

**TOWNSHIP OF HARDYSTON**

**ORDINANCE NO. 2017-03**

**AN ORDINANCE OF THE TOWNSHIP OF HARDYSTON, COUNTY OF SUSSEX,  
STATE OF NEW JERSEY AMENDING CHAPTER 185, ZONING, SECTION 185-  
90.1 ENTITLED “LOW AND MODERATE INCOME HOUSING” OF THE  
REVISED GENERAL ORDINANCES OF THE TOWNSHIP OF HARDYSTON**

Purpose Statement – The purpose of this Ordinance is to the amend the existing very low, low and moderate-income housing ordinance of the Township of Hardyston Township Code to update it in accordance with the Township’s Mt. Laurel constitutional affordable housing obligations.

**WHEREAS**, The New Jersey Council on Affordable Housing (“COAH”) adopted new revised Third Round Regulations, published in the New Jersey Register on June 2, 2008, which regulations permit municipalities to impose a maximum residential development fee equal to one and one half percent of the equalized assessed value; and

**WHEREAS**, the Senate and General Assembly of the State of New Jersey enacted P.L. 2008, c.46, approved July 17, 2008, which establishes a Statewide non-residential developer’s fee of 2.5% that is mandatory for all non-residential development unless explicitly exempt as stated in the Act; and

**WHEREAS**, in accordance with In re N.J.A.C. 5:96 and 5:97, 221 N.J. 1 (2015) (“Mt. Laurel IV”), the Township of Hardyston adopted a new Housing Element and Fair Share Plan dated March 2016 (“the 2016 HEFSP”); and

**WHEREAS**, on September 26, 2016, the Township of Hardyston obtained a Declaratory Judgment of Compliance and Order of Repose from the Hon. Stephan C. Hansbury, P.J.S.C., of the Superior Court of New Jersey, Sussex County, (“the Hardyston 2016 Judgment of Compliance”) which declares that the 2016 HEFSP satisfies the Township of Hardyston’s affordable housing obligation required pursuant to the *Mt. Laurel Doctrine* and applicable statutory, regulatory and case law such as Mt. Laurel IV; and

**WHEREAS**, the Hardyston 2016 Judgment of Compliance and implantation of the 2016 HEFSP requires the Township to adopt new ordinances and/or amend its existing ordinances to be in compliance with the *Mt. Laurel Doctrine* and applicable statutory, regulatory and case law such as Mt. Laurel IV.

**NOW, THEREFORE, BE IT ORDAINED** by the Township Council of the Township of Hardyston that the Comprehensive Land Use Code of the Township of Hardyston is hereby amended as follows:

**Section 1, Subsection T(8)(d) of Section 185.58**, entitled “Specific Conditions for Conditional Uses” is amended to read “The hotel condominium developer shall enter into a developer's agreement with the Township of Hardyston confirming that the developer shall contribute to the Hardyston Township Housing Trust Fund sufficient funds to satisfy the Township’s full obligation resulting from the hotel condominium pursuant to prior inclusionary incentive zoning and mandatory set-aside requirements as codified in regulations previously promulgated and adopted by the New Jersey Council on Affordable Housing ("COAH")."

**Section 1.** Section 185-90.1 entitled “Low and Moderate-Income Housing” is amended to delete the existing section and replace it with the following:

### **185-90.1 Very Low, Low and Moderate-Income Housing**

#### **A. Affordable Housing Requirements**

##### **1. Purpose**

- a) This Ordinance is intended to assure that very low, low and moderate-income units ("affordable units") are created with controls on affordability over time and that very low, low and moderate-income households shall occupy these units. This Ordinance shall apply except where inconsistent with applicable law.
- b) The Township of Hardyston Planning Board has adopted a Housing Element and Fair Share Plan pursuant to the New Jersey Municipal Land Use Law at N.J.S.A. 40:55D-1, et seq. The Fair Share Plan has been endorsed by the Township Council of the Township of Hardyston. The Fair Share Plan describes the ways the Township of Hardyston shall address its fair share for very low, low, and moderate-income housing as documented in the Housing Element.
- c) This Ordinance implements and incorporates the Fair Share Plan and addresses the requirements of N.J.A.C. 5:93-1, et. seq., as effective June 6, 1994, and all COAH rules and regulations. These rules are pursuant to the Fair Housing Act of 1985 and the Township of Hardyston's constitutional obligation to provide for its fair share of very low, low, and moderate income housing under COAH regulations and the Township’s Declaratory Judgment and Order of Repose dated September 26, 2016. All units provided by applicants shall meet all requirements needed for the Township to obtain credit under prior COAH rules and judicial decisions, including at not limited to Mt. Laurel IV.
- d) The Township of Hardyston shall file monitoring reports in accordance with the Agreement, tracking the status of the implementation of the Housing Element and Fair Share Plan. Any plan evaluation report of the Housing Element and Fair Share Plan and monitoring shall be available to the public at the Township of Hardyston Municipal Building, Municipal Clerk’s Office, 149 Wheatsworth Road, Hardyston, New Jersey.

##### **2. Definitions**

- a) The following terms as used in this ordinance; shall have the following meanings:

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

“Adaptable” means constructed in compliance with the technical design standards of the Barrier Free Subcode, N.J.A.C. 5:23-7.

“Administrative agent” means the entity responsible for the administration of affordable units in accordance with this Ordinance, N.J.A.C. 5:80-26.1 et seq., and any all other applicable statutes and regulations of the State of New Jersey.

“Affirmative marketing” means 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” means the average percentage of median income at which restricted units in an affordable housing development are affordable to very low, low and moderate-income households.

