

## ARTICLE VIII

**Affordable Housing<sup>1</sup>**

**[Added 1-10-2006 by Ord. No. 2005-100; amended 11-14-2006 by Ord. No. 2006-93; 2-24-2009 by Ord. No. 2009-10<sup>2</sup>]**

**§ 425-87. Purpose. [Amended 9-24-2013 by Ord. No. 2013-42]**

The purpose of these regulations is to provide affordable housing to meet the City's obligation to provide for affordable housing. The intent is to establish a program to bring about affordable housing consistent with the current rules and regulations of the New Jersey Council on Affordable Housing (COAH) and the Uniform Housing Affordability Controls (UHAC) and in conformity with the principles espoused by the New Jersey Supreme Court in *So. Burl. Co. NAACP v. Mount Laurel*, 92 N.J. 158 (1983) (Mount Laurel II) and in the Fair Housing Act, N.J.S.A. 52:27D-301 et seq. This article is intended to assure that low- and moderate-income units ("affordable units") are created or preserved with controls on affordability over time and that very low-, low- and moderate-income households shall occupy these units. This article shall apply throughout the City of Vineland except where inconsistent with applicable law.

**§ 425-88. Affordable housing obligation. [Amended 9-24-2013 by Ord. No. 2013-42]**

- A. The City of Vineland 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-28b(3) and N.J.S.A. 52:27D-310. The Fair Share Plan has been endorsed by the governing body. The Fair Share Plan describes the ways the City of Vineland shall address its fair share of low- and moderate-income housing as determined by COAH or successor agency and documented in the Housing Element.
- B. This article implements and incorporates the Housing Element and Fair Share Plan and addresses the requirements of N.J.A.C. 5:97 and 5:80, as they may be amended and supplemented. Should new or revised COAH or UHAC rules change any provisions that the City of Vineland is imposing upon developers, the COAH or UHAC rules shall prevail.

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1. Editor's Note: Former Art. VIII, Planned Residential Development and Planned Cluster Development, added 8-22-1989 by Ord. No. 89-51, was repealed 8-20-1990 by Ord. No. 90-77.

2. Editor's Note: This ordinance and Ord. No. 2009-11 were readopted in their entirety, without change, 11-24-2009 by Ord. No. 2009-72.

- C. The City of Vineland shall file monitoring reports with COAH in accordance with N.J.A.C. 5:96 to track 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 Vineland City Hall, City Clerk's Office, 640 E. Wood Street, Vineland, New Jersey 08360 or from COAH at 101 South Broad Street, Trenton, New Jersey 08625.

**§ 425-89. Definitions. [Amended 9-24-2013 by Ord. No. 2013-42]**

- A. Words and phrases used in this article shall have the meanings set forth in this section. Words and phrases not defined in this section but defined elsewhere in this chapter shall be given the meanings set forth in said chapter. Words and phrases not defined in this chapter but defined in the New Jersey Administrative Code or the New Jersey Statutes Annotated shall be given the meanings set forth in said code or statutes. For words and phrases for which no definition is available in this article or the New Jersey Administrative Code or the New Jersey Statutes Annotated, The Latest Illustrated Book of Development Definitions, authored by Harvey S. Moskowitz and Carl G. Lindbloom and published by Rutgers University (2003), may be used as a guide. All other words and phrases shall be given their common, ordinary meanings, unless the context clearly requires otherwise.

- B. The following definitions shall be applicable to this article:

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

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

ADMINISTRATIVE AGENT — Any entity responsible for the administration of affordable units in accordance with this article, N.J.A.C. 5:96 and 5:80-26.1 et seq.

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

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

**AFFORDABLE** — Any 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** — Any housing development all or a portion of which consists of restricted units.

**AFFORDABLE HOUSING DEVELOPMENT** — Any development included in the Housing Element and Fair Share Plan, and includes, but is not limited to, an inclusionary development, a municipal construction project or a 100% affordable development.

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

**AFFORDABLE UNIT** — Any 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.

**AGE-RESTRICTED UNIT** — Any housing unit designed to meet the needs of, and exclusively for, the residents of an age-restricted segment of the population such that:

- (1) All the residents of the development where the unit is situated are 62 years or older; or
- (2) At least 80% of the units are occupied by one person that is 55 years or older; or
- (3) The development has been designated by the Secretary of the United States Department of Housing and Urban Development as "housing for older persons" as defined in Section 807(b)(2) of the Fair Housing Act, 42 U.S.C. § 3607.

**ASSISTED-LIVING RESIDENCE** — Any 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** — Any household that has been certified by an administrative agent as a low-income household or moderate-income household.

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

**DCA** — The State of New Jersey Department of Community Affairs.

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

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

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

**DEVELOPMENT FEE** — Any money paid by a developer for the improvement of property as permitted in N.J.A.C. 5:97-8.3.

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

**GREEN BUILDING STRATEGIES** — Any 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.

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

**LOW-INCOME HOUSEHOLD** — Any household with a total gross annual household income equal to 50% or less of the median household income.

**LOW-INCOME UNIT** — Any restricted unit that is affordable to a low-income household.

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

**MARKET-RATE UNIT** — Any housing not restricted to low- and moderate-income households that may sell or rent at any price.

