**ORDINANCE NO 25-2023**

**OF THE GOVERNING BODY**

**OF THE BOROUGH OF BLOOMINGDALE**

**AN ORDINANCE OF THE BOROUGH OF BLOOMINGDALE, COUNTY OF PASSAIC, STATE OF NEW JERSEY, TO REPEAL CHAPTER 12 “LOW AND MODERATE HOUSING” AND TO ESTABLISH A NEW CHAPTER 12 ENTITLED “AFFORDABLE HOUSING”**

**WHEREAS**, the Borough herein updates its affordable housing regulations to be consistent with the Uniform Housing Affordability Control rules (N.J.A.C. 5:80-26.1), COAH’s substantive rules (N.J.A.C. 5:93), and the Fair Housing Act (N.J.S.A. 52:27D-301 et seq.); and

**NOW, THEREFORE, BE IT ORDAINED** by the Governing Body of the Borough of Bloomingdale, in the County of Passaic and State of New Jersey as follows:

# SECTION 1: Chapter 12 entitled “Low and Moderate Housing” is hereby repealed and replaced in its entirety with “Affordable Housing” and shall be added to the Code to read as follows:

**Section 12-1 “Affordable Housing”**

# § 12-1.1 Affordable Housing Obligation: General Program Purposes, Procedures

1. This section of the Borough Code sets forth regulations regarding the low and moderate income housing units in the Borough consistent with the provisions known as the “Substantive Rules of the New Jersey Council on Affordable Housing”, N.J.A.C. 5:93 et seq., the Uniform Housing Affordability Controls (“UHAC”), N.J.A.C. 5:80-26.1 et seq., except where modified by the requirements for very-low income housing as established in P.L. 2008, c.46 (the "Roberts Bill", codified at N.J.S.A. 52:27D-329.1), such that the statutory requirement to provide very-low income units equal to 13% of affordable units approved and constructed after July 17, 2008, to be affordable to households at 30% of the regional median income, overrides the UHAC requirement that 10% of all low- and moderate-income units must be affordable at 35% of the regional median income, and the Borough's constitutional obligation to provide a fair share of affordable housing for low and moderate income households.
2. This Ordinance is intended to assure that very-low, low- and moderate-income units ("affordable units") are created with controls on affordability over time and that very- low, low- and moderate-income households shall occupy these units. This Ordinance shall apply to all inclusionary developments and 100% affordable developments (including those funded with low-income housing tax credit financing) except where inconsistent with applicable law.

**§ 12-1.2 Definitions.** As used herein the following terms shall have the following meanings:

Act

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

Adaptable

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

Administrative agent

The entity responsible for the administration of affordable units in accordance with this ordinance, N.J.A.C. 5:91, N.J.A.C. 5:93 and N.J.A.C. 5:80-26.1 et seq.

Affirmative marketing

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

Affordability average

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

Affordable

A sales price or rent within the means of a low- or moderate-income household as defined in

N.J.A.C. 5:93-7.4; in the case of an ownership unit, that the sales price for the unit conforms to the standards set forth in N.J.A.C. 5:80-26.6, as may be amended and supplemented, and, in the case of a rental unit, that the rent for the unit conforms to the standards set forth in

N.J.A.C. 5:80-26.12, as may be amended and supplemented.

Affordable housing development

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

Affordable housing development

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

Affordable housing program(s)

Any mechanism in a municipal Fair Share Plan prepared or implemented to address a municipality’s fair share obligation.

Affordable unit

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

Agency

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

Age-restricted unit

A housing unit designed to meet the needs of, and exclusively for, the residents of an age- restricted segment of the population such that: 1) all the residents of the development where the unit is situated are 62 years or older; or 2) at least 80% of the units are occupied by one person that is 55 years or older; or 3) the development has been designated by the Secretary of the U.S. Department of Housing and Urban Development as “housing for older persons” as defined in Section 807(b)(2) of the Fair Housing Act, 42 U.S.C. § 3607.

Alternative living arrangement

A structure in which households live in distinct bedrooms, yet share kitchen and plumbing facilities, central heat and common areas. Alternative living arrangement includes, but is not limited to: transitional facilities for the homeless, Class A, B, C, D, and E boarding homes as regulated by the New Jersey Department of Community Affairs; residential health care facilities as regulated by the New Jersey Department of Health; group homes for the developmentally disabled and mentally ill as licensed and/or regulated by the New Jersey Department of Human Services; and congregate living arrangements.

Assisted living residence

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

Certified household

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.).

DCA

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.

Development

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

Development Fee

Money paid by a developer for the improvement of property as permitted in N.J.A.C. 5:93-8.

Equalized Assessed Value

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

Fair Share Plan

The plan that describes the mechanisms, strategies and the funding sources, if any, by which the Borough proposes to address its affordable housing obligation as established in the Housing Element, including the draft ordinances necessary to implement that plan, and addresses the requirements of N.J.A.C. 5:93-5.

Housing Element

The portion of the Borough's Master Plan, required by the Municipal Land Use Law ("MLUL"),

N.J.S.A. 40:55D-28b(3) and the Act, that includes the information required by N.J.A.C. 5:93-

5.1 and establishes the Borough's fair share obligation.

Inclusionary development

A development containing both affordable units and market rate units. This term includes, but is not necessarily limited to: new construction, the conversion of a non-residential structure to residential and the creation of new affordable units through the reconstruction of a vacant residential structure.

Low-income household

A household with a total gross annual household income equal to 50% or less of the median household income.

Low-income unit

A restricted unit that is affordable to a low-income household.

Market-rate units

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

Median income

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

Moderate-income household

A household with a total gross annual household income in excess of 50% but less than 80% of the median household income.

Moderate-income unit

A restricted unit that is affordable to a moderate-income household.

Non-exempt sale

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

Random selection process

A process by which currently income-eligible households are selected for placement in affordable housing units such that no preference is given to one applicant over another except for purposes of matching household income and size with an appropriately priced and sized affordable unit (e.g., by lottery).

Regional asset limit

The maximum housing value in each housing region affordable to a four-person household with an income at 80% of the regional median as defined by adopted/approved Regional Income Limits.

Rehabilitation

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

Rent

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

Restricted unit

A dwelling unit, whether a rental unit or ownership unit, that is subject to the affordability controls of N.J.A.C. 5:80-26.1, as may be amended and supplemented, but does not include a market-rate unit financed under UHORP or MONI.

