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AN ORDINANCE AMENDING TITLE 41 OF THE MUNICIPAL CODE OF THE CITY OF NEWARK, NEW JERSEY, TO ESTABLISH A NEW CHAPTER ENTITLED "INCLUSIONARY ZONING FOR AFFORDABLE HOUSING."

WHEREAS, Newark's Master Plan recognizes that "the region's housing growth is already shifting to urban centers like Newark," that "for the first time in more than a century, Newark is now a growing city," and that "[p]roviding housing of choice to more of the region's middle and upper-income households will support Newark's growing economy, strengthen the city's fiscal health, and help Newarkers of all types, ages, and income levels find quality homes;" and

WHEREAS, Newark wishes to ensure that as the City grows and attracts new market-rate residential development, the City also provides a realistic opportunity for the City to meet or exceed its fair share of the region's affordable housing need; and

WHEREAS, variance relief which is authorized by the Municipal Land Use Law ("MLUL") and Newark's ordinances provides incentives or compensatory benefits to developers of new market-rate housing seeking such variance relief to also make provisions for affordable housing; and

WHEREAS, the MLUL, at N.J.S.A. 40:55D-70, provides that "[n]o variance or other relief may be granted under the terms of this Section…without a showing that such variance or other relief can be granted without substantial detriment to the public good and will not substantially impair the intent and purpose of the zone plan and zoning ordinance"; and

WHEREAS, the intent and purpose of Newark's Master Plan includes to "create mixed-income housing through new construction…"; and

WHEREAS, the intent and purpose of Newark's Zoning Ordinance includes "advancing the purposes of the Municipal Land Use Law set forth at N.J.S.A. 40:55D-2," "ensuring that all land development in the City meets the applicable requirements of Federal, State and local laws," and "advanc[ing] the general concepts and recommendations of the Master Plan;" and

WHEREAS, the purposes of the MLUL, at N.J.S.A. 40:55D-2, include "to promote the establishment of appropriate population densities and concentrations that will contribute to the well-being of persons, neighborhoods, communities and regions…", and "to provide sufficient space in appropriate locations for a variety of…residential…uses…in order to meet the needs of all New Jersey citizens;" and

WHEREAS, in Southern Burlington County N.A.A.C.P. v. Mount Laurel Tp., 67 N.J. 151 (1975), the Supreme Court of New Jersey ruled that every municipality must bear its fair share of the regional burden of affordable housing; and

WHEREAS, in Southern Burlington County v. N.A.A.C.P. v. Mount Laurel Tp., 92 N.J. 158, 208 (1983), the Supreme Court of New Jersey held that where the municipal affordable housing obligation cannot be satisfied by removal of restrictive barriers, inclusionary devices such as density bonuses and mandatory set-asides keyed to the construction of lower income housing are constitutional and within the zoning power of a municipality; and

WHEREAS, the Fair Housing Act of 1985, N.J.S.A. 52:27D-301 et seq. ("FHA"), established the Council on Affordable Housing ("COAH") and vested it with primary responsibility for assigning and determining municipal affordable housing obligations; and

WHEREAS, Newark petitioned COAH for substantive certification of Newark's Affordable Housing Plan on February 17, 2010 and COAH deemed Newark's petition complete on June 23, 2010; and

WHEREAS, COAH did not take final action on Newark's petition for substantive certification; and

WHEREAS, in In re Adoption of N.J.A.C. 5:96 and N.J.A.C. 5:97, 416 N.J.Super. 462 (App. Div. 2010), the Appellate Division of the Superior Court of New Jersey invalidated COAH's revised Third Round rules; and

WHEREAS, in In re Adoption of N.J.A.C. 5:96, 215 N.J. 578 (2013), the Supreme Court of New Jersey invalidated COAH's revised Third Round Rules and endorsed the Appellate Division's remedy directing COAH to promulgate new rules within five months; and

WHEREAS, COAH has not adopted new rules; and

WHEREAS, in In re Adoption of N.J.A.C. 5:96 and 5:97 ex rel. New Jersey Council on Affordable Housing, 221 N.J. 1 (2015), as relief for COAH's failure to adopt new rules, the Supreme Court of New Jersey dissolved the FHA's exhaustion-of-administrative-remedies requirement until further order, allowing resort to the courts, in the first instance, to resolve municipalities' constitutional obligations to provide for affordable housing; and

WHEREAS, in Fair Share Housing Ctr., Inc. v. Zoning Bd. of City of Hoboken, 441 N.J.Super. 483 (App. Div. 2015), the Appellate Division of the Superior Court of New Jersey ruled that (i) neither the FHA, nor regulations promulgated by COAH pursuant to the FHA, required a municipality to submit all ordinances impacting the municipality's affordable housing obligation to COAH for approval, despite the existence of substantive certification provided by COAH to municipalities seeking its protection from builder's remedy suits, (ii) that the certification procedure was entirely voluntary, and (iii) that the FHA provided an alternative route;

WHEREAS, the City wishes to provide a realistic opportunity for new construction of mixed-income housing, irrespective of the voluntary substantive certification process administered by COAH and any COAH credit which may be available as part of that process; and

WHEREAS, the Administration and the Department of Economic and Housing Development have determined that it would further the interests of sustaining and promoting balanced growth and development in the City of Newark if Title 41 was amended to include a new Chapter entitled

"Inclusionary Zoning for Affordable Housing"; and

WHEREAS, the Municipal Council, by Resolution 7R2-b December 7, 2016, referred a Draft Ordinance Amending Title 41 Zoning and Land Use Regulations and Creating a new Chapter - Inclusionary Zoning for Affordable Housing, for formal review, report, and recommendation by the Central Planning Board as required by N.J.S.A. 40:55d-26; and

WHEREAS, on December 19, 2016, the Central Planning Board approved a Resolution finding that the Draft Ordinance Amending Title 41 Zoning and Land Use Regulations is consistent with the MLUL and offered recommendations for revisions as shown in **Exhibit A,** attached hereto.

NOW, THEREFORE, BE IT ORDAINED BY THE MUNICIPAL COUNCIL OF THE CITY OF NEWARK, NEW JERSEY, THAT:

Section 1. Title 41 of the City of Newark General Code entitled "NEWARK ZONING AND LAND USE REGULATIONS" is hereby amended to include a new Chapter entitled "Inclusionary Zoning for Affordable Housing" which shall read in its entirety, as follows:

Section 1.1 Purpose. The purpose of this Ordinance is to create mixed-income housing through new construction, and substantial rehabilitation development, to assist the City in providing a realistic opportunity for affordable housing as the City grows and attracts new market-rate residential development.

Section 1.2 Definitions. The following terms, when used in this Chapter, shall have the following definitions:

ADMINISTRATIVE AGENT

The Division of Housing and Real Estate Development within the City of Newark Department of Economic and Housing Assistance, or such other qualified entity which may be duly approved by the City from time to time.

AFFORDABILITY AVERAGE

An average of the percentage of median income at which income-restricted units are affordable to low-and moderate-income households. For example, if the rents for the five restricted rental units in an affordable housing development were affordable at 46, 48, 50, 52 and 54 percent of median income, respectively, the average affordability for those units would be 50 percent of median income.

AFFORDABLE

In the case of an income-restricted ownership unit, a sales price for the unit that 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 an income-restricted rental unit, a rent for the unit that conforms to the standards set forth in N.J.A.C. 5:80-26.12, as may be amended or supplemented.

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AFFORDABLE DEVELOPMENT

A housing development all or a portion of which consists of income-restricted units.