**MEDIAN INCOME** — The median income of a household, by household size, for Cumberland County and as adopted annually by COAH.

**MODERATE-INCOME HOUSEHOLD** — Any household with a total gross annual household income in excess of 50% but less than 80% of the median household income.

**MODERATE-INCOME UNIT** — Any restricted unit that is affordable to a moderate-income household.

**NJHMFA** — The New Jersey Housing and Mortgage Finance Agency established by P.L. 1983, c. 530 (N.J.S.A. 55:14K-1 et seq.).

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

**RANDOM SELECTION PROCESS** — Any process by which currently income-eligible households are selected for placement in affordable housing units such that no preference is given to

one applicant over another except for purposes of matching household income and size with an appropriately priced and sized affordable unit (e.g., by lottery).

REGIONAL ASSET LIMIT — The maximum housing value in each housing region affordable to a four-person household with an income at 80% of the regional median as defined by COAH's adopted regional income limits published annually by COAH.

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

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

RESTRICTED UNIT — Any 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.

SUPPORTIVE AND SPECIAL NEEDS HOUSING — A structure or structures in which individuals or households reside, as listed in N.J.A.C. 5:97-6.10(a); previously defined by COAH as "alternative living arrangements."

SUPPORTIVE SHARED LIVING HOUSING — Permanent lease-based supportive housing that provides access to supportive services to individuals with special needs who maintain separate leases for bedrooms and share common living space.

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

UNIT — Any dwelling unit, as defined in § 425-270. For purposes of this chapter, bedrooms shall also be considered units in those limited instances where state affordable housing regulations allow bedrooms to be counted as units (e.g., group homes).

VERY-LOW-INCOME HOUSEHOLD — Any household with a total gross annual household income equal to 30% or less of the median household income.

VERY-LOW-INCOME UNIT — Any restricted unit that is affordable to a very-low-income household.

WEATHERIZATION — Any 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.

**§ 425-90. Affordable housing programs. [Amended 9-24-2013 by Ord. No. 2013-42]**

The City of Vineland has determined that it will use the following mechanisms to satisfy its affordable housing obligations:

A. A rehabilitation program.

- (1) The City of Vineland's rehabilitation program shall be designed to renovate deficient housing units occupied by low- and moderate-income households such that, after rehabilitation, these units will comply with the New Jersey State Housing Code pursuant to N.J.A.C. 5:28.
- (2) Both owner-occupied and renter-occupied units shall be eligible for rehabilitation funds.
- (3) All rehabilitated units shall remain affordable to low- and moderate-income households for a period of 10 years (the control period), unless COAH accepts a different means of affordability control. For owner-occupied units, the control period will be enforced with a lien; and for renter-occupied units, the control period will be enforced with a deed restriction. Any money provided to a property owner shall be repaid to the City when the property is sold. The funds shall remain in the City's rehabilitation program and shall be made available for the rehabilitation of additional units.
- (4) The City of Vineland shall dedicate an average of \$10,000 for each unit to be rehabilitated through this program, reflecting the minimum hard cost of rehabilitation for each unit.
- (5) The City of Vineland shall adopt a resolution committing to fund any shortfall in the rehabilitation programs for the City of Vineland if required by COAH.
- (6) The City of Vineland shall designate, subject to the approval of COAH, one or more administrative agents to administer the rehabilitation program in accordance with N.J.A.C. 5:96 and 5:97. The administrative agent(s) shall provide a rehabilitation manual for the owner occupancy rehabilitation program and a rehabilitation manual for the rental occupancy

rehabilitation program to be adopted by resolution of the governing body and subject to approval of COAH. Both rehabilitation manuals shall be available for public inspection in the office of the City Clerk and in the office(s) of the administrative agent(s).

- (7) Units in a rehabilitation program shall be exempt from N.J.A.C. 5:97-9 and Uniform Housing Affordability Controls (UHAC) but shall be administered in accordance with the following:
  - (a) If a unit is vacant, upon initial rental subsequent to rehabilitation, or if a renter-occupied unit is re-rented prior to the end of controls on affordability, the deed restriction shall require the unit to be rented to a low- or moderate-income household at an affordable rent and affirmatively marketed pursuant to N.J.A.C. 5:97-9 and UHAC.
  - (b) If a unit is renter-occupied, upon completion of the rehabilitation, the maximum rate of rent shall be the lesser of the current rent or the maximum permitted rent pursuant to N.J.A.C. 5:97-9 and UHAC.
  - (c) Rents in rehabilitated units may increase annually based on the standards in N.J.A.C. 5:97-9.
  - (d) Applicant and/or tenant households shall be certified as income-eligible in accordance with N.J.A.C. 5:97-9 and UHAC, except that households in owner-occupied units shall be exempt from the regional asset limit.

B. Market-to-affordable program.

- (1) A market-to-affordable program is established to permit the purchase or subsidization of units through a written agreement with the property owner and sold or rented to low- and moderate-income households. Subject to the provisions of Subsection B(2)(c) below, the market-to-affordable programs may produce both low- and moderate-income units (the program may be limited to only low- or only moderate-income units as per the Fair Share Plan).
- (2) The following provisions shall apply to market-to-affordable programs:
  - (a) At the time they are offered for sale or rental, eligible units may be new, pre-owned or vacant.