Special master

An expert appointed by a judge to make sure that judicial orders are followed. A master's function is essentially investigative, compiling evidence or documents to inform some future action by the court.

UHAC

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

Very-low income household

A household with a total gross annual household income equal to 30% or less of the median household income.

Very-low income unit

A restricted unit that is affordable to a very-low income household.

**§ 12-1.3 Administration of Affordable Units.** The following requirements shall apply to all new or planned developments that contain low- and moderate- income housing units.

1. Phasing. Final site plan or subdivision approval shall be contingent upon the affordable housing development meeting the following phasing schedule for low and moderate income units whether developed in a single phase development, or in a multi-phase development:

Maximum Percentage of Minimum Percentage of Low- Market-Rate Units and Moderate- Income Completed Units Completed

25 0

25+1 10

50 50

75 75

90 100

100

1. Design. In inclusionary developments, low- and moderate- income units shall be integrated with the market units.
2. Utilities. Affordable units shall utilize the same type of heating source as market units within the affordable development.
3. Low/Moderate Split and Bedroom Distribution of Affordable Housing Units:
	1. The fair share obligation shall be divided equally between low- and moderate- income units, except that where there is an odd number of affordable housing units, the extra unit shall be a low income unit.
	2. In each affordable housing development, the total number of units and within each bedroom distribution shall have at least 50% of the restricted units for low-income households, with at least 13% affordable to very-low-income households.
	3. Affordable developments 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 shall be no greater than 20% of the total low- and moderate-income units;
		2. At least 30% of all low- and moderate-income units shall be two bedroom units;
		3. At least 20% of all low- and moderate-income units shall be three bedroom units; and
		4. The remaining units may be allocated among two and three bedroom units at the discretion of the developer.
	4. Affordable developments that are age-restricted shall be structured such that the number of bedrooms shall equal the number of age-restricted low- and moderate-income units within the inclusionary development. The standard may be met by having all one-bedroom units or by having a two-bedroom unit for each efficiency unit.
4. Accessibility Requirements:
	1. The first floor of all new restricted townhouse dwelling units and all restricted multistory dwelling units attached to at least one (1) other dwelling unit shall be subject to the technical design standards of the Barrier Free Subcode,

N.J.A.C. 5:23-7.

* + 1. All restricted townhouse dwelling units and all restricted multistory dwelling units attached to at least one (1) other dwelling unit shall have the following features:
			1. An adaptable toilet and bathing facility on the first floor;
			2. An adaptable kitchen on the first floor;
			3. An interior accessible route of travel on the first floor;
				1. An interior accessible route of travel shall not be required between stories within an individual unit;
1. An adaptable room that can be used as a bedroom, with a door or the casing for the installation of a door, on the first floor; and
2. An accessible entranceway as set forth at P.L. 2005, c. 350 (N.J.S.A. 52:27D-311a et seq.) and the Barrier Free Subcode, N.J.A.C. 5:23-7, or evidence that the Borough has collected funds from the developer sufficient to make 10% of the adaptable entrances in the development accessible:
	1. Where a unit has been constructed with an adaptable entrance, upon the request of a disabled person who is purchasing or will reside in the dwelling unit, an accessible entrance shall be installed.
	2. To this end, the builder of restricted units shall deposit funds within the Borough of Bloomingdale’s affordable housing trust fund sufficient to install accessible entrances in 10% of the affordable units that have been constructed with adaptable entrances.
	3. The funds deposited under paragraph (2) herein, shall be used by the Borough for the sole purpose of making the adaptable entrance of any affordable unit accessible when requested to do so by a person with a disability who occupies or intends to occupy the unit and requires an accessible entrance.
	4. The developer of the restricted units shall submit a design plan and cost estimate for the conversion from adaptable to accessible entrances to the Construction Official of the Borough of Bloomingdale.
	5. Once the Construction Official has determined that the design plan to convert the unit entrances from adaptable to accessible meet the requirements of the Barrier Free Subcode, N.J.A.C. 5:23-7, and that the cost estimate of such conversion is reasonable, payment shall be made to the Borough of Bloomingdale’s affordable housing trust fund in care of the Municipal Treasurer who shall ensure that the funds are deposited into the affordable housing trust fund and appropriately earmarked.
	6. Full compliance with the foregoing provisions shall not be required where an entity can demonstrate that it is site impracticable to meet the requirements. Determinations of site impracticability shall be in compliance with the Barrier Free Subcode, N.J.A.C. 5:23-7.
3. Maximum Rents and Sales Prices.
	1. In establishing rents and sales prices of affordable housing units, the administrative agent shall follow the procedures set forth in UHAC and by the Superior Court, utilizing the regional income limits established.
	2. The maximum rent for restricted rental units within each affordable development shall be affordable to households earning no more than 60% of median income, and the average rent for restricted low- and moderate- income units shall be affordable to households earning no more than 52% of median income.
	3. The developers and/or municipal sponsors of restricted rental units shall establish at least one rent for each bedroom type for both low-income and moderate-income units.
		1. At least 13% of all low- and moderate-income rental units shall be affordable to households earning no more than 30% of median income.
	4. The maximum sales price of restricted ownership units within each affordable development shall be affordable to households earning no more than 70% of median income, and each affordable development must achieve an affordability average of 55% for restricted ownership units; in achieving this affordability average, moderate-income ownership units must be available for at least three different prices for each bedroom type, and low-income ownership units must be available for at least two different prices for each bedroom type.
	5. In determining the initial sales prices and rents for compliance with the affordability average requirements for restricted units other than assisted living facilities, the following standards shall be met:
		1. A studio or efficiency unit 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.
	6. In determining the initial rents for compliance with the affordability average requirements for restricted units in assisted living facilities, the following standards shall be met:
		1. A studio or efficiency unit 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.
	7. The initial purchase price for all restricted ownership units shall be calculated so that the monthly carrying cost of the unit, including principal and interest (based on a mortgage loan equal to 95% of the purchase price and the Federal Reserve H.15 rate of interest), taxes, homeowner and private mortgage insurance and condominium or homeowner association fees do not exceed 28% of the eligible monthly income of the appropriate size household as determined under N.J.A.C. 5:80-26.4, as may be amended and supplemented; provided, however, that the price shall be subject to the affordability average requirement of N.J.A.C. 5:80-26.3, as may be amended and supplemented.
	8. The initial rent for a restricted rental unit shall be calculated so as not to exceed 30% of the eligible monthly income of the appropriate household size as determined under N.J.A.C. 5:80-26.4, as may be amended and supplemented; provided, however, that the rent shall be subject to the affordability average requirement of N.J.A.C. 5:80-26.3, as may be amended and supplemented.
	9. The price of owner-occupied low- and moderate-income units may increase annually based on the percentage increase in the regional median income limit for each housing region. In no event shall the maximum resale price established by the administrative agent be lower than the last recorded purchase price.

