no more than twenty percent (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 for the affordable housing in compliance with the Housing Element and Fair Share Plan. 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.

§185-258. Monitoring

On an annual basis commencing with the first anniversary of the entry of the Order granting a Final Judgment of Compliance and Repose The Township of South Orange Village 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 residential and nonresidential developers, payments in lieu of constructing affordable units on site, funds from the sale of units with extinguished controls, barrier-free escrow funds, rental income, repayments from affordable housing program loans, and any other funds collected in connection with the Township's housing program, as well as to the expenditure of revenues and implementation of the plan approved by the court.

§185-259. Ongoing collection of fees

- A. The ability for the Township of South Orange Village to impose, collect and expend development fees shall expire with its substantive certification unless the Township of South Orange Village has filed an adopted Housing Element and Fair Share Plan with the court or other appropriate jurisdiction, has filed a Declaratory Judgment action and has received court approval of its development fee ordinance. If the Township of South Orange Village fails to renew its ability to impose and collect development fees prior to the expiration of 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 (C.52:27D-320). The Township of South Orange Village shall not impose a residential development fee on a development that receives preliminary or final site plan approval after the expiration of its judgment of compliance and repose, nor shall the Township of South Orange Village retroactively impose a development fee on such a development. The Township of South Orange Village shall not expend development fees after the expiration of judgment of compliance and repose.

Section 3.

Repealer

All ordinances or parts of ordinances inconsistent with the provisions of this ordinance are hereby repealed to the extent of such inconsistency.

Section 4.

This ordinance shall take effect after final passage and publication as required by law.

Section 5.

On passage this ordinance shall be codified.

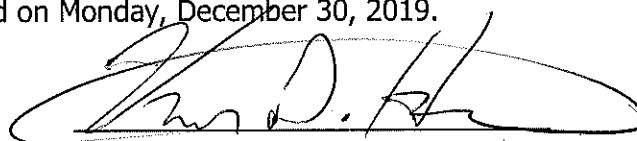
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Introduction – First Reading

Trustee Member	Motion	Second	Ayes	Nays	Abstain	Absent
Clarke			X			
Coallier			X			
Hartshorn Hilton	X		X			
Jones			X			
Schnall			X			
Zuckerman		X	X			

CERTIFICATION

I, Kevin D. Harris, Village Clerk of the Township of South Orange Village, County of Essex, State of New Jersey, do hereby certify that this Ordinance was introduced on first reading by the Board of Trustees at their special meeting held on Monday, December 30, 2019.



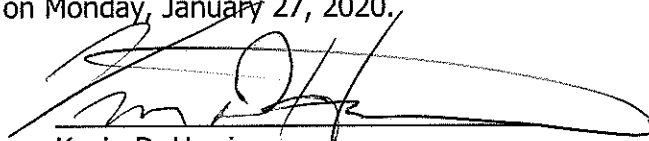
Kevin D. Harris
Village Clerk

Adoption – Second Reading

Trustee Member	Motion	Second	Ayes	Nays	Abstain	Absent
Clarke			X			
Coallier			X			
Hartshorn Hilton	X		X			
Jones		X	X			
Schnall			X			
Zuckerman			X			

CERTIFICATION

I, Kevin D. Harris, Village Clerk of the Township of South Orange Village, County of Essex, State of New Jersey, do hereby certify that this Ordinance was adopted on second reading by the Board of Trustees at their regular meeting held on Monday, January 27, 2020.

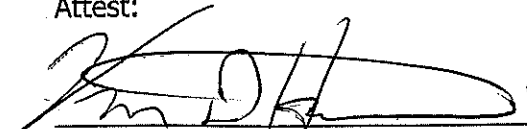


Kevin D. Harris
Village Clerk

Adopted:


Sheena C. Collum, Village President

Attest:


Kevin D. Harris, Village Clerk



UNLOCKING POTENTIAL
IN PLACES YOU LOVE

Memorandum

Date: December 27, 2019
To: Village of South Orange - Board of Trustees
From: Golda Speyer, AICP, PP
Copy: Nancy L. Holm, Esq. – Surenian & Associates, LLC
SUBJECT: ORDINANCE 19-28 (AFFORDABLE HOUSING)

On November 6, 2019, the Village of South Orange introduced two (2) ordinances at the Board of Trustee Meeting, which were intended to revise Articles 185-XXXIII (Affordable Housing) and 185-XXXIV (Development Fees) pursuant to the Village's affordable housing settlement agreement and directive by the Superior Court. Copies of these ordinances were provided to Fair Share Housing Center (FSHC), the main party in South Orange's affordable housing litigation, prior to introduction in anticipation for a mid-December compliance hearing. However, comment was not received from FSHC until subsequent to the introduction of these ordinances, which will require re-introduction to incorporate their comments.

