
Planning Report

Master Plan Amendment

Fair Share Plan

Chester Township
Morris County, New Jersey

Prepared for: Chester Township Planning Board

under the supervision of:
George A. Ritter, P.P./AICP
Professional Planner
NJ License #2126
AICP #017420

April 14, 2010

Adopted: May 11, 2010

THE FAIR SHARE PLAN

INTRODUCTION

The Council on Affordable Housing (COAH) requires that a municipality develop a Fair Share Plan to address its 1987-2018 fair share obligations pursuant to the requirements contained in its Substantive Rules N.J.A.C. 5:97. The Fair Share Plan shall identify the strategies to be utilized by the municipality to meet the estimated growth share need and affordable housing obligations carried forward from previous rounds that is detailed in the municipal Housing Element. The Fair Share Plan shall be adopted by the planning board and endorsed by the governing body prior to the municipal petition for substantive certification.

The most recent Fair Share Plan for Chester Township was adopted on November 22, 2005. The Fair Share Plan that follows responds to the need for affordable housing in Chester Township based upon that which has been identified in the Housing Element completed in February 2010. It complies with requirements of the revised New Jersey Council on Affordable Housing Procedural Rules and Substantive Rules for round three, which became effective on June 2, 2008.

For round three, COAH has provided municipalities with their fair share obligations using a new methodology that incorporates data from prior rounds and projected need calculated by COAH. The projected need is based on growth share for the years 2004 to 2018. Growth share is calculated for residential and non-residential development for the period and added to the municipality's prior round obligations for rehabilitation and new construction to arrive at the round three fair share need. Municipalities that are located in the Highlands Region, such as Chester Township, may utilize growth projections prepared by the Highlands Council to determine the affordable housing need that results from development between the period beginning in 2004 and ending in 2018. Chester Township has availed itself of this option. The 2010 Housing Element provides the calculations used to determine Chester Township's fair share obligations for the third round.

AFFORDABLE HOUSING NEED

Chester Township has an obligation of 36 units from prior rounds consisting of 4 rehabilitation units and 32 units of new construction. Growth share for the period 2004-2018, generated by new residential and non-residential construction, has been projected by the Highlands Council as 19 units of affordable housing. Combining the three components used to determine the pre-credited affordable housing obligation for round three — rehabilitation share, prior round obligation and growth share — Chester Township’s obligation is 55 units comprised of 51 new construction units and 4 units of rehabilitation. The report sections that follow provide details of how the Township intends to meet its remaining obligations. Table 1 illustrates Chester Township’s pre-credited affordable housing need for round three.

Table 1: Pre-Credited Round Three Affordable Housing Need

Round Three Methodology Components	
Rehabilitation Share	4 units
Prior Round Obligation (new construction)	32 units
Growth Share 2004-2018 (new construction)	19 units
Fair Share Obligation	55 units

As summarized in the 2010 Housing Element, Chester Township has undertaken affordable housing activity that has generated affordable units that may reduce the pre-credited need. The completed rehabilitation and new construction units total 38 including rental bonuses. After application of the credits, Chester Township’s affordable housing obligation is reduced to 13 units as illustrated in the table below:

Table 2: Remaining Third Round Fair Share Obligation

Rehabilitation Share	4 units
Renovated deficient units	5 units
Remaining Rehabilitation Share Obligation	0 units
New Construction Obligation from Prior Round (1987-1999)	32 units
Prior Cycle (Arc)	3 units
Age-restricted rental units (CASH)	15 units
Supportive Special Needs Housing	9 units
Rental Bonuses (6 units certified)	5 units
Remaining Prior Round Obligation	0 units
Growth Share	19 units
Habitat for Humanity (pending)	1 unit
Chester Area Senior Housing (pending)	4 units
Surplus Bonus Credit from Prior Round (certified)	1 unit
Remaining Growth Share Obligation	13 units

To summarize, Chester Township has fulfilled its rehabilitation obligation of four (4) units and is left with a 1-unit surplus to be applied to subsequent COAH rounds. The prior round obligation has been satisfied with 32 out of 33 certified credits. The Township’s 19-unit growth share obligation has been reduced by 6 units comprised of one-unit left over from the prior round, one pending credit for a home built by Habitat for Humanity and four units of the Chester Area Senior Housing development (CASH) not available for credit in round two leaving Chester Township with a 13-unit shortfall.

Table 3: Summary of Round Three Obligations

Round Three Fair Share Summary	
Rehabilitation Share	1-unit surplus
Prior Round Obligation	Satisfied
Growth Share Obligation	13-unit shortfall

The Township’s strategies for meeting its Fair Share Obligation are detailed below.

COMPLIANCE STRATEGIES

The Council on Affordable Housing requires that the municipality applying for substantive certification present a plan that meets its overall obligation for the period of time that covers the years 1987 - 2018, which includes three components: rehabilitation share, prior round obligation and growth share. As demonstrated above, Chester Township has met its obligations for rehabilitation; therefore, a rehabilitation program is not necessary for round three. The prior round obligation has been satisfied with completed affordable units. With regard to growth share, after use of 5 credits for completed units and one bonus credit carried forward from the prior round, the Township has a 13-unit shortfall; therefore proposed units are required to satisfy the Township’s overall need for round three.

COAH has provided municipalities with several options for providing affordable housing. The options identified by the Township as providing a realistic opportunity for the development of affordable housing are in the category of new construction and include; supportive and special needs housing, 100% affordable housing units and an accessory apartment program. Following is a description of each proposed new construction project or program.

Supportive and Special Needs Housing

Chester Township has elected to address a substantial portion of its affordable housing obligation by partnering with a non-profit entity to develop affordable rental units. The Township closed on the purchase of the Glenlora Nursing Home property in December 2005 and immediately thereafter entered into a lease/purchase agreement with United

Cerebral Palsy of Morris/Somerset County (UCP), which intended to redevelop the facility for an integrated service center that would include apartments for low-income disabled individuals. In 2009, UCP informed the Township that due to financial hardship it could no longer honor its commitment to Chester Township to acquire and redevelop the property.

Chester Township remains committed to finding a developer for this property that will provide affordable housing in the form of a supportive and special needs facility. The Township has been approached by several interested parties about potential redevelopment of the site and has reached-out to others in hopes of securing a firm commitment by the end of 2010.

Site Description

The site consists of a single lot identified on the Chester Township tax maps as Lot 7 in Block 26.06. It is a corner lot with frontage on State Highway No. 24 and Chester Woods Drive, a local municipal street. The tract contains 14.4 acres.

The Township of Chester is the owner of record. The site and facilities, consisting of buildings, parking areas and other accessory structures, were formerly used as a nursing home known as Glenlora Nursing Home. The Township purchased the property from the latest owner/operator of Glenlora in 2005 with the goal of assisting UCP with their plans to locate an integrated service center and affordable housing for disabled persons in the Township.

The property is in two zoning districts; R-2 Residential and LB Limited Business. The proposed use will house up to 15 individuals with developmental disabilities and therefore it is a permitted use in all residential districts pursuant to the New Jersey Municipal Land Use Law (MLUL), Section 40:55D-66.1. The facility will be located in the R-2 District and no zoning amendment is required.

The site is surrounded by the following zoning and land uses:

- | | |
|--------|---|
| North: | R-2 Residential Zone; Single-Family Homes |
| South: | LB Limited Business Zone; Offices |
| East: | LB Limited Business Zone and R-2 Residential Zone; Offices and Single-Family Homes |
| West: | LB Limited Business District and R-2 Residential Zone; Commercial and Single-Family Homes |

Utilities consist of an onsite septic system, a public non-community water supply system, electric, gas and telephone service. A public community water system and public sanitary sewer are not available to service this site.

Sewer: Existing individual subsurface sewage disposal system.

