

This Notice is being sent to you, for reference purposes, as per the Open Public Meetings Act Requirements, N.J.S.A. 10:4-8 and N.J.S.A. 10:4-18.

**AGENDA
SPECIAL COUNCIL MEETING
315 WESTFIELD AVE., CLARK, NJ 07066
Council Chambers
May 1, 2017
7:30 PM**

ROLL CALL:

Councilman Barr _____	Councilman O'Connor _____
Councilman Hund _____	Councilman Smith _____
Councilman Mazzarella _____	Councilman Toal _____
	Council President Albanese _____

PLEDGE OF ALLEGIANCE TO THE FLAG: MOMENT OF SILENCE

This meeting is in compliance with the Open Public Meetings Act as adequate notice of this meeting has been provided by sending written advanced notice of at least 48 hours to the Star Ledger, Union County Local Source, and TAP into Clark, by posting such Meeting Agenda on the Bulletin Board in Town Hall reserved for such announcements and the proper filing of said Notice. Formal action may be taken at this meeting.

PRESENTATION: Kevin O'Brien, Township Planner - Housing Element and Fair Share Plan

RESOLUTIONS:

1. Authorizing the Mayor and Township Clerk to execute a Developer's Agreement with Clark Commercial Center, LLC for a Retail Development located at 301 and 315 Central Avenue

AFFORDABLE HOUSING RESOLUTIONS:

2. Endorsing the Housing Element and Fair Share Plan of the Master Plan as adopted by the Planning Board on April 6, 2017
3. Adopting The Affirmative Fair Housing Marketing Plan in accordance with the Fair Housing Act and the New Jersey Uniform Housing Affordability Controls

INTRODUCTION OF ORDINANCES SET FORTH IN THE HOUSING ELEMENT AND FAIR SHARE PLAN:

4. AN ORDINANCE AMENDING CHAPTER 66 OF THE CODE OF THE TOWNSHIP OF CLARK ENTITLED AFFORDABLE HOUSING
5. AN ORDINANCE AMENDING CHAPTER 195, ENTITLED LAND USE AND DEVELOPMENT, ARTICLE XIX, AFFORDABLE HOUSING DEVELOPMENT FEES OF THE CODE OF THE TOWNSHIP OF CLARK
6. AN ORDINANCE AMENDING AND SUPPLEMENTING CHAPTER 195, ENTITLED LAND USE AND DEVELOPMENT, ARTICLE XXIII, DISTRICT REGULATIONS, OF THE CODE OF THE TOWNSHIP OF CLARK

PUBLIC COMMENTS:

Each person addressing the Council shall first give his/her name and address to the Clerk. All remarks shall be addressed to the Council as a body and shall not exceed 10 minutes in duration.

MAYOR, COUNCIL AND PROFESSIONAL COMMENTS:

ADJOURNMENT:

TOWNSHIP OF CLARK

Resolution _____

May 1, 2017

Motion _____ Second _____

BE IT RESOLVED by the Governing Body of the Township of Clark, County of Union, State of New Jersey, that it hereby authorizes the Mayor and Township Clerk to execute a Developer's Agreement with Clark Commercial Center, LLC, having its principal office located at 14 Cliffwood Avenue, Suite 200, Matawan, New Jersey 07747 for a Retail Development on the tract of land identified as Block 60, Lots 11 and 12, situated at 301 and 315 Central Avenue, Clark, New Jersey 07066.

ATTEST:

APPROVED:

EDITH L. MERKEL, RMC
Township Clerk

ANGEL ALBANESE
Council President

Res17/5-1AuthDevAgreementClarkCommercialCenter
Aye Nay Abstain Absent

Barr	_____
Hund	_____
Mazzarella	_____
O'Connor	_____
Smith	_____
Toal	_____
Albanese	_____

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Motion _____ Second _____

Resolution Endorsing the Housing Element and Fair Share Plan of the Township of Clark, Union County, New Jersey

WHEREAS, the Planning Board of the Township of Clark, Union County, State of New Jersey, adopted a revised Housing Element and Fair Share Plan of the Township's Master Plan dated April 6, 2017; and

WHEREAS, a true copy of the resolution of the Planning Board adopting the Housing Element and Fair Share Plan is attached pursuant to N.J.S.A. 40:55D-28; and

WHEREAS, the Planning Board adopted the Housing Element and Fair Share Plan at its duly noticed public hearing on April 6, 2017; and

WHEREAS, the Governing Body of the Township of Clark, in consultation with its legal counsel and planning consultant, has reviewed the above-referenced plan and believes that said Housing Element and Fair Share Plan is in the best interest of the Township of Clark and consistent with the goal of meeting its constitutional obligation to provide its fair share of affordable housing of low and moderate income persons.

NOW THEREFORE BE IT RESOLVED that the Governing Body of the Township of Clark, Union County, State of New Jersey, hereby endorses the Housing Element and Fair Share Plan dated, April 6, 2017 as adopted by the Clark Township Planning Board; and

BE IT FURTHER RESOLVED that the Township of Clark Master Plan Map be revised to reflect the above adoption of the Housing Element and Fair Share Plan; and

BE IT FURTHER RESOLVED that the Governing Body of the Township of Clark, directs that a certified copy of this Resolution be provided to the Township Attorney, Planning Consultant, the Honorable Karen Cassidy, Assignment Judge, Superior Court of New Jersey, Union County, and Special Master, Elizabeth McKenzie together with all other parties in interest as may appear on the service list filed IN THE MATTER OF THE APPLICATION OF THE TOWNSHIP OF CLARK, A MUNICIPAL CORPORATION OF THE STATE OF NEW JERSEY Docket No: UNN-L-002441-15

ATTEST:

APPROVED:

EDITH L. MERKEL, RMC
Township Clerk

ANGEL ALBANESE
Council President

Res17/5-1EndorsingHousingElement&FairSharePlan
Aye Nay Abstain Absent

Barr _____
Hund _____
Mazzarella _____
O'Connor _____
Smith _____
Toal _____
Albanese _____

TOWNSHIP OF CLARK PLANNING BOARD

RESOLUTION

**APPROVING THE HOUSING ELEMENT AND FAIR SHARE
PLAN OF THE TOWNSHIP OF CLARK MASTER PLAN**

Resolution No. 17-3

MEETING DATE: April 6, 2017

MOTION BY:

SECONDED:

**VOTE: (8) Ayes (0) Nays (0) Recused
(1) Absent (0) Abstained**

Ayes: Mayor Sal Bonaccorso, Councilman Frank Mazzarella, Michael Kurzawski, Kevin Koch, Robert Tarantino, Matthew Casey, Michael Altmann, Michael Triola

Nays: None

Abstained: None

Recusals: None

Absent: John Laezza

WHEREAS, The Municipal Land Use Law, N.J.S.A. 40:55D-28, provides that the Planning Board of a municipality may prepare, and after public hearing adopt or amend, a master plan, or component parts thereof, to guide the use of lands within the municipality in a manner which protects the public health and safety and promotes the general welfare; and

WHEREAS, the Township of Clark Planning Board ("Board") in full compliance with N.J.S.A. 40:55D-13, provided notice of a public hearing on the Housing Element and Fair Share Plan of the Township Master Plan; and

WHEREAS, a public hearing was held on April 6, 2017 on the Housing Element and Fair Share Plan of the Township Master Plan during which the Township's Planning expert, Kevin O'Brien, P.P., AICP, presented the plans, the Board had the opportunity to discuss the

plans and the public was provided the opportunity to ask questions and provide testimony regarding the plans; and

WHEREAS, the Housing Element of the Master Plan includes, recommendations for specific changes required to the Land Use and Development Code to implement the Housing Element and Fair Share Plan, specifically creating and amending the Township Code Section 195 for R-SH Age-Restricted/Senior Housing District, R-B-16 Multiple Family Residential District, R-B-20 Multiple Family Residential District and DTV Downtown Village District, Amended Zoning Map, Affordable Housing Control Ordinance and Development Fee Ordinance and the Board, with its Planning expert, did review those proposed changes and determine that they will appropriately implement these Master Plan components and as such are consistent with the Master Plan in compliance with the Board's responsibilities under N.J.S.A. 40:55D-26; and

WHEREAS, the Housing Element and Fair Share Plan along with the Land Use and Development Code changes are designed to comply with the Township's constitutional obligation to provide a realistic opportunity for its fair share of affordable housing and have been drafted by the Township's Planning expert to reflect and implement a settlement agreement negotiated in the Township's Affordable Housing Litigation, Docket No. UNN-L-002441-15; and

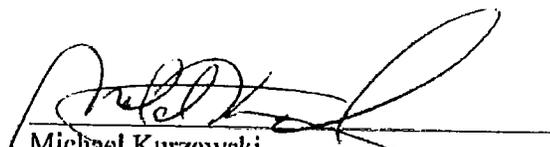
WHEREAS, the Township of Clark Planning Board, after thorough review and public hearing on the Housing Element and Fair Share Plan, dated April 6, 2017, prepared by Kevin O'Brien, P.P., A.I.C.P., Shamrock Enterprises, LTD., voted to approve the documents as component elements of the Township of Clark Master Plan.

NOW, THEREFORE BE IT RESOLVED by the Planning Board of the Township of

Clark that, based upon the presentation of Township Planner Kevin O'Brien, P.P., AICP, and a thorough review of the plans by the Board, the Housing Element and Fair Share Plan dated April 6, 2017, which are attached hereto and incorporated herein by reference, are hereby approved as elements of the Township of Clark Master Plan.

BE IT FURTHER RESOLVED that the proposed changes to the Land Use and Development Code, included in the Housing Element dated, April 6, 2017, specifically creating and amending the Township Code Section 195 for R-SH Age-Restricted/Senior Housing District, R-B-16 Multiple Family Residential District, R-B-20 Multiple Family Residential District and DTV Downtown Village District, Amending the Zoning Map, Affordable Housing Controls Ordinance and Development Fee Ordinance are determined, pursuant to N.J.S.A. 40:55D-26, to be consistent with the newly approved Housing Element and Fair Share Plan and are hereby referred to the Township Council for appropriate action.

BE IT FURTHER RESOLVED that the Board Secretary is directed to provide signed copies of this Resolution along with the approved Housing Element and Fair Share Plan to the Township Attorney, Mayor, Council, and to the Union County Planning Board.


Michael Kurzawski
Planning Board Chair


Donna Mazucco
Planning Board Secretary

TOWNSHIP OF CLARK
Resolution _____
May 1, 2017

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Motion _____ Second _____

RESOLUTION
ADOPTING THE AFFIRMATIVE FAIR HOUSING MARKETING PLAN FOR
THE TOWNSHIP OF CLARK, COUNTY OF UNION, NEW JERSEY

WHEREAS, in accordance with the Fair Housing Act and the New Jersey Uniform Housing Affordability Controls (N.J.A.C. 5:80-26-1, *et seq.*), the Township of Clark is required to adopt by resolution an Affirmative Marketing Plan to ensure that all affordable housing units created, including those created within the Township of Clark are affirmatively marketed to low and moderate income households, particularly those living and/or working within Housing Region 2, the Housing Region encompassing the Township of Clark.

NOW, THEREFORE, BE IT RESOLVED, that the Governing Body of the Township of Clark, County of Union, State of New Jersey, do hereby adopt the following Affirmative Marketing Plan:

Marketing Plan

All affordable housing units in the Township of Clark shall be marketed in accordance with the provisions herein unless otherwise provided by law or regulation of the State of New Jersey.

This Affirmative Marketing Plan shall apply to all developments that contain or will contain very low, low and moderate income units, including those that are part of the Township's prior round Fair Share Plan and its current Fair Share Plan and those that may be constructed in future developments not yet anticipated by the Fair Share Plan.

The Affirmative Marketing Plan shall be implemented by an Administrative Agent designated by and/or under contract to the Township of Clark. All the costs of advertising and affirmatively marketing affordable housing units shall be borne by the developers/sellers/owners of the affordable unit(s).

