

STATE OF NEW JERSEY  
COUNTY OF HUNTERDON  
TOWNSHIP OF LEBANON  
ORDINANCE NO. 2018-02

AN ORDINANCE OF THE TOWNSHIP OF LEBANON AMENDING CHAPTERS 199 AND 400 OF THE CODE OF THE TOWNSHIP OF LEBANON PURSUANT TO A SETTLEMENT AGREEMENT BETWEEN THE FAIR SHARE HOUSING CENTER AND THE TOWNSHIP OF LEBANON DATED AUGUST 15, 2017 AS APPROVED BY THE SUPERIOR COURT OF NEW JERSEY, SOMERSET COUNTY LAW DIVISION ON SEPTEMBER 12, 2017

**WHEREAS**, the Township of Lebanon (the "Township") entered into a Settlement Agreement with the Fair Share Housing Center dated August 15, 2017 and authorized by Resolution No. 84-2017, arising out of a Declaratory Judgment action filed by the Township seeking a delineation of the Township's compliance with the Mt. Laurel doctrine and Fair Share Housing Act of 1985 ("Settlement Agreement"); and

**WHEREAS**, the Settlement Agreement was approved by the Superior Court of New Jersey, Somerset County Law Division on September 12, 2017; and

**WHEREAS**, the Settlement Agreement and the Court's approval require certain changes to the Township's ordinances to address compliance issues; and

**WHEREAS**, the Township Committee of the Township of Lebanon wishes to amend the Township's ordinances to comply with the requirements of the Settlement Agreement and Court's approval thereof;

**BE IT ORDAINED**, by the Mayor and Committee of the Township of Lebanon in the County of Hunterdon and State of New Jersey as follows (deletions are shown as ~~thus~~ and additions are shown as **thus**):

**SECTION 1**: Chapter 199, entitled "Affordable Housing" is amended and supplemented as follows:

Article I. Title.

§ 199-1. Title.

**No Change**

Article II. Authorization; Findings of Fact; Purpose; Definitions

§ 199-2. Authorization.

**No Change**

§ 199-3. Findings of fact; **Effective date.**

A. The New Jersey Supreme Court has ruled that each municipality has a constitutional obligation to provide a realistic opportunity for the provision of housing for low- and moderate-income households in fulfillment of the housing needs of the region wherein it is located.

B. The Lebanon Township Planning Board has adopted a Housing Plan Element and Fair Share Plan of the Master Plan as required by the Fair Housing Act **and pursuant to the Municipal Land Use Law (N.J.S.A. 40:55d-1 et seq.)**; said Housing Plan Element provides the framework for this chapter. ***The Housing Plan Element has been endorsed by the governing body. The Housing Element describes the ways the Township of Lebanon shall address its fair share for low- and moderate-income housing as documented in the Housing Element and outlined in the terms of the settlement agreement between the Township and Fair Share Housing Center ("FSHC") in the Matter of the Application of the Township of Lebanon, County of Hunterdon, Docket No. HNT-299-15 (the "Settlement Agreement").***

C. ***The Superior Court of the State of New Jersey, Hunterdon County approved a settlement agreement between the Township and Fair Share Housing Center via a fairness hearing on September 12, 2017 in the case captioned In the Matter of the Application of the Township of Lebanon, Docket No. HNT-L-299-15, The Council on Affordable Housing (COAH) has granted substantive certification to the Housing Plan Element referenced above, affirming that the housing needs for low- and moderate-income households in Lebanon Township will be met as provided by the plan contained in said Housing Plan Element. Pursuant to the Settlement Agreement, the Township must seek approval from the Court of its Housing Plan Element referenced above via a Compliance Hearing, to be held after adoption of this Fair Housing Ordinance.***

D. ***This Ordinance shall not become effective until the Court approves the Township's Housing Plan Element and issues a Judgement of Repose.***

§ 199-4. Purpose.

A. The purpose of this chapter is to meet a portion of Lebanon Township's fair share housing obligation as set forth and certified by the Council on Affordable Housing **in the Settlement Agreement**. This chapter provides for the voluntary rehabilitation of ~~34~~ **3** existing homes **residential units** located within the Township which are deemed by the Construction Code Official to meet the criteria for eligibility as set forth herein, and through **an accessory apartment program providing for one (1) unit and a municipally-sponsored market to affordable program providing for one (1) unit.** ~~transfer of 10 RCAs to another municipality within Hunterdon County, subject to the creation and execution of a regional contribution agreement (RCA) between Lebanon Township and another municipality within Hunterdon County and execution by all~~

applicable officials. Funding for the **above-referenced programs** rehabilitation program shall be provided by the Township through one or more of the following means:

- (1) A Housing Trust Fund, established by the Township in conjunction with the Township's approved Development Fee Ordinance
- (2) Grants in aid from the State of New Jersey DCA Balanced Housing Program or NJHMFA Affordable Housing Program or such other program(s) as may be available under state sponsorship.
- (3) Grants in aid from the County of Hunterdon as may be available from time to time during the implementation of this chapter.
- (4) Municipal appropriation, as necessary if no other funds as outlined above are available. Each fiscal year, the Township Committee shall include the necessary sum in the municipal budget in order to ensure sufficient funds for program operations during the year.

~~B. Funding for the transfer of RCAs program shall be through municipal appropriation up to the limit of 10 RCAs.~~

#### § 199-5. Definitions.

A. All definitions contained in ~~N.J.A.C. 5:94~~ ***N.J.A.C. 5:96-1.1 et seq., as may be amended by the decision in In re Adoption of N.J.A.C. 5:96 & 5:97 by N.J. Council on Affordable Housing, 221 N.J. 1 (2015) ("Mount Laurel IV") or a court of competent jurisdiction***, Procedural Rules of the New Jersey Council on Affordable Housing, and ~~N.J.A.C. 5:93~~ ***N.J.A.C. 5:97-1.1. et seq., as may be amended by the decision in Mount Laurel IV or a court of competent jurisdiction***, Substantive Rules of the New Jersey Council on Affordable Housing, are hereby incorporated and adopted as if set forth in full herein. For convenience, the following definitions are provided for reference purposes. In the event of any conflict or amendment to the New Jersey Administrative Code (N.J.A.C.), the definitions and rules duly promulgated pursuant to the Administrative Procedures Act shall govern this chapter.

B. As used in this chapter, the following terms shall have the meanings indicated:

#### **ACCESSORY APARTMENT**

A dwelling unit authorized under this chapter for the sole purpose of fulfilling the Township's obligation for its fair share of the regional low- and moderate-income housing need under rules and regulations established by COAH. Such units are limited in number and are authorized for this special case for periods of time identified in this chapter.