- (b) The units shall be certified to be in sound condition as a result of an inspection performed by a licensed building inspector.
  - (c) The municipality will provide a minimum of \$25,000 per unit to subsidize each moderate-income unit and/or \$30,000 per unit to subsidize each low-income unit, with additional subsidy depending on the market prices or rents in a municipality.
  - (d) The maximum number of creditable market-to-affordable units shall be equal to no more than 10 for-sale units and 10 rental units or a combined total of 10% of the fair-share obligation, whichever is greater. (Additional units may be approved by COAH if the municipality demonstrates the successful completion of its initial market-to-affordable program.)
- (3) The units shall comply with N.J.A.C. 5:97-9 and UHAC with the following exceptions:
- (a) Bedroom distribution pursuant to N.J.A.C. 5:80-26.3(b) and (c);
  - (b) Low-to-moderate-income-household ratios pursuant to N.J.A.C. 5:80-26.3(a); and
  - (c) Affordability average pursuant to N.J.A.C. 5:80-26.3(d) and (e); however:
    - [1] The maximum rent for a moderate-income unit shall be affordable to households earning no more than 60% of median income, and the maximum rent for a low-income unit shall be affordable to households earning no more than 44% of median income; and
    - [2] The maximum sales price for a moderate-income unit shall be affordable to households earning no more than 70% of median income, and the maximum sales price for a low-income unit shall be affordable to households earning no more than 40% of median income.

C. Payments-in-lieu of construction.

- (1) The standards for the collection of payments-in-lieu of constructing affordable units shall be in accordance with N.J.A.C. 5:97-6.4.

- (2) The amount of the payments-in-lieu shall be as established by COAH for Region 6.

D. Construction of affordable units off site.

- (1) The standards for constructing affordable units off site shall be in accordance with N.J.A.C. 5:97-6.4.
- (2) Affordable units constructed off site shall be scattered.

E. Inclusionary zoning. Where inclusionary affordable units are proposed or required, the following shall apply:

- (1) Presumed densities. Where the densities in N.J.A.C. 5:97-6.4(b)(2) are reached in any residential development within the City of Vineland corresponding to the geographic limitations of Planning Areas 1 and 2 of the State Development and Redevelopment Plan, or substantially similar land use designations, the threshold for providing adequate incentive to developers to construct an inclusionary affordable housing component shall be presumed to be met when the underlying density of the zoning district is half or less of the COAH density.
- (2) Affordable housing set-asides. The minimum percentage of affordable housing units as a total of all housing units within an inclusionary development shall be 15% when the developer proposes a rental project and 20% when the developer proposes a for-sale project, whether fee simple, condominium or cooperative form of ownership.
- (3) Phasing. In inclusionary developments the following ratios for the issuance of certificates of occupancy shall be followed:

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

- (4) Design. In inclusionary developments to the extent feasible, low- and moderate-income units shall be integrated with the market units. The developer is encouraged to disburse the

affordable units being provided within the inclusionary development throughout the development. The developer shall place the affordable units within buildings designed to be architecturally indistinguishable from the market rate units otherwise being constructed with the development. To that end, the scale, massing, roof pitch and architectural detailing (e.g., selection of exterior materials, doors, windows, etc.) of the buildings containing the affordable housing units shall be similar to and compatible with that of the market rate units, except that an affordable unit(s) may have a lower roof height than the market units.

- (5) Utilities. Affordable units shall utilize the same type of heating source as market units within the affordable development.
- F. Redevelopment. Where redevelopment is proposed that creates affordable housing under N.J.S.A. 40:12A-1 et seq., the following provisions shall apply:
- (1) All sites shall meet the site suitability criteria set forth in N.J.A.C. 5:97-3.13.
  - (2) The municipality shall designate the site as an area in need of redevelopment or rehabilitation.
  - (3) The municipality shall adopt a redevelopment plan.
  - (4) The redevelopment agreement shall comply with N.J.A.C. 5:97-6.4(b) through (h).
  - (5) The municipality shall issue a request for proposals for a designated redeveloper, if applicable.
  - (6) The units shall comply with N.J.A.C. 5:97-9 and UHAC.
  - (7) Documentation shall be submitted comporting with COAH's requirements under N.J.A.C. 5:97-6.6(d) and (e).
  - (8) Documentation shall be submitted prior to marketing the completed units comporting with COAH's requirements under N.J.A.C. 5:97-6.6(f).
- G. Municipally sponsored and 100% affordable developments. When the City proposes a municipally sponsored project or supports a 100% affordable development by another entity, the following provisions shall apply:

- (1) All sites shall meet the site suitability criteria set forth in N.J.A.C. 5:97-3.13.
  - (2) The municipality or developer/sponsor shall have control or the ability to control the site(s).
  - (3) The construction schedule shall provide for construction to begin within two years of substantive certification from COAH or in accordance with the City's implementation schedule pursuant to N.J.A.C. 5:97-3.2(a)4.
  - (4) The first floor of all townhouse dwelling units and of all other multistory dwellings shall comply with N.J.A.C. 5:97-3.14 and 5:97-9 and UHAC.
  - (5) Documentation shall be submitted comporting with COAH's requirements under N.J.A.C. 5:97-6.7(d).
  - (6) Documentation shall be submitted prior to marketing the completed units comporting with COAH's requirements under N.J.A.C. 5:97-6.7(e).
- H. Supportive and special needs housing. Where special needs housing, including but not limited to residential health-care facilities as licensed and/or regulated by the New Jersey Department of Community Affairs or Department of Health and Senior Services (if the facility is located with, and operated by, a licensed health-care facility); group homes for people with developmental disabilities and mental illness as licensed and/or regulated by the New Jersey Department of Human Services; permanent supportive housing; and supportive shared-living housing are proposed, the following provisions shall apply:
- (1) The following provisions shall apply to group homes, residential health-care facilities, and supportive shared-living housing:
    - (a) The unit of credit shall be the bedroom.
    - (b) Housing that is age-restricted shall be included with the maximum number of units that may be age-restricted pursuant to N.J.A.C. 5:97-3.8.
    - (c) Occupancy shall not be restricted to youth under 18 years of age.
    - (d) All sites shall meet the site suitability criteria set forth in N.J.A.C. 5:97-3.13.

- (e) The municipality or developer/sponsor shall have site control or the ability to control the site(s).
- (2) The following provisions shall apply to permanent supportive housing:
  - (a) The unit of credit shall be the unit.
  - (b) Housing that is age-restricted shall be included with the maximum number of units that may be age-restricted pursuant to N.J.A.C. 5:97-3.8.
  - (c) Units shall not be restricted to youth under 18 years of age.
  - (d) All sites shall meet the site suitability criteria set forth in N.J.A.C. 5:97-3.13.
  - (e) The municipality or developer/sponsor shall have site control or the ability to control the site(s).
- (3) The bedrooms and/or units pursuant to Subsection H(1) and (2) hereinabove shall comply with N.J.A.C. 5:97-9 and UHAC, with the following exceptions:
  - (a) Affirmative marketing (N.J.A.C. 5:80-26.15); however, group homes, residential health-care facilities, permanent supportive housing and supportive shared-living housing shall be affirmatively marketed to individuals with special needs in accordance with a plan approved by the COAH's Executive Director;
  - (b) Affordability average and bedroom distribution (N.J.A.C. 5:80-26.3); and
  - (c) With the exception of units established with capital funding through a twenty-year operating contract with the Department of Human Services, Division of Developmental Disabilities, group homes, residential health-care facilities, supportive shared-living housing and permanent supportive housing shall have appropriate controls on affordability in accordance with N.J.A.C. 5:97-9.
- (4) Documentation shall be submitted comporting with COAH's requirements under N.J.A.C. 5:97-6.10(e).

- (5) Documentation shall be submitted prior to marketing the completed units comporting with COAH's requirements under N.J.A.C. 5:97-6.10(f).
- I. Extension of expiring controls. Where the City of Vineland proposes to extend affordability controls where such restrictions will expire during the extant COAH time period, the following provisions shall be followed:
  - (1) The unit meets the criteria for prior-cycle or post-1986 credits set forth in N.J.A.C. 5:97-4.2 or 5:97-4.3;
  - (2) The municipality shall obtain a continuing certificate of occupancy or a certified statement from the municipal building inspector stating that the restricted unit meets all code standards; and
  - (3) Documentation shall be submitted comporting with COAH's requirements under N.J.A.C. 5:97-6.14(b) and (c).

#### **§ 425-91. 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% 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:
    - (a) The combined number of efficiency and one-bedroom units shall be no greater than 20% of the total low- and moderate-income units;
    - (b) At least 30% of all low- and moderate-income units shall be two-bedroom units;

- (c) At least 20% of all low- and moderate-income units shall be three-bedroom units; and
- (d) The remaining units may be allocated among two- and three-bedroom units at the discretion of the developer.
- (4) Affordable developments that are age-restricted shall be structured such that the number of bedrooms shall equal the number of age-restricted low- and moderate-income units within the inclusionary development. The standard may be met by having all one-bedroom units or by having a two-bedroom unit for each efficiency unit.

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 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:
  - (a) An adaptable toilet and bathing facility on the first floor;
  - (b) An adaptable kitchen on the first floor;
  - (c) An interior accessible route of travel on the first floor;
  - (d) An interior accessible route of travel shall not be required between stories within an individual unit;
  - (e) An adaptable room that can be used as a bedroom, with a door or the casing for the installation of a door, on the first floor; and
  - (f) An accessible entranceway as set forth at P.L. 2005, c. 350 (N.J.S.A. 52:27D-311a et seq.) and the Barrier Free Subcode, N.J.A.C. 5:23-7 and 5:97-3.14, or evidence that the City of Vineland has collected funds from the developer sufficient to make 10% of the adaptable entrances in the development accessible:
    - [1] Where a unit has been constructed with an adaptable entrance, upon the request of a disabled person who is purchasing or will reside in the dwelling unit, an accessible entrance shall be installed.