The Affirmative Marketing Plan is a regional marketing strategy designed to attract buyers and/or renters of all majority and minority groups, regardless of race, creed, color, national origin, ancestry, marital or familial status, gender, affectional or sexual orientation, disability, age or number of children to housing units which are being marketed by a developer or sponsor of 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 the Housing Region in which the municipality is located and covers the entire period of the deed restriction for each restricted housing unit. The

Township of Clark is in Housing Region 2, consisting of Essex, Morris, Union and Warren Counties.

The affirmative marketing process for available affordable units shall begin at least four months prior to the expected date of occupancy. Advertising and outreach shall take place during the first week of the marketing program and each month thereafter until all available units have been leased or sold.

The costs of advertising and affirmative marketing of the affordable units shall be the responsibility of the developer, sponsor or owner, with the advertisement subject to the review and approval of the Administrative Agent and paid for by the owner/developer/landlord.

Advertisements will be published in the following newspaper covering the entire Housing Region 2: The Star Ledger

Advertisements will be published in at least three locally oriented weekly newspapers within the region, one of which shall be circulated primarily within Union County and the other two of which shall be circulated primarily outside of Union County but within the housing region. In addition, information should be posted in the publications, Tap into Clark, Tap into Cranford, and Tap into Westfield.

Advertisements will be broadcast on the following regional cable television station: TV 36 Clark and TV 35 Cranford.

Advertisements will be placed on the following websites: Town of Clark Website <http://www.ourclark.com/>, NJ Housing Resource Center at <http://www.njhrc.gov/>.

The advertisement shall include a description of the:

1. Street address(es) of the units;
2. Directions to the units;
3. Range of prices for the units;
4. Numbers of bedrooms in units (bedroom mix);
5. Maximum income permitted to qualify for the units;
6. Location of applications;
7. Application fees, if any;
8. Number of units currently available; and
9. Anticipated dates of availability.

The Administrative Agent shall develop, maintain and regularly update a list of community contact person(s) and/or organizations(s) in Essex, Morris, Union and Warren Counties that will aid in Clark's affirmative marketing program. The list shall include as many contacts that will reach out to groups that are least likely to apply for housing within the region. Information shall be sent quarterly to every entity on the Township's affirmative marketing list: Please see Appendix I at the end of this Resolution for a list of all current community contacts, including reaching those least likely to apply, major employers, institutions, public entities, etc.

Preliminary Applications

Locations of applications, brochures, and flyers to affirmatively market the program are listed in Appendix II. Preliminary applications or links to online preliminary applications shall be provided by the Administrative Agent, the Developer, and the Municipal Housing Liaison to prospective applicants upon request. When on-line preliminary applications are utilized, if prospective applicants do not have internet access they will be given a phone number to call the Administrative Agent, who will then enter all pre-application information online during the phone call, and mail them a confirmation and details. If applicant prefers completing a paper copy themselves, a paper copy will be sent by mail to the prospective applicant.

Random Selection

Whenever necessary, a random selection method to select occupants of low and moderate income housing will be used by the Administrative Agent, in conformance with N.J.A.C. 5:80-26.16 (l). The Affirmative Marketing Plan shall provide a regional preference for all households that live and/or work in Housing Region 2 comprised of Essex, Morris, Union and Warren Counties.

Administration of Affirmative Marketing Plan

The Administrative Agent shall administer the Affirmative Marketing Plan. The Administrative Agent has the responsibility to income qualify low and moderate income households; to place income eligible households in low and moderate income units upon initial occupancy; to provide for the initial occupancy of low and moderate income units with income qualified households; to continue to qualify households for re-occupancy of units as they become vacant during the period of affordability controls; to assist with outreach to low and moderate income households; and to enforce the terms of the deed restriction and mortgage loan as per N.J.A.C 5:80-26-1, et seq.

Whenever appropriate, the Administrative Agent shall provide or direct qualified low and moderate income applicants to counseling services on subjects such as budgeting, credit issues, mortgage qualifications, rental lease requirements and landlord/tenant law. The Administrative Agent shall develop, maintain and update a list of entities and lenders willing and able to perform such services.

All developers/owners of low and moderate income housing units shall be required to undertake and pay the costs of the marketing of the affordable units in their respective developments, subject to the direction and supervision of the Administrative Agent.

The implementation of the Affirmative Marketing Plan for a new development that includes affordable housing shall commence at least 120 days before the issuance of either a temporary or permanent certificate of occupancy. The implementation of the Affirmative Marketing Plan shall continue until all affordable housing units are initially occupied and for as long as affordable units exist that remain deed restricted and for which the occupancy or re-occupancy of units continues to be necessary. Please note that in addition to complying with this Township-wide Affirmative Marketing Plan that the Administrative Agent shall also review and approve a separate Affirmative Marketing Plan for every new affordable development in Clark that is subject to NJAC 5:80-26.1

et seq. That document shall be completed by the owner/developer and will be compliant with the Township's Affirmative Marketing Plan as presented herein, and incorporate development specific details and permitted options, all subject to the Administrative Agent's review and approval. The development specific affirmative marketing plans will use the standard form for Region 2, included at the end of this document as Appendix III.

The Administrative Agent shall provide the Affordable Housing Liaison with the information required to comply with monitoring and reporting requirements pursuant to N.J.A.C.5:80-26-1, et seq.

I hereby certify that this is a true copy of a resolution duly adopted by the Governing Body of the Township of Clark at a Council meeting held on May 1, 2017.

ATTEST:

APPROVED:

EDITH L. MERKEL, RMC
Township Clerk

ANGEL ALBANESE
Council President

Res17/5-1AffordableHousingMarketingPlan
Aye Nay Abstain Absent

Barr	_____
Hund	_____
Mazzarella	_____
O'Connor	_____
Smith	_____
Toal	_____
Albanese	_____

INTRO ORD.
4

TOWNSHIP OF CLARK
Ordinance No. _____
Adopted _____

Introduced: May 1, 2017 Public Hearing: May 15, 2017
Motion: _____ Motion: _____
Seconded: _____ Seconded: _____

**AN ORDINANCE AMENDING CHAPTER 66 OF
THE CODE OF THE TOWNSHIP OF CLARK
ENTITLED AFFORDABLE HOUSING**

BE IT ORDAINED by the Governing Body of the Township of Clark that Chapter 66, entitled "Affordable Housing" of the Code of the Township of Clark is hereby amended in the following particulars:

SECTION 1: Chapter 66 is deleted in its entirety and replaced as follows:

§ 66-1. Affordable housing obligation.

- A. This chapter is intended to assure that low- and moderate-income units ("affordable units") are created with controls on affordability over time and that low- and moderate-income households shall occupy these units. This chapter shall apply except where inconsistent with applicable law.
- B. The Clark Township Planning Board has adopted a Housing Element and Fair Share Plan pursuant to the Municipal Land Use Law at N.J.S.A. 40:5513-1 et seq. The Fair Share Plan has been endorsed by the governing body. The Fair Share Plan describes the ways Clark Township shall address its fair share for low- and moderate-income housing as determined by the a Court of Competent Jurisdiction and documented in the Housing Element.
- C. This chapter implements and incorporates the Fair Share Plan and addresses the requirements of N.J.A.C. 5:93-1 et.seq., as may be amended and supplemented.
- D. The Township of Clark shall file monitoring reports as may be directed by a Court of Competent Jurisdiction regarding the status of the implementation of its Court-approved Housing Element and Fair Share Plan. The report shall be filed with the Union County Superior Court and shall be available to the public at the Clark Township Municipal Building, Municipal Clerk's Office, 430 Westfield Avenue, Clark, New Jersey.
- E. The following terms, when used in this chapter, shall have the meanings given in this section:

ACCESSORY APARTMENT A self-contained residential dwelling unit with a kitchen, sanitary facilities, sleeping quarters and a private entrance, which is created within an existing home, or through the conversion of an existing accessory structure on the same site, or by an addition to an existing home or accessory building, or by the construction of a new accessory structure on the same site.

ACT 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 chapter, 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 DEVELOPMENT - A housing development 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 one-hundred-percent 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, and approved for crediting by the Court, 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:

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

ASSISTED LIVING RESIDENCE - 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.

A COURT OF COMPETENT JURISDICTION - The approving authority, 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.

DEFICIENT 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 components of a building as provided in the definition of "major system" below.'

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.

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 nonresidential 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.

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

MARKET-RATE 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.

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.

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

RANDOM SELECTION PROCESS - 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 Regional Income Limits published annually.

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 UIETORP or MONT.

UHAC - The 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.

WEATHERIZATION - Building insulation (for attic, exterior walls and crawl space), siding to improve energy efficiency, replacement storm windows, replacement storm doors, replacement windows and replacement doors, and is considered a major system for rehabilitation.

§ 66-3. Affordable housing programs.

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

A. A rehabilitation program.

- (1) The Township of Clark'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, and the Rehabilitation Subcode, N.J.A.C. 5:23-6. The Program is also guided by N.J.A.C. 5:93-5.2 and is subject to all applicable laws, regulations, ordinances and codes of the New Jersey Department of Community Affairs (DCA) and the Township of Clark. The Township program may include units rehabilitated under the Union County Home Improvement Program.
- (2) Both owner-occupied and renter-occupied units shall be eligible for rehabilitation funds.
- (3) All rehabilitated units shall remain affordable to low- and moderate-income households for a period of 10 years (the control period). For owner-occupied units the control period will be enforced with a lien, and for renter-occupied units the control period will be enforced with a deed restriction.

- (4) The Township of Clark shall dedicate an average of at least \$10,000 for each unit to be rehabilitated through this program, reflecting the minimum average hard cost of rehabilitation for each unit.
- (5) The Township of Clark shall adopt a resolution committing to fund any shortfall in the rehabilitation programs for the Township of Clark.
- (6) The Township of Clark shall designate, subject to the approval of a Court of Competent Jurisdiction, one or more administrative agents to administer the rehabilitation program in accordance with N.J.A.C. 5:93-5.2. The administrative agent(s) shall provide a rehabilitation manual for the owner-occupancy rehabilitation program and for the rental-occupancy rehabilitation program to be adopted by resolution of the governing body and subject to approval of a Court of Competent Jurisdiction. The rehabilitation manual shall be available for public inspection in the office of the Municipal Clerk and in the office(s) of the administrative agent(s).
- (7) Units in a rehabilitation program shall be exempt from 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 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 UHAC.
 - (c) Rents in rehabilitated units may increase annually which will be updated regularly, either by DCA, or in its absence, via the formula approved by the Court of Jurisdiction and attached as an Appendix to the Township's Housing Rehabilitation Policies and Procedures Manual.
 - (d) Applicant and/or tenant households shall be certified as income-eligible in accordance with UHAC, except that households in owner-occupied units shall be exempt from the regional asset limit.

B. A market-to-affordable program.

- (1) A market-to-affordable program may be established to permit the purchase or subsidization of units through a written agreement with the property owner and sold or rented to low- and moderate-income households. Subject to the provisions of Subsection B(2)(c) below, the market-to-affordable programs may produce both low- and moderate-income units (the program may be limited to only low- or only moderate-income units)
- (2) The following provisions shall apply to market-to-affordable programs:
 - (a) At the time they are offered for sale or rental, eligible units may be new, preowned or vacant.
 - (b) The units shall be certified to be in sound condition as a result of an inspection performed by a licensed building inspector.

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

§ 66-4. New construction.