#### **ACT**

The Fair Housing Act (P.L. 1985, Chapter 222).

**Administrative Agent**

*The person or entity responsible for administering the affordability controls of this Section as designated by N.J.A.C. 5:80-26.14.*

**Affordable**

*A sales price or rent within the means of a low- or moderate-income household as defined in COAH's Rules, specifically 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 COAH's Rules, specifically, N.J.A.C. 5:80-26.12, as may be amended and supplemented.*

**Affordable unit**

*A housing unit proposed or created pursuant to the Act, credited pursuant to N.J.A.C. 5:97-4, and/or funded through an affordable housing trust fund.*

**Agency**

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

**Certified Household**

*A household that has been certified by an Administrative Agent as a low-income household or moderate-income household.*

**COAH**

*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.).*

**HOUSEHOLD**

A person or persons occupying a housing unit, whether the owner or tenant of the unit.

**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.

### **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 household 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.

### **PROGRAM**

The administration and assistance provided under this chapter to rehabilitate housing units that are substandard, ~~and to~~ create accessory apartments, ***and to fund the conversion of market units to affordable units.***

### **REHABILITATED UNIT**

A previously substandard unit which has undergone significant renovation to meet the municipal or other applicable housing code standards.

### **SETTLEMENT AGREEMENT**

***A settlement agreement between the Township and Fair Share Housing Center (“FSHC”) in the Matter of the Application of the Township of Lebanon, County of Hunterdon, Docket No. HNT-299-15.***

### **SUBSTANDARD HOUSING UNIT**

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

### **UHAC**

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

### **SURROGATE**

A census indicator of deficient housing.

Article III. General Provisions.

**§ 199-6. Municipal Fair Share Obligation; Identification of Programs**

**A. As set forth in the Settlement Agreement, the fair share obligation of the Township consists of a three (3) unit rehabilitation obligation, a twenty-seven (27) unit prior round obligation, and a two (2) unit prospective need obligation.**

**B. The Township shall comply with the terms of the Settlement Agreement.**

**C. The Township of Lebanon has determined that it will use the following mechanisms to satisfy its affordable housing obligations: rehabilitation, accessory apartments, and market-to-affordable buy down.**

~~§ 199-6.7. Eligibility for rehabilitation program.~~ **Rehabilitation Program**

**A. The Township of Lebanon'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.**

**B. Eligibility**

~~A.~~ **(1) Household eligibility.**

~~(1)~~**i.** Only owners of houses or structures within Lebanon Township are eligible for the rehabilitation assistance provided under this chapter. For owner-occupied units, the owner shall be determined to be income eligible as a low- or moderate-income household as herein defined, in accordance with this chapter. For renter-occupied units, the tenant household shall be determined to be income eligible as low- or moderate-income, in accordance with this chapter.

~~(2)~~**ii.** Owners of vacant units which are found to be eligible for assistance under this chapter shall enter into an agreement or deed restriction, that the unit will either be rented or sold to a low- or moderate-income eligible household as provided in this chapter and the rent or sales price of the unit shall be restricted for a term of years as outlined herein.

~~B.~~ **(2) Unit eligibility.**

~~(1)~~**i.** A dwelling unit which is proposed to be rehabilitated under this chapter must be found to be a substandard housing unit in accordance with N.J.A.C. ~~5:93~~ **5:97-1.1 et seq., as may be amended by the decision in Mount Laurel IV or a court of competent jurisdiction.** A "substandard housing unit" is defined as a unit **that was built prior to 1950 and is overcrowded or one** with health and safety code violations that require the repair or replacement of a major system. A major system shall

include a roof, plumbing (including wells), heating, electricity, weatherization, sanitary plumbing (including septic systems) and/or a load bearing structural system. Upon rehabilitation, housing deficiencies shall be corrected and the house shall be brought up to code standard. The standard for evaluating rehabilitation activity shall be the local property maintenance code or, if none is available, the BOCA National Existing Structures Code. The rehabilitation activity shall not include luxury improvements, the purchase of appliances (with the exception of stoves) or improvements that are strictly cosmetic.

**(2)ii. All rehabilitated units shall remain affordable to low- and moderate-income households for a period of 10 years (the control period).** Owners of units rehabilitated under this chapter shall be bound by **a recorded deed or declaration of covenants and restrictions applied to the property upon which the accessory apartment is located running with the land and limiting its subsequent rental or sale of the unit and the accessory apartment,** its terms and those of the Fair Housing Act through an agreement or deed restriction, the form of which shall be prepared by the Township Attorney in conformance with the Act.

~~§ 199-7.C.~~ **Terms of rehabilitation program.**

**i.** The assistance provided under this chapter shall be available until **34 3** units of deficient housing have been satisfactorily rehabilitated within the Township's period of substantive certification **or Judgment of Repose.**

**ii. The Township shall dedicate a minimum of \$10,000 for each unit to be rehabilitated through this program, reflecting the minimum hard cost of rehabilitation for each unit.**

**iii. 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.**

§ 199-8. **Accessory Apartment Program.** Eligibility and development standards for accessory apartment program.

A. An accessory apartment shall be occupied by a low- ~~or moderate~~-income household meeting the income eligibility standards established by COAH **for a period as set forth in any agreement or deed restriction, but not less than ten (10) years.** ~~In addition, the accessory apartment shall be occupied by a senior citizen (62 years of age or older) low- or moderate-income household, or the accessory apartment shall be located on a lot owned and occupied by a senior citizen household with the apartment occupied by a low- or moderate-income household. The owner of the principal dwelling shall reside in the principal dwelling or the apartment at all times.~~

B. No more than ~~40~~ **1** accessory apartment shall be created under this program.

C. Accessory apartments are permitted in existing principal or accessory buildings on lots in the following zones and according to the following area, yard and bulk requirements:

~~(1) In the R-3 and R-5 Zoning Districts on lots with a minimum area of five acres and meeting the yard and building requirements for the R-5 District established in Schedule I, Lot, Yard, Height and Bulk Requirements, of Chapter 400, Zoning;~~

~~(2) In the I Zoning District on lots with a minimum area of five acres and meeting the yard and building requirements for the I District established in Schedule I, Lot, Yard, Height and Bulk Requirements, of Chapter 400, Zoning; and~~

~~(3) In the B-2 Zoning District~~ **On any lot in any zone** where approval of the proposed septic system can be obtained.