“Affordable” means, a sales price or rent within the means of a very low, low or moderate-income household as defined in N.J.A.C. 5:97-9; in the case of an ownership unit, that the sales price for the unit conforms to the standards set forth in N.J.A.C. 5:80-26.6, as may be amended and supplemented, and, in the case of a rental unit, that the rent for the unit conforms to the standards set forth in N.J.A.C. 5:80-26.12, as may be amended and supplemented.

“Affordable development” means a housing development all or a portion of which consists of restricted units.

“Affordable housing development” means 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 (100%) percent affordable development.

“Affordable housing program(s)” means any mechanism in a municipal Fair Share Plan prepared or implemented to address a municipality’s fair share obligation.

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

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

“Assisted living residence” means 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” means a household that has been certified by an Administrative Agent as a very low, low or moderate-income household.

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

“DCA” means the State of New Jersey Department of Community Affairs.

“Deficient housing unit” means a housing unit with health and safety code violations that require the repair or replacement of a major system. A major system includes weatherization, roofing, plumbing (including wells), heating, electricity, sanitary plumbing (including septic systems), lead paint abatement and/or load bearing structural systems.

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

“Major system” means 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” means housing not restricted to very low, low, and moderate-income households that may sell or rent at any price.

“Median income” means the median income by household size for the applicable county, as adopted annually by COAH.

“Moderate-income household” means a household with a total gross annual household income in excess of 50 percent but less than 80 percent of the median household income.

“Moderate-income unit” means a restricted unit that is affordable to a moderate-income household.

“Non-exempt sale” means 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” means 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” means the maximum housing value in each housing region affordable to a four-person household with an income at 80 percent of the regional median as defined by COAH’s adopted Regional Income Limits published annually by COAH.

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

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

“UHAC” means the Uniform Housing Affordability Controls set forth in N.J.A.C. 5:80-26.1 et seq.

“Very low income household” means a household with a total gross annual household income equal to 30 percent or less of the median household income.

“Very low income unit” means a restricted unit that is affordable to a very low income household.

“Weatherization” means 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.

### **3. Affordable Housing Programs**

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

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

2. The units shall be certified to be in sound condition as a result of an inspection performed by a licensed building inspector.
  3. The municipality will provide a minimum of \$25,000 per unit to subsidize each moderate-income unit and/or \$30,000 per unit to subsidize each low income unit, with additional subsidy depending on the market prices or rents in a municipality.
  4. 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 percent of the fair share obligation, whichever is greater. (Additional units may be approved by COAH if the municipality demonstrates the successful completion of its initial market to affordable program.)
- iii. The units shall comply with UHAC with the following exceptions:
1. Bedroom distribution (N.J.A.C. 5:80-26.3(b) and (c));
  2. Low/moderate income split (N.J.A.C. 5:80-26.3(a)); and
  3. Affordability average (N.J.A.C. 5:80-26.3(d) and (e)); however:
    - a. The maximum rent for a moderate-income unit shall be affordable to households earning no more than fifty seven and one half (57.5%) of median income. The maximum rent for a low income unit shall be affordable to households earning no more than 44 percent of median income; and the maximum rent for a very low income unit shall be affordable to households earning no more than 30 percent of median income.
    - b. The maximum sales price for a moderate-income unit shall be affordable to households earning no more than 70 percent of median income, and the maximum sales price for a low income unit shall be affordable to households earning no more than 40 percent of median income and the maximum sales price for very low income unit shall be affordable to households earning no more than 30% of median income.

#### **4. Inclusionary Zoning**

- a) **Presumptive densities and set-asides.** To ensure the efficient use of land through compact forms of development and to create realistic opportunities for the construction of affordable housing, inclusionary zoning permits minimum presumptive densities and presumptive maximum affordable housing set-asides as follows
- i. Inclusionary zoning in existing or proposed sewer service areas outside of Planning Areas 1 or 2 permits residential development at a presumptive minimum gross density of four units per acre and a presumptive maximum affordable housing set-aside of 20 percent of the total number of units in the development;
  - ii. Inclusionary zoning outside of a sewer service area in Planning Areas 3, 4 and 5 permits a presumptive density increase of 40 percent over the existing zoning. The presumptive maximum affordable housing set-aside shall be 20 percent of the total number of units in the development; and

iii. Where an executed development agreement and/or a planning board approval resolution exists for affordable housing on a specific site or sites list the sites below and identify the density and set-aside for each.

1. Crystal Springs Village Center South: 13 units/acre 25% set-aside
2. Ridgefield Commons: 2.7 units/acre 11% set-aside
3. Indian Fields: 2.2 units/acre 12.5% set-aside
4. Forest Knolls: .2 units/acre 13% set-aside
5. Emerald Estates/CJS Investments: .2units/acre 12% set-aside

iv. Additional incentives to subsidize the creation of affordable housing available to very-low income households may be included in the zoning section of this ordinance or specified in a developer's or redeveloper's agreement.

b) **Phasing.** In inclusionary developments the following schedule shall be followed:

Units Completed	Minimum Percentage of Low, very low and Moderate-Income Units Completed
25	0
25+1	10
50	50
75	75
90	100

c) **Design.** In inclusionary developments, to the extent possible, very low, low and moderate-income units shall be integrated with the market units.

d) **Payments-in-lieu and off-site construction.** The standards for the collection of Payments-in-Lieu of constructing affordable units or standards for constructing affordable units off-site, shall be in accordance with N.J.A.C. 5:97-6.4, and/or other applicable laws, statutes or regulations.

e) **Utilities.** Affordable units shall utilize the same type of heating source as market units within the affordable development.