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

A. Low/moderate split and bedroom distribution of affordable housing units:

- (1) The fair share obligation shall be divided equally between low- and moderate-income units, except that where there is an odd number of affordable housing units, the extra unit shall be a low-income unit. At least 13% of all restricted rental units shall be very low income units (affordable to a household earning 30% or less of median income). The very low income units shall be counted as part of the required number of low income units within the development.
- (2) In each affordable development, at least 50% of the restricted units within each bedroom distribution shall be low-income units.
- (3) Affordable developments that are not age-restricted shall be structured in conjunction with realistic market demands such that:
 - (a) The combined number of efficiency and one-bedroom units shall be no greater than 20% of the total low- and moderate-income units;
 - (b) At least 30% of all low- and moderate-income units shall be two-bedroom units;

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

B. Accessibility requirements:

- (1) The first floor of all restricted townhouse dwelling units and all restricted units in all other multistory buildings shall be subject to the technical design standards of the Barrier Free Subcode, N.J.A.C. 5:23-7.
- (2) All restricted townhouse dwelling units and all restricted units in other multistory buildings in which a restricted dwelling unit is attached to at least one other dwelling unit shall have the following features:
 - (a) An adaptable toilet and bathing facility on the first floor;
 - (b) An adaptable kitchen on the first floor;
 - (c) An interior accessible route of travel on the first floor;
 - (d) An 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;
 - (e) If not all of the foregoing requirements in (a) through (d) can be satisfied, then an interior accessible route of travel must be provided between stories within an individual unit, but if all of the terms of paragraphs (a) through (d) directly above have been satisfied, then an interior accessible route of travel shall not be required between stories within an individual unit;
 - (f) An accessible entranceway as set forth at P.L. 2005, c. 350 (N.J.S.A. 52:27D-311a et seq.) and the Barrier Free Subcode, N.J.A.C. 5:23-7, or evidence that the Township of Clark 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 Township of Clark's affordable housing trust fund sufficient to install accessible entrances in 10% of the affordable units that have been constructed with adaptable entrances.
 - [3] The funds deposited under Subsection B(2)(f)[2] above shall be used by the Township of Clark 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 Code Official of the Township of Clark.

[5] Once the Construction Code 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 Township of Clark'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.

C. 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 Design.

(1) In inclusionary developments, to the extent possible, very low, low and moderate income units shall be integrated with the market units.

(2) In inclusionary developments, very low, low, and moderate income units shall have access to all of the same common elements and facilities as the market units.

D. 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, utilizing the regional income limits established by COAH. If COAH is not functioning, Clark will utilize the procedures approved by the Court and included in the Home Improvement Program Policies and Procedures Manual as Appendix B, and entitled "Current Income Limits and Rental Increase Procedures."

(2) The maximum rent for restricted rental units within each affordable development shall be affordable to households earning no more than 60% of median income, and the average rent for restricted low- and moderate-income units shall be affordable to households earning no more than 52% of median income.

(3) The developers and/or municipal sponsors of restricted rental units shall establish at least one rent for each bedroom type for both low-income and moderate-income units.

(a) At least 13% of all low- and moderate-income rental units shall be affordable to households earning no more than 30% of regional median income.

(4) The maximum sales price of restricted ownership units within each affordable development shall be affordable to households earning no more than 70% of median income, and each affordable development must achieve an affordability average of 55% for restricted ownership units; in achieving this affordability average, moderate-income ownership units must be available for at least three different prices for each

bedroom type, and low-income ownership units must be available for at least two different prices for each bedroom type.

- (5) In determining the initial sales prices and rents for compliance with the affordability average requirements for restricted units other than assisted living facilities, the following standards shall be used:
 - (a) A studio shall be affordable to a one-person household;
 - (b) A one-bedroom unit shall be affordable to a one-and-one-half-person household;
 - (c) A two-bedroom unit shall be affordable to a three-person household;
 - (d) A three-bedroom unit shall be affordable to a four-and-one-half-person household; and
 - (e) A four-bedroom unit shall be affordable to a six-person household.
- (6) In determining the initial rents for compliance with the affordability average requirements for restricted units in assisted living facilities, the following standards shall be used:
 - (a) A studio shall be affordable to a one-person household;
 - (b) A one-bedroom unit shall be affordable to a one-and-one-half-person household; and
 - (c) A two-bedroom unit shall be affordable to a two-person household or to two one-person households.
- (7) The initial purchase price for all restricted ownership units shall be calculated so that the monthly carrying cost of the unit, including principal and interest (based on a mortgage loan equal to 95% of the purchase price and the Federal Reserve H.15 rate of interest), taxes, homeowner and private mortgage insurance and condominium or homeowner association fees do not exceed 28% of the eligible monthly income of the appropriate size household as determined under N.J.A.C. 5:80-26.4, as may be amended and supplemented; provided, however, that the price shall be subject to the affordability average requirement of N.J.A.C. 5:80-26.3, as may be amended and supplemented.
- (8) The initial rent for a restricted rental unit shall be calculated so as not to exceed 30% of the eligible monthly income of the appropriate household size as determined under N.J.A.C. 5:80-26.4, as may be amended and supplemented; provided, however, that the rent shall be subject to the affordability average requirement of N.J.A.C. 5:80-26.3, as may be amended and supplemented.
- (9) The price of owner-occupied low- and moderate-income units may increase annually based on the percentage increase in the regional median income limit for each housing region. In no event shall the maximum resale price established by the administrative agent be lower than the last recorded purchase price.
- (10) The rent of low- and moderate-income units may be increased annually based on the percentage increase in the Housing Consumer Price Index for the United States. This increase shall not exceed 9% in any one year. Rents for units constructed pursuant to

low-income housing tax credit regulations shall be indexed pursuant to the regulations governing low-income housing tax credits.

- (11) Utilities. Tenant-paid utilities that are included in the utility allowance shall be so stated in the lease and shall be consistent with the utility allowance approved by DCA for its Section 8 program.

§ 66-5. Affirmative marketing requirements.

- A. The Township of Clark shall adopt by resolution an affirmative marketing plan, subject to approval of a Court of Competent Jurisdiction, compliant with N.J.A.C. 5:80-26.15, as may be amended and supplemented.
- B. The affirmative marketing plan is a regional marketing strategy designed to attract buyers and/or renters of all majority and minority groups, regardless of race, creed, color, national origin, ancestry, marital or familial status, gender, affectional or sexual orientation, disability, age or number of children to housing units which are being marketed by a developer, sponsor or owner of affordable housing. The affirmative marketing plan is also intended to target those potentially eligible persons who are least likely to apply for affordable units in that region. It is a continuing program that directs all marketing activities toward Housing Region 2 and covers the period of deed restriction. The affirmative marketing plan shall provide a regional preference for all households that live and/or work in Housing Region 2 comprised of Essex, Morris, Union and Warren counties.
- C. The administrative agent designated by the Township of Clark shall assure the affirmative marketing of all affordable units consistent with the affirmative marketing plan for the municipality.
- D. 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.
- E. The affirmative marketing process for available affordable units shall begin at least four months prior to the expected date of occupancy.
- F. 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 of Clark.

§ 66-6. Occupancy standards.

- A. In referring certified households to specific restricted units, to the extent feasible, and without causing an undue delay in occupying the unit, the administrative agent shall strive to:
- (1) Provide an occupant for each bedroom; and
 - (2) Provide children of different sex with separate bedrooms; and
 - (3) Prevent more than two persons from occupying a single bedroom; and
 - (4) Provide separate bedrooms for parents and children.

- B. Additional provisions related to occupancy standards (if any) shall be provided in the municipal Operating Manual.

§ 66-7. Control periods for restricted ownership units and enforcement mechanisms.

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

§ 66-8. Price restrictions for restricted ownership units, homeowner association fees and resale prices.

Price restrictions for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.1 et seq., as may be amended and supplemented, including:

- A. The initial purchase price for a restricted ownership unit shall be approved by the administrative agent.
- B. The administrative agent shall approve all resale prices, in writing and in advance of the resale, to assure compliance with the foregoing standards.

- C. The method used to determine the condominium association fee amounts and special assessments shall be indistinguishable between the low- and moderate-income unit owners and the market unit owners.
- D. The owners of restricted ownership units may apply to the administrative agent to increase the maximum sales price for the unit on the basis of capital improvements. Eligible capital improvements shall be those that render the unit suitable for a larger household or the addition of a bathroom.

§ 66-9. Buyer income eligibility.

- A. Buyer income eligibility for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.1 et seq., as may be amended and supplemented, such that low-income ownership units shall be reserved for households with a gross household income less than or equal to 50% of median income, and moderate-income ownership units shall be reserved for households with a gross household income less than 80% of median income.
- B. Notwithstanding the foregoing, however, the Administrative Agent may, upon approval by the Township Council, and subject to the Court's approval, permit moderate-income purchasers to buy low-income units in housing markets if the Administrative Agent determines that there is an insufficient number of eligible low-income purchasers to permit prompt occupancy of the units. All such low-income units to be sold to moderate-income households shall retain the required pricing and pricing restrictions for low-income units.
- C. 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.
- D. A certified household that purchases a restricted ownership unit must occupy it as the certified household's principal residence and shall not lease the unit; provided, however, that the Administrative Agent may permit the owner of a restricted ownership unit, upon application and a showing of hardship, to lease the restricted unit to another certified household for a period not to exceed one year.

§ 66-10. Limitations on indebtedness secured by ownership unit; subordination.

- A. Prior to incurring any indebtedness to be secured by a restricted ownership unit, the administrative agent shall determine in writing that the proposed indebtedness complies with the provisions of this section.
- B. With the exception of original purchase money mortgages, during a control period neither an owner nor a lender shall at any time cause or permit the total indebtedness secured by a restricted ownership unit to exceed 95% 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).

§ 66-11. Control periods for restricted rental units.

- A. Control periods for restricted rental units shall be in accordance with N.J.A.C. 5:80-26.11, as may be amended and supplemented, and each restricted rental unit shall remain subject to the requirements of this chapter until the Township of Clark elects to release the unit from such requirements pursuant to action taken in compliance with N.J.A.C. 5:80-26.1 et seq., as may be amended and supplemented, and prior to such an election, a restricted rental unit must remain subject to the requirements of N.J.A.C. 5:80-26.1 et seq., as may be amended and supplemented, for at least 30 years.
- B. Deeds of all real property that include restricted rental units shall contain deed restriction language. The deed restriction shall have priority over all mortgages on the property, and the deed restriction shall be filed by the developer or seller with the records office of the County of Union. A copy of the filed document shall be provided to the administrative agent within 30 days of the receipt of a certificate of occupancy.
- C. A restricted rental unit shall remain subject to the affordability controls of this chapter, 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.

§ 66-12. Price restrictions for rental units; leases.

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

§ 66-13. Tenant income eligibility.

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

- (3) Moderate-income rental units shall be reserved for households with a gross household income less than 80% of median income.
- B. The administrative agent shall certify a household as eligible for a restricted rental unit when the household is a very-low-income, low-income 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.
- C. The applicant shall file documentation sufficient to establish the existence of the circumstances in Subsection B(1) through (5) above with the administrative agent, who shall counsel the household on budgeting.

§ 66-14. Administration.

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

- (a) Serving as the municipality's primary point of contact for all inquiries from the state, affordable housing providers, administrative agents and interested households;
 - (b) The implementation of the Affirmative Marketing Plan and affordability controls;
 - (c) When applicable, supervising any contracting administrative agent;
 - (d) Monitoring the status of all restricted units in the Township of Clark's Fair Share Plan;
 - (e) Compiling, verifying and submitting annual reports as required by a Court of Competent Jurisdiction;
 - (f) Coordinating meetings with affordable housing providers and administrative agents, as applicable; and
 - (g) Attending continuing education opportunities on affordability controls, compliance monitoring and affirmative marketing as offered.
- B. The Township of Clark shall designate by resolution of the Township Council, subject to the approval of a Court of Competent Jurisdiction, one or more administrative agents to administer newly constructed affordable units in accordance with UHAC.
- C. An Operating Manual shall be provided by the administrative agent(s) to be adopted by resolution of the governing body and subject to approval of a Court of Competent Jurisdiction. The Operating Manuals shall be available for public inspection in the office of the Municipal Clerk and in the office(s) of the administrative agent(s).
- D. Duties and responsibilities.
- (1) 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:
 - (a) Attending continuing education opportunities on affordability controls, compliance monitoring, and affirmative marketing as offered or approved by COAH or the Affordable Housing Professionals of New Jersey (AHPNJ);
 - (b) Affirmative marketing;
 - (c) Household certification;
 - (d) Affordability controls;
 - (e) Records retention;
 - (f) Resale and re-rental;
 - (g) Processing requests from unit owners; and
 - (h) Enforcement, though the ultimate responsibility for retaining controls on the units rests with the municipality.