Income limits for all units for which income limits are not already established through a federal program exempted from the Uniform Housing Affordability Controls pursuant to N.J.A.C. 5:80-26.1 shall be updated by the Borough annually within 30 days of the publication of determinations of median income by HUD as follows:

* + 1. Regional income limits shall be established for the Region 1 based on the median income by household size, which shall be established by a regional weighted average of the uncapped Section 8 income limits published by HUD. To compute this regional income limit, the HUD determination of median county income for a family of four is multiplied by the estimated households within the county according to the most recent decennial Census. The resulting product for each county within the housing region is summed. The sum is divided by the estimated total households from the most recent decennial Census in Region 1. This quotient represents the regional weighted average of median income for a household of four. The income limit for a moderate-income unit for a household of four shall be 80 percent of the regional weighted average median income for a family of four. The income limit for a low-income unit for a household of four shall be 50 percent of the HUD determination of the regional weighted average median income for a family of four. The income limit for a very-low income unit for a household of four shall be 30 percent of the regional weighted average median income for a family of four. These income limits shall be adjusted by household size based on multipliers used by HUD to adjust median income by household size. In no event shall the income limits be less than those for the previous year.
		2. The income limits calculated each year shall be the result of applying the percentages set forth in paragraph (a) above to HUD's determination of median income for the relevant fiscal year, and shall be utilized until the Borough updates the income limits after HUD has published revised determinations of median income for the next fiscal year.
		3. The Regional Asset Limit used in determining an applicant's eligibility for affordable housing pursuant to N.J.A.C. 5:80-26.16(b)3 shall be calculated by the Borough annually by taking the percentage increase of the income limits calculated pursuant to paragraph (a) above over the previous year’s income limits, and applying the same percentage increase to the Regional Asset Limit from the prior year. In no event shall the Regional Asset Limit be less than that for the previous year.
	1. The rent levels of very-low-, low- and moderate-income units may be increased annually based on the percentage increase in the Housing Consumer Price Index for the Northeast Urban Area, upon its publication for the prior calendar year. This increase shall not exceed nine percent in any one year. Rents for units constructed pursuant to low income housing tax credit regulations shall be indexed pursuant to the regulations governing low income housing tax credits.
	2. Tenant-paid utilities that are included in the utility allowance shall be so stated in the lease and shall be consistent with the utility allowance approved by DCA for its Section 8 program.
1. Condominium and Homeowners Association Fees.
	1. For any affordable housing unit that is part of a condominium association and/or homeowner’s association, the Master Deed shall reflect that the association fee assessed for each affordable housing unit shall be established at 100% of the market rate fee.
2. Affordable Unit Controls and Requirements
	1. The requirements of this section apply to all developments that contain affordable housing units, including any currently unanticipated future developments that will provide low- and moderate- income housing units.
3. Affirmative Marketing.
	1. The Borough shall adopt by resolution an Affirmative Marketing Plan, subject to approval of the Superior Court, compliant with N.J.A.C. 5:80-26.15, as may be amended and supplemented.
	2. The affirmative marketing plan is a regional marketing strategy designed to attract buyers and/or renters of all majority and minority groups, regardless of race, creed, color, national origin, ancestry, marital or familial status, gender, affectional or sexual orientation, disability, age or number of children to housing units which are being marketed by a developer, sponsor or owner of affordable housing. The affirmative marketing plan is also intended to target those potentially eligible persons who are least likely to apply for affordable units in that region. It is a continuing program that directs all marketing activities toward COAH Housing Region 1 and covers the period of deed restriction.
	3. The affirmative marketing plan shall provide a regional preference for all households that live and/or work in COAH Housing Region 1, comprised of Bergen, Hudson, Passaic and Sussex Counties
	4. The Administrative Agent designated by the Borough shall assure the affirmative marketing of all affordable units is consistent with the Affirmative Marketing Plan for the municipality.
	5. The Borough shall add to the list of community and regional organizations in its affirmative marketing plan, pursuant to N.J.A.C. 5:80-26.15(f)(5), Fair Share Housing Center, the New Jersey State Conference of the NAACP, the Latino Action Network, , the Morris County Chapter of the NAACP, Newark NAACP, East Orange NAACP, Housing Partnership for Morris County, Community Access Unlimited, Inc., Northwest New Jersey Community Action Program, Inc. (NORWESCAP), Homeless Solutions of Morristown, and the Supportive Housing Association, and shall, as part of its regional affirmative marketing strategies during its implementation of this plan, provide notice to those organizations of all available affordable housing units. The Borough also agrees to require any other entities, including developers or persons or companies retained to do affirmative marketing, to comply with this paragraph.
4. 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.
5. The affirmative marketing process for available affordable units shall begin at least four months prior to the expected date of occupancy.
6. 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 Borough of Bloomingdale.
7. Occupancy Standards.
	1. 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:
8. Provide an occupant for each bedroom;
9. Provide separate bedrooms for parents and children;
10. Provide children of different sexes with separate bedrooms; and
11. Prevent more than two persons from occupying a single bedroom.
	1. Additional provisions related to occupancy standards (if any) shall be provided in the municipal Operating Manual.
12. Selection of Occupants of Affordable Housing Units.
	1. The administrative agent shall use a random selection process to select occupants of low- and moderate- income housing.
	2. A waiting list of all eligible candidates will be maintained in accordance with the provisions of N.J.A.C. 5:80-26 et seq.
13. Control Periods for Restricted Ownership Units and Enforcement Mechanisms.
	1. Control periods for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.5, and each restricted ownership unit shall remain subject to the controls on affordability for a period of at least 30 years, until the municipality takes action to release the controls on affordability.
	2. Rehabilitated owner-occupied housing units that are improved to code standards shall be subject to affordability controls for a period of 10 years.
	3. The affordability control period for a restricted ownership unit shall commence on the date the initial certified household takes title to the unit.
	4. The affordability controls set forth in this Ordinance shall remain in effect despite the entry and enforcement of any judgment of foreclosure with respect to restricted ownership units.
	5. A restricted ownership unit shall be required to obtain a Continuing Certificate of Occupancy or a certified statement from the Construction Official stating that the unit meets all code standards upon the first transfer of title that follows the expiration of the applicable minimum control period provided under N.J.A.C. 5:80-26.5(a), as may be amended and supplemented.
14. Price Restrictions for Restricted Ownership Units, Homeowner Association Fees and Resale Prices.
	1. Price restrictions for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.1, as may be amended and supplemented, including:
	2. The initial purchase price for a restricted ownership unit shall be approved by the Administrative Agent.
	3. The Administrative Agent shall approve all resale prices, in writing and in advance of the resale, to assure compliance with the foregoing standards.
	4. The method used to determine the condominium association fee amounts and special assessments shall be indistinguishable between the low- and moderate-income unit owners and the market unit owners.
	5. The owners of restricted ownership units may apply to the Administrative Agent to increase the maximum sales price for the unit on the basis of capital improvements. Eligible capital improvements shall be those that render the unit suitable for a larger household or the addition of a bathroom.
15. Buyer Income Eligibility.
	1. Buyer income eligibility for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.1, as may be amended and supplemented, such that low-income ownership units shall be reserved for households with a gross household income less than or equal to 50% of median income and moderate-income ownership units shall be reserved for households with a gross household income less than 80% of median income.
	2. The Administrative Agent shall certify a household as eligible for a restricted ownership unit when the household is a low-income household or a moderate-income household, as applicable to the unit, and the estimated monthly housing cost for the particular unit (including principal, interest, taxes, homeowner and private mortgage insurance and condominium or homeowner association fees, as applicable) does not exceed 33% of the household’s certified monthly income.
16. Limitations on indebtedness secured by ownership unit; subordination.
	1. Prior to incurring any indebtedness to be secured by a restricted ownership unit, the administrative agent shall determine in writing that the proposed