**D. Accessory apartments shall comply with all applicable statutes and regulations of the State of New Jersey, in addition to all building codes.**

~~D.E~~ **The rents for the** accessory apartments, including an allowance for utilities, **shall be affordable to a low-income household as per COAH and UHAC regulations.** ~~are established so as not to exceed 30% of the gross monthly income of the appropriate household size. In addition, the following rents are calculated on the basis of 44% of median income for low-income households and 71% of median income for moderate-income households in order to meet COAH's standards that rents of accessory apartments will average 57.5% of median income, including utilities [N.J.A.C.~~

~~5:93-5.9(a)3]. The maximum rents are based on the number of bedrooms and the size of households in accordance with N.J.A.C. 5:93-7.4, and shall not exceed the following:~~

| <b>Maximum Monthly Rents<br/>(Including Utilities)</b>  |                             |                                  |
|---|-----------------------------|----------------------------------|
| <b>Type of Unit</b>   | <b>Low-Income Household</b> | <b>Moderate-Income Household</b> |
| Efficiency  | \$594                       | \$953                            |
| One-bedroom   | \$633                       | \$1,021                          |
| Two-bedroom   | \$759                       | \$1,225                          |
| Three-bedroom   | \$877                       | \$1,416                          |
| The above rents are based on eligible income standards adopted by COAH on April 7, 1999, and will be adjusted annually based on COAH's standards. |                             |                                  |

~~E.F.~~ The accessory apartment shall have living and sleeping space, cooking facilities, a kitchen sink, and complete sanitary facilities for the exclusive use of its occupants.

~~F.G.~~ The accessory apartment shall consist of not less than two rooms, one of which shall be a bathroom containing a flush toilet, wash basin and bathroom tub or shower.

~~G.H.~~ All rooms shall be accessible from within the apartment.

~~H.I.~~ The accessory apartment shall be ***separate from the primary residence and*** private and secure from all attached units.

~~I.J.~~ The apartment shall have direct access to the outdoors or directly to a hall from which there is direct access to the outdoors without passing through any other unit, and the accessory apartment shall comply with all requirements of the applicable building codes.

~~J.K.~~ If the apartment is located on the second or third floor, there shall be at least two means of access to the outdoors, available at all times, as approved by the Construction Official. Exterior stairways for the accessory apartment shall be located at the rear or side of the structure.

~~K.L.~~ No apartment shall be located above the third floor.

~~L.M.~~ The net floor area of the apartment shall be at least 400 square feet, and no bedroom shall have a net floor area of less than 80 square feet.

**M.N.** An accessory apartment shall be permitted in a principal building, or in an accessory building existing at the time of the adoption of this chapter. The accessory apartment shall occupy no more than 1,200 square feet of the principal or existing accessory building.

**N.O.** At least two off-street parking spaces, or one off-street parking space per bedroom, whichever is greater, shall be provided for each apartment, situated in the side yard or rear yard only.

**O.P.** An accessory building in which a supplementary apartment is built may not be used for any other purpose, except for the storage of vehicles and equipment normally used on residential or agricultural lots or the operation of a residential or agricultural workshop, provided that large quantities of toxic or hazardous materials are not stored in the building.

**P.Q.** The sanitary disposal system serving the accessory apartment shall be approved by the Board of Health.

#### **199-9 Market to affordable program**

**A.** *A market to affordable program is established to permit the subsidization of units rented to low- and moderate-income households through a written agreement with the property owner. Subject to the provisions of B(3) below, the market to affordable program shall produce one low-income unit.*

**B.** *The following provisions shall apply to the market to affordable program:*  
**(1)** *At the time it is offered for rental, the eligible unit may be new, pre-owned, or vacant.*

**(2)** *The unit shall be certified to be in sound condition as a result of an inspection performed by a licensed building inspector.*

**(3)** *The municipality will provide a minimum of \$30,000 to subsidize the low-income unit, with additional subsidy depending on the market prices or rents in a municipality.*

**C.** *The unit shall comply with N.J.A.C. 5:97-9 and UHAC with the following exceptions:*

- i. Bedroom distribution (N.J.A.C. 5:80-26.3(b) and (c));*
- ii. Low/moderate income split (N.J.A.C. 5:80-26.3(a)); and*
- iii. Affordability average (N.J.A.C. 5:80-26.3(d) and (e)).*

§ 199-9-10. Compliance with chapter and affordability controls.

All owners of assisted units under ~~this program~~ **the programs set forth in this Chapter** shall enter into an agreement with the Township, and a deed restriction and/or lien shall be filed, stipulating that the owner agrees to comply with this chapter and the Act for the specified terms as outlined herein.

§ 199-40--11. Compliance with COAH regulations.

This chapter and all persons assisted pursuant thereto shall comply with the rules and regulations of the N.J. Council on Affordable Housing ("COAH Rules").

Article IV. Administration

§ 199-44.-12. Staff; duties generally.

A. Administrator. The Township **Committee shall appoint an** Clerk shall be the administrator of **Administrative Agent** of the rehabilitation, and accessory apartment, **and market to affordable** programs. **The Administrative Agent may also act as the Township's Municipal Housing Liaison.** In this capacity the Clerk **Administrative Agent** shall arrange for all mass mailings and advertising, shall make funding recommendations to the Township Committee as outlined herein, and shall periodically report the progress of the program to the Township Committee and shall file annual reports with COAH as required by N.J.A.C. 5:937 **and the Settlement Agreement.**

**The Administrative Agent shall perform the duties and responsibilities of an administrative agent as are set forth in UHAC and which are described in full detail in the Operating Manual, including those set forth in N.J.A.C. 5:80-26.14, 16 and 18 thereof, which includes:**

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

The **Administrative Agent** Clerk, in conjunction with the Construction Code Official and Assessor, shall develop forms for use by households or owners wishing to participate in the programs. The **Administrative Agent** Clerk shall maintain a complete file for each application.

B. Construction Code Official. The Township Construction Code Official shall have primary responsibility for all housing inspections. For units proposed for rehabilitation, he shall determine the unit's substandard systems and eligibility, the scope of work needed to make the unit adequate and safe, and the estimated cost of improvements. For proposed accessory apartments, the Construction Code Official shall determine whether the proposed plan meets the standards in § 199-8, and the estimated cost of improvements. He shall report his findings in the form of recommendations for funding to the **Administrative Agent** Township Clerk who shall list same on the agenda of the Township Committee. The Construction Code Official shall make periodic inspections and issue a report of completion to the **Administrative Agent** Township Clerk concomitant with the issuance of a certificate of occupancy for the unit upon completion of the rehabilitation, or accessory apartment, **or market-to-affordable unit** creation.