- [2] To this end, the builder of restricted units shall deposit funds within the City of Vineland's Affordable Housing Trust Fund sufficient to install accessible entrances in 10% of the affordable units that have been constructed with adaptable entrances.
- [3] The funds deposited under Subsection B(2)(f)[2] above shall be used by the City of Vineland for the sole purpose of making the adaptable entrance of any affordable unit accessible when requested to do so by a person with a disability who occupies or intends to occupy the unit and requires an accessible entrance.
- [4] The developer of the restricted units shall submit a design plan and cost estimate for the conversion from adaptable to accessible entrances to the Construction Official of the City of Vineland.
- [5] Once the Construction Official has determined that the design plan to convert the unit entrances from adaptable to accessible meet the requirements of the Barrier Free Subcode, N.J.A.C. 5:23-7 and 5:97-3.14, and that the cost estimate of such conversion is reasonable, payment shall be made to the City of Vineland's Affordable Housing Trust Fund in care of the Chief Financial Officer who shall ensure that the funds are deposited into the Affordable Housing Trust Fund and appropriately earmarked.
- [6] Full compliance with the foregoing provisions shall not be required where an entity can demonstrate that it is site impracticable to meet the requirements. Determinations of site impracticability shall be in compliance with the Barrier Free Subcode, N.J.A.C. 5:23-7 and 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% of median income, and the average rent for restricted low- and moderate-income units shall be



affordable to households earning no more than 52% of median income.

- (3) The developers and/or municipal sponsors of restricted rental units shall establish at least one rent for each bedroom type for both low income- and moderate-income units.
  - (a) At least 10% of all low- and moderate-income rental units shall be affordable to households earning no more than 30% of median income.
- (4) The maximum sales price of restricted ownership units within each affordable development shall be affordable to households earning no more than 70% of median income, and each affordable development must achieve an affordability average of 55% for restricted ownership units; in achieving this affordability average, moderate-income ownership units must be available for at least three different prices for each bedroom type, and low-income ownership units must be available for at least two different prices for each bedroom type.
- (5) In determining the initial sales prices and rents for compliance with the affordability average requirements for restricted units other than assisted living facilities, the following standards shall be used:
  - (a) A studio shall be affordable to a one-person household;
  - (b) A one-bedroom unit shall be affordable to a one-and-one-half-person household;
  - (c) A two-bedroom unit shall be affordable to a three-person household;
  - (d) A three-bedroom unit shall be affordable to a four-and-one-half-person household; and
  - (e) A four-bedroom unit shall be affordable to a six-person household.
- (6) In determining the initial rents for compliance with the affordability average requirements for restricted units in assisted living facilities, the following standards shall be used:
  - (a) A studio shall be affordable to a one-person household;

- (b) A one-bedroom unit shall be affordable to a one-and-one-half-person household; and
  - (c) A two-bedroom unit shall be affordable to a two-person household or to two one-person households.
- (7) The initial purchase price for all restricted ownership units shall be calculated so that the monthly carrying cost of the unit, including principal and interest (based on a mortgage loan equal to 95% of the purchase price and the Federal Reserve H.15 rate of interest), taxes, homeowner and private mortgage insurance and condominium or homeowner association fees do not exceed 28% of the eligible monthly income of the appropriate size household as determined under N.J.A.C. 5:80-26.4, as may be amended and supplemented; provided, however, that the price shall be subject to the affordability average requirement of N.J.A.C. 5:80-26.3, as may be amended and supplemented.
  - (8) The initial rent for a restricted rental unit shall be calculated so as not to exceed 30% of the eligible monthly income of the appropriate household size as determined under N.J.A.C. 5:80-26.4, as may be amended and supplemented; provided, however, that the rent shall be subject to the affordability average requirement of N.J.A.C. 5:80-26.3, as may be amended and supplemented.
  - (9) The price of owner-occupied low- and moderate-income units may increase annually based on the percentage increase in the regional median income limit for each housing region. In no event shall the maximum resale price established by the administrative agent be lower than the last recorded purchase price.
  - (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 9% in any one year. Rents for units constructed pursuant to low-income housing tax credit regulations shall be indexed pursuant to the regulations governing low-income housing tax credits.
  - (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.

**§ 425-92. Affirmative marketing requirements.**

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:

- A. The City of Vineland 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 6 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 6 comprised of Atlantic, Cape May, Cumberland and Salem Counties.
- D. The administrative agent designated by the City of Vineland 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 the City of Vineland.

**§ 425-93. 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 City Operating Manual.

**§ 425-94. 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 article until the City of Vineland 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 nonrestricted, fair market value of the unit based on either an appraisal or the unit's equalized assessed value.
- D. At the time of the first sale of the unit, the purchaser shall execute and deliver to the administrative agent a recapture note obligating the purchaser (as well as the purchaser's heirs, successors and assigns) to repay, upon the first nonexempt sale after the unit's release from the requirements of this article, an amount equal to the difference between the unit's nonrestricted 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 article 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.

**§ 425-95. 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.

**§ 425-96. Buyer income eligibility.**

- A. Buyer income eligibility for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.1, as may be amended and supplemented, such that low-income ownership units shall be reserved for households with a gross household income less than or equal to 50% of median income and moderate-income ownership units shall be reserved for households with a gross household income less than 80% of median income.

- B. The administrative agent shall certify a household as eligible for a restricted ownership unit when the household is a low-income household or a moderate-income household, as applicable to the unit, and the estimated monthly housing cost for the particular unit (including principal, interest, taxes, homeowner and private mortgage insurance and condominium or homeowner association fees, as applicable) does not exceed 33% of the household's certified monthly income.