Capacity: 4,050 GPD

Water: Existing public non-community well

Capacity: over 5,000 GPD

Redevelopment will include use of the existing well and septic system. Other existing site improvements include 6,200 square feet of building, parking areas, driveways, walks and a swimming pool.

Site Suitability

The site lies within the Highlands Planning Area of Chester Township and as such is exempt from the regulations promulgated by the New Jersey Department of Environmental Protection (NJDEP) set forth in N.J.A.C. 7:38. Only about 24% of Chester Township's land area is designated as Planning Area and therefore the Township has limited opportunities for development of affordable housing.

The majority of the properties within the Highlands Planning Area of Chester Township are developed. Those parcels that remain vacant are so disposed primarily because of the lack of public sewer and water and environmental constraints that would limit or prevent development. Redevelopment of existing parcels with septic systems and wells is the future for development of the parcels located within the Planning Area.

It appears that there are no environmental constraints that would prohibit or limit the proposed use. The site is not within 300' of a Category One waterway and no wetlands or flood hazard areas are located on the site pursuant to an analysis of NJDEP inventory maps. The site does not contain slopes in excess of 15%. Furthermore, the site and existing buildings are not of particular historic or architectural significance.

The site is located within the Environmentally Sensitive Planning Area PA5. Pursuant to guidelines of the State Development and Redevelopment Plan, new development is discouraged in PA5 except for locations within designated centers. Chester Township does not have a Center, designated or planned, and the site is already developed with an institutional use. Redevelopment of this property with a use similar to the former nursing home will not further negatively impact the site or the surrounding neighborhood. An enhanced benefit of the proposed redevelopment to the Township, County and State is the creation of affordable housing units.

Chester Township anticipates that the property will be developed to the full extent allowed by the MLUL for use as a community residence for the developmentally disabled, a use permitted in all residential zones to no more than 15 developmentally disabled individuals. The unit of credit towards the Township's growth share obligation

is the bedroom for this use; therefore, Chester Township will seek COAH's approval of 15 credits. Sewer and water are available in sufficient quantity to service such a facility.

100 Percent Affordable Housing

Chester Township has been approached by the owner of a parcel in the Township for development of affordable apartments available for lease. The current use of the property is residential as is the municipal zoning. The developer has submitted site plans and architecture for two buildings that contain a combined total of 8 apartments. It is the opinion of the Township Planner that NJDEP's septic regulations will allow a maximum of 5 units.

The Township intends to encourage the developer to proceed with an application to the proper municipal board for approval of such a project. As an incentive, the Township will offer to subsidize the development. At a minimum, this subsidy will be \$35,000 for each newly created affordable housing rental unit.

Site Description

The property at Rt. 206 and Four Bridges Road (Lot 11/Block 44) is zoned R-3 Residential. The lot has an area of about 6.5 acres according to a recent survey. Constraints to development include: (1) a 200' open space conservation easement along the property's Rt. 206 frontage; (2) wetlands and associated transition buffer area that covers approximately 2 acres of the site; and (3) Highlands Preservation Area regulations pursuant to N.J.A.C. 7:38 (unless exempt).

Site Suitability

Residential development may be allowed by NJDEP if the proposal is not determined to be a "major Highlands development" meaning that the development results in cumulative disturbance of less than 1-acre and new impervious surface of less than 0.25 acres for the lot that existed as of August 10, 2004 and no environmental land use or water permit is required from NJDEP (thus exempt from the Highlands regulations). If exempt, the existing building could be demolished and a new structure erected for affordable units elsewhere on the lot as proposed. The proposed development would have to stay under the NJDEP thresholds of 1-acre of disturbance which would include existing disturbed areas and 0.25 acres of new impervious cover.

Pursuant to current Township land use regulations for the R-3 Zone, development on this lot is limited to one single-family detached dwelling; therefore, a zoning amendment or use variance would be required. Further, the proposed development will require relief from NJDEP Highlands Preservation Area rules that limit the creation of new residential dwellings on existing lots.

The proposed development would be subject to limitations for sewage disposal. The aggregate flow from all site improvements cannot exceed 2,000 GPD per septic system for each lot. Potable water would be supplied by a well located on-site.

Accessory Apartment Program

The 1995 certified plan includes two (2) accessory apartments to meet the Township's prior round obligation. Chester Township enacted an ordinance in 1996 to effectuate the program (Article 41, Land Use). The development of the Habitat for Humanity house replaced one of the proposed accessory apartments leaving one in the adopted Fair Share Plan submitted to COAH in 2005. The proposed Fair Share Plan also includes one accessory apartment. Pursuant to requirements established by COAH, information regarding the accessory apartment program follows.

Housing Stock

The housing stock in Chester Township lends itself to the development of accessory apartments. Over 98% of the housing in Chester Township is single-family detached homes as compared to 67% for Morris County and 54% for the entire State of New Jersey. The homes in Chester Township are larger than those in the County and State as a whole as evidenced by the fact that the median number of rooms in the Township is 9 or more, whereas in Morris County the median number of rooms is 6.6 and for the State the median is 5.7 rooms. The residential development pattern in Chester Township is low density and homes are located on relatively large lots. More than 95% of the developed residential land is comprised of lots that are 2 acres or greater. Over 35% of the developed residential land is comprised of lots 3 acres or larger. Further, the number of owner-occupied homes is greater in Chester Township than in the Morris County and the State (85% Township; 77% County; and 67% State).

Funding Source

The Chester Township Accessory Apartment Program will be funded with monies from the Chester Township Affordable Housing Trust Fund as per our draft Spending Plan submitted to COAH with the Township's Third Round petition.

Water and Sewer

With very few exceptions, the homes in Chester Township are served by private septic systems and wells. The proposed accessory apartment will be developed in an existing single-family home or accessory building on the same lot as a single-family home that is served by a functioning septic system and well that has the capacity to serve all of the development on the lot.

Development Fees

Chester Township collects fees for new development pursuant to an ordinance established in 1995. The ordinance has been amended in subsequent years to comply with revised COAH rules. The current development fee ordinance is one that was approved by COAH on July 12, 2005. In 2008, COAH developed a new model development fee ordinance based upon its revised rules for use by municipalities. The Planning Board has prepared a draft ordinance using the new model (see Appendix D). The draft must be approved by Township Council, but not adopted, prior to submission to COAH for review and approval.

Chester Township will continue to enforce its development fee ordinance as amended and approved by COAH on July 12, 2005. The funds collected from developers of residential and non-residential projects in Chester Township will be added to the balance of monies in the Township's Affordable Housing Trust Fund. Any fees in excess of those required by Chester Township to fund the mechanisms proposed in this plan shall be used to fund affordable housing activity in the future as needed. Should there be a shortfall in the required funding, Chester Township is fully committed to provide the funding necessary to fulfill the Township's financial obligation for the proposed projects/programs regardless of the availability of grants, developer fees, or voluntary fees which the Township can expect to receive.

Chester Township is required to provide COAH with a plan of how it will spend development fees that have been collected or will accrue in the future as a result of residential and non-residential development in the Township. The proposed Spending Plan for round three is detailed in a separate document, which will be reviewed by the Planning Board before being forwarded to Township Council for its endorsement. The plan is subject to approval by the Council on Affordable Housing.

Growth Share

New residential and non-residential development contributes to the Township's growth share and creates an affordable housing obligation that must be addressed. Chester Township will plan for future growth by requiring all developers to provide for their fair share of affordable units or payment of a fee in lieu of constructing affordable units. An ordinance requiring the construction of affordable housing or payments in lieu thereof has been drafted by the Planning Board and submitted to COAH for approval prior to adoption by Township Council (see Appendix A).