**C. Township Planner. For proposed accessory apartments and market to affordable units, the Township Planner shall determine whether the proposed units meet all applicable standards in § 199-8 and 199-9.**

~~CD.~~ Tax Assessor. The Tax Assessor shall aid the Construction Code Official in his inspections and shall assist the **Administrative Agent** Township Clerk in arranging for mass mailings utilizing the Township's tax assessment records.

~~D~~ E. Township Attorney. A Township Attorney shall prepare all deed restrictions, lien documents, and any other legal documents he shall deem necessary and adequate to effectuate this chapter, the programs, and the regulations or requirements.

~~E.~~ Planning Board and Zoning Board of Adjustment. The Planning Board or Zoning Board of Adjustment, as the case may be, shall review applications for accessory apartments to determine if the proposed development meets the zoning standards established in § 199-8 of this chapter and Chapter 400, Zoning.

§ 199-42**13. Affirmative** Marketing.

**A. The Township adopts, by passage of this ordinance, as the following Affirmative Marketing Plan, subject to approval of COAH or a court of competent jurisdiction, compliant with N.J.A.C. 5:80-26.15, as may be amended and supplemented.**

**(1)** The **Administrative Agent** Clerk, in conjunction with the Tax Assessor and Tax Collector, shall arrange, at least once annually, for a mailing of brochures to all homeowners within the Township, announcing and explaining the availability of rehabilitation and accessory apartment assistance. In addition, the **Administrative Agent** Clerk shall arrange for and shall display, in public buildings throughout the

Township, posters which advertise the program. Owners of nonpublic facilities may, upon request, also display posters (such as banks, churches, community service organizations). All brochures and posters shall specify the name of the contact person in the Township Municipal Building (with telephone number and address) who will provide more detailed information and, upon request, application packages.

~~(2)B.~~ News releases shall be prepared and sent to the local print media at least quarterly and a public meeting shall be held in the initial stage of program implementation to familiarize interested parties with the procedures for program participation. Informational meetings shall be held with welfare organizations, community groups, personnel departments of local employers, social workers, civic and religious leaders, senior citizen groups, and fraternal organizations. Marketing efforts will continue until the programs are fully subscribed.

***B. The Administrative Agent shall assure the affirmative marketing of all affordable units consistent with the Affirmative Marketing Plan for the municipality.***

***C. 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.***

***D. 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 Township.***

***E. In compliance with the Settlement Agreement, the Township shall include in its affirmative marketing plan pursuant to N.J.A.C. 5:80-26.15(f)(5), the following: Fair Share Housing Center (510 Park Boulevard, Cherry Hill, NJ 08002), the New Jersey State Conference of the NAACP, the Latino Action Network (P.O. Box 943, Freehold, NJ 07728, East Orange NAACP (P.O. Box 1127, East Orange, NJ 07019), Newark NAACP (P.O. Box 1262, Newark, NJ 07101, Morris County NAACP (P.O. Box 2256, Morristown, NJ 07962, and Elizabeth NAACP (P.O. Box 6732, Elizabeth, NJ 07206). The Township shall, as part of its regional affirmative marketing strategies during its implementation of this plan, provide notice to those organizations of all available affordable housing units. The Township also agrees to require any other entities, including developers or persons or companies retained to do affirmative marketing, to comply with this paragraph.***

§ 199-4314. Application and forms.

The **Administrative Agent** ~~Township Clerk~~ shall develop appropriate forms for program implementation as follows:

A. Application form which shall cover all general data such as owner's and applicant's name; occupancy status; present rent (if applicable); number of persons in household; location and number of units, including number of bedrooms; income level and sources of income for proposed occupants; a description of the work to be done; and, for accessory apartments, a plot plan and construction plan.

B. Income verification forms which shall be signed by the applicant so that the **Administrative Agent** Clerk may mail them to the employer for verification. If unemployed, the applicant shall supply such other evidence as will reasonably establish the income level, such as social security statements, tax returns, dividend statements, etc. The **Administrative Agent** Clerk shall keep all financial disclosures made by an applicant confidential. In making recommendations to the Township Committee, the income need not be disclosed in public session except by means so as to establish that the income level is below the applicable low- or moderate-income levels established by the Council on Affordable Housing.

C. For vacant units where an owner-applicant may apply for and receive a rehabilitation or accessory apartment loan pursuant to this chapter, the owner shall agree to provide all necessary documents and a verification as outlined in this section, for prospective occupants, so as to adequately demonstrate compliance with all local and state regulations cited herein. An owner-applicant is a person who owns a housing structure proposed for rehabilitation, or a building proposed for an accessory apartment, and is applying to create a rental unit.

D. Affordability controls shall be clearly identified in the application package, and shall be in conformance with this chapter and **COAH's Rules** N.J.A.C. 5:93-9. A sample deed restriction and/or rehabilitation loan agreement shall be supplied to the applicant.

E. Supporting documents shall be submitted evidencing proof of ownership.

**F. Applications shall be considered in the order in which they are received by the Township.**

§ 199-44**15**. Application procedures.

A. Filing. All interested applicants may obtain an application package from the **Administrative Agent** Township Clerk. Questions as to income eligibility or administrative procedures may be directed to the **Administrative Agent** Township Clerk. Assistance regarding unit eligibility, accessory apartment standards, scope of work, and obtaining cost estimates will be provided by the Construction Code Official. The Construction Code Official and **Administrative Agent** Township Clerk shall arrange for special times to make themselves available to assist the public, which shall include daytime and evening hours. All completed applications shall be presented to the **Administrative Agent** Township Clerk.

B. **Administrative Agent's** Township Clerk's review.

(1) The **Administrative Agent** ~~Township Clerk~~ shall, within five business days, review the application to determine its completeness and the income level of the applicant. If the applicant's income exceeds the eligibility standard, the applicant will be so notified and a confirming letter shall be kept in the file. If the application is complete and the stated income level is eligible, the **Administrative Agent** ~~Clerk~~ shall transmit a copy of the package to the Construction Code Official for review. Thereafter, the **Administrative Agent** ~~Clerk~~ shall verify the income with the applicant's employer on the forms provided. Once verified, the Clerk shall so notify the Construction Code Official.

(2) For vacant units, the owner need not be income eligible, but he or she shall provide adequate documentation at the time of occupancy that the sales price or rental rate is affordable as defined in this chapter, and that the prospective occupants are income eligible.