On November 27, 2019, the Village's Affordable Housing Planner and Village Attorney had a mediation call with the Superior Court appointed Special Master and FSHC. During this phone call, FSHC recommended that the ordinances further be revised prior to adoption to include additional compliance language.

As such, all prior ordinances from the November 6, 2019 Board of Trustee Meeting have been rescinded, and Ordinance 19-28 is being introduced to effectuate the final comments provided by FSHC. Furthermore, the Superior Court has also agreed to postpone South Orange's compliance hearing to February 7, 2020 in order to adopt Ordinance 19-28.

This memorandum has been broken down and will further describe the following:

- 1) Differences specific to Ordinance 19-28 as a result of FSHC comment, from prior ordinances introduced at the November 6, 2019 Trustee Meeting;
- 2) Overall differences between Ordinance 19-28 and existing ordinances in Chapter 185, Articles XXXIII (Affordable Housing) and XXXIV (Development Fees); and
- 3) As requested by the Trustees, information of Ordinance 19-28 where language is "beyond" mandatory thresholds as seen throughout the State.

I. ORDINANCE 19-28 vs. PRIOR NOVEMBER INTRODUCTION

Ordinance 19-28 is being introduced and is intended to repeal Articles 185-XXXIII and 185-XXXIV and replace it in its entirety. The following provisions have been incorporated since the prior November 6, 2019 Trustee Meeting as a result of comment from FSHC:

- 1) Revised mandatory 13% VLI set-aside language to read, *"At least 13 percent of all restricted rental units within each bedroom distribution shall be very low-income units (affordable to a household earning 30 percent or less of regional median income by household size). The very low-income units shall be counted as part of the required number of low-income units within the development."*
- 2) Revised mandatory rent and sale price calculation language to read that the Administrative Agent shall utilize, *"the most recently published regional weighted average of the uncapped Section 8 income limits published by HUD and using calculation procedures approved by the Court."*
- 3) Insert language that reads, *"270 Irvington: pursuant to the applicable Redevelopment Plan, 270 Irvington is prohibited from making payments in lieu of construction."*
- 4) Insert language that reads, *"Lustbator: pursuant to the applicable Redevelopment Plan and Settlement Agreement with Fair Share Housing Center, Lustbator may make a payment in lieu of \$75,000.00 per unit, pursuant to the payment schedule set forth in subsection (G)5 of this section."*
- 5) Insert language that allows developers to demonstrate to the satisfaction of the Governing Body that a payment-in-lieu of \$100,000 per affordable unit would render the proposed inclusionary development economically unfeasible. Additionally, language is inserted to not allow the Village to adjust a payment-in-lieu amount lower than \$75,000 per affordable unit.
- 6) Insert language that payment-in-lieu amount applicable to inclusionary developments to reflect the cost of constructing a new affordable unit, *"at 52 percent of median income in the region"*.
- 7) Remove cross references to prior ordinance, which will now be repealed and replaced in its entirety with the new ordinance.

II. ORDINANCE 19-28 vs. EXISTING ORDINANCE (CH.185, ARTICLES 33-34)

In addition to the comments in Section I of this memorandum, the following policies are incorporated in O-19-28, which are not existing in Chapter 185, Articles 33-34. These items were in the prior ordinance introduction draft at the November 6, 2019 Trustee Meeting:

- 1) Removal of language that referred to COAH and "Third Round" regulations.

- 2) Clarify that projects with 5 or more proposed units are required to provide set-aside affordable units. The percentage of 20% set-aside remains unchanged from existing Chapter 185, Article 33.
- 3) Incorporate a stratification requirement for Very-Low-Income of 13% set-aside to households earning no more than 30% of median income.
- 4) Provide provision that the Village may, at its discretion, off-site up to 50% of a developer's mandatory set-aside requirement.
- 5) Establish a Payment-in-Lieu amount of \$100,000 per affordable unit, as well as options to do "market to affordable" buy downs. The existing ordinance does not specify PIL amounts.
- 6) Revise residential developer fee language to eliminate "the developers of all new development of principal and accessory residential buildings," which is now revised to say "residential developers" in order to eliminate confusion with additions that may be exempt.