Affordability Assistance

The Council on Affordable Housing requires that Chester Township use a portion of its

development fee revenues to fund a program to assist low and moderate-income households in the purchase or rental of units within the Township. An affordability assistance program utilizing COAH guidelines has been developed for this purpose. It is described in detail in the Affordability Assistance Program Plan appended to this Fair Share Plan.

Round Three Fair Share Summary

The rehabilitation and prior round obligations have been satisfied with completed affordable units. Information regarding these two components of the third round is specified in the Chester Township Housing Element. The preceding sections of the Fair Share Plan focus on the obligations created by growth share. The Township will meet its growth share obligation of 19 units as follows:

- Chester Area Senior Housing (CASH) provided the Township with 19 units and one bonus credit. To meet the prior round obligation, 15 of those credits have been proposed. The remaining 4 units and one bonus will be applied toward the growth share obligation.
- One additional completed affordable unit, a single-family home constructed by Habitat for Humanity, will be applied to growth share leaving a balance of 13 units.
- The 13-unit balance will be satisfied with proposed affordable housing activity consisting of:
 - 100 percent affordable housing development on property at Route 206 and Four Bridges Road;
 - Redevelopment of the Glenlora site for supportive and special needs housing; and
 - An accessory apartment program.

The number of affordable units proposed in this fair share plan exceeds the number required to satisfy the growth share obligation. When completed, 13 surplus new construction units will be available for future obligations.

In addition to the mechanisms/program listed above, the Township should be eligible for rental bonuses. The rental obligation for growth share is 25 percent of the obligation or 5 units when rounded up. The number of rental units proposed in this plan is 24 and the bonuses, which are computed differently depending upon the applicable rule, number 7 in all. Only 4 bonus units may be used toward the growth share obligation pursuant to COAH's rules. The balance will be applied to future affordable housing obligations as needed.

Following is a table that illustrates the entire third round fair share obligations and credits.

Third Round Fair Share Plan	Units	Source/status
Rehabilitation Obligation	4	COAH
<i>Credits</i>		
Rehabilitation Program	5	Completed
Remaining Rehabilitation Obligation	0	Surplus
<hr/>		
Prior Round Obligation	32	COAH
<i>Credits</i>		
Prior Cycle (Arc I)	3	Completed
Age-Restricted Units (CASH)	15	Completed
Supportive Special Needs Housing (Arc II & Devereux)	9	Completed
Rental Bonuses (Arc II & CASH)	6	Completed
Total Prior Round Credits	33	Calculated
Remaining Prior Round Obligation	0	Satisfied
<hr/>		
Growth Share Obligation	19	Highlands Council
<i>Credits</i>		
CASH (surplus prior round age-restricted units)	4	Completed
100% Affordable (Habitat for Humanity family housing)	1	Completed
Byrne Apartments (100% Affordable family housing)	5	Proposed
Special needs supportive housing (Glenlora Site)	15	Proposed
Accessory Apartments (family housing)	1	Proposed
<i>Bonuses (proposed)</i>		
Rental Bonuses	7	
Total Growth Share Credits	33	Calculated
Remaining Growth Share Obligation	0	Satisfied
<hr/>		
Round Three Fair Share Obligation		
Rehabilitation Units	1	Surplus
New Construction Units	14	Surplus

All of COAH's minimum and maximum thresholds for growth share have been met with one exception—minimum number of family units. Pursuant to N.J.A.C. 5:97-3.9, at least 50 percent of the affordable units addressing the growth share obligation shall be

“family housing” units, which COAH defines as. *“a self-contained residential dwelling unit with a kitchen, sanitary facilities, sleeping quarters and a private entrance, which is available to the general public and not restricted to any specific segment of the population.”* By definition, age-restricted and special needs and supportive housing are not family units. Out of the 19 units used to extinguish the growth share obligation, 7 are family units comprised of the completed Habitat house, the apartments in the proposed 100 percent affordable development and the proposed accessory apartment. The Township will request a waiver from the rule for the 3-unit shortfall.

Following is a summary table.

Growth Share Summary	Surplus	Shortfall
Family units: 10 required; 7 provided	0	3
Age-restricted units: Max. 4; 4 provided	0	0
Very low income units: 3 required; 3 provided	0	0
Rental obligation: Min. 5; 25 provided	20	0
Rental bonuses: Max. 4; 7 provided	3	0
Round Three Summary		
Surplus Rental Bonuses	3	Proposed
Surplus Rehabilitation Units	1	Completed
Surplus New Construction Units	14	Proposed
Total Surplus Credits for Round Three	18	

APPENDIX A
Growth Share Ordinance
Proposed

§ 113-218.1 Growth Share

- A. Intent and Purpose. The New Jersey Supreme Court and the New Jersey Legislature have recognized in *South Burlington County NAACP v. Mount Laurel* 92 N.J. 158 (1983) (“Mount Laurel II”) and the Fair Housing Act, N.J.S.A. 52:27D-301 et seq. (“FHA”) that New Jersey municipalities have responsibilities to provide affordable housing to low and moderate-income households. Development of residential and non-residential structures may generate an affordable housing obligation for the Township pursuant to Council on Affordable Housing (COAH) third round rules contained in N.J.A.C. 5:97 et seq. In furtherance of meeting this affordable housing obligation, Chester Township has established the following regulations that require developers to contribute affordable housing units or payments in lieu of construction of the units in proportion to the obligation generated by their development project.
- B. Applicability. Every development that increases the number of affordable housing units that must be addressed by the Chester Township Housing Element and Fair Share Plan, shall be subject to the regulations contained in this section unless exempt as provided for below. The provisions of this section shall be applicable to all zoning districts in Chester Township except the P Public Zone. Nothing contained herein shall relieve any developer from the payment of a development fee pursuant to § 113-218 if exempt from the provisions of this ordinance.
- C. Exemptions. The following types of development shall be exempt from the requirements of this section:
- (1) Developments of Federal, State, County, and municipal governments.
 - (2) 100% affordable developments.
 - (3) Additions to residential structures that do not create a new dwelling unit.
 - (4) Any construction that does not require the issuance of a Certificate of Occupancy.
 - (5) Developments that have received preliminary or final approval for subdivision or site plan or were issued a building permit prior to the effective date of this ordinance shall be exempt from the provisions hereof unless the developer seeks a substantial change in the approval or permit.
- D. Calculation of Affordable Unit Obligation.
- (1) Residential Development. One unit of affordable housing shall be provided for each five (5) market-rate units to be developed. The number of affordable units to be provided shall be calculated by dividing the total number of units in the development by five (5).
 - (2) Non-residential Development. The number of affordable units generated by non-residential development shall be in accordance with the following standards established by COAH (use groups are as defined by the IBC - International Building Code):

Use Group	Description *	Square Feet Generating One Affordable Unit
B	Office buildings. Places where business transactions of all kinds occur. Includes banks, corporate offices, government offices, professional offices, car showrooms and outpatient clinics.	8,333
M	Mercantile uses. Buildings used to display and sell products. Includes retail stores, strip malls, shops and gas stations.	25,000
F	Factories where people make, process, or assemble products. Includes automobile manufactures, electric power plants, foundries, and incinerators. F group includes F1 and F2.	12,500
S	Storage uses. Includes warehouses, parking garages, lumberyards, and aircraft hangers. S use group includes S1 and S2.	125,000
H	High Hazard manufacturing, processing, generation and storage uses. H group includes H1, H2, H3, H4 and H5.	25,000
A1	Assembly uses including concert halls and TV studios.	12,500
A2	Assembly uses including casinos, night clubs, restaurants and taverns.	8,333
A3	Assembly uses including libraries, lecture halls, arcades, galleries, bowling alleys, funeral parlors, gymnasiums and museums but excluding houses of worship.	8,333
A4	Assembly uses including arenas, skating rinks and pools.	8,333
A5	Assembly uses including bleachers, grandstands, amusement park structures and stadiums.	Exclude
E	Schools K-12	25,000
I	Institutional uses such as hospitals, nursing homes, assisted living facilities and jails. I group includes I1, I2, I3 and I4.	12,500
R1	Hotels and motels.	31,250
U	Miscellaneous uses. Fences, tanks, barns, agricultural buildings, sheds, greenhouses, etc.	Exclude
In the case of mixed-use development, the nonresidential affordable housing obligation will be assigned in proportion to the square footage of each use in the mixed-use development.		