**§ 425-97. Limitations on indebtedness secured by ownership unit and subordination.**

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

**§ 425-98. 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 article until the City of Vineland 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 in the Cumberland County Clerk's office. 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 article, 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.

**§ 425-98.1. Price restrictions for rental units and leases.**

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

**§ 425-98.2. Tenant income eligibility.**

- A. Tenant income eligibility shall be in accordance with N.J.A.C. 5:80-26.13, as may be amended and supplemented, and shall be determined as follows:
  - (1) Very-low-income rental units shall be reserved for households with a gross household income less than or equal to 30% of median income.
  - (2) Low-income rental units shall be reserved for households with a gross household income less than or equal to 50% of median income.
  - (3) Moderate-income rental units shall be reserved for households with a gross household income less than 80% of median income.

- B. The administrative agent shall certify a household as eligible for a restricted rental unit when the household is a very-low-income, low-income or a moderate-income household, as applicable to the unit, and the rent proposed for the unit does not exceed 35%, or 40% for age-restricted units, of the household's eligible monthly income as determined pursuant to N.J.A.C. 5:80-26.16, as may be amended and supplemented; provided, however, that this limit may be exceeded if one or more of the following circumstances exists:
- (1) The household currently pays more than 35%, or 40% for households eligible for age-restricted units, of its gross household income for rent, and the proposed rent will reduce its housing costs;
  - (2) The household has consistently paid more than 35%, or 40% 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 Subsection B(1) through (5) above with the administrative agent, who shall counsel the household on budgeting.

### **§ 425-98.3. Administration.**

- A. The position of Municipal Housing Liaison (MHL) for the City of Vineland has been established.<sup>3</sup> City Council shall be responsible for appointment of the MHL by means of a resolution.
- (1) The Municipal Housing Liaison must be either a full-time or part-time employee of the City of Vineland.

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3. Editor's Note: See Ch. 110, Officers and Employees, Art. VI, Municipal Housing Liaison.



- (2) The person appointed as the Municipal Housing Liaison must be reported to COAH for approval.
- (3) The Municipal Housing Liaison 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 the City of Vineland, including the following responsibilities which may not be contracted out to the administrative agent:
  - (a) Serving as the municipality's primary point of contact for all inquiries from the state, affordable housing providers, administrative agents and interested households;
  - (b) The implementation of the affirmative marketing plan and affordability controls;
  - (c) When applicable, supervising any contracting administrative agent;
  - (d) Monitoring the status of all restricted units in the City of Vineland's Fair Share Plan;
  - (e) Compiling, verifying and submitting annual reports as required by COAH;
  - (f) Coordinating meetings with affordable housing providers and administrative agents, as applicable; and
  - (g) Attending continuing education opportunities on affordability controls, compliance monitoring and affirmative marketing as offered or approved by COAH.
- B. The City of Vineland shall designate by resolution of City 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 and 5:97 and UHAC.
- C. An Operating Manual shall be provided by the administrative agent(s) to be adopted by resolution of the City Council and subject to approval of COAH. The Operating Manuals shall be available for public inspection in the City Clerk's office 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, 5:80-26.16 and 5:80-26.18 thereof, which includes:

- (1) Attending continuing education opportunities on affordability controls, compliance monitoring, and affirmative marketing as offered or approved by COAH;
- (2) Affirmative marketing;
- (3) Household certification;
- (4) Affordability controls;
- (5) Records retention;
- (6) Resale and re-rental;
- (7) Processing requests from unit owners;
- (8) Enforcement, though the ultimate responsibility for retaining controls on the units rests with the City; and
- (9) The administrative agent shall have authority to take all actions necessary and appropriate to carry out its responsibilities, hereunder.

#### **§ 425-98.4. 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 City 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 City 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 City may file a court action pursuant to N.J.S.A. 2A:58-11 alleging a violation, or violations, of the regulations governing the affordable housing unit. If the owner, developer or tenant

is found by the court to have violated any provision of the regulations governing affordable housing units, the owner, developer or tenant shall be subject to one or more of the following penalties, at the discretion of the court:

- (a) A fine of not more than \$500 or imprisonment for a period not to exceed 90 days, or both. Each and every day that the violation continues or exists shall be considered a separate and specific violation of these provisions and not as a continuing offense;
  - (b) In the case of an owner who has rented his or her low- or moderate-income unit in violation of the regulations governing affordable housing units, payment into the City of Vineland's Affordable Housing Trust Fund of the gross amount of rent illegally collected;
  - (c) In the case of an owner who has rented his or her low- or moderate-income unit in violation of the regulations governing affordable housing units, payment of an innocent tenant's reasonable relocation costs, as determined by the court.
- (2) The City 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 City, 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 City, 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 City 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 City 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 City 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 City 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 City 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 City. Any interest accrued or earned on such balance while being held in escrow shall belong to and shall be paid to the City, whether such balance shall be paid to the owner or forfeited to the City.

- E. Foreclosure by the City 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 City 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 City shall obligate the owner to accept an offer to purchase from any qualified purchaser which may be referred to the owner by the City, 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.