- (2) The administrative agent shall have authority to take all actions necessary and appropriate to carry out its responsibilities hereunder.

§ 66-15. Enforcement of affordable housing regulations.

- A. Upon the occurrence of a breach of any of the regulations governing the affordable unit by an owner, developer or tenant, the municipality shall have all remedies provided at law or equity, including but not limited to foreclosure, tenant eviction, municipal fines, a requirement for household recertification, acceleration of all sums due under a mortgage, recoupment of any funds from a sale in the violation of the regulations, injunctive relief to prevent further violation of the regulations, entry on the premises, and specific performance.
- B. After providing written notice of a violation to an owner, developer or tenant of a low- or moderate-income unit and advising the owner, developer or tenant of the penalties for such violations, the municipality may take the following action against the owner, developer or tenant for any violation that remains uncured for a period of 60 days after service of the written notice:
 - (1) The municipality may file a court action pursuant to N.J.S.A. 2A:58-11 alleging a violation, or violations, of the regulations governing the affordable housing unit. If the owner, developer or tenant is found by the court to have violated any provision of the regulations governing affordable housing units, the owner, developer or tenant shall be subject to one or more of the following penalties, at the discretion of the court:
 - (a) A fine of not more than \$500 or imprisonment for a period not to exceed 90 days, or both. Each and every day that the violation continues or exists shall be considered a separate and specific violation of these provisions and not as a continuing offense.
 - (b) In the case of an owner who has rented his or her low- or moderate-income unit in violation of the regulations governing affordable housing units, payment into the Township of Clark Affordable Housing Trust Fund of the gross amount of rent illegally collected.
 - (c) In the case of an owner who has rented his or her low- or moderate-income unit in violation of the regulations governing affordable housing units, payment of an innocent tenant's reasonable relocation costs, as determined by the court.
 - (2) The municipality may file a court action in the Superior Court seeking a judgment, which would result in the termination of the owner's equity or other interest in the unit, in the nature of a mortgage foreclosure. Any judgment shall be enforceable as if the same were a judgment of default of the first purchase money mortgage and shall constitute a lien against the low- and moderate-income unit.
- C. Such judgment shall be enforceable, at the option of the municipality, by means of an execution sale by the Sheriff, at which time the low- and moderate-income unit of the violating owner shall be sold at a sale price which is not less than the amount necessary to fully satisfy and pay off any first purchase money mortgage and prior liens and the costs of the enforcement proceedings incurred by the municipality, including attorney's fees. The violating owner shall have the right to possession terminated as well as the title conveyed pursuant to the Sheriff's sale.

- D. The proceeds of the Sheriffs 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 Sheriffs sale. In the event that the proceeds from the Sheriffs sale are insufficient to reimburse the municipality in full as aforesaid, the violating owner shall be personally responsible for and to the extent of such deficiency, in addition to any and all costs incurred by the municipality in connection with collecting such deficiency. In the event that a surplus remains after satisfying all of the above, such surplus, if any, shall be placed in escrow by the municipality for the owner and shall be held in such escrow for a maximum period of two years or until such earlier time as the owner shall make a claim with the municipality for such. Failure of the owner to claim such balance within the two-year period shall automatically result in a forfeiture of such balance to the municipality. Any interest accrued or earned on such balance while being held in escrow shall belong to and shall be paid to the municipality, whether such balance shall be paid to the owner or forfeited to the municipality.
- E. Foreclosure by the municipality due to violation of the regulations governing affordable housing units shall not extinguish the restrictions of the regulations governing affordable housing units as the same apply to the low- and moderate-income unit. Title shall be conveyed to the purchaser at the Sheriffs 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 Sheriffs sale shall not be entitled to any right of redemption.
- F. If there are no bidders at the Sheriffs sale, or if insufficient amounts are bid to satisfy the first purchase money mortgage and any prior liens, the municipality may acquire title to the low- and moderate-income unit by satisfying the first purchase money mortgage and any prior liens and crediting the violating owner with an amount equal to the difference between the first purchase money mortgage and any prior liens and costs of the enforcement proceedings, including legal fees and the maximum resale price for which the low- and moderate-income unit could have been sold under the terms of the regulations governing affordable housing units. This excess shall be treated in the same manner as the excess which would have been realized from an actual sale as previously described.
- G. Failure of the low- and moderate-income unit to be either sold at the Sheriffs sale or acquired by the municipality shall obligate the owner to accept an offer to purchase from any qualified purchaser which may be referred to the owner by the municipality, with such offer to purchase being equal to the maximum resale price of the low- and moderate-income unit as permitted by the regulations governing affordable housing units.
- H. The owner shall remain fully obligated, responsible and liable for complying with the terms and restrictions of governing affordable housing units until such time as title is conveyed from the owner.

§ 66-16. Appeals.

Appeals from all decisions of an administrative agent designated pursuant to this chapter shall be filed in writing with a Court of Competent Jurisdiction.

SECTION 2: **Inconsistent Ordinances:** Any ordinances of the Township of Clark which are inconsistent with the provisions of this ordinance are hereby repealed to the extent of such inconsistency.

SECTION 3: **Effective Date:** This Ordinance shall take effect upon adoption and publication, according to law.

Effective date: June 7, 2017

ATTEST:

APPROVED:

EDITH L. MERKEL, RMC
Township Clerk

ANGEL ALBANESE
Council President

SALVATORE BONACCORSO
Mayor

Ord17/5-1AmendCh66AffordableHousing
Aye Nay Abstain Absent

Barr	_____
Hund	_____
Mazzarella	_____
O'Connor	_____
Smith	_____
Toal	_____
Albanese	_____

TOWNSHIP OF CLARK

Ordinance No. _____

Adopted _____

Introduced: May 1, 2017 Public Hearing: May 15, 2017

Motion: _____ Motion: _____

Seconded: _____ Seconded: _____

AN ORDINANCE AMENDING CHAPTER 195, ENTITLED LAND USE AND DEVELOPMENT, ARTICLE XIX, AFFORDABLE HOUSING DEVELOPMENT FEES OF THE CODE OF THE TOWNSHIP OF CLARK

BE IT ORDAINED by the Governing Body of the Township of Clark that Chapter 195, entitled "Land Use and Development" Article XIX entitled "Development Fees Pursuant to COAH Rules" of the Code of the Township of Clark is hereby amended in the following particulars:

SECTION 1: Chapter 195 Land Use and Development, Article XIX previously entitled Development Fees Pursuant to COAH Rules is deleted in its entirety and replaced as follows:

ARTICLE XIX

AFFORDABLE HOUSING DEVELOPMENT FEES

• **Section 195-98 - Findings and purposes**

a. The New Jersey Supreme Court, in Holmdel Builder's Ass'n v. Holmdel Twp, 121 N.J. 550 (1990), determined that mandatory development fees are both statutorily and constitutionally permissible. The Court further anticipated that the Council on Affordable Housing (COAH) would promulgate appropriate development fee rules specifying, among other things, the standards for these development fees. The purpose of this section is to provide such rules pursuant to N.J.A.C. 5:94, et seq.

b. The Township Council finds and declares that the creation and preservation of affordable housing in the Township serves the public interest. Maintaining and improving a stock of sound affordable housing requires affirmative steps by local government working cooperatively with public bodies at all levels and with the private sector. The purpose of this Section is to create in the Township of Clark a trust fund from payment of development fees

to assist in the marshaling of public and private monies dedicated to affordable housing projects and programs.

- **Section 195-99 - Definitions**

- a. Affordable Housing. Any housing unit with an acquisition price or rent level not exceeding the maximum resale or rent level for low and moderate income housing as set forth in N.J.A.C. 5:94, et seq.

- b. Development Fees. Money paid by an individual, person, partnership, association, company, or corporation for the improvement of property as permitted in N.J.A.C. 5:94, et seq.

- c. Equalized Assessed Value. The value of a property determined by the Township Tax Assessor through a process designed to ensure that all property in the Township is assessed at the same assessment ratio or ratios required by law. Estimates at the time of building permit may be obtained by the Tax Assessor utilizing estimates for construction cost. Final equalized assessed value will be determined at project completion by the Tax Assessor.

- d. Substantive Certification. A determination by any court of competent jurisdiction approving Clark Township's Housing Element and Fair Share Plan in accordance with the provisions of the Fair Housing Act and the rules and criteria as set forth therein. A grant of "substantive certification" shall be valid for a period of ten years in accordance with the terms and conditions contained therein.

- **Section 195-100 - Development fee schedule**

- a. Residential Development.

- 1) Residential development fees shall be one and one half percent (1.5%) of the equalized assessed value for residential development which is not exempt from the provisions of this Article as set forth below, provided no increase in density is permitted.

- 2) If a "d" variance is granted by the Clark Township Zoning Board of Adjustment, pursuant to N.J.S.A. 40:55D-70d(5), the additional residential units realized (above what is permitted by right under the existing zoning) will incur a bonus development fee of six percent (6%) rather than the development fee of one and one half percent (1.5%). However, if the zoning on a site has changed during the two (2) year period preceding

the filing of the "d" variance application, the base density for the purposes of calculating the bonus development fee shall be the highest density permitted by right during the two (2) years preceding the filing with the Clark Township Zoning Board of Adjustment of the "d" variance application.

b. Nonresidential Development.

1) Nonresidential development fees shall be two and one half percent (2.5%) of the equalized assessed value for nonresidential development within the CG, CI, CN, CO, COH, LCI, districts, which is not exempt from the provisions of this subsection as set forth in this article.

2) If a "d" variance is granted by the Clark Township Zoning Board of Adjustment, pursuant to N.J.S.A. 40:55D-70d(4), then the additional floor area ration (FAR) realized (above what is permitted by right under the existing zoning) will incur a bonus development fee of six percent (6%) rather than the development fee of two and one half percent (2.5%). However, if the zoning on a site has changed during the two (2) year period preceding the filing of the "d" variance application, the base density for the purposes of calculating the bonus development fee shall be the highest density permitted by right during the two (2) years preceding the filing with the Clark Township Zoning Board of Adjustment of the "d" variance application.

c. Not built required housing

1) The development fee for each unit of required but not built affordable housing shall be fifty thousand dollars (\$50,000) per unit.

d. Total payment.

1). The total amount of payment to the Township shall be the largest amount of sections a, b or c above.

• **Section 195-101 - Eligible exactions, ineligible exactions and exemptions**

a. Except as provided in Subsection 3 (a) (2) above, developers of low and moderate income units shall be exempt from development fees.

b. Development fees may only be collected for any residential structure which requires the installation of a new foundation (excluding foundations required for an addition to or

renovation of an existing residential structure or a foundation required for an accessory structure to an existing residential structure).

c. All forms of new nonresidential construction shall be subject to development fees; provided, however, that development fees may only be collected for improvements which add useable or rentable footage to an existing non-residential structure. In the event that a development fee is collected for a nonresidential structure and thereafter usable or rentable footage is obtained through modification of the said structure, a development fee may be collected for the additional useable or rentable footage based upon the increase in the equalized assessed value of the improved structure.

d. Developments that have received preliminary or final approval prior to the adoption and final publication of this Ordinance shall be exempt from development fees unless the developer seeks a substantial change in the approval.

e. The Township exempts the following types of development from imposition of development fees:

- 1) Development by the Township or any of its instrumentalities;
- 2) development by charitable or not-for-profit entities formed and legally established in accordance with the laws of the State of New Jersey; and

• **Section 195-102 - Collection of development fees**

The Township shall collect fifty percent (50%) of the fee on any specific development prior to and as a condition of the issuance of the building permit therefore. The remaining portion shall be collected prior to and as a condition of the issuance of the certificate of occupancy. Once the final equalized assessed value of a particular development has been determined by the Tax Assessor, and such final equalized assessed value is greater than the estimated equalized assessed value, the developer shall, within ten (10) business days from receipt of notification from the Township, pay to the Township the difference between the development fees required to be paid by the developer once such final equalized assessed value has been determined and the estimated development fees actually paid by the developer. The failure of the developer to make timely payments of the aforesaid deficiency shall entitle the Township to file, without notice to the developer, a lien against the subject development. In the event that Township shall file such lien, the Township may add to the aforesaid deficiency amount reasonable attorney fees to file and discharge such lien, together with any and all costs incurred to file and discharge said lien. In

the event that the estimated equalized assessed value proves to have been too high, the Township shall promptly refund the difference between the estimated development fees actually paid by the developer and the development fees required to be paid by the developer once such final equalized assessed value has been determined.