*Note: The descriptions in the above table are not intended to be exhaustive and additional uses may be included within each use group; in all cases the IBC definitions control. The inclusion of any use in the above table is not to be construed to mean that such use is permitted in Chester Township or in any particular zoning district; such use shall only be permitted in accordance with the balance of the provisions in the Land Development Ordinance.

To determine the affordable unit obligation for a particular development, the developer shall divide the gross square footage of the building(s) by the square feet that generates one affordable unit for a given use group (refer to the chart above). As an example, if a developer proposes development of a 25,000 square foot office building (use group B), the affordable housing obligation for that developer would be 25,000 divided by 8,333 or three affordable units.

E. Developer's obligation. Prior to or as a condition of development approvals, a developer's agreement shall be executed between the affected developer and Chester Township in accordance with the following provisions.

- (1) Residential development and the residential portion of mixed residential-nonresidential development shall provide the calculated affordable housing obligation for the project as follows:
 - (a) For every whole unit of obligation one affordable unit shall be developed on the site or tract being developed or at another location in Chester Township, in accordance with all applicable zoning regulations.
 - (b) For every fractional unit of obligation the developer shall have the option to:
 - [1] Develop a whole affordable unit on the site or tract being developed or at another location in Chester Township, in accordance with all applicable zoning regulations and to claim a credit for any resulting fractional unit surplus pursuant to subsection F below or;
 - [2] Pay a fee to the Township in accordance with subsection G below.
- (2) Nonresidential development and the nonresidential portion of a mixed residential-nonresidential development shall provide the calculated affordable housing obligation for the project as follows:
 - (a) For every whole unit of obligation the developer shall develop the affordable unit on the site or tract being developed or at another location in Chester Township, in accordance with all applicable zoning regulations.
 - (b) For every fractional unit of obligation the developer shall have the option to:
 - (c) Develop a whole affordable unit as set forth in subsection E(b)[1] and to claim a credit for any resulting fractional unit surplus pursuant to subsection F below or;
 - (d) Pay a fee to the Township in accordance with subsection G below.

F. Surplus units. A developer may provide more affordable units than required to address a fractional unit obligation or for other reasons. Additionally, the governing body of Chester Township or another entity may enter into an agreement with the developer to provide a subsidy for the development of more affordable housing units than required. When surplus units are created, the following provisions shall apply:

- (1) Any developer that provides surplus units shall receive a credit for such surplus. If the Township or another entity subsidizes the surplus units, the credits shall accrue to the Township or that other entity.
- (2) Credits for surplus units may be applied to a subsequent development by the same developer or may be sold or otherwise transferred to other developers, who may then apply the credits to another development in Chester Township. The sale or other transfer of the credits shall require the approval of both parties to the transaction.
- (3) The Township shall be required to keep a record of:
 - (a) The number of surplus units and credits available for sale or transfer to interested parties and;
 - (b) The sale or transfer of credits in the Township.

(c) The Township shall make such records available to the public for inspection during normal working hours.

G. Payments in lieu of constructing affordable units. A developer may make a payment to the Township in lieu of building affordable housing units when permitted as set forth in subsection E above and in accordance with the following provisions:

- (1) The amount of the payment shall be based on the cost to the Township to create or subsidize the creation of the same number of affordable units, or fraction thereof, as is obligated by the developer, by utilizing the procedures authorized by COAH in N.J.A.C. 5:97-6.4(c) as amended and supplemented.
- (2) All funds collected by the Township as payments in lieu of constructing affordable units shall be deposited in the Chester Township Affordable Housing Trust Fund in accordance with all applicable COAH regulations and Chester Township requirements.
- (3) In the event that the developer makes the payment and then does not proceed to development, the developer may request a refund. Such request shall be made in writing to the Township Council. If requested, the Township shall refund the fee, plus any interest in the account resulting from the payment, less any expenses required to administer the account. Any refund issued by the Township shall be construed as a failure of the applicant to satisfy a condition precedent to the development approval and shall therefore terminate any and all rights to such development. The developer may reinstate such rights by making a new payment, with the amount of such payment to be renegotiated as set forth in subsection G above. The foregoing shall not be construed to extend or otherwise alter any rights to proceed with the development as established by the New Jersey Municipal Land Use Law, the rules of the New Jersey Council on Affordable Housing or other applicable law.

APPENDIX B

Affordable Housing Ordinance

Proposed

AN ORDINANCE OF CHESTER TOWNSHIP TO ADDRESS THE REQUIREMENTS OF THE COUNCIL ON AFFORDABLE HOUSING (COAH) REGARDING COMPLIANCE WITH THE MUNICIPALITY'S PRIOR ROUND AND THIRD ROUND AFFORDABLE HOUSING OBLIGATIONS

Section 1. Affordable Housing Obligation

- (a) This Ordinance is intended to assure that low- and moderate-income units ("affordable units") are created with controls on affordability over time and that low- and moderate-income households shall occupy these units. This Ordinance shall apply except where inconsistent with applicable law.
- (b) The Chester Township Planning Board has adopted a Housing Element and Fair Share Plan pursuant to the Municipal Land Use Law at N.J.S.A. 40:55D-1, et seq. The Fair Share Plan has been endorsed by the governing body. The Fair Share Plan describes the ways Chester Township shall address its fair share for low- and moderate-income housing as determined by the Council on Affordable Housing (COAH) and documented in the Housing Element.
- (c) This Ordinance implements and incorporates the Fair Share Plan and addresses the requirements of N.J.A.C. 5:97, as may be amended and supplemented.
- (d) Chester Township shall file monitoring reports with COAH in accordance with N.J.A.C. 5:96, tracking the status of the implementation of the Housing Element and Fair Share Plan. Any plan evaluation report of the Housing Element and Fair Share Plan and monitoring prepared by COAH in accordance with N.J.A.C. 5:96 shall be available to the public at the Chester Township Municipal Building, Municipal Clerk's Office, 1 Parker Road, Chester, New Jersey, or from COAH at 101 South Broad Street, Trenton, New Jersey and on COAH's website, www.nj.gov/dca/affiliates/coah.

Section 2. Definitions

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

"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. 5:96, N.J.A.C. 5:97 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. 5:97-9; in the case of an ownership unit, that the sales price for the unit conforms to the standards set forth in N.J.A.C. 5:80-26.6, as may be amended and supplemented, and, in the case of a rental unit, that the rent for the unit conforms to the standards set forth in N.J.A.C. 5:80-26.12, as may be amended and supplemented.

“Affordable development” 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 percent 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. 5:97-4, 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 percent 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.

“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.

“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 percent 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.

“Moderate-income household” means a household with a total gross annual household income in excess of 50 percent but less than 80 percent 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 percent of the regional median as defined by COAH's adopted Regional Income Limits published annually by COAH.

"Rehabilitation" means the repair, renovation, alteration or reconstruction of any building or structure, pursuant to the Rehabilitation 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.

"UHAC" means the Uniform Housing Affordability Controls set forth in N.J.A.C. 5:80-26.1 et seq.

"Very low-income household" means a household with a total gross annual household income equal to 30 percent 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.