#### **§ 425-98.5. Appeals.**

Appeals from all decisions of an administrative agent designated pursuant to this article shall be filed in writing with the Executive Director of COAH.

#### **§ 425-99. Affordable housing development fees. [Added 1-10-2006 by Ord. No. 2005-101; amended 11-14-2006 by Ord. No. 2006-93; 8-14-2007 by Ord. No. 2007-65; 2-24-2009 by Ord. No. 2009-11]**

- A. Purpose. In *Holmdel Builder's Association v. Holmdel Township*, 121 N.J. 550 (1990), the New Jersey Supreme Court determined that mandatory development fees are authorized by the Fair Housing Act of 1985 (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. This section establishes standards for the collection, maintenance, and expenditure of development fees pursuant to the COAH regulations and in accordance with P.L. 2008, c.46, Sections 8 and 32-38. Fees collected pursuant to this section shall be used for the sole purpose of providing affordable housing. This section shall be interpreted within the framework of COAH's rules on development fees, codified at N.J.A.C. 5:97-8. **[Amended 9-24-2013 by Ord. No. 2013-42]**
- B. Pursuant to P.L. 2008, c.46, Section 8 (N.J.S.A. 52:27D-329.2), and the Statewide Nonresidential Development Fee Act (N.J.S.A. 40:55D-8.1 through 40:55D-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 COAH or a court of competent jurisdiction and have a COAH-approved spending plan may retain fees collected from nonresidential development. **[Amended 9-24-2013 by Ord. No. 2013-42]**
- C. Basic requirements. **[Amended 9-24-2013 by Ord. No. 2013-42]**

- (1) This section shall not be effective until approved by COAH pursuant to N.J.A.C. 5:96-5.1. Should new or revised COAH rules change any provisions that the City of Vineland is imposing upon developers, the COAH rules shall prevail.
  - (2) The City of Vineland 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 5:96-5.3.
- D. Residential development fee schedule. **[Amended 9-24-2013 by Ord. No. 2013-42]**

(1) Imposed fees.

- (a) Within all zoning districts, developers who construct one or more new dwellings, except for developers of the types of development specifically exempted below, shall pay a fee of 1.5% 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 a maximum of 6% of the equalized assessed value for each additional unit that may be realized. However, if the zoning on a site has changed during the two-year period preceding the filing of such a variance application, the base density for the purposes of calculating the bonus development fee shall be the highest density permitted by right during the two-year period preceding the filing of the variance application.

Example: If an approval allows three units to be constructed on a site that was zoned for one unit, the fees could equal 1.5% of the equalized assessed value on the one unit and the specified higher percentage up to 6% 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, developments where the developer is providing for the construction of affordable units elsewhere in the municipality, and

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

- (b) Developments that have received preliminary or final site plan approval prior to the adoption of the municipal development fee ordinance on January 10, 2006, shall be exempt from development fees, unless the developer seeks a substantial change in the approval. Where a site plan or subdivision 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 add an additional dwelling (for example, from a single-family dwelling to a two-family dwelling), is demolished and replaced, or if the expansion is not otherwise exempt from the development fee requirement, but shall not apply to additions or changes that do not result in the creation of a new dwelling. The development fee shall be calculated on the increase in the equalized assessed value of the improved structure.
- (d) Developers of residential structures demolished and replaced as a result of a natural disaster or catastrophic event (e.g., fire) shall be exempt from paying a development fee.

E. Nonresidential development fees. **[Amended 9-24-2013 by Ord. No. 2013-42]**

- (1) Applicability. Pursuant to P.L. 2009, c. 90, and P.L. 2011, c. 122, the collection of a development fee on nonresidential construction is suspended for all nonresidential projects that received preliminary or final site plan approval after July 17, 2008, and until July 1, 2013, provided that a permit for the construction of the building has been issued prior to January 1, 2015. All other nonresidential development not meeting this exemption criterion or an exemption under Subsection E(3) hereinbelow shall pay a development fee in accordance with these provisions.
- (2) Imposed fees.

- (a) Within all zoning districts, nonresidential developers, except for developers of the types of development specifically exempted, shall pay a fee equal to 2.5% of the equalized assessed value of the land and improvements for all new nonresidential construction on an unimproved lot or lots.
  - (b) Nonresidential developers, except for developers of the types of development specifically exempted, shall also pay a fee equal to 2.5% of the increase in equalized assessed value resulting from any additions to existing structures or construction of additional structures to be used for nonresidential purposes.
  - (c) Development fees shall be imposed and collected when an existing structure is demolished and replaced. The development fee of 2.5% shall be calculated on the difference between the equalized assessed value of the preexisting land and improvement and the equalized assessed value of the newly improved structure (i.e., land and improvement, at the time final certificate of occupancy is issued). If the calculation required under this section results in a negative number, the nonresidential development fee shall be zero.
- (3) Eligible exactions, ineligible exactions and exemptions for nonresidential development.
- (a) The nonresidential portion of a mixed-use inclusionary or market-rate development shall be subject to the 2.5% development fee, unless otherwise exempted below.
  - (b) The 2.5% 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) Nonresidential developments shall be exempt from the payment of nonresidential development fees in accordance with the exemptions required pursuant to P.L. 2008, c. 46, as specified in Form N-RDF, the State of New Jersey Nonresidential Development Certification/Exemption form. Any exemption claimed by a developer shall be substantiated by that developer.
  - (d) A developer of a nonresidential development exempted from the nonresidential development fee pursuant to P.L.