AGENCY

The New Jersey Housing and Mortgage Finance Agency established by N.J.S.A. 55:14K-1 et seq. and in, but not of, the DCA.

AGE-RESTRICTED UNIT

A housing unit designed to meet the needs of, and exclusively for, the residents of an age-restricted segment of the population where the head of the household is a minimum age of either 62 years, or 55 years and meets the provisions of the 42 U.S.C. §§ 3601 et seq., except that due to death, a remaining spouse of less than 55 years of age shall be permitted to continue to reside.

ASSISTED LIVING RESIDENCE

A facility licensed by the New Jersey Department of Health and Senior Services to provide apartment-style housing and congregate dining and to assure that assisted living services are available when needed for four or more adult persons unrelated to the proprietor. Apartment units offer, at a minimum, one unfurnished room, a private bathroom, a kitchenette and a lockable door on the unit entrance.

BALANCED HOUSING

The Neighborhood Preservation Balanced Housing Program of the DCA as set forth at N.J.S.A. 52:27D-320 and N.J.A.C. 5:43 as may be amended or supplemented.

CERTIFIED HOUSEHOLD

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

COUNCIL ON AFFORDABLE HOUSING

The Council on Affordable Housing in, but not of, the DCA, established under the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301 et seq., or its successor.

DEPARTMENT OF COMMUNITY AFFAIRS

The State of New Jersey Department of Community Affairs.

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.

DIVISION

The Division of Housing in the DCA.

DOWNTOWN

The Downtown Neighborhood of the City of Newark, having the boundaries as depicted on the Downtown Neighborhood map in Section 41:3-2 “Zoning Maps” of Title 41 of the City’s Zoning and Land Use Regulations, adopted February 5, 2015.

HOUSING AFFORDABILITY SERVICE

The Housing Affordability Service, formerly known as the “Affordable Housing Management Service,” in the Department of Community Affairs, Division of Housing.

HOUSING AND URBAN DEVELOPMENT

The United States Department of Housing and Urban Development.

INCOME-RESTRICTED UNITS

Low and moderate income housing, as each term is defined in this Section.

IRONBOUND

The Ironbound Neighborhood of the City of Newark, having the boundaries as depicted on the Ironbound Neighborhood map in Section 41:3-2 “Zoning Maps” of Title 41 of the City’s Zoning and Land Use Regulations, adopted February 5, 2015.

LOW INCOME HOUSING

Housing Affordable according to Federal Department of Housing and Urban Development or other recognized standards for home ownership and rental costs and occupied or reserved for occupancy by households with a gross household income equal to 50% or less of the median gross household income for households of the same size within the housing region in which the housing is located.

MARKET ORIENTED NEIGHBORHOOD INVESTMENT

The New Jersey Housing and Mortgage Finance Agency's Market Oriented Neighborhood Investment Program, as it may be authorized from time to time by that Agency.

MARKET-RATE UNITS

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

MEDIAN INCOME

The median income by household size for the housing region that includes the City of Newark, as adopted annually by COAH or its successor, and if no such successor, then by an appropriate State or federal government agency.

MODERATE INCOME HOUSING

Housing affordable according to federal Department of Housing and Urban Development or other recognized standards for home ownership and rental costs and occupied or reserved for occupancy by households with a gross household income equal to more than 50% but less than 80% of the median gross household income for households of the same size within the housing region in which the housing is located.

NEW CONSTRUCTION

Any structure change of use, reconstruction, or addition as defined in the New Jersey Uniform Construction Code, N.J.A.C. 5:23-1 et al.

NON-EXEMPT SALE

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

RANDOM SELECTION PROCESS

A process by which currently income-eligible households are selected for placement in income-restricted 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 (for example, by lottery).

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. With respect to income-restricted units in an assisted living residence, rent does not include charges for food and services.

SUBSTANTIAL REHABILITATION

Any rehabilitation of a vacant structure or any rehabilitation that involves the replacement of two or more major systems.

URBAN HOMEOWNERSHIP RECOVERY PROGRAM

The New Jersey Housing and Mortgage Finance Agency's Urban Homeownership Recovery Program, as it may be authorized from time to time by that Agency's Board.

100% AFFORDABLE DEVELOPMENT

A development in which all of the residential units are income-restricted units.

Section 2. Mandatory Set-Aside:

a. All new and substantially rehabilitated residential development (as defined in Sec.41:2-2), having a minimum of thirty (30) total units for which the Zoning Board of Adjustment grants any variance pursuant to N.J.S.A. 40:55D-70~~c. or~~ d(1), d(5) or d(6)., shall set aside twenty percent (20%) of the total number of new constructed and substantially rehabilitated residential units as income-restricted units, in accordance with the standards in Section 3 of this Ordinance. Of that 20%, each new and substantially rehabilitated residential development must provide, at minimum, the following:

i. 5% income-restricted units at 40% of the AMI;
ii. 5% income-restricted units at 60% of the AMI; and
iii.10% income-restricted units at 80% of the AMI.

b. All new and substantially rehabilitated residential and mixed-use residential development having a minimum of thirty (30) total units for which the Planning Board grants any variance shall set aside twenty percent (20%) of the total number of newly constructed and substantially rehabilitated residential units as income-restricted units, in accordance with the standards in section 3 of this Ordinance.

c. In accordance with the Local Redevelopment and Housing Law, at N.J.S.A. 40A:12A-7b., all new and substantially rehabilitated residential and mixed-use residential development (as defined in Sec.41:2-2) which is authorized by either:

(i) a redevelopment plan that is adopted after the effective date of this Chapter, and that changes the zoning for the subject property from non-residential to residential or increases the permitted residential floor area ratio density, or height, on the subject property; or

an existing redevelopment plan that is amended after the effective date of this Chapter and that changes the zoning for the subject property from non-residential to residential or

increases the permitted residential floor area ratio, density, or height on the subject property, shall set aside twenty percent (20%) of the total number of new constructed residential units as income-restricted units.

Section 3. Standards:

a. The income-restricted units required by Section 2 of this Ordinance shall be constructed on-site. Provision of any of the required income-restricted units off-site is prohibited.

b. Rounding. When any calculation of the mandatory set-aside results in a fractional income-restricted unit of 1/2 or more, the fraction shall be rounded up to the next whole unit. When such a calculation results in a fraction of less than 1/2, the fraction shall be rounded down to the previous whole unit.

c. Income-restricted units shall be integrated with and interspersed among the market-rate units.

d. Any residential unit which is reserved for the superintendent of a residential development that is subject to this Chapter shall not be credited towards satisfaction of the mandatory set-aside.

e. The marketer of income-restricted units created pursuant to this Chapter shall, without unduly delaying occupancy, affirmatively market said units to give income-eligible Newark residents priority for occupancy of said units.

f. It is the intent of this Chapter to prevent evasion of its requirements by the artificial subdivision, separation, construction or rehabilitation of a project into smaller developments through the manipulation of the design or implementation schedule. The Zoning Board of Adjustment, therefore, shall review each application, including the completed checklist required by Section 6 of this Ordinance, to determine whether the project has been artificially subdivided, separated, constructed or rehabilitated through the manipulation of the design or implementation schedule in order to evade the provisions of this Chapter. If the Zoning Board so finds, the application shall not be approved.

Section 4. Exemptions: The following shall be exempt from the provisions of this Chapter:

a. Development requiring Planning Board approval, in which the total number of dwelling units is less than thirty (30).

b. 100% affordable development.