C. **Township Planner's and** Construction Code Official's ~~and Planning Board/Zoning Board of Adjustment~~ review.

(1) The Construction Code Official shall review the application package, and within 10 business days of receipt of same, shall (with the Tax Assessor) arrange for an inspection of the property. For rehabilitation proposals, he shall prepare a work write-up that details the unit's substandard characteristics and scope of work, all of which shall be in compliance with this chapter. A copy of the work write-up shall be sent to the applicant within 10 days of the inspection. The Construction Code Official shall prepare an in-house cost estimate to be kept in the file confidentially, until a contractor's proposal for the rehabilitation work is received. The applicant shall obtain at least one contractor's estimate (typical time frame of 10 business days) and return same to the Construction Code Official. If the Construction Code Official finds that the estimate is within 10% of his estimate, he shall prepare a recommendation for funding to be sent to the **Administrative Agent** ~~Township Clerk~~ for inclusion on the Township Committee's agenda. If the estimate is too high or too low, the applicant may elect to obtain a new estimate, or may request the contractor to meet with the Construction Code Official to resolve the discrepancy.

(2) For proposed accessory apartments, the **Township Planner** ~~Planning Board or Zoning Board of Adjustment, as the case may be,~~ shall review the application for conformance with the zoning standards established in § 199-8 of this chapter and Chapter 400, Zoning, and provide its findings to the Construction Code Official and Township Committee. The Construction Code Official shall review the findings of the ~~Planning Board/Zoning Board of Adjustment~~ **Township Planner**, the proposed plot plan and the construction plan for conformance with the construction standards in § 199-8. The applicant shall submit a cost estimate for the proposed scope of work for review by the Construction Code Official. If the ~~Township Planner~~ **Township Planner** ~~Planning Board/Zoning Board of Adjustment~~ and the Construction Code Official find that the proposed accessory apartment complies with the standards of § 199-8, and that the estimate is within 10% of the Construction Code Official's independent estimate, then the Construction Code

Official shall prepare a recommendation for funding to be sent to the **Administrative Agent** ~~Township Clerk~~ for inclusion on the Township Committee's agenda. If the standards of § 199-8 are not met, then the Construction Code Official shall prepare a report for the applicant and Township Committee identifying the standards which are not satisfied.

D. Township Committee authorization. Recommendations for funding shall be sent by the Construction Code Official to the Municipal Housing Liaison for inclusion on the agenda of the Township Committee. If all program criteria have been met, the Committee shall approve the funding of the improvements for the funds reserved for the program and shall authorize the Township Attorney to prepare a rehabilitation ~~or~~ accessory apartment, **or market to affordable** loan agreement and deed restriction **or lien** so as to ensure that a lien position may be held by the Township. The work may then be authorized by the Construction Code Official as provided in § 199-22. ~~The rehabilitation~~ **For rehabilitation projects, the** loan principal shall include only capital costs. Administrative expenses to be budgeted (such as the inspection costs, attorney's fees, and processing expenses incurred by the Municipal Housing Liaison) shall be paid by the Township and not charged to the borrower. For any two-year period, the average capital expense (hard cost) for units in the rehabilitation program shall be \$10,000, and the Township Committee may authorize the expenditure of up to \$30,000 on a rehabilitated unit. The Township Committee shall provide at least ~~\$20,000 to subsidize the creation of each moderate-income accessory apartment~~ or \$25,000 to subsidize the creation of each low-income accessory apartment. **The Township Committee shall provide \$30,000 to subsidize the creation of a low-income market-to-affordable unit.**

E. Inspections. **For rehabilitation and accessory apartment projects,** the Construction Code Official shall periodically inspect the premises during construction. Payments will be made to the contractor at 50% performance (40% of the cost) and upon completion (the balance due). Change orders shall require approval by the Township Committee if additional funding is required beyond the contract amount. Otherwise, applicant and Construction Code Official concurrence shall be the only necessary authorization. Upon completion, the Construction Code Official shall issue a completion report to the **Administrative Agent** ~~Township Clerk~~ stating that the work has been undertaken in conformance with the program, this chapter, and the applicable codes, and that the unit has been brought up to compliance with the relevant housing or building code for rehabilitated units, or the relevant accessory apartment standards for new accessory apartments.

F. Reports to the Township Committee. At least quarterly, the **Administrative Agent** ~~Township Clerk~~ shall report the program's progress to the Committee, including an accounting report supplied by the Chief Financial Officer/Treasurer as to funds expended. The report shall state the status of units under review or under construction, and the efforts which will be undertaken to meet program goals in the future. **Every two years, with the first report being due in August 2019,** ~~Annually,~~ the **Administrative**

**Agent** Clerk shall file a progress report with the Council on Affordable Housing **and Fair Share Housing Center**.

Article V. Affordability Controls

§ 199-45**16**. General requirements.

A. In accordance with N.J.A.C. 5:973-9, all units assisted under this chapter shall be subject to resale and rent affordability control for the periods outlined herein. Should the terms as authorized by N.J.A.C. 5:973-9 be amended as provided by law, then this chapter may be amended and the Township Committee may at its discretion take such steps as necessary to amend any loan agreement or deed restriction, with the consent of the owner.

B. At the time an application for a unit(s) is approved by the Township Committee, each household in occupancy must be income eligible as set forth in Article III whether an owner-applicant or a renter-applicant. Owners of vacant units must agree to rent or sell the unit to an income eligible low- or moderate-income household when the rehabilitation or accessory apartment is completed **or when the market-to-affordable unit is funded**. In approving the rehabilitation of vacant units, the Township Committee shall attempt to assure that at least 50% of such vacant units are reserved for low-income households.

C. The owner shall provide a certification verifying that the proposed rent level complies with this chapter and COAH rules.

§ 199-46**17**. Terms.

A. Owner-occupied rehabilitated units. Units which are owner occupied shall be subject to affordability controls for a term of **ten years** ~~six years from the date a completion report is filed by the Construction Code Official with the Township Clerk~~. At that time, the ~~Township Clerk~~ **Administrative Agent** shall advise the Township Attorney to file the ~~deed restriction~~ **lien** effectuating the rehabilitation loan agreement as hereinafter set forth.

B. Renter-occupied rehabilitated units. Units which are occupied by renter households shall be subject to affordability controls for a period of 10 years from the date a completion report is filed by the Construction Code Official with the ~~Township Clerk~~ **Administrative Agent**. At that time, the ~~Township Clerk~~ **Administrative Agent** shall advise the Township Attorney to file the deed restriction effectuating the rehabilitation loan agreement as hereinafter set forth. ***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. Vacant rehabilitated units.

(1) At the time a vacant unit is approved for funding by the Township Committee, the owner shall elect either to sell or to rent the unit when rehabilitation is completed. If the unit is to be sold, it shall be sold to an income eligible low- or moderate-income household based on the following standards:

(a) Sales units shall be priced so that the sales price is affordable to households based on a factor of no more than 28% of gross income being paid for principal, interest, taxes, and insurance with a 10% down payment and a mortgage at prevailing interest rates at the time the application is approved. Controls shall be in effect for six years.