- **Section 195-103 - Contested fees**

Imposed and collected development fees that are challenged shall be placed in an interest-bearing escrow account by the Chief Financial Officer of the Township. If all or a portion of the contested fees are returned to the developer, the accrued interest on the returned amount shall also be returned.

- **Section 195-104 - Housing trust fund**

All development fees shall be deposited with the Chief Financial Officer of the Township in a separate designated interest-bearing housing trust fund. The development fees placed in the housing trust fund shall be deemed "dedicated revenues" as such term is defined in the N.J.S.A. 40A:4-36.

- **Section 195-105 - Use of money**

a. The Township shall use revenues collected from development fees for any activity approved by any court of competent jurisdiction for addressing the Township's fair share obligation. Such activities include, but are not limited to, rehabilitation, new construction, regional contribution agreements, purchase of new land for low and moderate income housing, improvement of land to be used for low and moderate income housing, extension and/or improvements of roads and infrastructure to low and moderate income housing sites, assistance designed to render units to be more affordable and administration of the implementation of the Housing Element and Fair Share Plan. The expenditure of all money shall conform to a spending plan approved by any court of competent jurisdiction.

b. Funds shall not be expended to reimburse the Township for past housing activities.

c. After subtracting development fees collected to finance a regional contribution agreement, a rehabilitation program or a new construction project that are necessary to address the municipality's affordable housing obligation, at least thirty percent (30%) of the balance remaining shall be used to provide affordability assistance to low and moderate income

households in affordable units included in a 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 thirty percent (30%) or less of median income by region.

1) Affordability assistance programs may include down payment assistance, security deposit assistance, low interest loans, and rental assistance.

2) Affordability assistance to households earning thirty percent (30%) or less of median income may include buying down the cost of low income units in a municipal Fair Share Plan to make them affordable to households earning thirty percent (30%) or less than median income. The use of development fees in this manner shall entitle a municipality to bonus credits pursuant to N.J.A.C. 5:94-4.22.

3) Payments in lieu of constructing affordable units on site and funds from the sale of units with extinguished controls shall be exempt from the affordability assistance requirement.

d. No more than twenty percent (20%) of the revenues collected from development fees shall be expended on administration, including, but not limited to, salaries and benefits for Township Employees or consultant fees necessary to develop or implement a rehabilitation program, a new construction program, a regional contribution agreement, a Housing Element and Fair Share Plan, and an affirmative marketing program. Administrative funds may be used for income qualification of households, monitoring the turnover of sale and rental units, and compliance with COAH's monitoring requirements. Development fees shall not be used to defray the costs of existing staff.

- **Section 195-106 - Spending plans**

The Township shall submit to a court of competent jurisdiction a spending plan for the development fees collected by it prior to the expiration of its substantive certification period. Plans to spend development fees shall consist of the following information;

- a. a projection of revenues anticipated from imposing fees on development, based on historic activity;
- b. a description of the administrative mechanism that the Township will use to collect and distribute revenues;

- c. a description of the anticipated use of all development fees;
- d. a schedule for the creation or rehabilitation of housing units;
- e. in the event of the Township envisions being responsible for public sector or nonprofit construction of housing, a pro forma statement of the anticipated costs and revenues associated with the development;
- f. the manner through which the Township will address any expected or unexpected shortfall if the anticipated revenues from development fees are not sufficient to implement the plan;
- g. a description of the funds anticipated; and
- h. a schedule for spending.

- **Section 195-107 - Ongoing collection of development fees**

The ability for Clark Township to impose, collect and expend development fees shall expire with the expiration of its substantive certification unless the Township has filed a revised and adopted Housing Element and Fair Share Plan, has petitioned for substantive certification for the succeeding round, and has received approval from any court of competent jurisdiction of a revised development fee ordinance prior to the expiration. If Clark Township fails to act before the expiration of its substantive certification, the Township may only resume the imposition and collection of development fees by filing a revised and adopted Housing Element and Fair Share Plan, petitioning for substantive certification for the succeeding round and after receiving approval from any court of competent jurisdiction of a revised development fee ordinance. Clark Township shall not impose a development fee on a development that receives preliminary or final approval after the expiration of its substantive certification, nor shall Clark Township retroactively impose a development fee on such a development. Clark Township shall not expend development fees after the expiration of its substantive certification.

SECTION 2: **Inconsistent Ordinances:** Any ordinances of the Township of Clark which are inconsistent with the provisions of this ordinance are hereby repealed to the extent of such inconsistency.

SECTION 3: **Effective Date:** This Ordinance shall take effect upon adoption and publication, according to law.

Effective date: June 7, 2017

ATTEST:

APPROVED:

EDITH L. MERKEL, RMC
Township Clerk

ANGEL ALBANESE
Council President

SALVATORE BONACCORSO
Mayor

Ord17/5-1AmendCh195ArticleXIXDevelopmentFees
Aye Nay Abstain Absent

Barr	_____
Hund	_____
Mazzarella	_____
O'Connor	_____
Smith	_____
Toal	_____
Albanese	_____

TOWNSHIP OF CLARK

Ordinance No. _____

Adopted _____

Introduced: May 1, 2017 Public Hearing: May 15, 2017

Motion: _____ Motion: _____

Seconded: _____ Seconded: _____

AN ORDINANCE AMENDING AND SUPPLEMENTING CHAPTER 195, ENTITLED LAND USE AND DEVELOPMENT, ARTICLE XXIII, DISTRICT REGULATIONS, OF THE CODE OF THE TOWNSHIP OF CLARK

BE IT ORDAINED by the Governing Body of the Township of Clark that Chapter 195, entitled "Land Use and Development" Article XXIII entitled "District Regulations" of the Code of the Township of Clark is hereby amended and supplemented in the following particulars:

SECTION 1: Section 195-130 R-SH Age-Restricted/Senior Housing Overlay District is deleted and replaced as follows:

§ 195-130 R-SH Age-Restricted/Senior Housing District.

A. Purpose of district. The purpose of the Age-Restricted/Senior Housing District is to permit construction of an age-restricted multifamily residential development with a twenty-percent affordable housing set-aside in accordance with the Township's adopted Housing Element and Fair Share plan, the requirements of a Court of Competent Jurisdiction and the terms and conditions of the Township's substantive certification.

B. Permitted uses: age-restricted multifamily residential development containing a twenty-percent set-aside for low- and moderate-income households ages 55 years and older. The development may be constructed as multifamily dwellings, multiple-group dwellings, or garden apartments, townhouses or a townhouse/flat combination.

C. Development standards:

- (1) **Minimum tract area:** 10 acres.

- (2) **Minimum frontage:** a minimum of 250 feet on a paved public street.
- (3) **Density.** The maximum density shall be 32 units per acre for multifamily dwellings, multiple-group dwellings, or garden apartments, and 15 units per acre of gross site area for townhouses and townhouse/apartment/flat combinations.
- (4) **Low- and moderate-income housing requirements.** A minimum of 20% of the total age-restricted dwelling units shall be affordable to low- and moderate-income households aged 55 years or older in accordance with the standards and requirements specified in § 195-129D, but excluding § 195-129D(2)(c) and (d).
- (5) **Building height.** Maximum building height shall be 45 feet and four stories.
- (6) **Design standards.** All development shall incorporate the following design standards. Waivers from these standards may be granted by the Board pursuant to N.J.S.A. 40:55D-51b.
 - (a) **Building design.** The objectives of the building design standards are to provide overall high-quality building with special emphasis on methods that reduce the visual impact of large buildings. The exterior appearances of buildings shall complement the character of existing development in the surrounding area.
 - (b) **Specific design features that reduce the visual impact of large buildings shall be used. These include but are not limited to:**
 - [1] Elements that draw focus, introduce scale and provide three-dimensional effects.
 - [2] Variations and articulation to overall building facades by changing the facade plane.
 - [3] Use of subdued wall coloration, patterning, texture and reveals.
 - [4] Extensive use of landscaping to shield and break up building planes.
 - (c) **Building mass.** Solid and unarticulated buildings are not permitted. The mass, scale and visual impact of buildings shall be reduced by staggered building walls. The staggered building walls shall incorporate a setback or bump-out that, in the opinion of the Board, provides an equivalent reduction in the mass, scale and visual impact of the buildings.
 - (d) **Architectural interest.** To provide architectural interest, create a three-dimensional effect and further reduce the visual scale and impact of a building, the following techniques shall also be used:

[1] Variations in building treatment shall be liberally used and shall include painted panels, awnings or canopies, wall openings, wall texture changes, changes in building height and variations in rooflines.

[2] Building entries and building corners shall be readily identifiable through the use of canopies, marquees, architectural treatment and the use of different materials.

[3] Extensive use of small-scale elements, such as planter walls and hedges, shall be provided particularly around building entrances.

[4] Landscaping shall be employed to further reduce the visual impact of building mass.

(e) Materials.

[1] The front and two side elevations of all buildings and structures shall be constructed of brick, architectural block, architectural precast concrete or tilt-up construction using similar materials of equally high quality and aesthetics. Utility standard concrete panels or masonry units may be used on rear elevations if the rear elevations are not visible from any public right-of-way after berming, fencing or landscaping treatment.

[2] Rooflines and parapets shall be designed to minimize the visual impact of rooftop-mounted equipment, such as vents and stacks, from public rights-of-way.

(f) Pedestrian circulation.

[1] On-site concrete or brick sidewalks, or such other material acceptable to the Board, shall be provided to create a continuous pedestrian network and to connect with existing sidewalks and neighborhoods.

[2] Vehicular and pedestrian circulation patterns shall be separated. A landscaped buffer shall provide a separation between pedestrian and vehicular ways.

[3] Pedestrian crossings shall be indicated by such techniques as changed pavement materials or texture, signals, signage, or painted stripes, as determined by the Board.

[4] Secure and convenient pedestrian walkway access shall be provided between parking lots, sidewalks and primary entrances to buildings. Sidewalks shall be barrier-free, a minimum of 5 feet in width and shall be set back a minimum of 5 feet from all buildings.

(7) Setbacks. The following setback standards shall apply:

(a) Buildings:

[1] Front yard: 45 feet or the height of the principal building, whichever is greater.

[2] Side yard: 40 feet.

[3] Rear yard: 40 feet.

(b) Accessory building:

[1] Front yard: 50 feet.

[2] Side yard: 25 feet.

[3] Rear yard: 25 feet.

(8) Building coverage. Buildings and accessory structures shall cover not more than 40% of the lot or parcel area. Accessory structures devoted to parking shall count towards total lot coverage.

(9) Total lot coverage. Not more than 70% of the lot or parcel area shall be covered by a combination of buildings, accessory structures, parking areas, driveways, and other impervious surfaces.

(10) Minimum open space. Not less than 30% of the parcel area shall be open space as defined in § 195-111.

(11) Parking. Off-street parking shall be provided in accordance with the Residential Site Improvement Standards, but in no event shall the parking ratio for one- and two-bedroom units be greater than 1.5 spaces per unit. No off-street parking shall be located less than 25 feet from any property line. A carport and adjacent driveway space shall be counted as two spaces; designated stacked parking spaces shall also be counted as two spaces. Parking spaces may be located at grade in the building footprint (garage), without limitation.

(12) Landscaped areas, buffer areas, and recreation facilities. All areas not occupied by buildings, driveways, walkways, and parking areas shall be suitably landscaped and be arranged such that appropriate active and passive recreation opportunities will be provided on site for the residents of the development (e.g., walking paths, benches, gazebos, or ponds or water features); a suitable landscaped buffer strip of at least 25 feet in width shall be provided to the property boundaries to form a visual screen.