III. ORDINANCE 19-28 – BEYOND STATE THRESEHOLDS

The following provisions of O-19-28 are unique in that they are specific to South Orange Village and are considered "beyond" State mandate of current affordable housing ordinances:

- 1) **Mandatory Set-Aside Provision:** Municipalities are not "required" under COAH regulations to adopt a municipal-wide set-aside ordinance. Rather, a municipality will find a large portion of land to rezone for inclusionary development. However, FSHC has required a mandatory set-aside ordinance in almost all of its settlement agreements with municipalities, with very limited exceptions. As such, the Village is going "beyond" standard COAH regulations by requiring set-aside ordinance pursuant to its settlement agreement.
- 2) **Rental vs. Homeownership Set-Aside Percentages:** COAH regulations generally have between a 17.5% set-aside and 20% set-aside based upon density under its "Zoning for Inclusionary Development" regulations. However, as stated above, mandatory set-aside ordinances across the municipality are not a requirement. Generally speaking, the standard set-aside is 20%, but since COAH provides other regulations that incentivize the creation of rental units (i.e. awarding bonus credits in each round of rental development), municipalities have in turn incentivized builders to create affordable rental units by only requiring a 15% set-aside. In general, FSHC has agreed to this approach. As such, the Village is going "beyond" standard COAH regulations by requiring 20% set-aside requirements for rental developments.

RESOLUTION 20-
TOWNSHIP OF SOUTH ORANGE VILLAGE PLANNING BOARD
CONSISTENCY REPORT PURSUANT TO N.J.S.A. 40:55D-26

WHEREAS, pursuant to N.J.S.A. 40:55D-64, the Governing Body of a Municipality shall refer any proposed zoning ordinance or amendment thereto to its Planning Board prior to hearing on the adoption of such zoning ordinance or amendment; and

WHEREAS, pursuant to N.J.S.A. 40:55D-26, the Planning Board shall make and transmit to the Governing Body a report with respect to such zoning ordinance or amendment thereto including identification of any provisions in the proposed regulation, revision or amendment which are inconsistent with the Master Plan and recommendations concerning these inconsistencies and any other matters as the Board deems appropriate; and

WHEREAS, on January 6, 2020, the Planning Board adopted the amended Round 3 Housing Element and Fair Share Plan of the Township of South Orange Village's Master Plan;

WHEREAS, the Governing Body has submitted to the Planning Board a proposed ordinance amendment entitled, **AN ORDINANCE TO AMEND THE CODE OF THE TOWNSHIP OF SOUTH ORANGE VILLAGE, TO REVISE CHAPTER 185, LAND DEVELOPMENT, TO REPEAL ARTICLES 185-XXXIII AND 185-XXXIV IN THEIR ENTIRETY AND CREATE A NEW PART 15, "AFFORDABLE HOUSING" WITH THE ADDITION OF NEW ARTICLES XXXVI, XXXVII, XXXVIII AND XXXIV, TO REVISE "AFFORDABLE HOUSING" PROVISIONS OF THE CODE OF THE TOWNSHIP OF SOUTH ORANGE VILLAGE TO ADDRESS THE REQUIREMENTS OF THE NJ SUPERIOR COURT;** and

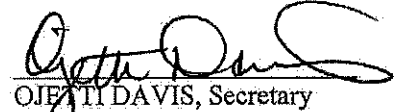
WHEREAS, the Planning Board conducted a meeting on January 6, 2020 due notice of said meeting having been given in accordance with New Jersey Statutes, the Open Public Meetings Act, and the Municipal Land Use Law, and a quorum of the Planning Board being present, the Board reviewed and considered the proposed amendments to the Zoning Ordinance to determine their consistency with the Master Plan and Re-Examination Report, the Planning Board does hereby make the following report to the Governing Body of the Municipality:

1. The purpose of the proposed Ordinance is to assure that very-low, low, and moderate income units are created with controls on affordability and that very-low, low, and moderate income households shall occupy those units.
2. The proposed Ordinance is consistent with the South Orange Village Master Plan.
3. The Planning Board recommends that the Village periodically re-examine whether the Payment-In-Lieu amount required by the Ordinance is adequate to generate additional affordable housing in the Village.
4. The Planning Board recommends that the Village should promptly utilize funds collected from payments-in-lieu in order to promptly provide additional affordable units in the Village.
5. The Planning Board recommends that the Village Trustees consider requiring an increased percentage of on-site affordable units.

NOW, THEREFORE, BE IT RESOLVED by the Planning Board on this 6th Day of January, 2020 that the within report be transmitted to the Governing Body of the Municipality forthwith.

I HEREBY CERTIFY that the above is a true and exact copy of the report adopted by the Planning board of the Township of South Orange Village at its meeting held on January 6, 2020.

Dated: January 10, 2020


JEFFREY DAVIS, Secretary
South Orange Village Planning Board