indebtedness complies with the provisions of this section.

* 1. With the exception of original purchase money mortgages, during a control period neither an owner nor a lender shall at any time cause or permit the total indebtedness secured by a restricted ownership unit to exceed 95% of the maximum allowable resale price of that unit, as such price is determined by the administrative agent in accordance with N.J.A.C.5:80-26.6(b).
1. Control Periods for Restricted Rental Units.
	1. Control periods for restricted rental units shall be in accordance with N.J.A.C. 5:80-26.11, and each restricted rental unit shall remain subject to the controls on affordability for a period of at least 30 years, until the municipality takes action to release the controls on affordability.
		1. Restricted rental units created as part of developments receiving nine percent (9%) Low Income Housing Tax Credits must comply with a control period of not less than a 30-year compliance period plus a 15-year extended use period.
	2. Rehabilitated renter-occupied housing units that are improved to code standards shall be subject to affordability controls for a period of 10 years.
	3. Deeds of all real property that include restricted rental units shall contain deed restriction language. The deed restriction shall have priority over all mortgages on the property, and the deed restriction shall be filed by the developer or seller with the records office of the County of Gloucester. A copy of the filed document shall be provided to the Administrative Agent within 30 days of the receipt of a Certificate of Occupancy.
	4. A restricted rental unit shall remain subject to the affordability controls of this Ordinance, despite the occurrence of any of the following events:
		1. Sublease or assignment of the lease of the unit;
		2. Sale or other voluntary transfer of the ownership of the unit; or
		3. The entry and enforcement of any judgment of foreclosure.
2. Price Restrictions for Rental Units; Leases.
	1. A written lease shall be required for all restricted rental units, except for units in an assisted living residence, and tenants shall be responsible for security deposits and the full amount of the rent as stated on the lease. A copy of the current lease for each restricted rental unit shall be provided to the Administrative Agent.
	2. No additional fees or charges shall be added to the approved rent (except, in the case of units in an assisted living residence, to cover the customary charges for food and services) without the express written approval of the Administrative Agent.
	3. Application fees (including the charge for any credit check) shall not exceed 5% of the monthly rent of the applicable restricted unit and shall be payable to the Administrative Agent to be applied to the costs of administering the controls applicable to the unit as set forth in this Ordinance.
3. Tenant Income Eligibility.
	1. Tenant income eligibility shall be in accordance with N.J.A.C. 5:80-26.13, as may be amended and supplemented, and shall be determined as follows:
		1. Very-low-income rental units shall be reserved for households with a gross household income less than or equal to 30% of median income.
		2. Low-income rental units shall be reserved for households with a gross household income less than or equal to 50% of median income.
		3. Moderate-income rental units shall be reserved for households with a gross household income less than 80% of median income.
	2. The Administrative Agent shall certify a household as eligible for a restricted rental unit when the household is a very-low-income, low-income household or a moderate-income household, as applicable to the unit, and the rent proposed for the unit does not exceed 35% (40% for age-restricted units) of the household’s eligible monthly income as determined pursuant to N.J.A.C. 5:80-26.16, as may be amended and supplemented; provided, however, that this limit may be exceeded if one or more of the following circumstances exists:
		1. The household currently pays more than 35% (40% for households eligible for age-restricted units) of its gross household income for rent, and the proposed rent will reduce its housing costs;
		2. The household has consistently paid more than 35% (40% for households eligible for age-restricted units) of eligible monthly income for rent in the past and has proven its ability to pay;
		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.
	3. The applicant shall file documentation sufficient to establish the existence of the circumstances in (b)1 through 5 above with the Administrative Agent, who shall counsel the household on budgeting.
4. Conversions.
	1. Each affordable housing unit created through the conversion of a non-residential structure shall be considered a new housing unit and shall be subject to the affordability controls for a new housing unit.
5. Alternative Living Arrangements.
	1. The administration of an alternative living arrangement shall be in compliance with N.J.A.C. 5:93-5.8 and UHAC, with the following exceptions:
		1. Affirmative marketing (N.J.A.C. 5:80-26.15), provided, however, that the units or bedrooms may be affirmatively marketed by the provider in accordance with an alternative plan approved by the Court;
		2. Affordability average and bedroom distribution (N.J.A.C. 5:80- 26.3).
	2. With the exception of units established with capital funding through a 20-year operating contract with the Department of Human Services, Division of Developmental Disabilities, alternative living arrangements shall have at least 30 year controls on affordability in accordance with UHAC, unless an alternative commitment is approved by the Court.
	3. The service provider for the alternative living arrangement shall act as the Administrative Agent for the purposes of administering the affirmative marketing and affordability requirements for the alternative living arrangement.