## 5. New Construction

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

a) Low/Moderate Split and Bedroom Distribution of Affordable Housing Units:

- i. 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.
- ii. In each affordable development, at least 50 percent of the restricted units within each bedroom distribution shall be low-income units.
- iii. Affordable developments that are not age-restricted shall be structured in conjunction with realistic market demands such that:
  1. The combined number of efficiency and one-bedroom units shall be no greater than 20 percent of the total very low, low and moderate-income units, if applicable;
  2. At least 30 percent of all very low, low and moderate-income units shall be two bedroom units, if applicable;
  3. At least 20 percent of all very low, low, and moderate-income units shall be three bedroom units, if applicable; and
  4. The remaining units may be allocated among two and three bedroom units at the discretion of the developer.
- iv. Affordable developments that are age-restricted shall be structured such that the number of bedrooms shall equal the number of age-restricted very low, 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:

- i. The first floor of all restricted townhouse dwelling units and all restricted units in all other multistory buildings shall be subject to the technical design standards of the Barrier Free Subcode, N.J.A.C. 5:23-7 and N.J.A.C. 5:97-3.14.
- ii. 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:
  1. An adaptable toilet and bathing facility on the first floor;
  2. An adaptable kitchen on the first floor;
  3. An interior accessible route of travel on the first floor;
  4. An interior accessible route of travel shall not be required between stories within an individual unit;
  5. An adaptable room that can be used as a bedroom, with a door or the casing for the installation of a door, on the first floor; and
- iv. An accessible entranceway as set forth at P.L. 2005, c. 350 (N.J.S.A. 52:27D-311a et seq.) and the Barrier Free Subcode, N.J.A.C. 5:23-7 and N.J.A.C. 5:97-3.14, or evidence that

the Township of Hardyston has collected funds from the developer sufficient to make 10 percent 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 Hardyston's affordable housing trust fund sufficient to install accessible entrances in 10 percent of the affordable units that have been constructed with adaptable entrances.
3. The funds deposited under paragraph B. above shall be used by the Township of Hardyston for the sole purpose of making the adaptable entrance of any affordable unit accessible when requested to do so by a person with a disability who occupies or intends to occupy the unit and requires an accessible entrance.
4. The developer of the restricted units shall submit a design plan and cost estimate for the conversion from adaptable to accessible entrances to the Construction Official of the Township of Hardyston.
5. Once the Construction Official has determined that the design plan to convert the unit entrances from adaptable to accessible meet the requirements of the Barrier Free Subcode, N.J.A.C. 5:23-7 and N.J.A.C. 5:97-3.14, and that the cost estimate of such conversion is reasonable, payment shall be made to the Township of Hardyston's affordable housing trust fund in care of the Municipal Treasurer who shall ensure that the funds are deposited into the affordable housing trust fund and appropriately earmarked.
6. Full compliance with the foregoing provisions shall not be required where an entity can demonstrate that it is site impracticable to meet the requirements. Determinations of site impracticability shall be in compliance with the Barrier Free Subcode, N.J.A.C. 5:23-7 and N.J.A.C. 5:97-3.14.

c) Maximum Rents and Sales Prices

- i. In establishing rents and sales prices of affordable housing units, the administrative agent shall follow the procedures set forth in UHAC and in COAH, utilizing the regional income limits previously established by COAH.
- ii. The maximum rent for restricted rental units within each affordable development shall be affordable to households earning no more than 60 percent of median income, and the average rent for restricted very low, low and moderate-income units shall be affordable to households earning no more than 52 percent of median income.
- iii. The developers and/or municipal sponsors of restricted rental units shall establish at least one rent for each bedroom type for very low, low income and moderate-income units.
  1. At least 10 percent of all low and moderate-income rental units shall be affordable to households earning no more than 30 percent of median income.
- iv. The maximum sales price of restricted ownership units within each affordable development shall be affordable to households earning no more than 70 percent of median

- income, and each affordable development must achieve an affordability average of 55 percent 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 very low, low income ownership units must be available for at least two different prices for each bedroom type.
- v. 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:
    - 1. A studio shall be affordable to a one-person household;
    - 2. A one-bedroom unit shall be affordable to a one and one-half person household;
    - 3. A two-bedroom unit shall be affordable to a three-person household;
    - 4. A three-bedroom unit shall be affordable to a four and one-half person household; and
    - 5. A four-bedroom unit shall be affordable to a six-person household.
  - vi. 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:
    - 1. A studio shall be affordable to a one-person household;
    - 2. A one-bedroom unit shall be affordable to a one and one-half person household; and
    - 3. A two-bedroom unit shall be affordable to a two-person household or to two one-person households.
  - vii. 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 percent of the purchase price and the Federal Reserve H.15 rate of interest), taxes, homeowner and private mortgage insurance and condominium or homeowner association fees do not exceed 28 percent of the eligible monthly income of 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.
  - viii. The initial rent for a restricted rental unit shall be calculated so as not to exceed 30 percent of the eligible monthly income of the appropriate household size as determined under N.J.A.C. 5:80-26.4, as may be amended 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.
  - ix. The price of owner-occupied very low, 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.

- x. The rent of very low, low and moderate-income units may be increased annually based on the percentage increase in the Housing Consumer Price Index for the United States. This increase shall not exceed nine percent in any one year. Rents for units constructed pursuant to very low, low income housing tax credit regulations shall be indexed pursuant to the regulations governing very low, low income housing tax credits.
- xi. **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.