Section 3. Affordable Housing Programs

Chester Township has determined that it will use the following mechanisms to satisfy its affordable housing obligations: 100 Percent Affordable Housing, Accessory Apartment Program, Supportive and Special Needs Housing and Development Fee Ordinance.

(a) An Accessory Apartment program.

1. All accessory apartments shall meet the following conditions:

i. Accessory apartments are permitted by the Zoning Ordinance for various zoning districts, provided the units are affordable to low- and moderate-

- income households. Accessory apartments may be developed as low-income or moderate-income units (accessory apartments may be limited to only low- or only moderate-income units as determined in the Fair Share Plan).
- ii. Accessory apartments shall comply with all applicable statutes and regulations of the State of New Jersey in addition to all building codes.
 - iii. At the time of initial occupancy of the unit and for at least ten years thereafter, the accessory apartment shall be rented only to a household which is either a low- or moderate-income household.
 - iv. Rents of accessory apartments shall be affordable to low- or moderate-income households as per COAH and UHAC regulations.
 - v. There shall be a recorded deed or declaration of covenants and restrictions applied to the property upon which the accessory apartment is located running with the land and limiting its subsequent rental or sale of the unit and the accessory apartment.
 - vi. The appropriate utility authority must certify that there is water and sewer infrastructure with sufficient capacity to serve the proposed accessory apartment. Where the proposed location is served by an individual well and/or septic system, the additional capacity necessitated by the new unit must meet the appropriate NJDEP standards.
 - vii. The Chester Township accessory apartment program shall not restrict the number of bedrooms in any accessory apartment.
 - viii. No accessory apartment created as a result of this article or these regulations shall exceed the gross floor area of the existing principal dwelling on the lot.
2. The maximum number of creditable accessory apartments shall be equal to no more than 10 or an amount equal to 10 percent of Chester Township's fair share obligation, whichever is greater (additional units may be approved by COAH if the municipality has demonstrated successful completion of its accessory apartment program.).
 3. Chester Township shall designate an administrative entity to administer the accessory apartment program that shall have the following responsibilities:
 - i. The Administrative Agent shall administer the accessory apartment program, including advertising, income qualifying prospective renters, setting rents and annual rent increases, maintaining a waiting list, distributing the subsidy, securing certificates of occupancy, qualifying properties, handling application forms, filing deed restrictions and monitoring reports and affirmatively marketing the affordable accessory apartment program in accordance with the UHAC.
 - ii. The administrative entity shall only deny an application for an accessory apartment if the project is not in conformance with COAH's requirements and/or the provisions of this section/article. All denials shall be in writing with the reasons clearly stated.

- iii. In accordance with COAH requirements, Chester Township shall provide at least \$25,000 per unit to subsidize the creation of each low-income accessory apartment or \$20,000 per unit to subsidize the creation of each moderate-income accessory apartment. Subsidy may be used to fund actual construction costs and/or to provide compensation for reduced rental rates.
4. Property owners wishing to apply to create an accessory apartment shall submit to the administrative entity:
 - i. A sketch of floor plan(s) showing the location, size and relationship of both the accessory apartment and the primary dwelling within the building or in another structure;
 - ii. Rough elevations showing the modifications of any exterior building façade to which changes are proposed; and
 - iii. A site development sketch showing the location of the existing dwelling and other existing buildings; all property lines; proposed addition, if any, along with the minimum building setback lines; the required parking spaces for both dwelling units; and any man-made conditions which might affect construction.

Section 4. Reserved

Section 5. Reserved

Section 6. Reserved

Section 7. Reserved

Section 8. New Construction

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

(a) Low/Moderate Split and Bedroom Distribution of Affordable Housing Units:

1. The fair share obligation shall be divided equally between low- and moderate-income units, except that where there is an odd number of affordable housing units, the extra unit shall be a low income unit.
2. In each affordable development, at least 50 percent of the restricted units within each bedroom distribution shall be low-income units.
3. 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 percent of the total low- and moderate-income units;
 - ii. At least 30 percent of all low- and moderate-income units shall be two bedroom units;

- iii. At least 20 percent 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.
4. Affordable developments that are age-restricted shall be structured such that the number of bedrooms shall equal the number of age-restricted low- and moderate-income units within the inclusionary development. The standard may be met by having all one-bedroom units or by having a two-bedroom unit for each efficiency unit.

(b) Accessibility Requirements:

- 1. The first floor of all restricted townhouse dwelling units and all restricted units in all other multistory buildings shall be subject to the technical design standards of the Barrier Free Subcode, N.J.A.C. 5:23-7 and N.J.A.C. 5:97-3.14.
- 2. All restricted townhouse dwelling units and all restricted units in other multistory buildings in which a restricted dwelling unit is attached to at least one other dwelling unit shall have the following features:
 - i. An adaptable toilet and bathing facility on the first floor;
 - ii. An adaptable kitchen on the first floor;
 - iii. An interior accessible route of travel on the first floor;
 - iv. An interior accessible route of travel shall not be required between stories within an individual unit;
 - v. 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
 - vi. 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 and N.J.A.C. 5:97-3.14, or evidence that Chester Township has collected funds from the developer sufficient to make 10 percent of the adaptable entrances in the development accessible:
 - A Where a unit has been constructed with an adaptable entrance, upon the request of a disabled person who is purchasing or will reside in the dwelling unit, an accessible entrance shall be installed.
 - B To this end, the builder of restricted units shall deposit funds within Chester Township's affordable housing trust fund sufficient to install accessible entrances in 10 percent of the affordable units that have been constructed with adaptable entrances.
 - C The funds deposited under paragraph B. above shall be used by Chester Township for the sole purpose of making the adaptable entrance of any affordable unit accessible when requested to do so by a person with a disability who occupies or intends to occupy the unit and requires an accessible entrance.

- D The developer of the restricted units shall submit a design plan and cost estimate for the conversion from adaptable to accessible entrances to the Construction Official of Chester Township.
- E 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 N.J.A.C. 5:97-3.14, and that the cost estimate of such conversion is reasonable, payment shall be made to the Township of Chester'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.
- F Full compliance with the foregoing provisions shall not be required where an entity can demonstrate that it is site impracticable to meet the requirements. Determinations of site impracticability shall be in compliance with the Barrier Free Subcode, N.J.A.C. 5:23-7 and N.J.A.C. 5:97-3.14.

(c) Maximum Rents and Sales Prices

1. In establishing rents and sales prices of affordable housing units, the administrative agent shall follow the procedures set forth in UHAC and in COAH, utilizing the regional income limits established by COAH.
2. The maximum rent for restricted rental units within each affordable development shall be affordable to households earning no more than 60 percent of median income, and the average rent for restricted low- and moderate-income units shall be affordable to households earning no more than 52 percent of median income.
3. The developers and/or municipal sponsors of restricted rental units shall establish at least one rent for each bedroom type for both low-income and moderate-income units.
 - i. At least 10 percent of all low- and moderate-income rental units shall be affordable to households earning no more than 30 percent of median income.

****NOTE:** N.J.S.A. 52:27D-329.1 (P.L. 2008, C. 46) includes the requirement that all municipal fair share plans provide for the reservation of at least 13% of the affordable units for very low income households, i.e. households earning 30% or less of the median income. The new statute states that the requirement is not project-specific. Each municipality's version of this ordinance must reflect the determinations made in the Fair Share Plan as to the percentage of units necessary for very low income units in rental projects. Additional incentives to subsidize the creation of affordable housing available to very-low income households may be included in the zoning section of this ordinance or specified in a developer's or redeveloper's agreement.