(13) Parking lot setback and landscaping. Parking areas shall be attractively landscaped in accordance with the following standards:

(a) Parking lots shall be set back a minimum of 25 feet from the right-of-way of a public street. The setback area shall be landscaped with shade trees and shrubs adaptable to the location and able to provide low-level screening of the view of the parking lot; at least one shade tree for each 40 feet of frontage shall be provided.

(b) In addition to landscaping required along public streets, the interior of the parking lot shall be landscaped with at least one tree for every 20 parking

spaces, which shall be planted in suitably prepared and protected landscaping islands.

(c) No more than 20% of the required parking shall be provided between the building line and the public right-of-way.

(14) Townhouse and townhouse/apartment combination building spacing. The minimum spacing between buildings shall be 50 feet between front and front/back, 35 feet front/back to side and 25 feet end to end. The minimum setbacks from driveways and parking areas shall be 15 feet from primary buildings, unless a garage is attached.

SECTION 2: Section 195-131 DTV Downtown Village District is deleted and replaced as follows:

§ 195-131 DTV Downtown Village District.

A. Purpose of the district.

(1) The downtown of any community should be a mixed use center with many diverse retail shops and restaurants where the community can gather on nights and weekends. The Downtown Village District has been created in that area along Westfield Avenue between Washington Street and Broadway, from Denman Avenue and Benjamin Street to the Rahway border. The purpose of the DTV Downtown Village District is to permit construction of an multifamily residential development with a fifteen percent affordable housing set-aside in accordance with the Township's adopted Housing Element and Fair Share plan. The DTV Zone District is intended to encourage retail sales and personal services oriented to pedestrian shopping on the ground floor and other commercial activity and residential use on the upper floors.

(2) Authentic period (Colonial, Federal or Victorian) reproductions are encouraged to complement the established character of more recently constructed buildings. In any case, as a minimum, in order to assure compatibility of new building construction or alterations of existing buildings, the building design standards in this section shall be adhered to, except that the Planning Board may grant waivers of specific requirements on a showing by the developer of unavoidable hardship.

(3) Exterior walls shall be finished with face brick, integrally colored masonry units (not panels), or wood clapboards, cedar shingles or vertical boards. All exterior walls of buildings shall be finished with the same materials or combinations of materials. Exceptions require Board of Adjustment or Planning Board approval.

(4) Visible sections of roof areas shall be cedar shingle or textured asphalt shingle, in dark colors. Mansard roofs, when provided, shall be full canopies of textured asphalt shingle, or fiberglass in dark colors.

(5) All design features applied to building exteriors shall be functional, rather than superimposed for decorative purposes only, unless part of authentic period architecture. Shutters, when provided, shall be designed to fit the windows to which they are attached.

(6) No rooftop mechanical structures shall be permitted in the DTV Zone without Planning Board or Board of Adjustment approval. All mechanicals shall be adequately screened so as to conceal them.

(7) All development applications containing proposed new buildings and structures or alterations or modifications to existing structures shall conform to the Building site design standards set forth in Section 195-182 of the Land Use and Development Ordinance.

B. Principal uses and structures. The following principal uses and structures shall be permitted in the DTV Zone District:

(1) Business establishments devoted primarily to the retail sales of goods and personal services on the premises. Retail establishments that serve local needs may include the sale of baked goods, office supplies, flowers and the dispensing of pharmaceutical products;

(2) Taverns and restaurants and food establishments intended for food consumption on the premises or for takeout of food;

(3) Outdoor dining;

(4) Personal and consumer service establishments, such as hair salons;

(5) Banks and other financial institutions engaged in the business of accepting deposits from the public and/or extending credit to the public in the form of loans. Such business must be conducted on the premises and must be the principal activity of the use on the premises;

(6) Business, administrative and professional offices or other business establishments providing the following services:

- (a) Finance, insurance or real estate sales or services;
- (b) Business or professional services;
- (c) Health services;
- (d) Social services;
- (e) Consulting services;
- (f) Private clubs and service organizations;

(7) Museums, art galleries and indoor motion-picture theaters and theaters for conducting live entertainment or cultural performances; music and dance studios;

(8) Child care centers;

(9) Governmental buildings and municipal parking facilities;

(10) Public parks and playgrounds;

(11) Residential dwelling units limited to the second, third and fourth floors;

(12) Commercial parking lots.

C. Accessory uses and structures. The following accessory uses and structures shall be permitted in the DTV Zone District:

(1) Parking and parking facilities as regulated in Article **XXIV**.

(2) Signs, pursuant to the provisions of Article **XXV**, for the uses for which signs are permitted.

(3) Other accessory uses and structures customarily subordinate and incidental to permitted principal uses and permitted conditional uses.

D. Conditional uses and structures. The following conditional uses and structures shall be permitted in the DTV District only if they comply with the appropriate regulations for such uses or structures in Article **XXVIII**:

- (1) Nonprofit chartered membership organizations;
- (2) Residential-type public utility facilities; and
- (3) Certain telecommunications antennas as set forth in Article **XXVI**.

E. Prohibited uses and structures. Any use or structure, other than those uses or structures permitted in Subsections **B**, **C** and **D** above, are prohibited. In addition, and notwithstanding the above permitted uses, the following uses shall be specifically prohibited:

- (1) Any business conducted outside the confines of a building, except those temporary activities permitted by special permission from the Township Mayor and Council or allowed elsewhere in the Ordinance;
- (2) Gasoline filling stations, gasoline service stations, public garages, automobile body repair or painting shops;
- (3) Lumberyards or building material yards;
- (4) Sale, rental or repair of automobiles, motorcycles, boats, trailers, lawn mowers, small gasoline or other liquid-fuel engines;
- (5) Dry-cleaning establishments where the dry cleaning is done on the premises;
- (6) Warehouses or businesses which do not sell directly to the general public;
- (7) Public or private schools;
- (8) Funeral services, undertakers, crematories and morticians;
- (9) Residential use of any kind, other than those uses as permitted in Subsection **B(10)** above. Existing nonconforming residential buildings or structures shall not be extended or enlarged for use relating to a business, unless the first floor is used entirely for business use;
- (11) All aboveground and underground bulk storage of liquefied petroleum gases, gasoline, diesel fuel, kerosene, No. 2 fuel, fuel oil, chemicals or similar

hazardous, flammable or combustible liquids in any amount, except as permitted otherwise by permit. Aboveground or basement storage of up to 530 gallons of kerosene or No. 2 heating fuel in approved storage tanks and used exclusively for heating purposes on the premises is exempted from the above prohibition;

(12) Any building, structure or use which would create an undue hazard of fire, explosion or nuisance by reason of odor, noise, dust or smoke, or which in any way would be detrimental to the health, public morals and public safety of the community; and

(13) Private commercial parking lots as a principal use.

F. Area, yard and building dimensions. In any DTV District, the following dimensional requirements shall be applied, unless otherwise excepted:

(1) Minimum lot dimensions:

(a) Lot area: 7,500 square feet.

(b) Lot frontage: 75 feet.

(2) Minimum yards.

(a) Front yard. There shall be a minimum front yard of 15 feet, except that when abutting a residential district, the front yard requirement of such residential district shall apply to the abutting yard. No parking service shall be located closer than five feet to any street line.

(b) Side yard. There are no minimum single side yard requirements, except that when abutting a residential district, the side yard requirement of such residential district shall apply to the abutting yard. The total of both side yards should be a minimum of 20 feet.

(c) Rear yard: 20 feet for principal structures; five feet for accessory structures.

(3) Maximum building dimensions:

(a) Height: 45 feet and 4 stories.

(b) Building coverage: 80%.

(c) Impervious cover: 90%.

(d) Floor area ratio: 3.0.

(e) Density: 32 units per acre.

(4) Open space. There shall be a minimum of 10% open space.

G. Streetscape standards. Private development within the DTV District shall include street improvements to enhance the downtown streetscape. Required streetscape improvements will include a specific architectural and site design theme similar to the streetscape improvements undertaken by the Township of Clark within this area during the period 2000 through 2001. Site improvements will include benches, trash receptacles, area lighting, street trees, brick pavers and planters. These improvements shall be consistent with plans and specifications on file with the Township Engineer. Architectural details and standards not included therein will be developed and adopted by the Township Engineer to encourage a unity among the diverse uses and structures that make up this village neighborhood. Building architectural features will involve facade and large window treatments, cornice lines that are visually connective with neighboring buildings, finishes and rooflines.

H. Integrated shopping units.

(1) Nothing in this section shall be construed to prevent the construction or erection of a series or row of attached stores, shops or offices on a single piece of property, or a composite of lots under one ownership, where such a grouping forms an integrated limited shopping unit. Such unit shall be constructed or erected in accordance with a plot plan and shall meet any applicable dimensional requirements set forth in this section for the DTV District. Each such integrated shopping unit shall consist of a group of individual shops or offices and shall have a uniform architectural design and appearance. Such design shall be consistent with the goals and objectives of the zone.

(2) Signs shall be in accordance with the provisions of Article **XXV**. In addition, such shopping unit is permitted one sign stating the name or designation of such shopping unit or listing the names or designations of stores, shops or offices therein. Such sign shall be no greater in area than 48 square feet and shall be no higher than the height of the principal building. Any illumination of such sign shall be non-flashing, uncolored and confined to the face of such sign.

I. Screening of commercial uses. Any lot used for commercial purposes which abuts any permitted dwellings, public buildings or institutional premises in the DTV District or other district along any lot line, except a front lot line or side street line, shall be screened along such lot line. Such screen shall be a solid wall or a solid fence not less than four feet in height, together with a three-foot planting strip along the outside face of such wall or fence, planted in shrubs or evergreens. In lieu of such wall, fence and planting strip, a compact evergreen hedge of not less than three feet in height at the

time of planting may be used. Such wall, fence, planting or hedge shall be maintained in good condition, and no advertising shall be placed thereon. Such screening shall be indicated on the site plan.

SECTION 3: Section 195-140.2 R-B - 16 Multiple-Family Residential District is added as new district and citation as follows:

§ 195-140.2 R-B - 16 Multiple-Family Residential District.

A. Purpose of district. The purpose of the R-B District is to allow for the construction of multifamily residential buildings, including townhouses and garden apartments, meeting the minimum density requirement for inclusionary housing and providing for the required set-aside of units within such developments affordable to low- and moderate-income families, complying with the obligation of the Township to provide a regional fair share of low- and moderate-income housing.^[1]

B. Permitted uses. The permitted uses are townhouses and garden apartments.

C. Development standards.

(1) Definition of uses. Garden apartments include multiple dwellings arranged in flats, up to 40 feet in height. Townhouses comprise single-family dwellings attached side by side, up to 2 1/2 stories in height. A half story is one within a gable roof, in which not over 1/2 of the floor area of the full story below has a full ceiling height.

(2) Density. The maximum density shall be sixteen (16) units per acre of site area.

(3) Lower-income housing requirements. A minimum of 20% of the housing units shall be sold or rented and shall be maintained for a minimum period of 30 years so as to be affordable to families and persons of low and moderate income, under the lower-income housing requirements specified in Subsection **D** below.

(4) Building requirements, garden apartments. Maximum building height shall be 40 feet, and maximum building length shall be 120 feet.

(5) Building requirements, townhouses. Maximum building height shall be 2 1/2 stories and 35 feet, and there shall not be more than six housing units per structure.

(6) Setbacks and spacing, garden apartments. The minimum setback from street and property lines shall be 50 feet, except that accessory garages, if provided, may be within 20 feet of side or rear lot lines. The minimum distance between buildings shall be 35 feet between fronts and backs, and 20 feet end to end. The minimum setback from parking areas and driveways shall be 10 feet.

(7) Setbacks and spacing, townhouses. The minimum setback from streets and property lines shall be 50 feet. The minimum separation between buildings shall be 50 feet between fronts and backs, and 25 feet end to end. The minimum setbacks from driveways and parking areas shall be 20 feet from building fronts and 25 feet from building rears, and 20 feet on building ends.