Section 5. Payment In Lieu of Constructing Income-Restricted Units:

a. Projects may, with the approval of the Zoning Board of Adjustment, make a voluntary cash payment into the City of Newark's Affordable Housing Trust Fund in lieu of constructing all or part of the income-restricted units required by this chapter.

b. The amount of the payment-in-lieu figure shall be based on the construction cost of a one thousand square foot (1,000 sq. ft.) two-bedroom unit. Should the Developer provide a certain percentage of the income-restricted units, the payment-in-lieu is as follows:

i. 40% of the required income-restricted units - $50,000.00

ii. 60% of the required income-restricted units - $20,000.00

iii. 80% of the required income-restricted units - $15,000.00

The Municipal Council, in consultation with the City of Newark Department of Economic and Housing Development, shall review this construction cost figure every five (5) years, and as the Municipal Council may deem appropriate, revise the construction cost figure by ordinance.

c. The City may also consider a reduction in the payment-in-lieu should the Developer provide the following Community Benefits:

i. Construction of Retail Space within specific neighborhoods;

ii.

iii. The rehabilitation of residential homes, to be sold at cost, in specific neighborhood.

d. The Zoning Board of Adjustment is authorized to approve voluntary cash payment-in-lieu only upon written findings, supported by the record, that such a contribution will further the housing policies of the City of Newark more than the construction of income-restricted units at the time of the development application. In making such findings, the Zoning Board shall consider and determine the following factors:

(i) The number of income-restricted units that can be provided with the payment-in-lieu, as compared with the number of new income-restricted units otherwise required to be constructed in the subject development.

(ii) The availability and stage of readiness of any plans for the actual provision of income-restricted units within the City of Newark on which the payment-in-lieu can be expended.

(iii) The reasons which make construction of the required income-restricted units impractical.

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e. The opportunity to make a voluntary payment in lieu of constructing income-restricted units is not intended to be and should not be construed as a right available to developers at their sole option. The policy of this chapter favors construction of income-restricted units.

f.

f The Zoning Board of Adjustment approval of any payment-in-lieu shall be conditioned upon the developer and the City entering into a developer's agreement that details the manner in which the payment-in-lieu commitment will be fulfilled.

g. The Municipal Council, at its discretion and by Ordinance, has the authority to make changes to the amount of the payment-in-lieu on a specific development project.

Section 6. Compliance Checklist: A checklist for compliance with this Chapter, in the form attached to and incorporated into this Ordinance as Exhibit A ("Checklist"), is hereby adopted. The Zoning Board of Adjustment shall provide the Checklist to each applicant for development which is subject to this chapter. Subject to N.J.S.A. 40:55D-10.3, applications for development which are subject to this Chapter, but which lack information indicated on the Checklist, shall be deemed incomplete.

a. Upon receipt of each submitted Checklist, the Zoning Board of Adjustment Clerk or Secretary shall forward a copy of same to the Manager of the City of Newark Division of Housing Assistance in the Department of Economic and Housing Development.

b. As soon as reasonably practicable, the Manager of the Division of Housing and Real Estate Development shall submit any written comments which the Manager may have on a completed Checklist to the Zoning Board Clerk or Secretary. Upon receipt, the Zoning Board Clerk or Secretary shall distribute the Manager's written comments to the Zoning Board members.

c. Nothing in this Chapter shall be construed as altering any applicable time periods established by State statute or City of Newark ordinance for Zoning Board of Adjustment action on a development application.

Section 7. Phasing: Construction of income-restricted units shall take place simultaneously with the balance of the development triggering the requirements of this Chapter, and shall be governed by the following phasing schedule:

Maximum % of Market-Rate Units Issued Certificates of Occupancy	Minimum % of Income-Restricted Units Issued Certificates of Occupancy
25% +1 unit	10%
50%	50%
75%	75%
90%	100%

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a. Certificates of Occupancy for the last ten percent (10%) of the market-rate units shall not be issued until Certificates of Occupancy have been issued for all of the required income-restricted units.

b. A schedule setting forth the phasing of the actual number of total units and income-restricted units, by unit size, for each development shall be incorporated into the resolution of approval for any development subject to the provisions of this Chapter.

Section 8. Affordability Average; Bedroom Distribution: The intent of this Section is to ensure that any development which is subject to this Chapter satisfies the affordability average and bedroom distribution standards set forth at N.J.A.C. 5:80-26.3, as same may be amended or supplemented.

a. In each subject development, at least 50 percent of the income-restricted units within each bedroom distribution shall be low income housing units and the remainder may be moderate income housing units.

b. Income-restricted units that are not age-restricted shall be structured in conjunction with realistic market demands such that:

1. The combined number of efficiency and one-bedroom units is no greater than 20 percent of the total low-and moderate-income units;

2. At least 30 percent of all low and moderate income housing units are two bedroom units;

3. At least 20 percent of all low and moderate income housing units are three bedroom units; and

4. The remainder, if any, may be allocated at the discretion of the developer.

c. Age-restricted low and moderate-income units may utilize a modified bedroom distribution. At a minimum, the number of bedrooms shall equal the number of age-restricted low and moderate-income units within the affordable development. The standard may be met by creating all one-bedroom units or by creating a two-bedroom unit for each efficiency unit.

d. The maximum rent for income-restricted units within each subject development shall be affordable to households earning no more than 50 percent of median income. The average rent for low-and moderate-income units should be affordable to households earning no more than 50 percent of median income. The developers and/or municipal sponsors of income-restricted rental units shall establish at least one rent for each bedroom type for both low-income and moderate-income units, provided that at least 10 percent of all low-and moderate-income units shall be affordable to households earning no more than 35 percent of median income.

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e. The maximum sales price of income-restricted ownership units within each development subject to this Chapter shall be affordable to households earning no more than 60 percent of median income. Each development subject to this Chapter must achieve an affordability average of 55 percent for income-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.

f. Income-restricted units must utilize the same type of heating, ventilation and air conditioning as the market rate units within the subject development.

g. The provisions of this Section shall not apply to affordable developments financed under UHORP or MONI or to assisted living residences, which shall comply with applicable Agency regulations.

Section 9. Occupancy Standards: The intent of this Section is to ensure that any development which is subject to this Chapter satisfies the occupancy standards set forth at N.J.A.C. 5:80-26.4, as same may be amended or supplemented.

a. In determining the initial rents and initial sales prices for compliance with the affordability average requirements for income-restricted units other than assisted living facilities, the following standards shall be used:

1. A studio shall be affordable to a one person household;
2. A one bedroom unit shall be affordable to a one and one-half person household;
3. A two bedroom unit shall be affordable to a three person household;
4. A three bedroom unit shall be affordable to a four and one-half person household; and
5. A four bedroom unit shall be affordable to a six person household.

b. For assisted living facilities, the following standards shall be used:

1. A studio shall be affordable to a one person household;
2. A one-bedroom unit shall be affordable to a one and one-half person household; and
3. A two-bedroom unit shall be affordable to a two person household or to two one-person households.

c. 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 unit bedroom;

2. Provide children of different sex with separate bedrooms; and
3. Prevent more than two persons from occupying a single bedroom.