4. The maximum sales price of restricted ownership units within each affordable development shall be affordable to households earning no more than 70 percent of median income, and each affordable development must achieve an affordability average of 55 percent for restricted ownership units; in achieving this affordability average, moderate-income ownership units must be available for at least three different 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 used:
 - i. A studio shall be affordable to a one-person household;
 - ii. A one-bedroom unit shall be affordable to a one and one-half person household;
 - iii. A two-bedroom unit shall be affordable to a three-person household;
 - iv. A three-bedroom unit shall be affordable to a four and one-half person household; and
 - v. 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 used:
 - i. A studio shall be affordable to a one-person household;
 - ii. A one-bedroom unit shall be affordable to a one and one-half person household; and
 - iii. A two-bedroom unit shall be affordable to a two-person household or to two one-person households.
7. The initial purchase price for all restricted ownership units shall be calculated so that the monthly carrying cost of the unit, including principal and interest (based on a mortgage loan equal to 95 percent of the purchase price and the Federal Reserve H.15 rate of interest), taxes, homeowner and private mortgage insurance and condominium or homeowner association fees do not exceed 28 percent of the eligible monthly income of the appropriate size household as determined under N.J.A.C. 5:80-26.4, as may be amended and supplemented; provided, however, that the price shall be subject to the affordability average requirement of N.J.A.C. 5:80-26.3, as may be amended and supplemented.
8. The initial rent for a restricted rental unit shall be calculated so as not to exceed 30 percent of the eligible monthly income of the appropriate 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.
10. The rent of low- and moderate-income units may be increased annually based on the percentage increase in the Housing Consumer Price Index for the United States. This increase shall not exceed 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. Utilities. Tenant-paid utilities that are included in the utility allowance shall be so stated in the lease and shall be consistent with the utility allowance approved by DCA for its Section 8 program.

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

Section 9. Affirmative Marketing Requirements

- (a) Chester Township shall adopt by resolution an Affirmative Marketing Plan, subject to approval of COAH, 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 Morris, Essex, Union and Warren counties.
- (d) The Administrative Agent designated by Chester Township shall assure the affirmative marketing of all affordable units consistent with the Affirmative Marketing Plan for the municipality.
- (e) In implementing the affirmative marketing plan, the Administrative Agent shall provide a list of counseling services to low- and moderate-income applicants on subjects such as budgeting, credit issues, mortgage qualification, rental lease requirements, and landlord/tenant law.
- (f) The affirmative marketing process for available affordable units shall begin at least four months prior to the expected date of occupancy.

- (g) 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 Chester Township.

Section 10. Occupancy Standards

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

Section 11. Control Periods for Restricted Ownership Units and Enforcement Mechanisms

- (a) Control periods for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.5, as may be amended and supplemented, and each restricted ownership unit shall remain subject to the requirements of this Ordinance until Chester Township elects to release the unit from such requirements however, and prior to such an election, a restricted ownership unit must remain subject to the requirements of N.J.A.C. 5:80-26.1, as may be amended and supplemented, for at least 30 years.
- (b) The affordability control period for a restricted ownership unit shall commence on the date the initial certified household takes title to the unit.
- (c) Prior to the issuance of the initial certificate of occupancy for a restricted ownership unit and upon each successive sale during the period of restricted ownership, the administrative agent shall determine the restricted price for the unit and shall also determine the non-restricted, fair market value of the unit based on either an appraisal or the unit's equalized assessed value.
- (d) At the time of the first sale of the unit, the purchaser shall execute and deliver to the Administrative Agent a recapture note obligating the purchaser (as well as the purchaser's heirs, successors and assigns) to repay, upon the first non-exempt sale after the unit's release from the requirements of this Ordinance, an amount equal to the difference between the unit's non-restricted fair market value and its restricted price, and the recapture note shall be secured by a recapture lien evidenced by a duly recorded mortgage on the unit.
- (e) The affordability controls set forth in this Ordinance shall remain in effect despite the entry and enforcement of any judgment of foreclosure with respect to restricted ownership units.
- (f) A restricted ownership unit shall be required to obtain a Continuing Certificate of Occupancy or a certified statement from the Construction Official stating that the unit

meets all code standards upon the first transfer of title 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.

Section 12. 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.

Section 13. Buyer Income Eligibility

- (a) Buyer income eligibility for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.1, as may be amended and supplemented, such that low-income ownership units shall be reserved for households with a gross household income less than or equal to 50 percent of median income and moderate-income ownership units shall be reserved for households with a gross household income less than 80 percent of median income.
- (b) The Administrative Agent shall certify a household as eligible for a restricted ownership unit when the household is a low-income household or a moderate-income household, as applicable to the unit, and the estimated monthly housing cost for the particular unit (including principal, interest, taxes, homeowner and private mortgage insurance and condominium or homeowner association fees, as applicable) does not exceed 33 percent of the household's certified monthly income.

Section 14. 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 percent 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).

Section 15. Control Periods for Restricted Rental Units

- (a) Control periods for restricted rental units shall be in accordance with N.J.A.C. 5:80-26.11, as may be amended and supplemented, and each restricted rental unit shall remain subject to the requirements of this Ordinance until Chester Township elects to release the unit from such requirements pursuant to action taken in compliance with N.J.A.C. 5:80-26.1, as may be amended and supplemented, and prior to such an election, a restricted rental unit must remain subject to the requirements of N.J.A.C. 5:80-26.1, as may be amended and supplemented, for at least 30 years.
- (b) Deeds of all real property that include restricted rental units shall contain deed restriction language. The deed restriction shall have priority over all mortgages on the property, and the deed restriction shall be filed by the developer or seller with the records office of the County of Morris. A copy of the filed document shall be provided to the Administrative Agent within 30 days of the receipt of a Certificate of Occupancy.
- (c) A restricted rental unit shall remain subject to the affordability controls of this Ordinance, despite the occurrence of any of the following events:
 - 1. Sublease or assignment of the lease of the unit;
 - 2. Sale or other voluntary transfer of the ownership of the unit; or
 - 3. The entry and enforcement of any judgment of foreclosure.

Section 16. 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 five percent of the monthly rent of the applicable restricted unit and shall be payable to the Administrative Agent to be applied to the costs of administering the controls applicable to the unit as set forth in this Ordinance.

Section 17. Tenant Income Eligibility

- (a) Tenant income eligibility shall be in accordance with N.J.A.C. 5:80-26.13, as may be amended and supplemented, and shall be determined as follows:
 - 1. Very low-income rental units shall be reserved for households with a gross household income less than or equal to 30 percent of median income.

2. Low-income rental units shall be reserved for households with a gross household income less than or equal to 50 percent of median income.
 3. Moderate-income rental units shall be reserved for households with a gross household income less than 80 percent of median income.
- (b) The Administrative Agent shall certify a household as eligible for a restricted rental unit when the household is a very low-income, low-income household or a moderate-income household, as applicable to the unit, and the rent proposed for the unit does not exceed 35 percent (40 percent for age-restricted units) of the household's eligible monthly income as determined pursuant to N.J.A.C. 5:80-26.16, as may be amended and supplemented; provided, however, that this limit may be exceeded if one or more of the following circumstances exists:
1. The household currently pays more than 35 percent (40 percent for households eligible for age-restricted units) of its gross household income for rent, and the proposed rent will reduce its housing costs;
 2. The household has consistently paid more than 35 percent (40 percent for households eligible for age-restricted units) of eligible monthly income for rent in the past and has proven its ability to pay;
 3. The household is currently in substandard or overcrowded living conditions;
 4. The household documents the existence of assets with which the household proposes to supplement the rent payments; or
 5. The household documents 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.
- (c) The applicant shall file documentation sufficient to establish the existence of the circumstances in (b)1 through 5 above with the Administrative Agent, who shall counsel the household on budgeting.