(b) Rental units shall be rented to income eligible household based on no more than 30% of gross income paid for rent, including utilities. Controls shall be in effect for 10 years.

(2) At the time a vacant unit has been rehabilitated and a completion report issued, the Attorney shall file the loan agreement in the manner provided in § 199-22 below. The agreement **and deed restriction** shall contain provisions requiring that, as a condition of sale or rent of the vacant unit, the owner shall provide the **Administrative Agent** Township Clerk with documentation and the **Administrative Agent** Clerk shall verify that the proposed purchaser or renter household meets the income criteria established in this chapter, i.e. that the household is either low-income or moderate-income and that the sales price or rent level is affordable as low- or moderate-income housing, all in accordance with the occupancy designation of the unit as set forth in § 199-15. The **Administrative Agent** Township Clerk shall provide the owner with approval or disapproval based upon the criteria in this chapter for making such determinations. Until a satisfactory determination is reached, any certificate of occupancy shall be considered conditional in regard to substantiation of compliance with this chapter. Once the **Administrative Agent** Township Clerk certifies approval, a copy shall be forwarded to the Construction Code Official, who shall issue the full certificate of occupancy, provided all work-related items have been completed satisfactorily.

D. Accessory apartments.

(1) ~~Of the maximum of 10~~ **The one** accessory apartment created, three shall be subject to affordability controls for a term of at least 10 years from the date a completion report is filed by the Construction Code Official with the **Administrative Agent** Township Clerk. ~~The remaining seven accessory apartments shall be subject to affordability controls for a term of at least 30 years from the date a completion report is filed by the Construction Code Official with the Township Clerk, in accordance with N.J.A.C. 5:93-5.9(d). On the remaining seven units the Township can reduce the period of affordability controls from at least 30 years to at least 10 years for good cause.~~

(2) Vacant accessory apartments, for which no tenant is available at the time of filing the completion report, shall be subject to the same conditions of the loan agreement concerning income eligibility of the proposed renter household as are outlined in Subsection C.

§ 199-47**18**. Rehabilitation and accessory apartment loan agreements.

At such time as the Township Committee approves an application for assistance (funding) under this chapter **for a rehabilitation or accessory apartment**, it shall be with the condition that the amount of funding for capital costs or soft costs paid to the applicant shall be the subject of a rehabilitation loan agreement, whereby the owner agrees to be bound by this chapter and the following terms:

A. General terms. The rehabilitation or accessory apartment loan shall be for the full amount of funds borrowed by the applicant to cover the cost of the repairs to each eligible unit, whether from Township funds or other funding sources as may be available through this program. The loan shall stipulate that interest shall only accrue on the principal according to the terms outlined in Subsection D. Payments on principal shall only be due upon sale or refinancing of the unit(s), except as outlined below in Subsections C, D and E.

B. Terms for owner-occupied rehabilitated units. Owners of owner-occupied units shall generally continue to reside in the unit for ~~six~~ **ten** years. If the unit is sold during the ~~six~~**ten**-year period, the loan shall be assumable only if the purchaser is an income eligible low- or moderate-income household. If, during the ~~six~~**ten**-year term, the unit is sold to a non-income eligible household, the loan and all accrued interest (determined as specified in Subsection E) shall be repaid in full as a condition of the sale. The Township will then offer the same assistance to another unit within the Township. At the end of the ~~six~~**ten**-year period, the loan principal shall be repaid in full, except that if the owner remains an income-eligible household and continues to live in the unit, the payment may be deferred. In said event, a new agreement shall be executed stipulating these conditions.

C. Terms for renter-occupied rehabilitated units. Owners of renter-occupied units shall agree to rent the unit to an income eligible household for the full ten-year term. Any future owner of such units shall be bound by this restriction, and the loan shall be assumable. At the end of the ten-year period, the loan principal shall be repaid in full, except that if the owner agrees to continue renting to income-eligible households, the payment may be deferred. In said event, a new agreement shall be executed stipulating these conditions.

D. Terms for accessory apartments.

~~——(1)——~~ Owners of renter-occupied accessory apartments shall agree to rent the unit to an income eligible household for the full ten-year term. For units with a ten-year loan agreement, the loan shall be repaid in full at the end of the ten-year period, together with accrued interest, except that if the owner agrees to continue renting to

income eligible households, the payment may be deferred. In said event, a new agreement shall be executed stipulating these conditions. The loan may not be prepaid during the initial ten-year period.

~~(2) For units with a thirty-year loan agreement, the loan shall be forgiven in full at the end of the thirty-year period. After 10 years, no additional interest shall accrue, and commencing after the 11th year 5% of the principal and previously accrued interest shall be forgiven each year. The loan may not be prepaid during the initial thirty-year period.~~

E. Premature termination. In cases where the rehabilitation or accessory apartment loan agreement must be terminated prematurely due to court action, bankruptcy or good cause as may be established by rules and regulations of an appropriate federal or state agency, before the expiration of the time period in the agreement required by this chapter or COAH regulations as revised, the amount of the loan principal is to be paid in full together with accrued interest determined as follows:

~~(1) For a six-year loan terminated in its first year, simple interest at a rate per annum equal to the prime rate at Citibank of New York plus 2%. For a six-year loan terminated thereafter, the rate per annum for the entire period will be the first year's rate reduced by 20% for each full year that the loan has been outstanding until after five full years when the rate shall be 1%.~~

~~(2) For a ten-year loan terminated in its first year, simple interest at a rate per annum equal to the prime rate at Citibank of New York plus 2%. For a ten-year loan terminated thereafter, the rate per annum for the entire period will be the first year's rate reduced by 10% for each full year that the loan has been outstanding until after nine full years when the rate shall be 1%.~~

~~(3) For a thirty-year loan terminated in its first year, simple interest at a rate per annum equal to the prime rate at Citibank of New York plus 2%. For a thirty-year loan terminated thereafter, the rate per annum for the entire period will be the first year's rate reduced by 3.3% for each full year that the loan has been outstanding until after 29 full years when the rate shall be 1%.~~

§ 199-48**19**. Rental of an owner-occupied *rehabilitated* unit.

An owner who decides to rent a *rehabilitated* unit which was owner-occupied at the time the application was approved shall only be permitted to rent the unit to an income eligible household in accordance with the standards contained in § 199-16C(1)(b) above. The controls shall be extended and the loan agreement modified so as to extend the term thereof to 10 years from the date of the filing of the completion report, in accordance with § 199-17C above.

§ 199-49**20**. Exceptions.