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Section 10. Control Periods for Income-Restricted Ownership Units. The intent of this Section is to ensure that any development which is subject to this Chapter satisfies the control periods for ownership units set forth at N.J.A.C. 5:80-26.5, as same may be amended or supplemented.

a. Each income-restricted ownership unit shall remain subject to the requirements of this chapter for a period of 30 years; provided, however, that:

1. Any unit that, prior to December 20, 2004, received substantive certification from COAH, was part of a judgment of compliance from a court of competent jurisdiction or became subject to a grant agreement or other contract with either the State or a political subdivision thereof, shall have its control period governed by said grant of substantive certification, judgment or grant agreement or contract.

b. The affordability control period for an income-restricted ownership unit shall commence on the date the initial certified household takes title to the income-restricted unit and shall terminate only at such time as is applicable under Subsection a. above.

c. Prior to the issuance of the initial Certificate of Occupancy for an income-restricted ownership unit and upon each successive sale during the period of income-restricted ownership, the administrative agent shall determine the income-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. At the time of the 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 Chapter, an amount equal to the difference between the unit's non-restricted fair market value and its restricted price. The recapture note shall be secured by a recapture lien evidenced by a duly recorded mortgage on the unit. The recapture note and recapture mortgage lien shall be in favor of the Agency if the unit was financed under UHORP or MONI, in favor of the State if State funds other than UHORP or MONI contributed to the financing of the unit, and, in all other cases, in favor of the City of Newark. The recapture note and recapture mortgage lien shall be in the form prescribed in Subchapter Appendices L, M, N, O, P and Q of N.J.A.C. 5:80-26, as may be amended or supplemented, incorporated herein by reference, and as applicable.

1. The recapture lien shall also provide that the recapture amount shall be reduced by the cumulative dollar value of capital expenditures by all owners during the control period for improvements and/or upgrades to the unit, as approved by the administrative agent.

2. In the event that the City of Newark exercises the option to purchase income-restricted ownership units pursuant to Subsection f. below, the City of Newark shall not be required to satisfy the recapture lien.

3. Upon termination of the affordability control period pursuant to subsection g. below, and satisfaction of the recapture of the lien, the unit may be sold at fair

market value and the proceeds retained by the seller.

d. All conveyances of income-restricted ownership units shall be made by deeds and restrictive covenants substantially in the form prescribed in Subchapter Appendices A, B, C, D, L, M, N, O, P and Q of N.J.A.C. 5:80-26, as same may be amended or supplemented, incorporated herein by reference, as applicable.

e. The affordability controls set forth in this Chapter and incorporated in instruments in the forms presented Appendices A, D, E, F, G, H, I, J, K, L, M, N, O, P and Q of N.J.A.C. 5:80-26, as same may be amended or supplemented, incorporated herein by reference, shall remain in effect despite the entry and enforcement of any judgment of foreclosure with respect to income-restricted ownership units.

f. At the time of the first non-exempt sale following a 30-year interval from the date of the issuance of the initial Certificate of Occupancy, the City of Newark shall have the right of first refusal to purchase an income-restricted ownership unit at the maximum restricted price, with the exceptions noted under subsection a. above, provided that:

1. The City of Newark enters into a contract to purchase the unit within 60 days of notification of intent to sell by the owner of the restricted unit; and
2. The recapture lien described in subsection c. above remains in full force and effect.

g. All income-restricted ownership units created pursuant to this chapter shall be released from the requirements of this chapter upon the expiration of the applicable control period specified under Subsection a. above, provided that:

1. The recapture lien described in Subsection c. above remains in full force and effect; and

2. If the lien required under subsection c. above is in favor of the City of Newark, the City of Newark has a COAH-approved spending plan pursuant to N.J.A.C. 5:94-6.5(c), as may be amended or supplemented, and to the extent applicable, requiring that all proceeds from the satisfaction of a recapture lien on an income-restricted ownership unit be used to create one new affordable unit for every unit released from affordability controls within the City of Newark.

h. In those instances in which control periods expire pursuant to this Section, the administrative agent shall, within 60 days of the expiration of the control period, execute a release, substantially in form set forth in Appendix F to N.J.A.C. 5:80-26, as same may be amended or supplemented, incorporated herein by reference, of all restriction instruments with respect to the unit. The owner of the income-restricted unit is responsible for recording the release instruments and returning the recorded originals promptly to the administrative agent. Upon the expiration of the control period for an income-restricted ownership unit established in this section, the owner of the unit shall be entitled to sell it to any purchaser at the fair market price.

Section 11. Price Restrictions for Ownership Units. The intent of this Section is to ensure that any development which is subject to this Chapter complies with the price restrictions for ownership units set forth at N.J.A.C. 5:80-26.6, as same may be amended or supplemented.

a. The initial purchase price for an income-restricted ownership unit shall be approved by the administrative agent and, if the unit is receiving assistance under the Balanced Housing Program, shall be consistent with the Balanced Housing grant agreement.

b. The initial purchase price for all income-restricted ownership units except those financed under UHORP or MONI shall be calculated so that the monthly carrying costs 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 an appropriate household size as determined under N.J.A.C. 5:80-26.4, as many be amended or 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 or supplemented.

c. The initial purchase price of an income-restricted ownership unit financed under UHORP or MONI unit shall be calculated so that the monthly carrying costs of the unit, including principal and interest (based on a mortgage loan equal to 95 percent of the purchase price and the Federal Reserve HR15 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 a household whose income does not exceed 45 percent of median income, in the case of a low-income unit, or 72 percent of median income, in the case of a moderate-income unit, and that is of an appropriate household size as determined under N.J.A.C. 5:80-26.4, as may be amended or supplemented.

d. The maximum resale price for an income-restricted ownership unit, if the resale occurs prior to the one-year anniversary of the date on which title to the unit was first transferred to a certified household, is the initial purchase price. If the resale occurs on or after such anniversary date, the maximum resale price shall be consistent with the regional income limits most recently published by COAH and calculated pursuant to N.J.A.C. 5:94-7.2(b), as same may be amended or supplemented. The administrative agent shall approve all resale prices, in writing and in advance of the resale, to assure compliance with the foregoing standards.

e. The master deeds of developments subject to this chapter shall provide no distinction between the condominium or homeowner association fees and special assessments paid by low-and moderate-income purchasers and those paid by market purchasers.

Section 12. Buyer Income Eligibility for Ownership Units: The intent of this Section is to ensure that any development which is subject to this Chapter complies with the price

restrictions for ownership units set forth at N.J.A.C. 5:80-26.7, as same may be amended or supplemented.

a. Low-income ownership units shall be reserved for households with a gross household income less than or equal to 50 percent of median income. Moderate income ownership units shall be reserved for households with a gross household income less than 80 percent of median income. For example, a household earning 48 percent of median income may be placed in any low-income unit; however, a household earning 53 percent does not qualify for a low-income unit. A household earning 67 percent of median may be placed in any moderate income housing unit. A household earning less than 50 percent of median may be placed in a moderate income housing unit. Notwithstanding the foregoing, however, the administrative agent may permit moderate-income purchasers to buy low-income units in housing markets where, as determined by COAH or the Division, as applicable, low-income prices are required but there is an insufficient number of low-income purchasers to permit prompt occupancy of the units. A certified household that purchases an income-restricted ownership unit must occupy it as the principal residence and not lease the unit; provided, however, the administrative agent may permit the owner of an income-restricted ownership unit, upon a showing of hardship, to lease the unit to a certified household for a period not to exceed one year.

b. The administrative agent shall certify a household as eligible for an income-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 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 eligible monthly income. The administrative agent, however, may exercise the discretion to certify a low-or moderate-income household as eligible despite the fact that the unit's monthly housing cost would exceed the 33 percent level, if the household obtains a firm mortgage loan commitment at the higher level from a licensed financial institution, under terms consistent with the requirements of the New Jersey Home Ownership Security Act of 2002, N.J.S.A. 46:10B-22 et seq., including certification from a non-profit counselor approved by HUD or the New Jersey Department of Banking and Insurance that the borrower has received counseling on the advisability of the loan transaction.