## **6. Affirmative Marketing Requirements**

- a) The Township of Hardyston shall adopt by resolution an Affirmative Marketing Plan, compliant with N.J.A.C. 5:80-26.15, as may be amended and supplemented.
- b) The affirmative marketing plan is a regional marketing strategy designed to attract buyers and/or renters of all majority and minority groups, regardless of race, creed, color, national origin, ancestry, marital or familial status, gender, affectional or sexual orientation, disability, age or number of children to housing units which are being marketed by a developer, sponsor or owner of affordable housing. The affirmative marketing plan is also intended to target those potentially eligible persons who are least likely to apply for affordable units in that region. It is a continuing program that directs all marketing activities toward COAH Housing Region 1 and covers the period of deed restriction.
- c) The affirmative marketing plan shall provide a regional preference for all households that live and/or work in COAH Housing Region 1 comprised of Bergen, Sussex, Passaic, and Hudson Counties
- d) The Administrative Agent designated by the Township of Hardyston shall assure the affirmative marketing of all affordable units consistent with the Affirmative Marketing Plan for the municipality.
- e) In implementing the affirmative marketing plan, the Administrative Agent shall provide a list of counseling services to very low, low and moderate-income applicants on subjects such as budgeting, credit issues, mortgage qualification, rental lease requirements, and landlord/tenant law.
- f) The affirmative marketing process for available affordable units shall begin at least four months prior to the expected date of occupancy.
- g) The costs of advertising and affirmative marketing of the affordable units shall be the responsibility of the developer, sponsor or owner, unless otherwise determined or agreed to by Township of Hardyston.

## **7. 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:

- i. Provide an occupant for each bedroom;
  - ii. Provide children of different sex with separate bedrooms; and
  - iii. Prevent more than two persons from occupying a single bedroom.
- b) Additional provisions related to occupancy standards (if any) shall be provided in the municipal Operating Manual.

## **8. 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 Ordinance until the Township of Hardyston 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 non-restricted, 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 non-exempt sale after the unit's release from the requirements of this Ordinance, an amount equal to the difference between the unit's non-restricted 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 Ordinance shall remain in effect despite the entry and enforcement of any judgment of foreclosure with respect to restricted ownership units.
- f) A restricted ownership unit shall be required to obtain a Continuing Certificate of Occupancy or a certified statement from the Construction Official stating that the unit meets all code standards upon the first transfer of title that follows the expiration of the applicable minimum control period provided under N.J.A.C. 5:80-26.5(a), as may be amended and supplemented.

## **9. Price Restrictions for Restricted Ownership Units, Homeowner Association Fees and Resale Prices**

- a) Price restrictions for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.1, as may be amended and supplemented, including:
- i. The initial purchase price for a restricted ownership unit shall be approved by the Administrative Agent.
  - ii. The Administrative Agent shall approve all resale prices, in writing and in advance of the resale, to assure compliance with the foregoing standards.

- iii. The method used to determine the condominium association fee amounts and special assessments shall be indistinguishable between the very low, low and moderate-income unit owners and the market unit owners.
- iv. 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.

#### **10. Buyer Income Eligibility**

- a) Buyer income eligibility for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.1, as may be amended and supplemented, such that low income ownership units shall be reserved for households with a gross household income less than or equal to 50 percent of median income and moderate-income ownership units shall be reserved for households with a gross household income less than 80 percent of median income.
- b) The Administrative Agent shall certify a household as eligible for a restricted ownership unit when the household is a very low, 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 percent of the household's certified monthly income.

#### **11. 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 percent 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).

#### **12. 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 Ordinance until the Township of Hardyston elects to release the unit from such requirements pursuant to action taken in compliance with N.J.A.C. 5:80-26.1, as may be amended and supplemented, and prior to such an election, a restricted rental unit must remain subject to the requirements of N.J.A.C. 5:80-26.1, as may be amended and supplemented, for at least 30 years.
- b) Deeds of all real property that include restricted rental units shall contain deed restriction language. The deed restriction shall have priority over all mortgages on the property, and

the deed restriction shall be filed by the developer or seller with the records office of the County of Sussex. 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 Ordinance, despite the occurrence of any of the following events:
  - i. Sublease or assignment of the lease of the unit;
  - ii. Sale or other voluntary transfer of the ownership of the unit; or
  - iii. The entry and enforcement of any judgment of foreclosure.

### **13. 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 five percent of the monthly rent of the applicable restricted unit and shall be payable to the Administrative Agent to be applied to the costs of administering the controls applicable to the unit as set forth in this Ordinance.

### **14. 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:
  - i. Very low income rental units shall be reserved for households with a gross household income less than or equal to 30 percent of median income.
  - ii. Low income rental units shall be reserved for households with a gross household income less than or equal to 50 percent of median income.
  - iii. Moderate-income rental units shall be reserved for households with a gross household income less than 80 percent of median income.
- b) The Administrative Agent shall certify a household as eligible for a restricted rental unit when the household is a very low, low or a moderate-income household, as applicable to the unit, and the rent proposed for the unit does not exceed 35 percent (40 percent for age-restricted units) of the household's eligible monthly income as determined pursuant to N.J.A.C. 5:80-26.16, as may be amended and supplemented; provided, however, that this limit may be exceeded if one or more of the following circumstances exists:

- i. The household currently pays more than 35 percent (40 percent for households eligible for age-restricted units) of its gross household income for rent, and the proposed rent will reduce its housing costs;
  - ii. The household has consistently paid more than 35 percent (40 percent for households eligible for age-restricted units) of eligible monthly income for rent in the past and has proven its ability to pay;
  - iii. The household is currently in substandard or overcrowded living conditions;
  - iv. The household documents the existence of assets with which the household proposes to supplement the rent payments; or
  - v. 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 (b) i through v above with the Administrative Agent, who shall counsel the household on budgeting.