**No Change**

§ 199-20**21**. Noneviction policy.

**No Change**

§ 199-24~~22~~**22**. Establishment of income limits.

The income limits which shall govern this chapter shall be those promulgated by **COAH or a Court of competent jurisdiction.** ~~the Council on Affordable Housing.~~

§ 199-22~~23~~**23**. Agreement in escrow.

**No Change**

Article VI. Appropriations

§ 199-24. Appropriation of funds.

**No Change**

§ 199-25. Funds repaid to Township.

Any funds repaid to the Township as provided in § **199-17B, C, D and E** shall be paid to the general fund, and a like amount shall be added to the appropriation in the next fiscal year.

§ 199-26. Funds repaid to Township after affordability controls expired.

**No Change**

**SECTION 2:** Chapter 400 entitled “Growth-Based Affordable Housing” is amended and supplemented as follows:

Article VIII. ~~Growth-Based Affordable Housing Production~~

§ 400-57. Residential development requirements.

In any zone within the Township where affordable housing is a permitted use:

A. Any development of five or more new residential dwelling units ***shall provide at least 15 percent of the units in rental developments as affordable units and 20 percent of all units in for-sale developments as affordable units with at least 50 percent being affordable low income households, including 13 percent in rental developments being affordable to very-low income households with all such affordable units, including the required bedroom distribution, be governed by controls on affordability and affirmatively marketed in conformance with the Uniform Housing Affordability Controls (“UHAC”) N.J.A.C. 5:80-26.1 et seq. or any successor regulation, and all other applicable law.*** ~~shall provide that not less than 20% of the dwelling units shall be affordable dwelling units subject to controls on~~

~~affordability and occupancy in accordance with the rules and regulations of the New Jersey Committee on Affordable Housing (COAH). Residential development providing at least the 20% set aside of affordable dwelling units as required herein shall not be subject to the payment of the affordable housing development fee.~~

B. In the event the number of units is not a multiple of five, and the number does not round up, the developer shall pay the affordable housing development fee for the increment of the market units that are not subject to the set aside. For example, if a residential development is approved for 12 units, two of the 12 units to be constructed must be affordable and the remaining 10 may be market rate. The developer must also pay the affordable housing development fee on two market units. If the development is instead approved for 13 units, the required set aside will be rounded up and three of the 13 units shall be affordable. The developer in "rounded-up" developments will not be responsible to pay any affordable housing development fee.

C. ***Pursuant to N.J.A.C. 5:97-6.4, r***Residential developments of four or fewer residential dwelling units ***shall not be required to make a payment in lieu or provide for an affordable housing set-aside.***~~satisfy the affordable housing requirement by the payment of an in-lieu fee in accordance with N.J.A.C. 5:94-4.4(b)(1) and this article.~~

D. In accordance with § 400-62 below, the Township may approve the construction of affordable units required by the development identified above on an off-site location or through an alternative mechanism to produce affordable units within the Township, provided the mechanism is authorized by COAH regulations. The developer shall present its planned method of affordable housing compliance to the Township or its designee at the time of filing an application for development approval. Municipal approval of the off-site construction of affordable units or the use of an alternative mechanism shall be conditioned on Township Committee endorsement of the proposed method of affordable housing compliance. ~~The permissible mechanisms include, but are not limited to:~~

~~———— (1) ——— Construction of affordable units off-site, provided that the developer demonstrates, and the Township determines, that the off-site location is within the Township and is appropriately zoned for residential development. The developer shall further demonstrate to the satisfaction of the Township that the off-site location is approvable, suitable, and developable for affordable housing.~~

~~———— (2) ——— Participation in a Township-sponsored buy-down program for sales units pursuant to N.J.A.C. 5:94-4.10.~~

~~———— (3) ——— Participation in a Township-sponsored rental program pursuant to N.J.A.C. 5:94-4.11.~~

~~———— (4) ——— Participation in a Township-sponsored program to create affordable accessory apartments pursuant to N.J.A.C. 5:94-4.9.~~

~~(5) Participation in a Township-sponsored program to provide affordable housing pursuant to N.J.A.C. 5:94-4.6.~~

~~(6) Providing a payment to the Township in lieu of constructing the affordable units on site. The amount of the payment in lieu of constructing the affordable units on site shall be negotiated between the developer and the Township, and the payment shall only be used to fund eligible affordable housing activities within the Township in accordance with N.J.A.C. 5:94-4.4.~~

***E. A developer of a tract of land zoned for multi-family purposes may not subdivide the tract into two or more lots for the purpose of avoiding the affordable housing set-aside required by this Ordinance.***

***F. All the provisions of this Ordinance are subject to the provisions of the Settlement Agreement which is incorporated herein as if set forth in length, the applicable provisions of UHAC, COAH Rules, the Fair Housing Act N.J.S.A.52:27D301 et seq. and the Township's Housing Element and Fair Share Plan or any successor regulation, and all other applicable law.***

§ 400-58. Payment of development fee.

In any zone within the Township where affordable housing is not a permitted use, developers shall pay the development fee in accordance with Chapter 110, Affordable Housing, Article I, Development Fee.

~~§ 400-59. Nonresidential development requirements.~~

~~All new nonresidential development in any zoning district shall be required to provide affordable housing constructed at the ratio of at least one affordable unit for every 25 new jobs created as a result of the proposed nonresidential development project. The calculation of the number of jobs created shall be in accordance with Appendix E of N.J.A.C. 5:94-1 et seq., entitled "UCC Use Groups for Projecting and Implementing Nonresidential Components of Growth Share." The provision of the affordable unit(s) required shall be through on-site construction, through the creation of affordable units off-site, or through a payment in lieu of construction.~~

§ 400-~~60~~**59**. Payments in lieu of construction.

A. Payments in lieu of the construction of affordable housing shall be ***based upon N.J.A.C. 5:97-6.4(c)(3)***, based ~~a proportionate share of the total project cost embodied in one or more pro formas for the construction of an affordable housing development elsewhere within Lebanon Township, which pro forma(s) shall be on file in the office of the Township Clerk. If no pro formas are available the developer shall prepare one, which shall be subject to review and approval by the Township staff. The actual payment in lieu of construction made by the developer may be negotiated with the~~

~~Township considering the actual land cost of the site(s) identified for affordable housing construction elsewhere within Lebanon Township or the substitution of land, site preparation and/or construction services for all or a portion of the monetary payment otherwise required.~~

B. Regardless of the mechanism selected by the developer for satisfying the required number of affordable housing units, any development or portion thereof that generates a fraction of an affordable housing unit as all or a portion of the obligation shall under any circumstances be required to make a payment in lieu of construction for that fraction of a unit based on the prorated cost of constructing an affordable housing unit in Lebanon Township.