Section 13. Limitations on Indebtedness Incurred by Income-Restricted Ownership Unit; Subordination: The intent of this Section is to ensure that any development which is subject to this Chapter complies with the indebtedness limitations and subordination standards set forth at N.J.A.C. 5:80-26.8, as same may be amended or supplemented.

a. Prior to incurring any indebtedness to be secured by an income- restricted ownership unit, the owner shall submit to the Deputy Mayor/Director of the Department of Economic and Housing Development and the administrative agent a notice of intent to incur such indebtedness, in such form and with such documentary support as determined by the administrative agent, and the owner shall not incur any such indebtedness unless and until the administrative agent has determined 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 an income-restricted ownership unit to exceed 95 percent of the maximum allowable resale price of that unit, as such price is determined by the Deputy Mayor/ Director of the Department of Economic and Housing Development in accordance with N.J.A.C. 5:80-26.6(c), as same may be amended or supplemented.

Section 14. Capital Improvements to Ownership Units: The intent of this Section is to ensure that any development which is subject to this Chapter complies with the standards for capital improvements to ownership units set forth at N.J.A.C. 5:80-26.9, as same may be amended or supplemented.

a. The owners of income-restricted ownership units may apply to the administrative agent to increase the maximum sales price for the unit on the basis of capital improvements made since the purchase of the unit. Eligible capital improvements shall be those that render the unit suitable for a larger household or that add an additional bathroom. In no event shall the maximum sales price of an improved housing unit exceed the limits for affordability for the larger household.

b. Upon the resale of an income-restricted ownership unit, all items of property that are permanently affixed to the unit or were included when the unit was initially restricted (for example, refrigerator, range, washer, dryer, dishwasher, wall-to-wall carpeting) shall be included in the maximum allowable resale price. Other items may be sold to the purchaser at a reasonable price that has been approved by the administrative agent at the time of signing the agreement to purchase. The purchase of central air conditioning installed subsequent to the initial sale of the unit and not included in the base price may be made a condition of the unit resale provided the price, subject to 10-year, straight-line depreciation, has been approved by the administrative agent. Unless otherwise approved by the administrative agent, the purchase of any property other than central air conditioning shall not be made a condition of the unit resale. The owner and the purchaser must personally certify at the time of closing that no unapproved transfer of funds for the purpose of selling and receiving property has taken place at resale.

Section 15. Maintenance of Income-Restricted Ownership Units: The intent of this Section is to ensure that any development which is subject to this Chapter complies with the standards for maintenance of restricted ownership units set forth at N.J.A.C. 5:80-26.10, as same may be amended or supplemented.

a. An income-restricted ownership unit shall be required to obtain a Continuing Certificate of Occupancy or a certified statement from the City of Newark Building Inspector 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 or supplemented.

Section 16. Control Periods for Income-Restricted Rental Units: The intent of this

Section is to ensure that any development which is subject to this Chapter satisfies the control periods for rental units set forth at N.J.A.C. 5:80-26.11, as same may be amended or supplemented.

a. Each income-restricted rental unit created pursuant to this Chapter shall remain subject to the requirements of this Chapter for a period of 30 years; provided, however, that:

1. Any unit that, prior to December 20, 2004, received substantive certification from COAH, was part of a judgment of compliance from a court of competent jurisdiction or became subject to a grant agreement or other contract with either the State or a political subdivision thereof, shall have its control period governed by said grant of substantive certification, judgment or grant agreement or contract.

b. The affordability control period for the income-restricted rental units in a development subject to this chapter shall commence on the first date that a certified household occupies a unit and shall terminate only at such time that the City of Newark opts to release the unit from the requirements of this chapter in accordance with subsection e. below, except that the affordability controls set forth in this chapter shall remain in effect until the date on which a rental unit shall become vacant, provided that the occupant household continues to earn a gross annual income of less than 80 percent of the applicable median income. If, at that time, a rental household's income is found to exceed 80 percent of the regional median income, the rental rate restriction shall expire at the later of either the next scheduled lease renewal or 60 days.

c. Deeds of all real property that include income-restricted rental units shall contain deed restriction language substantially in the form set forth in Appendix E to N.J.A.C. 5:80-26, as may be amended or supplemented, incorporated herein by reference. The deed restriction shall have priority over all mortgages on the property. The deed restriction shall be filed by the developer or seller with the records office of Essex County, and a copy of the filed document shall be provided to the administrative agent within 30 days of the receipt of a certificate of occupancy. The preparer of the foregoing instrument shall certify to the administrative agent that the deed restriction language in Appendix E has been included therein.

d. An income-restricted rental unit shall remain subject to the affordability controls of this Chapter despite the occurrence of any of the following events:

1. A sublease or assignment of the lease of the unit;

2. A sale or other voluntary transfer of the ownership of the unit; or

3. The entry and enforcement of any judgment of foreclosure.

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d. All income-restricted rental units in any development created pursuant to this Chapter shall be released from the requirements of this Chapter upon the expiration of the minimum control period specified under subsection a. above, provided that:

1. The administrative agent shall, within 60 days of the expiration of the minimum control period specified under Subsection a. above, execute a release, in the form set forth in Appendix F to N.J.A.C 5:80-26, as may be amended or supplemented, incorporated herein by reference, of all restriction instruments with respect to the unit(s). The owner of the income-restricted unit(s) is responsible for recording the release instruments and returning the recorded originals promptly to the administrative agent. Upon the expiration of the control period for a restricted rental unit established in this Section, the owner of the unit shall be entitled to lease it to any tenant at the fair market rent.

Section 17. Restrictions on Rents: The intent of this Section is to ensure that any development which is subject to this Chapter complies with the rent restrictions set forth at N.J.A.C. 5:80-26.12, as same may be amended or supplemented.

a. The initial rent for an income-restricted rental unit shall be approved by the administrative agent and, if the unit is receiving assistance under the Balanced Housing Program, shall be consistent with the Balanced Housing grant agreement. The initial rent 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 or 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 or supplemented.

b. At the anniversary date of the tenancy of the certified household occupying an income-restricted rental unit, the rent may be increased, if such increase is consistent with the regional income limits most recently published by COAH, calculated pursuant to N.J.A.C. 5:94-7.2(b), as may be amended or supplemented, and has been filed with the administrative agent. If the landlord has charged a tenant less than the initial maximum allowable rent for a restricted unit, the landlord may, with the approval of the administrative agent, use the maximum allowable rent instead of the current rent in performing this multiplication to establish the rent for the next tenant under a new lease.

c. Approved initial rents may not be increased when an announcement of a COAH-adopted increase occurs during initial lease-up activity. Rents may not be increased more than once a year. Rents may not be increased by more than one COAH-approved increment at one time. Rents may not be increased at the time of a new occupancy if the new occupancy occurs within a year of the last occupancy and prior to the next published COAH-adopted increase. No additional fees or charges may be added to the approved rent (except, in the case of units in an assisted living residence, for the customary charges for food and services) without the express written approval of the administrative agent. Application fees (including the

charge for any credit check) may not exceed five percent of the monthly rental of the applicable restricted unit and shall be payable to the administrative agent to be applied to the costs of administering the controls in this Subchapter as applicable to the unit.

d. A written lease is required for all income-restricted rental units, except for units in an assisted living residence. Final lease agreements are the responsibility of the landlord and the prospective tenant. Tenants are responsible for security deposits and the full amount of the rent as stated on the lease. All lease provisions shall comply with applicable law. The landlord shall provide the administrative agent with sufficient information for a preparation of a unit inventory form for entry into the centralized affordable housing unit inventory system. The landlord shall submit a copy of each lease entered into with a certified household to the administrative agent within 10 business days after the execution of each lease.

e. Those tenant-paid utilities that are included in the utility allowance shall be so stated in the lease. The allowance for utilities shall be consistent with the utility allowance approved by DCA for its Section 8 program.