# § 12-1.4 Municipal Housing Liaison.

1. The position of Municipal Housing Liaison for the Borough of Bloomingdale is hereby established. The Municipal Housing Liaison shall be appointed by duly adopted resolution of the Borough Mayor and Council and be subject to the approval by the Superior Court.
2. The Municipal Housing Liaison must be either a full-time or part-time employee of the Borough of Bloomingdale.
3. The Municipal Housing Liaison must meet the requirements for qualifications, including initial and periodic training found in N.J.A.C. 5:93.
4. The Municipal Housing Liaison shall be responsible for oversight and administration of the affordable housing program for the Borough of Bloomingdale, including the following responsibilities which may not be contracted out to the Administrative Agent:
5. Serving as the municipality’s primary point of contact for all inquiries from the State, affordable housing providers, Administrative Agents and interested households;
6. The implementation of the Affirmative Marketing Plan and affordability controls.
7. When applicable, supervising any contracting Administrative Agent.
8. Monitoring the status of all restricted units in the Borough of Bloomingdale’s Fair Share Plan;
9. Compiling, verifying and submitting annual reports as required by the Superior Court;
10. Coordinating meetings with affordable housing providers and Administrative Agents, as applicable; and
11. Attending continuing education opportunities on affordability controls, compliance monitoring and affirmative marketing as offered or approved by the Superior Court.

# § 12-1.5 Administrative Agent.

1. The Borough shall designate by resolution of the Borough Mayor and Council, , one or more Administrative Agents to administer newly constructed affordable units in accordance with N.J.A.C. 5:93 and UHAC.
2. Developers of affordable housing units shall utilize the Borough’s appointed administrative agent for the administration of affordable units, unless specifically authorized to do otherwise by the Borough Mayor and Council or Planning or Zoning Board. All administration costs, including those of the administrative agent, shall be paid by the developer.
3. An Operating Manual shall be provided by the Administrative Agent(s) to be adopted by resolution of the governing body and subject to approval of the Superior Court. The Operating Manuals shall be available for public inspection in the Office of the Municipal Clerk and in the office(s) of the Administrative Agent(s).
4. 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:
5. Attending continuing education opportunities on affordability controls, compliance monitoring, and affirmative marketing as offered or approved by the Superior Court;
6. Affirmative Marketing;
7. Household Certification;
8. Affordability Controls;
9. Records retention;
10. Resale and re-rental;
11. Processing requests from unit owners; and
12. Enforcement, although the ultimate responsibility for retaining controls on the units rests with the municipality.
13. The Administrative Agent shall, as delegated by the Borough Mayor and Council, have the authority to take all actions necessary and appropriate to carry out its responsibilities, hereunder.

# § 12-1.6 Enforcement of Affordable Housing Regulations.

1. Upon the occurrence of a breach of any of the regulations governing the affordable unit by an Owner, Developer or Tenant, the municipality shall have all remedies provided at law or equity, including but not limited to foreclosure, tenant eviction, municipal fines, a requirement for household recertification, acceleration of all sums due under a mortgage, recoupment of any funds from a sale in the violation of the regulations, injunctive relief to prevent further violation of the regulations, entry on the premises, and specific performance.
2. After providing written notice of a violation to an Owner, Developer or Tenant of a low- or moderate-income unit and advising the Owner, Developer or Tenant of the penalties for such violations, the municipality may take the following action against the Owner, Developer or Tenant for any violation that remains uncured for a period of 60 days after service of the written notice:
	1. The municipality may file a court action pursuant to N.J.S.A. 2A:58-11 alleging a violation, or violations, of the regulations governing the affordable housing unit. If the Owner, Developer or Tenant is found by the court to have violated any provision of the regulations governing affordable housing units the Owner, Developer or Tenant shall be subject to one or more of the following penalties, at the discretion of the court:
		1. A fine of not more than $500.00 or imprisonment for a period not to exceed 90 days, or both. Each and every day that the violation continues or exists shall be considered a separate and specific violation of these provisions and not as a continuing offense;
		2. In the case of an Owner who has rented his or her low- or moderate- income unit in violation of the regulations governing affordable housing units, payment into the Borough of Bloomingdale Affordable Housing Trust Fund of the gross amount of rent illegally collected;
		3. In the case of an Owner who has rented his or her low- or moderate- income unit in violation of the regulations governing affordable housing units, payment of an innocent tenant's reasonable relocation costs, as determined by the court.
	2. The municipality may file a court action in the Superior Court seeking a judgment, which would result in the termination of the Owner's equity or other interest in the unit, in the nature of a mortgage foreclosure. Any judgment shall be enforceable as if the same were a judgment of default of the First Purchase Money Mortgage and shall constitute a lien against the low- and moderate-income unit.
3. Such judgment shall be enforceable, at the option of the municipality, by means of an execution sale by the Sheriff, at which time the low- and moderate-income unit of the violating Owner shall be sold at a sale price which is not less than the amount necessary to fully satisfy and pay off any First Purchase Money Mortgage and prior liens and the costs of the enforcement proceedings incurred by the municipality, including attorney's fees. The violating Owner shall have the right to possession terminated as well as the title conveyed pursuant to the Sheriff's sale.
4. The proceeds of the Sheriff's sale shall first be applied to satisfy the First Purchase Money Mortgage lien and any prior liens upon the low- and moderate-income unit. The excess, if any, shall be applied to reimburse the municipality for any and all costs and expenses incurred in connection with either the court action resulting in the judgment of violation or the Sheriff's sale. In the event that the proceeds from the Sheriff's sale are insufficient to reimburse the municipality in full as aforesaid, the violating Owner shall be personally responsible for and to the extent of such deficiency, in addition to any and all costs incurred by the municipality in connection with collecting such deficiency. In the event that a surplus remains after satisfying all of the above, such surplus, if any, shall be placed in escrow by the municipality for the Owner and shall be held in such escrow for a maximum period of two years or until such earlier time as the Owner shall make a claim with the municipality for such. Failure of the Owner to claim such balance within the two-year period shall automatically result in a forfeiture of such balance to the municipality. Any interest accrued or earned on such balance while being held in escrow shall belong to and shall be paid to the municipality, whether such balance shall be paid to the Owner or forfeited to the municipality.
5. Foreclosure by the municipality due to violation of the regulations governing affordable housing units shall not extinguish the restrictions of the regulations governing affordable housing units as the same apply to the low- and moderate- income unit. Title shall be conveyed to the purchaser at the Sheriff's sale, subject to the restrictions and provisions of the regulations governing the affordable housing unit. The Owner determined to be in violation of the provisions of this plan and from whom title and possession were taken by means of the Sheriff's sale shall not be entitled to any right of redemption.
6. If there are no bidders at the Sheriff's sale, or if insufficient amounts are bid to satisfy the First Purchase Money Mortgage and any prior liens, the municipality may acquire title to the low- and moderate-income unit by satisfying the First Purchase Money Mortgage and any prior liens and crediting the violating owner with an amount equal to the difference between the First Purchase Money Mortgage and any prior liens and costs of the enforcement proceedings, including legal fees and the maximum resale price for which the low- and moderate-income unit could have been sold under the terms of the regulations governing affordable housing units. This excess shall be treated in the same manner as the excess which would have been realized from an actual sale as previously described.
7. Failure of the low- and moderate-income unit to be either sold at the Sheriff's sale or acquired by the municipality shall obligate the Owner to accept an offer to purchase from any qualified purchaser which may be referred to the Owner by the municipality, with such offer to purchase being equal to the maximum resale price of the low- and moderate-income unit as permitted by the regulations governing affordable housing units.
8. The Owner shall remain fully obligated, responsible and liable for complying with the terms and restrictions of governing affordable housing units until such time as title is conveyed from the Owner.