Section 18. Administration

- (a) The position of Municipal Housing Liaison (MHL) for Chester Township is established by this ordinance. The Township Council shall make the actual appointment of the MHL by means of a resolution.
1. The MHL must be either a full-time or part-time employee of Chester Township.
 2. The person appointed as the MHL must be reported to COAH for approval.
 3. The MHL must meet all COAH requirements for qualifications, including initial and periodic training.
 4. The Municipal Housing Liaison shall be responsible for oversight and administration of the affordable housing program for Chester Township, including the following responsibilities which may not be contracted out to the Administrative Agent:

- i. Serving as the municipality's primary point of contact for all inquiries from the State, affordable housing providers, Administrative Agents and interested households;
 - ii. The implementation of the Affirmative Marketing Plan and affordability controls.
 - iii. When applicable, supervising any contracting Administrative Agent.
 - iv. Monitoring the status of all restricted units in Chester Township's Fair Share Plan;
 - v. Compiling, verifying and submitting annual reports as required by COAH;
 - vi. Coordinating meetings with affordable housing providers and Administrative Agents, as applicable; and
 - vii. Attending continuing education opportunities on affordability controls, compliance monitoring and affirmative marketing as offered or approved by COAH.
- (b) Chester Township shall designate by resolution of the Township Council, subject to the approval of COAH, one or more Administrative Agents to administer newly constructed affordable units in accordance with N.J.A.C. 5:96, N.J.A.C. 5:97 and UHAC.
- (c) 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 COAH. 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).
- (d) 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 COAH;
 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, though the ultimate responsibility for retaining controls on the units rests with the municipality.
 9. The Administrative Agent shall have authority to take all actions necessary and appropriate to carry out its responsibilities, hereunder.

Section 19. 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:
 - i. A fine of not more than [insert amount] 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;
 - ii. 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 Chester Township Affordable Housing Trust Fund of the gross amount of rent illegally collected;
 - iii. 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.

Section 20. Appeals

Appeals from all decisions of an Administrative Agent designated pursuant to this Ordinance shall be filed in writing with the Executive Director of COAH.

REPEALER

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

SEVERABILITY

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

EFFECTIVE DATE

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

APPENDIX C

Affordability Assistance Program Plan

Proposed

Affordability Assistance Program Plan

Chester Township, Morris County, NJ

April 15, 2010

Pursuant to N.J.A.C. 5:94-6.12(c), Chester Township must use funds from its development fee affordable housing trust fund to increase affordability of the units that are part of its affordable housing plan. Chester Township proposes to provide affordability assistance through security deposit assistance and/or rental assistance program(s).

According to Chester Township's spending plan approved by COAH on [insert date spending plan was approved], Chester Township has [*insert \$ amount set forth in the spending plan*] available for affordability assistance programs.

Of the amount designated above, Chester Township also has a requirement to provide at least one-third of all affordability assistance to households earning 30 percent or less of area median income. The municipality has designated [*insert \$ amount set forth in the spending plan*] for affordability assistance to very low-income households.

Rental Assistance Program

Chester Township will designate [insert \$ amount set forth in the spending plan] of its affordable housing trust fund as a Rental Assistance Fund. A rental supplement from the fund will be received by an income eligible renter with good credit standing who qualifies for a low- or moderate-income rental unit when only a unit in a higher income category is available (i.e., placing a low-income household in a moderate-income unit, or placing a very-low income household in a low-income unit).

The amount of the rental supplement will be determined by Chester Township as the difference between the restricted rent set by the landlord and 30 percent of the renter's gross monthly income. The rental supplement will be paid directly to the landlord each month by Chester Township on behalf of the tenant.

Rental assistance does not need to be repaid by the tenant. If the tenant wishes to renew the lease, they must be re-income qualified and the rental supplement will be recalculated. If the tenant no longer qualifies for the rental assistance, but qualifies for the actual rent, they may renew the lease and stay in the unit, but will no longer receive rental assistance.

Security Deposit Assistance Program

Chester Township will designate [insert \$ amount set forth in the spending plan] of its affordable housing trust fund as a revolving Security Deposit Assistance Fund. The security deposit assistance will be in the form of a cash loan equal to the security deposit amount determined by the landlord paid to the landlord on behalf of the tenant. An interest-free loan from the fund will be received by an income eligible renter with good credit standing who qualifies for a low- or moderate-income rental unit.

At the termination of the lease, the landlord will return the portion of the security deposit it determines to Chester Township along with the interest earned. The tenant will repay

any difference between the original security deposit amount and the portion returned by the landlord to Chester Township. Funds returned to the municipality will be placed in the affordable housing trust fund to be used for future security deposit assistance.

Administration:

Chester Township's Affordability Assistance Programs will be administered by the Chester Township Affordability Housing Trust Corporation. After an applicant is income qualified by the Morris County Department of Community Development pursuant to COAH's rules and the Uniform Housing Affordability Controls, or cannot be qualified due to a need for assistance, an affordability assistance application will be completed and forwarded with all necessary documentation to the Affordable Housing Trust Corporation.

The affordability assistance recipient will sign a contract with Chester Township, which states, at a minimum: the amount of funds granted, interest information, procedures, duration and conditions of affordability assistance, and repayment information.

The availability of any Affordability Assistance Programs must be noticed to all owners/tenants of affordable units within Chester Township and provided to all administrative agents of affordable units within Chester Township.

An income eligible occupant or applicant for an affordable unit within municipality may not be denied participation in the Affordability Assistance Program(s) unless funding is no longer available.

APPENDIX D

Development Fee Ordinance

Proposed

CHESTER TOWNSHIP

An Ordinance to Amend Chapter 113, “Land Use”, Article 33, “Administration”, Section 113-218, “Affordable Housing Trust Fund; development permit fee”, of the Code of Chester Township Regarding Development Fees

WHEREAS, the New Jersey Council On Affordable Housing (COAH) has instructed municipalities under its jurisdiction to amend their development fee ordinance to coincide with COAH’s substantive rules, pursuant to N.J.A.C. 5:97-8.3; and

WHEREAS, COAH has provided a model development fee ordinance for use by such municipalities; and

WHEREAS, the Township Council desires to address the amended COAH rules by repealing all subsections of Section 113-218 and replacing them with new language.

NOW THEREFORE, BE IT ORDAINED by the Township Council of Chester Township, County of Morris, and State of New Jersey that Article 33 of Land Use Code for Chester Township is hereby amended as follows:

SECTION ONE. Article 33, Section 113-218 of the Land Use Code is hereby repealed in its entirety and replaced with the following:

§113-218. Affordable Housing Trust Fund: development permit fee.

A. Purpose

- (1) 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.
- (2) 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.
- (3) 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. 5:97-8.

B. Basic requirements

- (1) This ordinance shall not be effective until approved by COAH pursuant to N.J.A.C. 5:96-5.1.
- (2) Chester Township shall not spend development fees until COAH has approved a plan for spending such fees in conformance with N.J.A.C. 5:97-8.10 and N.J.A.C. 5:96-5.3.

C. Definitions

- (1) The following terms, as used in this ordinance, shall have the following meanings:
 - (a) **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.
 - (b) **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.
 - (c) **Development fee** means money paid by a developer for the improvement of property as permitted in N.J.A.C. 5:97-8.3.
 - (d) **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.
 - (e) **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).
 - (f) **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.

D. Residential Development fees

(1) Imposed fees

- (a) Within all district(s) except those districts that are specifically exempted below, residential developers, except for developers of the types of development specifically exempted below, shall pay a fee of one and one-half (1.5) percent of the equalized assessed value for residential development provided no increased density is permitted.
- (b) When an increase in residential density pursuant to N.J.S.A. 40:55D-70d(5) (known as a “d” variance) has been permitted, developers may be required to pay a development fee of six (6) percent 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.