Section 18. Tenant Income Eligibility: The intent of this Section is to ensure that any development which is subject to this Chapter complies with the standards for tenant income eligibility set forth at N.J.A.C. 5:80-26.13, as same may be amended or supplemented.

a. Low-income rental units shall be reserved for households with a gross household income less than or equal to 50 percent of median income. 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 an income-restricted rental unit when the household is a 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 or 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 Subsection b. above with the administrative agent, who shall counsel the household on budgeting.

Section 19. Administrative Agent: The intent of this Section is to ensure that any development which is subject to this Chapter complies with the administrative agent provisions set forth at N.J.A.C. 5:80-26.14, as same may be amended or supplemented.

a. The affordability controls set forth in this Chapter shall be administered and enforced by the administrative agent. The primary responsibility of the administrative agent shall be to ensure that the income-restricted units under administration are sold or rented, as applicable, only to low and moderate-income households. Among the responsibilities of the administrative agent are the following:

1. Conducting an outreach process to insure affirmative marketing of affordable housing units in accordance with the provisions of N.J.A.C. 5:80-26.15, as may be amended or supplemented;

2. Soliciting, scheduling, conducting and following up on interviews with interested households;

3. Conducting interviews and obtaining sufficient documentation of gross income and assets upon which to base a determination of income eligibility for a low-or moderate-income unit;

4. Providing written notification to each applicant as to the determination of eligibility or non-eligibility;

5. Creating and maintaining a referral list of eligible applicant households living within the City;

6. Creating and maintaining a referral list of eligible applicant households living in the COAH region and eligible applicant households with members working in the COAH region where the units are located;

7. Subject to subsection 3.e. of this ordinance, employing a random selection process when referring households for certification to affordable units;

8. Furnishing to attorneys or closing agents forms of deed restrictions and mortgages for recording at the time of conveyance of title of each restricted unit;

9. Creating and maintaining a file on each income-restricted unit for its control period, including the recorded deed with restrictions, recorded mortgage and note, as appropriate;

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10. Instituting and maintaining an effective means of communicating information between owners and the administrative agent regarding the availability of income -restricted units for resale or rental;

11. Instituting and maintaining an effective means of communicating information to low- and moderate-income households regarding the availability of restricted units for resale or re-rental;

12. Reviewing and approving requests from owners of restricted units who wish to take out home equity loans or refinance during the term of their ownership;

13. Reviewing and approving requests to increase sales prices from owners of restricted units who wish to make capital improvements to the units that would affect the selling price, such authorizations to be limited to those improvements resulting in additional bedrooms or bathrooms and the cost of central air conditioning systems;

14. Processing requests and making determinations on requests by owners of restricted units for hardship waivers;

15. Communicating with lenders regarding foreclosures;

16. Ensuring the issuance of Continuing Certificates of Occupancy or certifications pursuant to N.J.A.C. 5:80-26.10, as may be amended or supplemented;

17. Notifying the City of an owner's intent to sell a restricted unit;

18. Ensuring that the removal of the deed restrictions and cancellation of the mortgage note are effectuated and properly filed with the appropriate county's Register of Deeds or County Clerk's Office after the termination of the affordability controls in this Subchapter for each restricted unit;

19. Providing annual reports to COAH as required; and

20. Such other responsibilities as may be necessary to carry out the provisions of this Chapter.

c. The administrative agent shall create and shall publish in plain English, and in such other languages as may be appropriate to serving its client base, a written operating manual, as approved by COAH, to the extent applicable, setting forth procedures for administering such affordability controls, including procedures for long-term control of restricted units; for enforcing the covenants set forth in Appendices A, B, C, D and E of N.J.A.C. 5:80-26, as may be amended or supplemented, consistent with the provisions of N.J.A.C. 5:80-26.18, as may be amended or supplemented; and for releasing income-restricted units promptly at the conclusion of applicable control periods. The administrative agent shall have

authority to take all actions necessary and appropriate to carrying out its responsibilities hereunder. The operating manual shall have a separate and distinct Chapter or Section setting forth the process for identifying applicant households seeking certification to restricted units, for reviewing applicant household eligibility, and for certifying applicant households in accordance with the household certification and referral requirements set forth in N.J.A.C. 5:80-26.16, as may be amended or supplemented.

1. Such process shall require that an applicant household be notified in writing of the results of its application for certification within 20 days of the administrative agent's determination thereof.

2. At the discretion of the administrative agent, such process may include either or both an outreach requirement and a face-to-face applicant interview process.

3. The administrative agent shall establish and maintain a ready database of applicant households as a referral source for certifications to restricted units, and shall establish written procedures to ensure that selection among applicant households be via the database, and in accordance with a uniformly applied random selection process and all applicable State and Federal laws relating to the confidentiality of applicant records.

d. Except in the case of income-restricted units created pursuant to this Chapter receiving UHORP or MONI funding, the City of Newark, Division of Housing Assistance shall serve as the administrative agent for income-restricted units which are created pursuant to this Chapter.

d. The administrative agent shall have the authority to discharge and release any or all instruments filed of record to establish affordability controls.

Section 20. Affirmative Marketing: The intent of this Section is to ensure that any development which is subject to this Chapter complies with the affirmative marketing standards set forth at N.J.A.C. 5:80-26.15, as same may be amended or supplemented.

a. 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 or sponsor of income-restricted housing. The affirmative marketing plan is also intended to target those potentially eligible persons who are least likely to apply for income-restricted units in the housing region. It is a continuing program that directs all marketing activities toward the housing region and covers the period of deed restriction.

b. The administrative agent shall assure the affirmative marketing of income-restricted units which are created pursuant to this chapter, and shall be responsible for implementing the affirmative marketing plan. The administrative agent shall attend an affirmative marketing training program approved by COAH, if such

program is available.

c. The City shall ensure that all original applicant and sales records of income-restricted units are returned to the City for reporting purposes and to aid with future resales.

d. In implementing the affirmative marketing plan, the administrative agent shall designate an experienced staff person approved by COAH, to the extent applicable, to provide counseling services to low and moderate income applicants on subjects such as budgeting, credit issues, mortgage qualification, rental lease requirements, and landlord/tenant law. Alternatively, the administrative agent may contract with an experienced agency approved by COAH, to the extent applicable, to provide such counseling services.

e. The affirmative marketing plan shall provide the following information:

1. The name and address of the project;

2. The number of units, including the number of sales and/or rental units;

3. The price of sales and/or rental units;

4. The name of the sales agent and/or rental manager;

5. A description of the random selection method that will be used to select occupants of affordable housing; and

6. Disclosure of required application fees.

f. The affirmative marketing plan shall describe the media to be used in advertising and publicizing the availability of housing. In developing the plan, the administrative agent shall consider the use of language translations. The plan shall include the following:

1. The names of specific newspapers of general circulation within the housing region;

2. The names of specific radio and television stations broadcasting throughout the housing region;

3. The names of other publications circulated within the housing region, such as neighborhood oriented weekly newspapers, religious publications and organizational newsletters;

4. The names of employers throughout the housing region that will be contacted to post advertisements and distribute flyers regarding available affordable housing;