## **15. Administration**

- a) The position of Municipal Housing Liaison (MHL) for Township of Hardyston is established by this ordinance. The Hardyston Township Council shall make the actual appointment of the MHL by means of a resolution.
- i. The MHL must be either a full-time or part-time employee of Township of Hardyston.
  - ii. The person appointed as the MHL must be reported to COAH for approval. The MHL must meet all COAH requirements for qualifications, including initial and periodic training.
  - iii. The Municipal Housing Liaison shall be responsible for oversight and administration of the affordable housing program for the Township of Hardyston, including the following responsibilities which may not be contracted out to the Administrative Agent:
    - 1. Serving as the municipality's primary point of contact for all inquiries from the State, affordable housing providers, Administrative Agents and interested households;
    - 2. The implementation of the Affirmative Marketing Plan and affordability controls.
    - 3. When applicable, supervising any contracting Administrative Agent.
    - 4. Monitoring the status of all restricted units in the Township of Hardyston's Fair Share Plan;
    - 5. Compiling, verifying and submitting annual reports as required by COAH;
    - 6. Coordinating meetings with affordable housing providers and Administrative Agents, as applicable; and

7. Attending continuing education opportunities on affordability controls, compliance monitoring and affirmative marketing as offered or approved by COAH.
- b) The Township of Hardyston shall designate by Resolution of the Township Council of the Township Hardyston one or more Administrative Agents to administer newly constructed affordable units in accordance with the Hardyston 2016 Judgment of Compliance, UHAC and applicable COAH rules.
- 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 COAH. 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) 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:
  - i. Attending continuing education opportunities on affordability controls, compliance monitoring, and affirmative marketing as offered or approved by COAH;
  - ii. Affirmative Marketing Household Certification;
  - iii. Affordability Controls;
  - iv. Records retention;
  - v. Resale and re-rental;
  - vi. Processing requests from unit owners; and
  - vii. Enforcement, though the ultimate responsibility for retaining controls on the units rests with the municipality.
  - viii. The Administrative Agent shall have authority to take all actions necessary and appropriate to carry out its responsibilities, hereunder.

## **16. 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 very low, 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:

- i. The municipality may file a court action pursuant to N.J.S.A. 2A:58-11 alleging a violation, or violations, of the regulations governing the affordable housing unit. If the Owner, Developer or Tenant is found by the court to have violated any provision of the regulations governing affordable housing units the Owner, Developer or Tenant shall be subject to one or more of the following penalties, at the discretion of the court:
    1. A fine of not more than \$500.00 or imprisonment for a period not to exceed 90 days, or both. Each and every day that the violation continues or exists shall be considered a separate and specific violation of these provisions and not as a continuing offense;
    2. In the case of an Owner who has rented his or her very low, low or moderate-income unit in violation of the regulations governing affordable housing units, payment into the Township of Hardyston Affordable Housing Trust Fund of the gross amount of rent illegally collected;
    3. In the case of an Owner who has rented his or her very low, 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.
  - ii. 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 very low, low, or 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 very low, low, or 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 fees. The violating Owner shall have the right to possession terminated as well as the title conveyed pursuant to the Sheriff's sale.
- d) The proceeds of the Sheriff's sale shall first be applied to satisfy the First Purchase Money Mortgage lien and any prior liens upon the very low, low, or moderate-income unit. The excess, if any, shall be applied to reimburse the municipality for any and all costs and expenses incurred in connection with either the court action resulting in the judgment of violation or the Sheriff's sale. In the event that the proceeds from the Sheriff's sale are insufficient to reimburse the municipality in full as aforesaid, the violating Owner shall be personally responsible for and to the extent of such deficiency, in addition to any and all costs incurred by the municipality in connection with collecting such deficiency. In the event that a surplus remains after satisfying all of the above, such surplus, if any, shall be placed in escrow by the municipality for the Owner and shall be held in such escrow for a maximum period of two years or until such earlier time as the Owner shall make a claim with the municipality for such. Failure of the Owner to claim such balance within the two-year period shall automatically result in a forfeiture of such balance to the municipality. Any interest accrued or earned on such balance while being held in escrow shall belong to and shall be paid to the municipality, whether such balance shall be paid to the Owner or forfeited to the municipality.

- 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 very low, low, or moderate-income unit. Title shall be conveyed to the purchaser at the Sheriff's sale, subject to the restrictions and provisions of the regulations governing the affordable housing unit. The Owner determined to be in violation of the provisions of this plan and from whom title and possession were taken by means of the Sheriff's sale shall not be entitled to any right of redemption.
- f) If there are no bidders at the Sheriff's sale, or if insufficient amounts are bid to satisfy the First Purchase Money Mortgage and any prior liens, the municipality may acquire title to the very low, low, or 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 very low, low or 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 very low, low, or moderate-income unit to be either sold at the Sheriff's sale or acquired by the municipality shall obligate the Owner to accept an offer to purchase from any qualified purchaser which may be referred to the Owner by the municipality, with such offer to purchase being equal to the maximum resale price of the very low, low, or 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.

## **17. Appeals**

Appeals from all decisions of an Administrative Agent designated pursuant to this Ordinance shall be filed in writing with a court of the State of New Jersey having competent jurisdiction over matters concerning affordable housing enforcement in the State of New Jersey.

## **B. Affordable Housing Development Fees**

### **1. Purpose**

- a) In Holmdel Builder's Association V. Holmdel Township, 121 N.J. 550 (1990), the New Jersey Supreme Court determined that mandatory development fees are authorized by the Fair Housing Act of 1985 (the Act), N.J.S.A. 52:27d-301 et seq., and the State Constitution, subject to the Council on Affordable Housing's (COAH's) adoption of rules.
- b) Pursuant to P.L.2008, c.46 section 8 (C. 52:27D-329.2) and the Statewide Non-Residential Development Fee Act (C. 40:55D-8.1 through 8.7), COAH is

authorized to adopt and promulgate regulations necessary for the establishment, implementation, review, monitoring and enforcement of municipal affordable housing trust funds and corresponding spending plans. Municipalities that are under the jurisdiction of the Council or court of competent jurisdiction and have a COAH-approved spending plan may retain fees collected from non-residential development.