Example: If an approval allows four units to be constructed on a site that was zoned for two units, the fees could equal one and one-half (1.5) percent of the equalized assessed value on the first two units; and the specified higher percentage up to six (6) percent of the equalized assessed value for the two additional units, provided zoning on the site has not changed during the two-year period preceding the filing of such a variance application.

(2) Eligible exactions, ineligible exactions and exemptions for residential development.

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

(c) 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. Expansion shall refer to enclosed areas only. The development fee shall be calculated on the increase in the equalized assessed value of the improved structure.

- (d) Developers of decks, patios, porches or other non-enclosed areas shall be exempt from paying a development fee. Garages, pool houses, storage sheds, greenhouses and barns shall be subject to payment of the development fee.

E. Non-residential Development fees

(1) Imposed fees

- (a) Within all zoning districts, non-residential developers, except for developers of the types of development specifically exempted, shall pay a fee equal to two and one-half (2.5) percent of the equalized assessed value of the land and improvements, for all new non-residential construction on an unimproved lot or lots.
- (b) Non-residential developers, except for developers of the types of development specifically exempted, shall also pay a fee equal to two and one-half (2.5) percent of the increase in equalized assessed value resulting from any additions to existing structures to be used for non-residential purposes.
- (c) Development fees shall be imposed and collected when an existing structure is demolished and replaced. The development fee of two and 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.

(2) Eligible exactions, ineligible exactions and exemptions for non-residential development.

- (a) 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.

- (b) 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.
- (c) 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.
- (d) 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.
- (e) 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 Chester Township as a lien against the real property of the owner.

F. Collection procedures

- (1) Upon the granting of a preliminary, final or other applicable approval, for a development, the applicable approving authority shall direct its staff to notify the construction official responsible for the issuance of a building permit. For non-residential developments, the developer shall also be provided with a copy of Form N-RDF "State of New Jersey Non-Residential Development Certification/Exemption" and complete as per the instructions provided.
- (2) 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.

- (3) The construction official responsible for the issuance of a building permit shall notify the local tax assessor of the issuance of the first building permit for a development which is subject to a development fee.
- (4) Within 90 days of receipt of that notice, the municipal tax assessor, based on the plans filed, shall provide an estimate of the equalized assessed value of the development.
- (5) The construction official responsible for the issuance of a final certificate of occupancy notifies the local assessor of any and all requests for the scheduling of a final inspection on property which is subject to a development fee.
- (6) Within 10 business days of a request for the scheduling of a final inspection, the municipal assessor shall confirm or modify the previously estimated equalized assessed value of the improvements of the development; calculate the development fee; and thereafter notify the developer of the amount of the fee.
- (7) Should Chester Township 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).
- (8) The developer shall pay 100 percent of the calculated development fee amount prior to the municipal issuance of a final certificate of occupancy for the subject property.
- (9) Appeal of development fees
 - (a) A developer may challenge residential development fees imposed by filing a challenge with the County Board of Taxation. Pending a review and determination by the Board, collected fees shall be placed in an interest bearing escrow account by Chester Township. Appeals from a determination of the Board may be made to the tax court in accordance with the provisions of the State Tax Uniform Procedure Law, R.S.54:48-1 et seq., within 90 days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.
 - (b) A developer may challenge non-residential development fees imposed by filing a challenge with the Director of the Division of Taxation. Pending a review and determination by the Director, which shall be made within 45 days of receipt of the challenge, collected fees shall be placed in an interest bearing escrow account by Chester Township. Appeals from a determination of the Director may be made to the tax court in accordance

with the provisions of the State Tax Uniform Procedure Law, R.S.54:48-1 et seq., within 90 days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.

G. Affordable Housing trust fund

- (1) The interest-bearing housing trust fund previously created is hereby continued. The trust fund is 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.
- (2) The following additional funds shall be deposited in the Affordable Housing Trust Fund and shall at all times be identifiable by source and amount:
 - (a) payments in lieu of on-site construction of affordable units;
 - (b) developer contributed funds to make ten percent (10%) of the adaptable entrances in a townhouse or other multistory attached development accessible;
 - (c) rental income from municipally operated units;
 - (d) repayments from affordable housing program loans;
 - (e) recapture funds;
 - (f) proceeds from the sale of affordable units; and
 - (g) any other funds collected in connection with Chester Township's affordable housing program.
- (3) Within seven days from the opening of a new trust fund account, Chester Township shall provide COAH with written authorization, in the form of a three-party escrow agreement between the municipality, the bank, and COAH to permit COAH to direct the disbursement of the funds as provided for in N.J.A.C. 5:97-8.13(b).
- (4) All interest accrued in the housing trust fund shall only be used on eligible affordable housing activities approved by COAH.

H. Use of funds

- (1) The expenditure of all funds shall conform to a spending plan approved by COAH. Funds deposited in the housing trust fund may be used for any activity approved by COAH to address Chester Township'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. 5:97-8.7 through 8.9 and specified in the approved spending plan.

- (2) Funds shall not be expended to reimburse Chester Township for past housing activities.
- (3) At least 30 percent of all development fees collected and interest earned shall be used to provide affordability assistance to low- and moderate-income households in affordable units included in the municipal Fair Share Plan. One-third of the affordability assistance portion of development fees collected shall be used to provide affordability assistance to those households earning 30 percent or less of median income by region.
 - (a) 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.
 - (b) Affordability assistance to households earning 30 percent or less of median income may include buying down the cost of low or moderate income units in the municipal Fair Share Plan to make them affordable to households earning 30 percent or less of median income. The use of development fees in this manner shall entitle Chester Township to bonus credits pursuant to N.J.A.C. 5:97-3.7.
 - (c) 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.
- (4) Chester Township may contract with a private or public entity to administer any part of its Housing Element and Fair Share Plan, including the requirement for affordability assistance, in accordance with N.J.A.C. 5:96-18.
- (5) No more than 20 percent of all revenues collected from development fees,

may be expended on administration, including, but not limited to, salaries and benefits for municipal employees or consultant fees necessary to develop or implement a new construction program, a Housing Element and Fair Share Plan, and/or an affirmative marketing program. In the case of a rehabilitation program, no more than 20 percent of the revenues collected from development fees shall be expended for such administrative expenses. Administrative funds may be used for income qualification of households, monitoring the turnover of sale and rental units, and compliance with COAH's monitoring requirements. Legal or other fees related to litigation opposing affordable housing sites or objecting to the Council's regulations and/or action are not eligible uses of the affordable housing trust fund.

I. Monitoring

- (1) Chester Township shall complete and return to COAH all monitoring forms included in monitoring requirements related to the collection of development fees from residential and non-residential 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 Chester Township's housing program, as well as to the expenditure of revenues and implementation of the plan certified by COAH. All monitoring reports shall be completed on forms designed by COAH.

J. Ongoing collection of fees

- (1) The ability for Chester Township to impose, collect and expend development fees shall expire with its substantive certification unless Chester Township has filed an adopted Housing Element and Fair Share Plan with COAH, has petitioned for substantive certification, and has received COAH's approval of its development fee ordinance. If Chester Township 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). Chester Township shall not impose a residential development fee on a development that receives preliminary or final site plan approval after the expiration of its substantive certification or judgment of compliance, nor shall Chester Township retroactively impose a development fee on such a development. Chester Township shall not expend development fees after the expiration of its substantive certification or judgment of compliance.

SECTION TWO: All ordinances or part of ordinances inconsistent with this ordinance are hereby repealed to the extent of such inconsistency.

SECTION THREE: If any section, paragraph, subdivision, clause or provision of this ordinance shall be adjudged invalid, such adjudication shall apply only to the section, paragraph, subsection, clause or provision and the remainder of this ordinance shall be deemed valid and effective.

SECTION FOUR: This ordinance shall take effect upon its passage and publication according to law.