2008, c. 46, shall be subject to it at such time as the basis for the exemption no longer applies and shall make the payment of the nonresidential development fee, in that event, within three years after that event or after the issuance of the final certificate of occupancy of the nonresidential development, whichever is later.

- (e) If a property which was exempted from the collection of a nonresidential development fee thereafter ceases to be exempt from property taxation, the owner of the property shall remit the fees required pursuant to this section within 45 days of the termination of the property tax exemption. Unpaid nonresidential development fees under these circumstances may be enforceable by the City of Vineland 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.
- (2) For nonresidential developments only, the developer shall also be provided with a copy of Form N-RDF "State of New Jersey Nonresidential Development Certification/Exemption" by the Construction Official, to be completed as per the instructions provided. The developer of a nonresidential development shall complete Form N-RDF as per the instructions provided. The Construction Official shall verify the information submitted by the nonresidential developer as per the instructions provided in the Form N-RDF. The Tax Assessor shall verify exemptions and prepare estimated and final assessments as per the instructions provided in Form N-RDF.
- (3) The Construction Official responsible for the issuance of a building permit shall notify the 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 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 Tax 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 Tax 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 Construction Official of the amount of the fee, who will transmit it to the developer.
- (7) Should the City of Vineland fail to determine or notify the developer of the amount of the development fee within 10 business days of the request for final inspection, the developer may estimate the amount due and pay that estimated amount consistent with the dispute process set forth in Subsection b of Section 37 of P.L. 2008, c. 46 (N.J.S.A. 40:55D-8.6).
- (8) Fifty percent of the development fee shall be collected at the time of issuance of the building permit. The remaining portion shall be collected at the issuance of the certificate of occupancy. The developer shall be responsible for paying the difference between the fee calculated at building permit and that determined at issuance of certificate of occupancy.
- (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 the City of Vineland. Appeals from a determination of the Board may be made to the tax court in accordance with the provisions of the State Uniform Tax Procedure Law, N.J.S.A. 54:48-1 et seq., within 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 nonresidential development fees imposed by filing a challenge with the Director of the Division of Taxation. Pending a review and determination by the Director, which shall be made within 45 days of receipt of the challenge, collected fees shall be placed in an interest-bearing escrow account by the City of

Vineland. Appeals from a determination of the Director may be made to the tax court in accordance with the provisions of the State Uniform Tax Procedure Law, N.J.S.A. 54:48-1 et seq., within 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 City of Vineland has created a separate, interest-bearing Affordable Housing Trust Fund to be maintained by the Chief Financial Officer for the purpose of depositing development fees collected from residential and nonresidential 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 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 the City of Vineland's affordable housing program.
- (3) The City of Vineland has provided COAH with written authorization, in the form of a third-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 Affordable 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 Affordable Housing Trust Fund may be used for any activity approved by COAH to address the City of Vineland'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 nonresidential buildings to create new affordable units, green building strategies designed to be cost saving and in accordance with accepted national or state standards, purchase of land for affordable housing, improvement of land to be used for affordable housing, extensions or improvements of roads and infrastructure to affordable housing sites, financial assistance designed to increase affordability, administration necessary for implementation of the Housing Element and Fair Share Plan, or any other activity as permitted pursuant to N.J.A.C. 5:97-8.7 through 5:97-8.9 and specified in the approved spending plan.
- (2) Funds shall not be expended to reimburse the City of Vineland for past housing activities.
- (3) At least 30% of all development fees collected and interest earned shall be used to provide affordability assistance to low- and moderate-income households in affordable units included in the municipal Fair Share Plan, unless COAH approves a waiver of this affordability assistance requirement. One-third of the affordability assistance portion of development fees collected shall be used to provide affordability assistance to those households earning 30% or less of median income by region.
  - (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% 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% or less of median income.

- (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) The City of Vineland 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% 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% 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. The City of Vineland shall complete and return to COAH all monitoring forms included in monitoring requirements related to the collection of development fees from residential and nonresidential developers, payments in lieu of constructing affordable units on site, funds from the sale of units with extinguished controls, barrier free escrow funds, rental income, repayments from affordable housing program loans, and any other funds collected in connection with the City of Vineland'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. The ability for the City of Vineland to impose, collect and expend development fees shall expire with its substantive certification unless the City of Vineland has filed an adopted Housing Element and Fair Share Plan with COAH, has petitioned for substantive certification, and has received COAH's

approval of its development fee ordinance. If the City of Vineland 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 Affordable Housing Trust Fund. Any funds so forfeited shall be deposited into the "New Jersey Affordable Housing Trust Fund" established pursuant to Section 20 of P.L. 1985, c. 222 (N.J.S.A. 52:27D-320). The City of Vineland shall not impose a residential development fee on a development that receives preliminary or final site plan or subdivision approval after the expiration of its substantive certification or judgment of compliance, nor shall the City of Vineland retroactively impose a development fee on such a development. The City of Vineland shall not expend development fees after the expiration of its substantive certification or judgment of compliance.