- c) This ordinance establishes standards for the collection, maintenance, and expenditure of development fees pursuant to COAH's regulations and in accordance P.L.2008, c.46, Sections 8 and 32-38. Fees collected pursuant to this ordinance shall be used for the sole purpose of providing very low, low, and moderate-income housing. This ordinance shall be interpreted within the framework of COAH's rules on development fees, codified at N.J.A.C. 5:97-8.

## 2. Definitions

- a) The following terms, as used in this ordinance, shall have the following meanings:
  - i. **"Affordable housing development"** means a development included in the Housing Element and Fair Share Plan, and includes, but is not limited to, an inclusionary development, a municipal construction project or a 100 percent affordable development.
  - ii. **"COAH"** or the **"Council"** means the New Jersey Council on Affordable Housing established under the Act which has primary jurisdiction for the administration of housing obligations in accordance with sound regional planning consideration in the State.
  - iii. **"Development fee"** means money paid by a developer for the improvement of property as permitted in N.J.A.C. 5:97-8.3.
  - iv. **"Developer"** means the legal or beneficial owner or owners of a lot or of any land proposed to be included in a proposed development, including the holder of an option or contract to purchase, or other person having an enforceable proprietary interest in such land.
  - v. **"Equalized assessed value"** means the assessed value of a property divided by the current average ratio of assessed to true value for the municipality in which the property is situated, as determined in accordance with sections 1, 5, and 6 of P.L.1973, c.123 (C.54:1-35a through C.54:1-35c).
  - vi. **"Green building strategies"** means those strategies that minimize the impact of development on the environment, and enhance the health, safety and well-being of residents by producing durable, low-maintenance, resource-efficient housing while making optimum use of existing infrastructure and community services.

## 4. Residential Development fees

- a) Imposed fees

- i. Mandatory residential development fees shall be 1.5% of the equalized assessed value for residential development. These fees shall be required in conjunction with application for a building permit for all projects which do not require a land development application approval. All other land development projects will be subject to the incentive zoning and mandatory set-aside provisions of this chapter.
- ii. When an increase in residential density pursuant to N.J.S.A. 40:55D-70d (5) (known as a “d” variance) has been permitted, developers may be required to pay a development fee of 6 percent of the equalized assessed value for each additional unit that may be realized. However, if the zoning on a site has changed during the two-year period preceding the filing of such a variance application, the base density for the purposes of calculating the bonus development fee shall be the highest density permitted by right during the two-year period preceding the filing of the variance application.

Example: If an approval allows four units to be constructed on a site that was zoned for two units, the fees could equal one and a half percent of the equalized assessed value on the first two units; and the specified higher percentage up to six percent of the equalized assessed value for the two additional units, provided zoning on the site has not changed during the two-year period preceding the filing of such a variance application.

b) Eligible exactions, ineligible exactions and exemptions for residential development

- i. Affordable housing developments, developments where the developer is providing for the construction of affordable units elsewhere in the municipality, and developments where the developer has made a payment in lieu of on-site construction of affordable units shall be exempt from development fees.
- ii. Developments that have received preliminary or final site plan approval prior to the adoption of a municipal development fee ordinance shall be exempt from development fees, unless the developer seeks a substantial change in the approval. Where a site plan approval does not apply, a zoning and/or building permit shall be synonymous with preliminary or final site plan approval for this purpose. The fee percentage shall be vested on the date that the building permit is issued.
- iii. Developers of residential structures demolished and replaced as a result of a natural disaster or fire shall be exempt from paying a development fee.

c) Collection of fees.

- i. The following procedures shall be followed with respect to the collection of development fees:
  1. When a cash development fee is to be made in a sum determined by applying a percentage figure against the equalized assessed value of the land and improvements, the following rule shall apply: The value of the property shall be the equalized assessed value of each dwelling unit and the land at the time of project completion or, where feasible, completion of the unit in question.
  2. The developer shall pay a minimum development fee of \$500.00 to the Township of Hardyston prior to the commencement of construction.
  3. The developer shall pay the remaining fee to the Township of Hardyston at the issuance of a certificate of occupancy. At the issuance of the certificates of occupancy, the Tax Assessor shall calculate the equalized assessed value and the appropriate development fee. The developer shall be responsible for paying the difference between the fee calculated at the time of issuance of the certificate of occupancy and the amount paid at the time of issuance of the building permit.
  4. Payments shall be by certified check or bank money order to the Township of Hardyston and shall be deposited in a separate interest-bearing housing trust fund account established by this section.
- ii. A developer may challenge residential development fees imposed by filing a challenge with the County Board of Taxation. Pending a review and determination by the Board, collected fees shall be placed in an interest bearing escrow account by Hardyston Township. Appeals from a determination of the Board may be made to the tax court in accordance with the provisions of the State Tax Uniform Procedure Law, R.S.54:48-1 et seq., within 90 days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.

## **5. Non-residential Development fees**

- a) Imposed fees
  - i. Within all zoning districts, non-residential developers, except for developers of the types of development specifically exempted, shall pay a fee equal to two and one-half (2.5) percent of the equalized assessed value of the land and improvements, for all new non-residential construction on an unimproved lot or lots.
  - ii. Non-residential developers, except for developers of the types of development specifically exempted, shall also pay a fee equal to two and one-half (2.5) percent of the increase in equalized assessed value resulting from any additions to existing structures to be used for non-residential purposes.