(8) Landscaped areas, buffer areas, and recreation facilities. All areas not occupied by buildings, driveways, walkways, and parking areas shall be suitably landscaped and shall be arranged such that appropriate active and passive recreation facilities will be provided. Where the site adjoins other zones on the side or rear, a suitable landscaped buffer strip of at least five feet in width shall be provided to form a visual screen.

(9) Parking areas and access drives. A minimum of two parking spaces shall be provided for each dwelling unit. For townhouses, one of these spaces shall be provided within the unit or in a garage, except that this requirement shall not apply to lower-income units. All off-street parking areas shall be surfaced in accordance with Township standards. No off-street parking shall be located within front yards or within less than 10 feet from side and rear property lines.

(10) Other general design and site requirements. Other general design and site requirements shall be as required in the R-A Multiple-Family Apartment Residential District, in § 195-128 hereunder, as well as the standards below:

(a) Maximum impervious cover: 80%.

(b) There shall be a minimum of 20% open space.

D. Lower-income housing requirements.

(1) Purpose. The purpose of this section is to establish criteria for the development of land to comply with the provisions of the New Jersey Supreme Court decision commonly referred to as "Mt. Laurel II." The regulations and controls contained in this section shall be interpreted to assure the construction

of lower-income housing which meets the standards and guidelines set forth in Mt. Laurel II.

(2) Number and type of lower-income dwelling units required.

(a) Garden apartment and townhouse developments shall be required to provide 20% of all dwelling units to be affordable for lower-income households.

(b) At least 1/2 of all lower-income units shall meet HUD Section 8 eligibility requirements for very low income and 1/2 shall meet HUD eligibility requirements for lower income (Mt. Laurel II Moderate Income). There shall be a range of affordability within the maximum income limits as required by all applicable regulations.

(c) The developer shall agree not to impose age restrictions upon the occupants of any low- and moderate-income unit.

(d) Unit size distribution shall be as follows, divided evenly between low and moderate income:

[1] At a minimum, 35% of all low- and moderate-income units shall be two-bedroom units;

[2] At a minimum, 15% of all low- and moderate-income units shall be three-bedroom units; and

[3] No more than 20% of all low- and moderate-income units may be efficiency units.

(e) The lower-income units shall be architecturally similar to the market rate units and shall be generally distributed among the market rate units rather than isolated.

(3) Pricing of low and moderate income units.

(a) The average price of low and moderate income units within an inclusionary development shall be, as best as practicable, affordable to households at 57.5% of median income as contained in NJAC 5:92-12.4.

(b) For purchased housing, as best as practicable, the following distribution of prices shall be used for every 20 low and moderate income units:

	Proposed Pricing Stratification
Low	1 at 40% through 42.5%
	3 at 42.6% through 47.5%
	6 at 47.6% through 50%
Moderate	1 at 50.1% through 57.5%
	1 at 57.6% through 64.5%
	1 at 64.6% through 68.5%
	1 at 68.6% through 72.5%
	2 at 72.6% through 77.5%
	4 at 77.6% through 80%

(c) For initial occupancy, priority shall be given to households that fall within the median income categories delineated in the preceding subsection.

(d) In computing affordability and eligibility, not more than 30% of the family income may be used for rental housing and 28% for sales housing, as follows:

Rental units: rent, excluding utilities. Maximum rent shall be calculated as a percentage of the uncapped Section 8 income limits.

Sales: Principal and interest

Units:

Insurance

Taxes

Condominium or homeowners' association fees

Condominium or homeowners' association fees shall be consistent with N.J.A.C. 5:92-12.12(a), which is as follows:

5:92-12.12 Initial pricing

(a) Municipalities shall require that the initial price of a low and moderate income owner-occupied single family housing unit be established so that after a downpayment of 10%, the monthly principal, interest, taxes, insurance and condominium fees do not exceed 28% of an eligible gross monthly income. Municipalities shall, by ordinance, require that master deeds of inclusionary development regulate condominium or homeowner association fees or special assessments of low and moderate income purchasers at a specific percentage of those paid by market purchasers. Once established within the master deed, the percentage shall not be amended without prior approval from a Court of Competent Jurisdiction.

(e) The following criteria shall be considered in determining rents and sale prices:

- [1] Efficiency units shall be affordable to one-person households.
- [2] One-bedroom units shall be affordable to two-person households.
- [3] Two-bedroom units shall be affordable to three-person households.
- [4] Three-bedroom units shall be affordable to five-person households.

(4) **Subsidies.** Government subsidies may be used at the discretion of the applicant to fulfill the requirements of this section. The lack of the subsidies shall in no way alter or diminish the lower-income requirements of this section.

(5) Phasing of construction.

(a) Within inclusionary developments, low- and moderate-income housing units shall be built in accordance with the following schedule:

Minimum Percentage of Low- and Moderate-Income Units Completed	Percentage of Market Housing Units Completed
0%	25%
10%	25%, plus 1 unit
50%	50%
75%	75%
100%	90%
100%	100%

(b) Any development for which a subdivision or site plan has been approved shall be considered a single development for purposes of this section, regardless of whether parts or sections are sold or otherwise disposed of to persons of legal

entities other than the one which received approval. All such approvals and conditions of approvals shall run with the land. Any tracts or parcels sold shall include documentation, satisfactory to the Township Attorney, setting forth the requirements for low- and moderate-income housing units.

(6) Administration of low and moderate income housing.

(a) The governing body is hereby designated the Affordable Housing Board of the Township to administer or to provide for and supervise the administration of low and moderate income housing units hereunder and to assure that such units are made available and remain affordable to low- and moderate-income households for a period of not less than 30 years.

(b) The Township Administrator is hereby designated to carry out such administrative responsibilities within the Township as may be determined by the Affordable Housing Board.

(c) Appropriate outside agencies such as the Affordable Housing Management Service of the New Jersey Department of Community Affairs may be utilized for such administrative responsibilities as designated by the Affordable Housing Board of the Township.

(d) The cost of such administration by outside agencies shall be met, to a reasonable extent, by the developers of the housing projects including low- and moderate-income units.

(7) Resale and rental of lower-income housing.

(a) All lower-income dwelling units shall be required to have covenants running with the land to control the resale price of for-sale units or to employ other legal mechanisms which shall be approved by the Township Attorney and will, in his opinion, ensure that such housing will remain permanently affordable to persons of lower income for a period of at least 30 years.

(b) Selection procedures and an appropriate administration mechanism for assuring that low- and moderate-income housing units remain affordable to low- and moderate-income households shall be directed and administered by the Affordable Housing Board or an agency designated by it.

(c) The price of an owner-occupied housing unit and the rents of affordable housing units may increase annually based on the percentage increase in median income for each housing region as determined from the uncapped Section 8 income limits, published by HUD, or other recognized standards.

(d) Persons wishing to sell affordable units shall notify the Affordable Housing Board or an agency designated by it of the intent to sell. The seller may apply for permission to offer the unit to a non-income-eligible household at the maximum price permitted. The seller shall document efforts to sell the unit to an income-eligible household as part of this application. If the request is granted, the seller may offer low-income housing units to moderate-income households and moderate-income housing units to households earning in excess of 80% of the median. In no case shall the seller be permitted to receive more than the maximum price permitted. In no case shall a sale pursuant to this section eliminate the resale controls on the unit or permit any subsequent seller to convey the unit except in full compliance with the terms of N.J.A.C. 5:92-12.

(e) Property owners of single-family, owner-occupied housing may apply to the Affordable Housing Board or an agency designated by it for permission to increase the maximum price for eligible capital improvements. Eligible capital improvements shall be those that render the unit suitable for a larger household. In no event shall the maximum price of an improved housing unit exceed the limits of affordability for the larger household. Property owners shall apply to the Affordable Housing Board or an agency designated by it if an increase in the maximum sales price is sought.

(f) A judgment of the foreclosure or a deed in lieu of foreclosure by a financial institution regulated by state and/or federal law shall extinguish controls on affordable housing units, provided there is compliance with N.J.A.C. 5:92-10. Notice of foreclosure shall allow the Township, through the Affordable Housing Board, to purchase the affordable housing unit at the maximum permitted sale price.

(g) In the event of a foreclosure sale, the owner of the affordable housing unit shall be personally obligated to pay to the Township, through the Affordable Housing Board, any surplus funds, but only to the extent that such surplus funds exceed the difference between the maximum price permitted at the time of

foreclosure and the amount necessary to redeem the debt to the financial institution, including costs of foreclosure.

(8) Affirmative marketing.

(a) No low- and moderate-income housing units are presently under construction or are as yet planned by the respective property owners. However, at such time as these units are constructed, Affirmative Marketing will be conducted by the Township through a Housing Officer or an appropriate agency to be appointed by the governing body. Such marketing will include the following:

[1] Legal advertisements and also announcements suitable for newspaper articles will be prepared for local newspapers and those covering Union, Essex, Morris, and Sussex Counties, prescribing the available low- and moderate-income housing and procedures for application and inviting such applications.

[2] **Permitted newspapers.** The newspapers for such advertisements and announcements include the following:

[a] Union County Local Source

[b] Star Ledger.

[c] TAP into Clark

All of the above, are considered the official newspapers of the Township.

[3] In addition, announcements of such housing will be posted in the Municipal Building, the post office, and other appropriate public locations. Local church groups will be contacted announcing the availability of such units, and an announcement will be made on community-access cable television.

[a] Announcements will also be distributed to the County Planning Board and Housing Authority, local service organizations, the Welfare Director, and other appropriate local and areawide groups.

[b] As provided in the rezoning ordinance, 50% of the units shall be made available on a priority basis to income-eligible households that reside in the municipality or work in the municipality and reside elsewhere, for a period not to exceed 15 business days from the time such units are listed for sale or resale or made available for rent. No more than 50% of the units shall be made available on a

priority basis to income-eligible households that reside in the municipality or work in the municipality and reside elsewhere.

[c] Screening of occupants will be the responsibility of the Township Municipal Liaison or Administrative Agency designated by the governing body, who will work in conjunction with the project's developers. Such developers will be required to pay the reasonable costs of advertisements and will be required to cooperate with the Township in preparing the required announcements and advertisements.

[d] The marketing program will commence at least 90 days before the issuance of either temporary or permanent certificates of occupancy and shall continue until all low- and moderate-income housing units are under contract of sale and/or lease.

(9) Waiver of fees. Notwithstanding any ordinance requirement of the Township, the applicable approving agency shall waive the following fees for every unit designated as lower-income housing:

- [1]** Subdivision and site plan application fees.
- [2]** Building permit fees, except state and third-party fees.
- [3]** Certificate of occupancy fees.

SECTION 4: Section 195-140.3 R-B - 20 Multiple-Family Residential District is added as new district and citation as follows:

§ 195-140.3 R-B - 20 Multiple-Family Residential District.

A. Purpose of district. The purpose of the R-B District is to allow for the construction of multifamily residential buildings, including townhouses and garden apartments, meeting the minimum density requirement for inclusionary housing and providing for the required set-aside of units within such developments affordable to low- and moderate-income families, complying with the obligation of the Township to provide a regional fair share of low- and moderate-income housing.^[1]

B. Permitted uses. The permitted uses are townhouses and garden apartments.

C. Development standards.

(1) Definition of uses. Garden apartments include multiple dwellings arranged in flats, up to 45 feet in height. Townhouses comprise single-family dwellings

attached side by side, up to 2 1/2 stories in height. A half story is one within a gable roof, in which not over 1/2 of the floor area of the full story below has a full ceiling height.

(2) Density. The maximum density shall be twenty (20) units per acre of site area.

(3) Lower-income housing requirements. A minimum of 20% of the housing units shall be sold or rented and shall be maintained for a minimum period of 30 years so as to be affordable to families and persons of low and moderate income, under the lower-income housing requirements specified in Subsection **D** below.

(4) Building requirements, garden apartments. Maximum building height shall be 45 feet, and maximum building length shall be 120 feet.