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5. The names of specific community and regional organizations that will aid in soliciting low and moderate income applicants. Such organizations may include non-profit, religious, governmental, fraternal, civic, and other organizations; and

6. Other advertising and outreach efforts to groups that are least likely to be reached by commercial media efforts.

g. The affirmative marketing process for available income-restricted units shall begin at least four months prior to expected occupancy. In implementing the marketing program, the administrative agent shall undertake all of the following strategies:

1. Publication of one advertisement in a newspaper listed under f.1 above;

2. Broadcast of one advertisement by a radio or television station listed under f.2 above; and

3. At least one additional regional marketing strategy using one of the sources listed under f.3 through 6 above.

h. Such advertising and outreach shall take place during the first week of the marketing program and each month thereafter until all the units have been leased or sold. The advertisement shall include at least the following:

1. The location of the units;

2. Directions to the housing units;

3. A range of prices for the housing units;

4. The size, as measured in bedrooms, of the housing units;

5. The maximum income permitted to qualify for the housing units;

6. The location of applications for the housing units;

7. The business hours when interested households may obtain an application for a housing unit; and

8. Application fees, if any.

i. Applications for income-restricted housing shall be made available in several locations, including, the Essex County administrative building; Newark City Hall and the City of Newark municipal library; and the developer's sales office. Applications shall be mailed to prospective applicants upon request.

j. The costs of advertising income-restricted units created pursuant to this Chapter shall be the developer's responsibility, and said responsibility shall be a condition of

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Zoning Board of Adjustment approval.

Section 21. Household Certification and Referral; Related Project Information: The intent of this Section is to ensure that any development which is subject to this Chapter complies with the provisions for household certification and referral and related project information set forth at N.J.A.C. 5:80-26.16, as same may be amended or supplemented.

a. The administrative agent shall secure all information from applicant households necessary and appropriate to determine that income-restricted units are occupied by properly sized households with appropriate low or moderate-income levels. No household may be referred to a restricted unit, or may receive a commitment with respect to a restricted unit, unless that household has received a signed and dated certification, as set forth in this Section, and has executed a certificate in the form set forth in Appendices J or K to N.J.A.C. 5:80-26, as may be amended or supplemented and as applicable.

b. The administrative agent shall prepare a standard form of certification and shall sign and date one for each household when certified. An initial certification shall be valid for no more than 180 days unless a valid contract for sale or lease has been executed within that time period. In this event, certifications shall be valid until such time as the contract for sale or lease is ruled invalid and no occupancy has occurred. Certifications may be renewed in writing at the request of a certified household for an additional period of 180 days at the discretion of the administrative agent.

1. When reviewing an applicant household's income to determine eligibility, the administrative agent shall compare the applicant household's total gross annual income to the regional low-and moderate-income limits then in effect. For the purposes of this chapter, income includes, but is not limited to, wages, salaries, tips, commissions, alimony, regularly scheduled overtime, pensions, social security, unemployment compensation, TANF, verified regular child support, disability, net income from business or real estate, and income from assets such as savings, certificates of deposit, money market accounts, mutual funds, stocks, bonds and imputed income from non-income producing assets, such as equity in real estate.

2. Except as otherwise specifically provided in this chapter, the sources of income considered by the administrative agent shall be the types of regular income reported to the Internal Revenue Service and which can be used for mortgage loan approval. Household annual gross income shall be calculated by projecting current gross income over a 12-month period.

3. Assets not earning a verifiable income shall have an annual imputed interest income using a current average annual savings interest rate. Assets not earning income include present real estate equity. Applicants owning real estate must produce documentation of a market value appraisal and outstanding mortgage debt. The difference shall be treated as the monetary value of the asset and the imputed interest added to income. If the applicant household owns a primary

residence with no mortgage on the property valued at or above the regional asset limit as published annually by COAH, a certificate of eligibility shall be denied by the administrative agent, unless the applicant's existing monthly housing costs (including principal, interest, taxes, homeowner and private mortgage insurance, and condominium and homeowner association fees as applicable) exceed 38 percent of the household's eligible monthly income.

4. Rent from real estate is considered income, after deduction of any mortgage payments, real estate taxes, property owner's insurance and reasonable property management expenses as reported to the Internal Revenue Service. Other expenses are not deductible. If actual rent is less than fair market rent, the administrative agent shall impute a fair market rent.

5. Income does not include benefits, payments, rebates or credits received under any of the following: Federal or State low-income energy assistance programs, food stamps, payments received for foster care, relocation assistance benefits, income of live-in attendants, scholarships, student loans, personal property such as automobiles, lump-sum additions to assets such as inheritances, lottery winnings, gifts, insurance settlements, and part-time income of persons enrolled as full-time students. Income, however, does include interest and other earnings from the investment of any of the foregoing benefits, payments, rebates, or credits.

c. The administrative agent shall require each member of an applicant household who is 18 years of age or older to provide documentation to verify the member's income, including income received by adults on behalf of minor children for their benefit. Household members 18 years of age or older who do not receive income must produce documentation of current status.

d. Income verification documentation may include, but is not limited to, the following for each and every member of a household who is 18 years of age or older:

1. Four consecutive pay stubs, not more than 120 days old, including bonuses, overtime or tips, or a letter from the employer stating the present annual income figure;

2. Copies of Federal and State income tax returns for each of the preceding three tax years;

3. A letter or appropriate reporting form verifying monthly benefits such as Social Security, unemployment, welfare, disability or pension income (monthly or annually);

4. A letter or appropriate reporting form verifying any other sources of income claimed by the applicant, such as alimony or child support;

5. Income reports from banks or other financial institutions holding or managing trust funds, money market accounts, certificates of deposit, stocks or bonds; and

6. Evidence or reports of income from directly held assets such as real estate or businesses.

e. Court ordered payments for alimony or child support to another household, whether or not it is being paid regularly, shall be excluded from income for purposes of determining income eligibility.

f. At the discretion of the administrative agent, households may also be required to produce documentation of household composition for determining the correct unit size and applicable median income guide.

g. A certificate of eligibility may be withheld by the administrative agent as a result of an applicant's inability to demonstrate sufficient present assets for down payment or security deposit purposes, subject to development phasing that may provide opportunity for future savings.

h. A certificate of eligibility may be withheld by the administrative agent as a result of an applicant's inability to verify funds claimed as assets, household composition or other facts represented.

i. A certificate of eligibility shall be denied by the administrative agent as a result of any willful and material misstatement of fact made by the applicant in seeking eligibility.

j. The administrative agent shall screen households that apply for low-and moderate-income housing for preliminary income eligibility, by comparing their total gross annual income to the regional low-and moderate-income limits adopted for that year by COAH.

k. The following information shall promptly be provided to the administrative agent by the developer or sponsor of any project containing any affordable units subject to the requirements of this chapter, upon the latter of either final municipal land use approval or issuance of a grant contract by a governmental authority:

1. The total number of units in the project, and number of income-restricted units, broken down by bedroom size, identifying which are low-and which are moderate -income units, and including street addresses of restricted units;

2. Floor plans of all income-restricted units, including complete and accurate identification of uses and dimensions of all rooms;

3. A project map identifying the locations of income-restricted units and market units;

4. A list of project principals or partners, together with a list of all other affordable projects in which they have been involved over the previous five years;

5. Projected construction schedule;

6. Proposed pricing for all units, including any purchaser options and add-on items;

7. A list of all public funding sources, and copies of grant or loan agreements for those sources;

8. Condominium fees or homeowner association and any other maintenance or other fees;

9. Estimated real property taxes for sale units;

10. Sewer, trash disposal and any other utility assessments;

11. Flood insurance requirement, if applicable;

12. A description of all HVAC systems;

13. Location of any common areas and elevators;

14. Proposed form of lease for any rental units;

15. The name of the person who will be responsible for official contact with the administrative agent for the duration of the project; and

16. The State-approved Planned Real Estate Development public offering statement and/or master deed where available.

l. Subject to section 3.e of this ordinance, the administrative agent shall employ a random selection process when referring households for certification to income-restricted units which are created pursuant to this chapter.