**§ 12-1.7 Appeals.** Appeals from all decisions of an Administrative Agent designated pursuant to this Ordinance shall be filed in writing with the Borough Council.

**Section 12-2 “Mandatory Development Fee”**

# § 12-2.1 Purpose

This article establishes standards for the collection, maintenance, and expenditure of development fees that are consistent with COAH's regulations developed in response to P.L. 2008, c. 46, Sections 8 and 32-38 (N.J.S.A. 52:27D-329.2), the Statewide Non-Residential Development Fee Act (N.J.S.A. 40:55D-8.1 through 8.7), and the Borough’s 2021 Settlement Agreement with Fair Share Housing Center (ESX-L-2778-18). Fees collected pursuant to this article shall be used for the purpose of providing very-low, low- and moderate-income housing in accordance with a Court-approved spending plan.

**§ 12-2.2 Basic Requirements**

1. The Borough of Bloomingdale shall not spend development fees in a manner that is inconsistent with its approved Spending Plan.

**§ 12-2.3 Definitions**

The following terms when used in this Ordinance shall have the meaning given in this Section.

Affordable Housing Development shall mean a development included in the Housing Element and Fair Share Plan, and includes, but is not limited to, an inclusionary development, a municipally sponsored construction project or a 100% affordable housing development.

COAH or the Council shall mean the New Jersey Council on Affordable Housing established under the Fair Housing Act, or any successor agency charged with the administration of the Act.

Court shall mean the Superior Court of New Jersey, Law Division.

Developer shall mean the legal or beneficial owner or owners of a lot or of any land proposed to be included in a proposed development, including the holder of an option or contract to purchase, or other person having an enforceable proprietary interest in such land.

Development Fee shall mean money paid by a developer for the improvement of property as authorized by Holmdel Builder's Association v. Holmdel Borough, 121 N.J. 550 (1990) and the Fair Housing Act of 1985, N.J.S.A. 52:27d-301, et seq., and regulated by applicable COAH Rules.

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

Green Building Strategies shall mean strategies that minimize the impact of development on the environment, and enhance the health, safety and well-being of residents by producing durable, low-maintenance, resource-efficient housing while making optimum use of existing infrastructure and community services.

**§ 12-2.4 Residential Development Fees**

1. Imposed Fees.
	1. Within all residential zoning districts, developers shall pay a development fee of 1% of the equalized assessed value of any eligible residential activity.
	2. Nonresidential development in residential districts shall pay such fees as are set forth for nonresidential districts.
	3. If a "d" variance is granted pursuant to N.J.S.A. 40:55D-70d(5), then the additional residential units realized (above what is permitted by right under the existing zoning) will incur a bonus development fee of 6% rather than the development fee of 1%. However, if the zoning on a site has changed during the two year period preceding the filing of the "d" variance application, the density for the purposes of calculating the bonus development fee shall be the highest density permitted by right during the two year period preceding the filing of the "d" variance application.
2. Eligible extractions, including extractions for residential developments.
	1. Developers of low and moderate-income units shall be exempt from paying development fees.
	2. Developers are also exempt from paying development fees for the development of the following specific uses: not-for-profit uses; Federal, State and municipal government uses; churches and other places of worship; and public schools.
	3. Developers who expand an existing nonresidential structure or change to a more intense use shall pay a development fee. The development fee shall be calculated based on the increase in the equalized assessed value of the improved structure.
	4. Developers who have received preliminary or final approval prior to the effective date of this section shall be exempt from paying a development fee unless the developer seeks a substantial change in the approval.
	5. Developers who expand, enlarge or improve existing single family or two-family residences are exempt from paying development fees.

**§ 12-2.5 Non-Residential Development Fees**

1. Imposed Fees.
	1. Within all zoning districts, non-residential developers, except for developers of the types of development specifically exempted, shall pay a fee equal to two and one-half (2.5) percent of the equalized assessed value of the land and improvements, for all new non-residential construction on an unimproved lot or lots.
	2. Non-residential developers, except for developers of the types of development specifically exempted, shall also pay a fee equal to two and one-half (2.5) percent of the increase in equalized assessed value resulting from any additions to existing structures to be used for non-residential purposes.
	3. Development fees shall be imposed and collected when an existing structure is demolished and replaced. The development fee of two and a half percent (2.5%) shall be calculated on the difference between the equalized assessed value of the pre-existing land and improvement and the equalized assessed value of the newly improved structure, i.e. land and improvement, at the time final certificate of occupancy is issued. If the calculation required under this section results in a negative number, the non-residential development fee shall be zero.
2. Eligible exactions, ineligible exactions and exemptions for non-residential development.
	1. The non-residential portion of a mixed-use inclusionary or market rate development shall be subject to the two and a half (2.5) percent development fee, unless otherwise exempted below.
	2. The 2.5 percent fee shall not apply to an increase in equalized assessed value resulting from alterations, change in use within existing footprint, reconstruction, renovations and repairs.
	3. Nonresidential developments shall be exempt from the payment of nonresidential development fees in accordance with the exemptions required pursuant to the Statewide Non-Residential Development Fee Act (N.J.S.A. 40:55D-8.1 through 8.7), as specified in Form N-RDF "State of New Jersey Non-Residential Development Certification/Exemption." Any exemption claimed by a developer shall be substantiated by that developer.
	4. A developer of a nonresidential development exempted from the nonresidential development fee pursuant to the Statewide Non-Residential Development Fee Act shall be subject to the fee at such time as the basis for the exemption no longer applies, and shall make the payment of the nonresidential development fee, in that event, within three years after that event or after the issuance of the final certificate of occupancy for the nonresidential development, whichever is later.
	5. If a property which was exempted from the collection of a nonresidential development fee thereafter ceases to be exempt from property taxation, the owner of the property shall remit the fees required pursuant to this section within 45 days of the termination of the property tax exemption. Unpaid nonresidential development fees under these circumstances may be enforceable by the Borough of Bloomingdale as a lien against the real property of the owner.