§ 400-61**60**. Construction of affordable housing on site.

A. As to affordable housing units constructed on site within a residential development:

(1) The affordable housing units may be provided within single-family dwellings, duplex buildings, triplex buildings or quadriplex buildings designed to resemble as nearly as possible the single-family homes otherwise being constructed within the development to accommodate the market units. Unless precluded by another ordinance, such buildings shall be deemed to be permitted uses in the underlying zone when created for the purpose of meeting the growth share obligation.

(2) No density bonus shall be granted for the construction of the affordable housing units on-site, but the affordable housing units themselves shall not be included in the calculation of density for the purposes of this section.

(3) The lots within the development may be reduced in area and width to 20% of the area and width otherwise required in the zone in order to accommodate the construction of the affordable housing units on one or more lots on the same tract. All required setbacks, building height and coverage limits for the zone shall be met on all lots.

(4) All affordable units shall comply with COAH's Rules pertaining to the phasing, integration, low-/moderate-income split, controls on affordability, bedroom distribution, affirmative marketing, heating source and administration of the affordable units, ~~as set forth in N.J.A.C. 5:94-4.4 and elsewhere in the Rules.~~

B. As to affordable housing units constructed on site within a nonresidential development:

(1) Affordable housing units may be constructed within or converted from space above the first-floor level in nonresidential buildings or may be constructed in a separate building or buildings on the same site as a permitted nonresidential use or development, subject to site plan review by the Planning Board. Residential or mixed-

use buildings containing up to eight affordable housing units each shall be considered to be permitted uses in all nonresidential zoning districts in Lebanon Township, notwithstanding any other provision of this chapter to the contrary.

(2) All required setbacks, building height and coverage limits for the zone shall be met on nonresidential lots containing affordable housing units, except that, for the purposes of accommodating walkways and parking for the affordable units, the maximum lot coverage on any lot containing affordable units may be increased by up to 20% more than the coverage limit otherwise allowed on the lot.

(3) In computing the required parking for any mixed use development containing affordable housing units, consideration shall be given to shared parking opportunities.

(4) All affordable units shall comply with COAH's Rules pertaining to the phasing, integration, low-/moderate-income split, controls on affordability, bedroom distribution, affirmative marketing, heating source and administration of the affordable units, as set forth in N.J.A.C. 5:94-4.4 and elsewhere in the Rules.

§ 400-6261. Creation of affordable housing units elsewhere within Lebanon Township.

A. Developers electing to create affordable housing units elsewhere within Lebanon Township may do so within existing buildings of Lebanon Township, as set forth and regulated herein.

B. Within all residential zones other than the RC, R-5, and R-3 Residential Zones in Lebanon Township, the reconstruction and conversion of any dwelling from a single- or two-family dwelling into a building containing up to three dwellings in which all such dwelling units are deed restricted for affordability to and occupancy by low- and moderate-income households shall be permitted as of right, subject to meeting all other requirements of this section, notwithstanding any other provision of this article to the contrary.

C. No individual dwelling shall be smaller than 550 square feet.

D. All affordable units shall comply with COAH's Rules pertaining to the phasing (with the market units being constructed elsewhere by the same developer), low-/moderate-income split, controls on affordability, bedroom distribution, affirmative marketing, heating source and administration of the affordable units, ~~as set forth in N.J.A.C. 5:94-4.4 and elsewhere in the Rules.~~

E. All required setbacks, building height and coverage limits shall be met on the lot, except that, for the purposes of accommodating patios (but not decks) and parking for the affordable units, the maximum lot coverage on any lot containing affordable units shall be a maximum of 30% of the lot area and except further that existing setback

deficiencies and other nonconformities of the lot and/or building may be continued without the need for additional variances.

§ 400-~~63~~**62**. Other requirements.

A. The use of any of the foregoing mechanisms for providing affordable housing within Lebanon Township shall be limited to the provision of non-age-restricted rental affordable housing units in compliance with all of COAH's Rules set forth at N.J.A.C. 5:94-1 et seq.

B. The Planning Board shall have the jurisdiction to consider the grant of a waiver from the foregoing to permit age-restricted or for sale housing where the Board finds that granting such a waiver would be more appropriate to the context of the development or to the location and nature of the affordable housing unit(s) being created. The Planning Board shall consider the Township-wide impacts of such a deviation upon the adopted and COAH-certified Housing Element and Fair Share Plan before approving any such waiver.

C. A proposed affordable housing production plan shall be submitted to the Planning Board at the time application is made for any development requiring growth-based affordable housing production pursuant to this section. This plan shall be a condition of the "completeness" determination. All affordable housing production plans shall be the subject of review by the Planning Board's Planner for consistency with COAH's Rules and with the Township's certified third round Housing Element and Fair Share Plan. Compliance with all of the terms of COAH's Rules and with the approved affordable housing production plan shall be a condition of development plan approval and may be covered by appropriate performance and maintenance guarantees as with any other required improvement.

D. Where an odd number of low- and moderate-income housing units are required to be provided, the majority of the units shall be low-income units. Where there are an insufficient number of affordable units provided to meet the bedroom distribution requirements of COAH's Rules, the first unit shall be a two-bedroom unit, the second unit shall be a three-bedroom unit and the third unit shall be a one-bedroom unit. Otherwise, the bedroom distribution shall be in strict accordance with COAH's Rules. It shall be the developer's responsibility, at its sole cost and expense, to contract with a COAH-approved and Township-designated experienced entity for the initial and ongoing administration of the controls on affordability so as to ensure full COAH compliance. The designated administrative entity shall, by February 1 of each year, and as needed throughout the year, file with the Township Clerk of the Township of Lebanon such certifications, reports and/or monitoring forms as maybe required by COAH to verify the continuing compliance of each affordable unit with COAH's Rules.

E. Inclusionary residential developments constructed in any zones hereafter designated for inclusionary development shall be exempt from the requirements of this section. Moreover, developments covered by this section shall be exempt from the

payment of development fees pursuant to any Development Fee Ordinance adopted by the Township.

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

**SECTION 4.** If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

**SECTION 5.** This Ordinance shall become effective following its final passage and publication as required by law.

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Mike Schmidt, Mayor

ATTEST:

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Kim Jacobus,  
Deputy Clerk

Date of Introduction and First Reading: February 21, 2018

Date of Second Reading and final adoption: April 4, 2018

I certify that the foregoing Ordinance is a true and accurate copy of an Ordinance adopted by the Lebanon Township Committee on April 4, 2018.

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Kim Jacobus,  
Deputy Clerk