Section 22. Enforcement: The intent of this Section is to ensure that any development which is subject to this Chapter complies with the enforcement provisions set forth at N.J.A.C. 5:80-26.18, as same may be amended or supplemented.

a. The Deputy Mayor/Director of the Department of Economic and Housing Development shall liaison with the administrative agent on all matters related to this Subchapter as may be necessary and appropriate from time to time.

b. The City shall ensure that all income-restricted units are identified as affordable within the Tax Assessor's Office and any Municipal Utility Authority (MUA). The City and any MUA shall promptly notify the administrative agent of a change in billing address, payment delinquency of two consecutive billing cycles, transfer of title, or institution of a writ of foreclosure on all income-restricted units.

c. The City shall provide all reasonable and necessary assistance in support of the administrative agent's efforts to ensure effective compliance with the controls set forth in this Chapter.

d. Administrative agent practices and procedures shall include the following:

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1. Securing from all developers and sponsors of income-restricted units, at the earliest point of contact in the processing of the project or development, written acknowledgement of the requirement that no restricted unit can be offered, or in any other way committed, to any person, other than a household duly certified to the unit by the administrative agent;

2. Requiring that all certified applicants for restricted units execute a certificate substantially in the form, as applicable, of either the ownership or rental certificates set forth in Appendices J and K of N.J.A.C. 5:80-26, as may be amended or supplemented;

3. The posting annually in all rental properties, including two-family homes, of a notice as to the maximum permitted rent together with the telephone number of the administrative agent where complaints of excess rent can be made;

4. Annual mailings to all owners of income-restricted units, reminding them of the following notices and requirements:

i. If the unit is owner-occupied, that the unit may be resold only to a household that has been approved in advance and in writing by the administrative agent;

ii. That no sale of the unit shall be lawful, unless approved in advance and in writing by the administrative agent, and that no sale shall be for a consideration greater than regulated maximum permitted resale price, as determined by the administrative agent;

iii. That no refinancing, equity loan, secured letter of credit, or any other mortgage obligation or other debt secured by the unit may be incurred except as approved in advance and in writing by the administrative agent, and that at no time will the administrative agent approve any debt, if incurring the debt would make the total of all such debt exceed 95 percent of the then applicable maximum permitted resale price;

iv. That the owner of the unit shall at all times maintain the unit as his or her principal place of residence, which shall be defined as residing at the unit at least 260 days out of each calendar year;

v. That, except as set forth in N.J.A.C. 5:80-26.18(c)4vii, as may be amended or supplemented, at no time shall the owner of the unit lease or rent the unit to any person or persons, except on a short-term hardship basis, as approved in advance and in writing by the administrative agent;

vi. That the maximum permitted rent chargeable to income-restricted tenants is as stated in the notice required to be posted in accordance with N.J.A.C. 5:80-26.18(d)3, as may be amended or supplemented, a copy of which shall be enclosed, and that copies of all leases for income-restricted rental units must be submitted annually to the administrative agent;

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vii. If the income-restricted unit is a two-family home, that the owner shall lease the rental unit only to certified households approved in writing by the administrative agent, shall charge rent no greater than the maximum permitted rent as determined by the administrative agent, and shall submit for written approval of the administrative agent copies of all proposed leases prior to having them signed by any proposed tenant; and

viii. That no improvements may be made to any unit that would affect its bedroom configuration, except as provided in subsection (a) of N.J.A.C. 5:80-26.9(a), as may be amended or supplemented, and in any event, that no improvement made to the unit will be taken into consideration to increase the maximum permitted resale price, except for improvements approved in advance and in writing by the administrative agent;

5. Securing annually from the City lists of all income-restricted units for which tax bills are mailed to absentee owners, and notifying all such owners that they must either move back to their unit or sell it;

6. Establishing a program for diverting unlawful rent payments to the City of Newark Affordable Housing Trust Fund or other appropriate municipal fund approved by the DCA. For purposes of this subsection, unlawful rent payments shall mean:

i. All rent monies paid by a person who has not been duly certified in accordance with the provisions of N.J.A.C. 5:80-26.16, as may be amended or supplemented;

ii. All rent paid by a person or persons renting an ownership unit from an owner who has moved out of his or her unit illegally;

iii. Rent paid by a lawful tenant in excess of amounts permitted by law; and

iv. Rent paid to an income-restricted unit owner who is claiming a hardship, when the owner has not received prior authorization from the administrative agent as is provided for under the provisions of N.J.A.C. 5:80-26.7(a), as may be amended or supplemented; and

7. Establishing a rent-to-equity program, to be implemented in situations where an income-restricted unit owner has unlawfully rented out his or her unit, and where the tenant has entered into a tenancy without knowledge of its unlawful nature. Under such rent-to-equity program, the tenant, including the immediate family of such tenant, shall be given an opportunity to purchase the unit from the owner, and the owner shall be compelled to sell the unit to the tenant, with the total of all rent paid to the owner being credited to tenant as down payment money paid to the affordable owner. Anything herein to the contrary notwithstanding, any person offered a unit under such a rent to equity program must first be certified as eligible under the provisions of N.J.A.C. 5:80-26.16, as may be amended or supplemented.

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Section 23. COAH Action: Where the provisions of this Chapter are dependent upon COAH adopting or publishing certain increases, increments or limits, and if COAH has in fact not adopted or published such increases, increments or limits within two years of the date when such publication or adoption was to be made by COAH, then the administrative agent shall make a reasonable determination, based on appropriate standards used by State or Federal government agencies, as to the applicable increase, increment or limit.

Section 24. When Effective: This Chapter shall take effect:

(i) Any developer subject to this ordinance requesting a tax abatement in the East Ward and the Central Ward's Central Business District, are subject to this Chapter commencing on January 1, 2018;

(ii) Any developer subject to this ordinance requesting a tax abatement, outside of the specific areas listed in subsection (i), are subject to this Chapter, upon the effective date after the adoption of this ordinance;

(iii) Any developer requesting approvals from the Planning Board or Zoning Board of Adjustment are subject to this Chapter, commencing on January 1, 2018;

(iv) All substantial rehabilitation development projects, subject to this Chapter, shall take effect January 1, 2018;

(v) Any developer, subject this ordinance, requesting any other type of subsidy from the City (i.e. Home Funds, etc.), are subject to this Chapter commencing on January 1, 2018.

Any development that has received its New Foundation Permit by the above-listed deadlines in this Subsection, will not be subject to the provisions of this Chapter.

Section 25. Severability: If any Section, Subsection, sentence, clause, phrase or portion of this Chapter is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

Section 26. Repealer: All ordinances or parts of ordinances inconsistent herewith are repealed as to such inconsistencies.

Section 27. This Ordinance shall take effect upon final passage and publication in accordance with the laws of the State of New Jersey.

STATEMENT

This Ordinance amends Title 41, entitled, "Newark Zoning and Land Use Regulations" to include a new Chapter entitled "Inclusionary Zoning for Affordable Housing," and requires new residential development which consists of 30 or more units and which receives variance relief to set aside 20%

of the total residential units in the development for affordable housing.