**§ 12-2.6 Collection procedures**

1. Upon the granting of a preliminary, final or other applicable approval for a development, the applicable approving authority or entity shall notify or direct its staff to notify the construction official responsible for the issuance of a building permit.
2. For non-residential developments only, the developer shall also be provided with a copy of Form N-RDF “State of New Jersey Non-Residential Development Certification/Exemption” to be completed as per the instructions provided. The developer of a non-residential development shall complete Form N-RDF as per the instructions provided. The construction official shall verify the information submitted by the non-residential developer as per the instructions provided in the Form N-RDF. The Tax assessor shall verify exemptions and prepare estimated and final assessments as per the instructions provided in Form N-RDF.
3. The construction official responsible for the issuance of a building permit shall notify the local tax assessor of the issuance of the first building permit for a development which is subject to a development fee.
4. Within 90 days of receipt of that notice, the municipal tax assessor, based on the plans filed, shall provide an estimate of the equalized assessed value of the development.
5. The construction official responsible for the issuance of a final certificate of occupancy shall notify the local assessor of any and all requests for the scheduling of a final inspection on property which is subject to a development fee.
6. Within 10 business days of a request for the scheduling of a final inspection, the municipal assessor shall confirm or modify the previously estimated equalized assessed value of the improvements of the development; calculate the development fee; and thereafter notify the developer of the amount of the fee.
7. Should the Borough of Bloomingdale fail to determine or notify the developer of the amount of the development fee within 10 business days of the request for final inspection, the developer may estimate the amount due and pay that estimated amount consistent with the dispute process set forth in Subsection b. of Section 37 of P.L. 2008, c. 46 (N.J.S.A. 40:55D-8.6).
8. Fifty percent of the development fee shall be collected at the time of issuance of the building permit. The remaining portion shall be collected at the time of issuance of the certificate of occupancy. The developer shall be responsible for paying the difference between the fee calculated at building permit and that determined at the issuance of the certificate of occupancy. No certificate of occupancy shall be issued to the developer until all remaining developer fees have been paid in full.
9. Appeal of development fees
	1. A developer may challenge residential development fees imposed by filing a challenge with the County Board of Taxation. Pending a review and determination by the Board, collected fees shall be placed in an interest-bearing escrow account by Bloomingdale Borough. Appeals from a determination of the Board may be made to the tax court in accordance with the provisions of the State Tax Uniform Procedure Law, R.S.54:48-1 et seq., within 90 days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.
	2. A developer may challenge non-residential development fees imposed by filing a challenge with the Director of the Division of Taxation. Pending a review and determination by the Director, which shall be made within 45 days of receipt of the challenge, collected fees shall be placed in an interest-bearing escrow account by Bloomingdale Borough. Appeals from a determination of the Director may be made to the tax court in accordance with the provisions of the State Tax Uniform Procedure Law, R.S.54:48-1 et seq., within 90 days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.

**§ 12-2.7 Affordable Housing Trust Fund**

1. There is hereby created a separate, interest-bearing Housing Trust Fund to be maintained by the Chief Financial Officer for the purpose of depositing development fees collected from residential and nonresidential developers and proceeds from the sale of units with extinguished controls.
2. The following additional funds shall be deposited in the Affordable Housing Trust Fund and shall at all times be identifiable by source and amount:
	1. Payments in lieu of on-site construction of affordable units;
	2. Developer-contributed funds to make 10% of the adaptable entrances in a townhouse or other multistory attached dwelling unit development accessible;
	3. Rental income from municipally operated units;
	4. Repayments from affordable housing program loans;
	5. recapture funds;
	6. proceeds from the sale of affordable units; and
	7. Any other funds collected in connection with the Borough of Bloomingdale’s affordable housing program.
3. In the event of a failure by the Borough of Bloomingdale to comply with trust fund monitoring and reporting requirements or to submit accurate monitoring reports; or a failure to comply with the conditions of the judgment of compliance or a revocation of the judgment of compliance; or a failure to implement the approved spending plan and to expend funds within the applicable required time period as set forth in In re Tp. of Monroe, 442 N.J. Super. 565 (Law Div. 2015) (aff'd 442 N.J. Super. 563); or the expenditure of funds on activities not approved by the Court; or for other good cause demonstrating the unapproved use(s) of funds, the Court may authorize the State of New Jersey, Department of Community Affairs, Division of Local Government Services ("LGS"), to direct the manner in which the funds in the Affordable Housing Trust Fund shall be expended, provided that all such funds shall, to the extent practicable, be utilized for affordable housing programs within the Borough of Bloomingdale, or, if not practicable, then within the County.
	1. Any party may bring a motion before the Superior Court presenting evidence of such condition(s), and the Court may, after considering the evidence and providing the municipality a reasonable opportunity to respond and/or to remedy the noncompliant condition(s), and upon a finding of continuing and deliberate noncompliance, determine to authorize LGS to direct the expenditure of funds in the Trust Fund. The Court may also impose such other remedies as may be reasonable and appropriate to the circumstances.
4. All interest accrued in the Affordable Housing Trust Fund shall only be used to fund eligible affordable housing activities approved by the Court.