- iii. Development fees shall be imposed and collected when an existing structure is demolished and replaced. The development fee of two and a half percent (2.5%) shall be calculated on the difference between the equalized assessed value of the pre-existing land and improvement and the equalized assessed value of the newly improved structure, i.e. land and improvement, at the time final certificate of occupancy is issued. If the calculation required under this section results in a negative number, the non-residential development fee shall be zero.
- a) Eligible exactions, ineligible exactions and exemptions for non-residential development
- i. The non-residential portion of a mixed-use inclusionary or market rate development shall be subject to the two and a half (2.5) percent development fee, unless otherwise exempted below.
  - ii. The 2.5 percent fee shall not apply to an increase in equalized assessed value resulting from alterations, change in use within existing footprint, reconstruction, renovations and repairs.
  - iii. Non-residential developments shall be exempt from the payment of non-residential development fees in accordance with the exemptions required pursuant to P.L.2008, c.46, as specified in the Form N-RDF “State of New Jersey Non-Residential Development Certification/Exemption” Form. Any exemption claimed by a developer shall be substantiated by that developer.
  - iv. A developer of a non-residential development exempted from the non-residential development fee pursuant to P.L.2008, c.46 shall be subject to it at such time the basis for the exemption no longer applies, and shall make the payment of the non-residential development fee, in that event, within three years after that event or after the issuance of the final certificate of occupancy of the non-residential development, whichever is later.
  - v. If a property which was exempted from the collection of a non-residential development fee thereafter ceases to be exempt from property taxation, the owner of the property shall remit the fees required pursuant to this section within 45 days of the termination of the property tax exemption. Unpaid non-residential development fees under these circumstances may be enforceable by Hardyston Township as a lien against the real property of the owner.
- b) Collection procedures
- i. Upon the granting of a preliminary, final or other applicable approval, for a non-residential development, the applicable approving authority shall direct its staff to notify the construction official responsible for the issuance of a building permit.

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

## **6. Affordable Housing trust fund**

- a) There is hereby created a separate, interest-bearing housing trust fund to be maintained by the Chief Financial Officer for the purpose of depositing development fees collected from residential and non-residential developers and proceeds from the sale of units with extinguished controls.
- b) The following additional funds shall be deposited in the Affordable Housing Trust Fund and shall at all times be identifiable by source and amount:
  - 1. payments in lieu of on-site construction of affordable units;
  - 2. developer contributed funds to make ten percent (10%) of the adaptable entrances in a townhouse or other multistory attached development accessible;
  - 3. rental income from municipally operated units;
  - 4. repayments from affordable housing program loans;
  - 5. recapture funds;
  - 6. proceeds from the sale of affordable units; and
  - 7. any other funds collected in connection with Hardyston Township's affordable housing program.
- c) Within seven days from the opening of the trust fund account, Hardyston Township shall provide an escrow agreement between the municipality and the bank, to direct the disbursement of the funds as provided for in N.J.A.C. 5:97-8.13(b).
- d) All interest accrued in the housing trust fund shall only be used on eligible affordable housing activities.

## **7. Use of funds**

- a) The expenditure of all funds shall conform to a spending plan approved by COAH. Funds deposited in the housing trust fund may be used for any activity approved by COAH to address Hardyston Township's fair share obligation and may be set up as a grant or revolving loan program. Such activities include, but are not limited to: preservation or purchase of housing for the purpose of maintaining or implementing affordability controls, rehabilitation, new construction of affordable housing units and related costs, accessory apartment, market to affordable, or regional housing partnership programs, conversion of existing non-residential buildings to create new affordable units, green building strategies designed to be cost saving and in accordance with accepted national or state standards, purchase of land for affordable housing, improvement of land to be used for affordable housing, extensions or improvements of roads and infrastructure to affordable housing sites, financial assistance designed to increase affordability, administration necessary for implementation of the Housing Element and Fair Share Plan, or any other activity as permitted pursuant to N.J.A.C. 5:97-8.7 through 8.9 and specified in the approved spending plan.

- b) Funds shall not be expended to reimburse Hardyston Township for past housing activities.
- c) At least 30 percent of all development fees collected and interest earned shall be used to provide affordability assistance to very low, low, and moderate-income households in affordable units included in the municipal Fair Share Plan. One-third of the affordability assistance portion of development fees collected shall be used to provide affordability assistance to those households earning 30 percent or less of median income by region.
  - i. Affordability assistance programs may include down payment assistance, security deposit assistance, low interest loans, rental assistance, assistance with homeowners association or condominium fees and special assessments, and assistance with emergency repairs.
  - ii. Affordability assistance to households earning 30 percent or less of median income may include buying down the cost of low or moderate income units in the municipal Fair Share Plan to make them affordable to households earning 30 percent or less of median income.
  - iii. 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) Hardyston Township may contract with a private or public entity to administer any part of its Housing Element and Fair Share Plan, including the requirement for affordability assistance.
- e) No more than 20 percent of all revenues collected from development fees, may be expended on administration, including, but not limited to, salaries and benefits for municipal employees or consultant fees necessary to develop or implement a new construction program, a Housing Element and Fair Share Plan, and/or an affirmative marketing program. In the case of a rehabilitation program, no more than 20 percent of the revenues collected from development fees shall be expended for such administrative expenses. Administrative funds may be used for income qualification of households, monitoring the turnover of sale and rental units, and compliance with COAH's monitoring requirements. Legal or other fees related to litigation opposing affordable housing sites or objecting to the Council's regulations and/or action are not eligible uses of the affordable housing trust fund.