(5) Building requirements, townhouses. Maximum building height shall be 2 1/2 stories and 35 feet, and there shall not be more than six housing units per structure.

(6) Setbacks and spacing, garden apartments. The minimum setback from street and property lines shall be 50 feet, except that accessory garages, if provided, may be within 20 feet of side or rear lot lines. The minimum distance between buildings shall be 35 feet between fronts and backs, and 20 feet end to end. The minimum setback from parking areas and driveways shall be 10 feet.

(7) Setbacks and spacing, townhouses. The minimum setback from streets and property lines shall be 50 feet. The minimum separation between buildings shall be 50 feet between fronts and backs, and 25 feet end to end. The minimum setbacks from driveways and parking areas shall be 20 feet from building fronts and 25 feet from building rears, and 20 feet on building ends.

(8) Landscaped areas, buffer areas, and recreation facilities. All areas not occupied by buildings, driveways, walkways, and parking areas shall be suitably landscaped and shall be arranged such that appropriate active and passive recreation facilities will be provided. Where the site adjoins other zones on the side or rear, a suitable landscaped buffer strip of at least five feet in width shall be provided to form a visual screen.

(9) Parking areas and access drives. A minimum of two parking spaces shall be provided for each dwelling unit. For townhouses, one of these spaces shall be

provided within the unit or in a garage, except that this requirement shall not apply to lower-income units. All off-street parking areas shall be surfaced in accordance with Township standards. No off-street parking shall be located within front yards or within less than 10 feet from side and rear property lines. **(10)** Other general design and site requirements. Other general design and site requirements shall be as required in the R-A Multiple-Family Apartment Residential District, in § **195-128** hereunder, as well as the standards below:

- (a)** Maximum impervious cover: 80%.
- (b)** There shall be a minimum of 20% open space.

D. Lower-income housing requirements.

(1) Purpose. The purpose of this section is to establish criteria for the development of land to comply with the provisions of the New Jersey Supreme Court decision commonly referred to as "Mt. Laurel II." The regulations and controls contained in this section shall be interpreted to assure the construction of lower-income housing which meets the standards and guidelines set forth in Mt. Laurel II.

(2) Number and type of lower-income dwelling units required.

(a) Garden apartment and townhouse developments shall be required to provide 20% of all dwelling units to be affordable for lower-income households.

(b) At least 1/2 of all lower-income units shall meet HUD Section 8 eligibility requirements for very low income and 1/2 shall meet HUD eligibility requirements for lower income (Mt. Laurel II Moderate Income). There shall be a range of affordability within the maximum income limits as required by all applicable regulations.

(c) The developer shall agree not to impose age restrictions upon the occupants of any low- and moderate-income unit.

(d) Unit size distribution shall be as follows, divided evenly between low and moderate income:

[1] At a minimum, 35% of all low- and moderate-income units shall be two-bedroom units;

[2] At a minimum, 15% of all low- and moderate-income units shall be three-bedroom units; and

[3] No more than 20% of all low- and moderate-income units may be efficiency units.

(e) The lower-income units shall be architecturally similar to the market rate units and shall be generally distributed among the market rate units rather than isolated.

(3) Pricing of low and moderate income units.

(a) The average price of low and moderate income units within an inclusionary development shall be, as best as practicable, affordable to households at 57.5% of median income as contained in NJAC 5:92-12.4

(b) For purchased housing, as best as practicable, the following distribution of prices shall be used for every 20 low and moderate income units:

	Proposed Pricing Stratification
Low	1 at 40% through 42.5%
	3 at 42.6% through 47.5%
	6 at 47.6% through 50%
Moderate	1 at 50.1% through 57.5%
	1 at 57.6% through 64.5%
	1 at 64.6% through 68.5%
	1 at 68.6% through 72.5%
	2 at 72.6% through 77.5%
	4 at 77.6% through 80%

(c) For initial occupancy, priority shall be given to households that fall within the median income categories delineated in the preceding subsection.

(d) In computing affordability and eligibility, not more than 30% of the family income may be used for rental housing and 28% for sales housing, as follows:

Rental units: rent, excluding utilities. Maximum rent shall be calculated as a percentage uncapped Section 8 income limits.

Sales Principal and interest
Units:

Insurance

Taxes

Condominium or homeowners' association fees

Condominium or homeowners' association fees shall be consistent with N.J.A.C. 5:92-1 which is as follows:

"5:92-12.12 Initial pricing

- (a) Municipalities shall require that the initial price of a low and moderate income owner-occupied single family housing unit be established so that after a downpayment of 10%, the monthly principal, interest, taxes, insurance and condominium fees do not exceed 28% of an eligible gross monthly income. Municipalities shall, by ordinance, require that master deeds of inclusionary development regulate condominium or homeowner association fees or special assessments of low and moderate income purchasers at a specific percentage of those paid by market purchasers. Once established within the master deed, the percentage shall not be amended without prior approval from a Court of Competent Jurisdiction.

(e) The following criteria shall be considered in determining rents and sale prices:

- [1] Efficiency units shall be affordable to one-person households.
- [2] One-bedroom units shall be affordable to two-person households.
- [3] Two-bedroom units shall be affordable to three-person households.
- [4] Three-bedroom units shall be affordable to five-person households.

(5) Subsidies. Government subsidies may be used at the discretion of the applicant to fulfill the requirements of this section. The lack of the subsidies shall in no way alter or diminish the lower-income requirements of this section.

(6) Phasing of construction.

- (a) Within inclusionary developments, low- and moderate-income housing units shall be built in accordance with the following schedule:

Minimum Percentage of Low- and Moderate-Income Units Completed	Percentage of Market Housing Units Completed
0%	25%
10%	25%, plus 1 unit
50%	50%
75%	75%
100%	90%
100%	100%

(b) Any development for which a subdivision or site plan has been approved shall be considered a single development for purposes of this section, regardless of whether parts or sections are sold or otherwise disposed of to persons of legal entities other than the one which received approval. All such approvals and conditions of approvals shall run with the land. Any tracts or parcels sold shall include documentation, satisfactory to the Township Attorney, setting forth the requirements for low and moderate income housing units.

(7) Administration of low and moderate income housing.

(a) The governing body is hereby designated the Affordable Housing Board of the Township to administer or to provide for and supervise the administration of low and moderate income housing units hereunder and to assure that such units are made available and remain affordable to low and moderate income households for a period of not less than 30 years.

(b) The Township Administrator is hereby designated to carry out such administrative responsibilities within the Township as may be determined by the Affordable Housing Board.

(c) Appropriate outside agencies such as the Affordable Housing Management Service of the New Jersey Department of Community Affairs may be utilized for such administrative responsibilities as designated by the Affordable Housing Board of the Township.

(d) The cost of such administration by outside agencies shall be met, to a reasonable extent, by the developers of the housing projects including low and moderate income units.

(8) Resale and rental of lower-income housing.

(a) All lower-income dwelling units shall be required to have covenants running with the land to control the resale price of for-sale units or to employ other legal mechanisms which shall be approved by the Township Attorney and will, in his opinion, ensure that such housing will remain permanently affordable to persons of lower income for a period of at least 30 years.

(b) Selection procedures and an appropriate administration mechanism for assuring that low- and moderate-income housing units remain affordable to low- and moderate-income households shall be directed and administered by the Affordable Housing Board or an agency designated by it.

(c) The price of an owner-occupied housing unit and the rents of affordable housing units may increase annually based on the percentage increase in median income for each housing region as determined from the uncapped Section 8 income limits, published by HUD, or other recognized standards.

(d) Persons wishing to sell affordable units shall notify the Affordable Housing Board or an agency designated by it of the intent to sell. The seller may apply for permission to offer the unit to a non-income-eligible household at the maximum price permitted. The seller shall document efforts to sell the unit to an income-eligible household as part of this application. If the request is granted, the seller may offer low-income housing units to moderate-income households and moderate-income housing units to households earning in excess of 80% of the median. In no case shall the seller be permitted to receive more than the maximum price permitted. In no case shall a sale pursuant to this section eliminate the resale controls on the unit or permit any subsequent seller to convey the unit except in full compliance with the terms of N.J.A.C. 5:92-12.

(e) Property owners of single-family, owner-occupied housing may apply to the Affordable Housing Board or an agency designated by it for permission to increase the maximum price for eligible capital improvements. Eligible capital improvements shall be those that render the unit suitable for a larger household. In no event shall the maximum price of an improved housing unit exceed the limits of affordability for the larger household. Property owners shall apply to the Affordable Housing Board or an agency designated by it if an increase in the maximum sales price is sought.

(f) A judgment of the foreclosure or a deed in lieu of foreclosure by a financial institution regulated by state and/or federal law shall extinguish controls on affordable housing units, provided there is compliance with N.J.A.C. 5:92-10. Notice of foreclosure shall allow the Township, through the Affordable Housing Board, to purchase the affordable housing unit at the maximum permitted sale price.

(g) In the event of a foreclosure sale, the owner of the affordable housing unit shall be personally obligated to pay to the Township, through the Affordable Housing Board, any surplus funds, but only to the extent that such surplus funds exceed the difference between the maximum price permitted at the time of foreclosure and the amount necessary to redeem the debt to the financial institution, including costs of foreclosure.

(9) Affirmative marketing.

(a) No low- and moderate-income housing units are presently under construction or are as yet planned by the respective property owners. However, at such time as these units are constructed, Affirmative Marketing will be conducted by the Township through a Housing Officer or an appropriate agency to be appointed by the governing body. Such marketing will include the following:

[1] Legal advertisements and also announcements suitable for newspaper articles will be prepared for local newspapers and those covering Union, Essex, Morris, and Warren Counties, prescribing the available low- and moderate-income housing and procedures for application and inviting such applications.

[2] Permitted newspapers. The newspapers for such advertisements and announcements include the following:

[a] Union County Local Source

[b] Star Ledger.

[c] TAP into Clark

All of the above are considered the official newspaper of the Township.

[3] In addition, announcements of such housing will be posted in the Municipal Building, the post office, and other appropriate public locations. Local church groups will be contacted announcing the availability of such

units, and an announcement will be made on community-access cable television.

[a] Announcements will also be distributed to the County Planning Board and Housing Authority, local service organizations, the Welfare Director, and other appropriate local and areawide groups.

[b] As provided in the rezoning ordinance, 50% of the units shall be made available on a priority basis to income-eligible households that reside in the municipality or work in the municipality and reside elsewhere, for a period not to exceed 15 business days from the time such units are listed for sale or resale or made available for rent. No more than 50% of the units shall be made available on a priority basis to income-eligible households that reside in the municipality or work in the municipality and reside elsewhere.

[c] Screening of occupants will be the responsibility of the Township Housing Officer or appropriate agency designated by the governing body, who will work in conjunction with the project's developers. Such developers will be required to pay the reasonable costs of advertisements and will be required to cooperate with the Township in preparing the required announcements and advertisements.

[d] The marketing program will commence at least 90 days before the issuance of either temporary or permanent certificates of occupancy and shall continue until all low- and moderate-income housing units are under contract of sale and/or lease.

(10) Waiver of fees. Notwithstanding any ordinance requirement of the Township, the applicable approving agency shall waive the following fees for every unit designated as lower-income housing:

- [1] Subdivision and site plan application fees.
- [2] Building permit fees, except state and third-party fees.
- [3] Certificate of occupancy fees.

SECTION 5: **Inconsistent Ordinances:** Any ordinances of the Township of Clark which are inconsistent with the provisions of this ordinance are hereby repealed to the extent of such inconsistency.

SECTION 6: **Effective Date:** This Ordinance shall take effect upon adoption and publication, according to law.

Effective Date: June 7, 2017

ATTEST:

APPROVED:

EDITH L. MERKEL, RMC
Township Clerk

ANGEL ALBANESE
Council President

SALVATORE BONACCORSO
Mayor

Ord17/5-1AmendCh195ArticleXXIIIZoningDistricts
Aye Nay Abstain Absent

Barr	_____
Hund	_____
Mazzarella	_____
O'Connor	_____
Smith	_____
Toal	_____
Albanese	_____