**§ 12-2.8** **Use of Funds**

1. The expenditure of all funds shall conform to a spending plan approved by the Superior Court. Funds deposited in the Affordable Housing Trust Fund may be used for any activity approved by the Court to address Bloomingdale Borough's fair share obligation and may be set up as a grant or revolving loan program. Such activities include, but are not limited to preservation or purchase of housing for the purpose of maintaining or implementing affordability controls; housing rehabilitation; new construction of affordable housing units and related costs; accessory apartments; a market to affordable program; regional housing partnership programs; conversion of existing nonresidential buildings to create new affordable units; green building strategies designed to be cost saving and in accordance with accepted national or state standards; purchase of land for affordable housing; improvement of land to be used for affordable housing; extensions or improvements of roads and infrastructure to affordable housing sites; financial assistance designed to increase affordability; administration necessary for implementation of the Housing Element and Fair Share Plan; and/or any other activity permitted by the Court and specified in the approved spending plan.
2. Funds shall not be expended to reimburse Bloomingdale Borough for past housing activities.
3. At least 30% of all development fees collected and interest earned on such fees shall be used to provide affordability assistance to very low-, low- and moderate-income households in affordable units included in the municipal Fair Share Plan. One-third of the affordability assistance portion of development fees collected shall be used to provide affordability assistance to those households earning 30% or less of the median income for Housing Region, in which Bloomingdale is located.
	1. Affordability assistance programs may include down payment assistance, security deposit assistance, low interest loans, rental assistance, assistance with homeowners' association or condominium fees and special assessments, and assistance with emergency repairs. The specific programs to be used for affordability assistance shall be identified and described within the spending plan.
	2. Affordability assistance to households earning 30% or less of median income may include buying down the cost of low- or moderate-income units in the municipal Fair Share Plan to make them affordable to households earning 30% or less of median income. The specific programs to be used for very-low-income affordability assistance shall be identified and described within the spending plan.
	3. Payments in lieu of constructing affordable housing units on site and funds from the sale of units with extinguished controls shall be exempt from the affordability assistance requirement.
4. The Borough of Bloomingdale may contract with a private or public entity to administer any part of its Housing Element and Fair Share Plan, including its programs for affordability assistance.
5. No more than 20% of all revenues collected from development fees may be expended on administration, including but not limited to salaries and benefits for municipal employees or consultants' fees necessary to develop or implement a new construction program, prepare a Housing Element and Fair Share Plan, and/or administer an affirmative marketing program or a rehabilitation program.
	1. In the case of a rehabilitation program, no more than 20 percent of the revenues collected from development fees shall be expended for such administrative expenses.
	2. Administrative funds may be used for income qualification of households, monitoring the turnover of sale and rental units, and compliance with the monitoring requirements. Legal or other fees related to litigation opposing affordable housing sites or related to securing or appealing a judgment from the Court are not eligible uses of the Affordable Housing Trust Fund.

**§ 12-2.9 Monitoring**

1. The Borough of Bloomingdale shall provide annual reporting of Affordable Housing Trust Fund activity to the New Jersey Department of Community Affairs, COAH or Local Government Services or other entity designated by the State of New Jersey, and Fair Share Housing Center, as well as posting it to the municipal website, using forms developed for this purpose by the New Jersey Department of Community Affairs, COAH or Local Government Services, or any other forms endorsed by the Special Master and Fair Share Housing Center

**§ 12-2.10 Ongoing collection of fees**

1. The ability of the Borough of Bloomingdale to impose, collect and expend development fees shall be permitted through the expiration of the repose period covered by its judgment of compliance and shall continue thereafter so long as Bloomingdale Borough has filed an adopted Housing Element and Fair Share Plan with the Court or with a designated state administrative agency, has petitioned for a judgment of compliance from the Court or for substantive certification or its equivalent from a state administrative agency authorized to approve and administer municipal affordable housing compliance and has received approval of its development fee ordinance from the entity that will be reviewing and approving the Housing Element and Fair Share Plan.
2. If the Borough of Bloomingdale fails to renew its ability to impose and collect development fees after the expiration of its judgment of compliance and repose, it may be subject to forfeiture of any or all funds remaining within its Affordable Housing Trust Fund. Any funds so forfeited shall be deposited into the "New Jersey Affordable Housing Trust Fund" established pursuant to Section 20 of P.L. 1985, c. 222 (N.J.S.A. 52:27D-320).
3. After the expiration of the judgment of compliance and repose, if the Borough does not pursue or obtain continued authorization, Bloomingdale Borough shall not impose a residential development fee on a development that receives preliminary or final site plan approval, retroactively impose a development fee on such a development, or expend any of its collected development fees.

## SECTION 2: Severability

If any section, part of any section, or clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the remaining provisions of this ordinance. The governing body of the Borough of Bloomingdale declares that it would have passed the ordinance and each section and subsection thereof, irrespective of the fact that any one or more of the subsections, sentences, clauses or phrases may be declared unconstitutional or invalid.

## SECTION 3: Effective Date.

This ordinance shall take effect immediately upon passage and publication according to law.

 BOROUGH OF BLOOMINGDALE

 COUNTY OF PASSAIC

ATTEST: STATE OF NEW JERSEY

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Theresa Sauer, Deputy Clerk John D’Amato, Mayor

**PUBLIC NOTICE**

**ORDINANCE NO. 25-2023**

**OF THE GOVERNING BODY**

**OF THE BOROUGH OF BLOOMINGDALE**

**AN ORDINANCE OF THE BOROUGH OF BLOOMINGDALE, COUNTY OF PASSAIC, STATE OF NEW JERSEY, TO REPEAL CHAPTER 12 “LOW AND MODERATE HOUSING” AND TO ESTABLISH A NEW CHAPTER 12 ENTITLED “AFFORDABLE HOUSING”**

**NOTICE IS HEREBY GIVEN**, that the above Ordinance was introduced and passed on first reading at an Official Meeting of the Governing Body of the Borough of Bloomingdale, County of Passaic, State of New Jersey held in the Municipal Building on June 13, 2023, and the same shall come up for final passage at an Official Meeting of the Governing Body to be held on June 27, 2023 at 7PM, at which time any persons interested shall be given the opportunity to be heard concerning said Ordinance. Copies of this Ordinance are available in the Clerk’s Office located at 101 Hamburg Turnpike, Bloomingdale, New Jersey.

**Purpose/Summary of Ordinance No. 25-2023:**

WHEREAS, the Borough herein updates its affordable housing regulations to be consistent with the Uniform Housing Affordability Control rules (N.J.A.C. 5:80-26.1), COAH’s substantive rules (N.J.A.C. 5:93), and the Fair Housing Act (N.J.S.A. 52:27D-301 et seq.)

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 Theresa Sauer, Deputy Clerk