## **8. Monitoring**

- a) If applicable, Hardyston Township shall complete all monitoring forms included in monitoring requirements related to the: (1) collection of development fees from residential and non-residential developers, (2) payments in lieu of constructing affordable units on site, (3) funds from the sale of units with extinguished controls, (4) barrier free escrow funds, (5) rental income, (6) repayments from affordable housing program loans, and (7) any other funds collected in connection with Hardyston Township's housing program, as well as to the expenditure of revenues and implementation of the 2016 HEFSP as approved pursuant to the Hardyston 2016

Judgment of Compliance. All monitoring reports shall be completed on forms previously designed by COAH.

**9. Ongoing collection of fees**

- a) The ability for Hardyston Township to impose, collect and expend development fees shall expire in accordance with Hardyston 2016 Judgment of Compliance, unless Hardyston Township has filed an Amended Housing Element and Fair Share Plan with a Court of competent jurisdiction, and has received a judgment approving same together with concurrent or subsequent approval of any amended development fee ordinance. If Hardyston Township fails to renew its ability to impose and collect development fees prior to the expiration of the Hardyston 2016 Judgment of Compliance, it may be subject to forfeiture of any or all funds remaining within its municipal trust fund. Any funds so forfeited shall be deposited into the "New Jersey Affordable Housing Trust Fund" established pursuant to section 20 of P.L.1985, c.222 (C.52:27D-320). Hardyston Township shall not impose a residential development fee on a development that receives preliminary or final site plan approval after the expiration of the Hardyston 2016 Judgment of Compliance, nor shall Hardyston Township retroactively impose a development fee on such a development. Hardyston Township shall not expend development fees after the expiration of its substantive certification or any renewal or extension thereof.

**C. Incentive Zoning and Mandatory Set-Asides**

**1. Applicability.**

- a) The requirements contained in this Ordinance shall be applied in Hardyston Township to all zones except the Crystal Springs portion of the CR (VC) Zone District, which is subject to separate ordinance provisions and an affordable housing developer's agreement for an inclusionary development.
- b) Responsibility for constructing affordable housing units shall be as provided for under this Ordinance. Developers that have received final approvals prior to the effective date of this Ordinance shall be subject to the requirements of their final approvals and exempt from complying with the provisions of this Ordinance, unless the Developer seeks a substantial change in approval, or the plan is abandoned, the approval lapses, or the period of protection pursuant to N.J.S.A. 40:55D-52 expires without extension. For Developer's that did not receive final approvals prior to the effective date of this Ordinance, then the triggering mechanism for incentive zoning and mandatory set-aside responsibility shall be the issuance of a building permit for new construction that received municipal land use approvals after the adoption of this Ordinance.

**2. Affordable Units Required for Residential Developments.**

- a) Except for residential "inclusionary" developments which are otherwise required to have a set-aside of "low" and "moderate" income units, any applicant for a residential development in Hardyston Township that includes four (4) or more residential lots and/or dwelling units shall be required to provide the number of affordable housing units equivalent to twenty percent

(20%) of the total number of market rate units (15% if rental affordable are committed) which will result from the proposed development, with any decimal amount rounded to the next highest whole number. The number of units permitted is based upon the density requirements of the zone district including the incentive zoning affordable housing units allowed by this ordinance.

- b) As incentives to internally subsidize the required affordable housing units, a developer may utilize the following:
  - i. For residential developments constructing the incentive zoning affordable housing units on-site, the developer may be permitted to an overall density increase of 40 percent over the existing zoning. The administration of any rental affordable units constructed on site will be the responsibility of the developer, unless an alternative arrangement is agreed upon between the developer and the Township. The affordable units may be built on a lot of one-half (1/2) or more acres in size, and may be single-family, duplex, triplex or quadraplex units. The density increases granted for the construction of the affordable units on site, and the use of alternate structures and/or use types for the affordable units shall not require a “c” or “d” variance.
  - ii. For residential developments that make payments to the Township of Hardyston in lieu of constructing affordable units, the developer may build up to one-half (1/2) of a market-rate unit for each full contribution toward an affordable unit’s costs. The affordable units may be built on a lot of one-half (1/2) or more acres in size, and may be single-family, duplex, triplex or quadraplex units. The density increases granted for the construction of the affordable units on site, and the use of alternate structures and/or use types for the affordable units shall not require a “c” or “d” variance.

**3. Affordable Units Optional Incentives for Non-Residential and Mixed Use (Residential and Commercial) Developments.**

- a) At the option of the applicant for development, a non-residential or mixed use (residential and commercial) development shall be permitted in Hardyston Township and subject to the requirements of Sub-Section 185-90.1B entitled “Affordable Housing Development Fees”.
- b) An applicant for a mixed use (residential and commercial development) in Hardyston Township that elects these option incentives shall provide an affordable unit for each 5,000 square feet of additional commercial square footage, subject to the following:
  - i. The commercial portion of the project to the requirements of sub-Section 185-90.1B entitled "Affordable Housing Development Fees."
  - ii. The residential portion of the development shall be required to provide the number of affordable housing units equivalent to one (1) affordable for every four (4) market residential units.
- c) As incentives to internally subsidize the required affordable housing units in mixed use developments, a developer may utilize the following:
  - i. Developers shall be permitted to increase the overall density of the residential units by 40 percent over the existing zoning

- ii. Developers shall be permitted to construct affordable residential units above or beside retail, office and mixed use uses in order to satisfy the residential affordable housing obligation on-site.
- iii. Developers shall be permitted to demonstrate shared parking for mixed use developments and if demonstrated to be reasonable, reduce the parking for the affordable housing portion of the developments by 50%.

**4. "Low" & "Moderate" Income Split.**

- a) Fifty percent (50%) of the affordable housing units required to be produced in accordance with Subsections 2 and 3 hereinabove shall be available to "low" income households and fifty percent (50%) shall be available to "moderate" income households, provided that any single remaining unit shall be available only to a "low" income household. If only one (1) affordable unit is required it shall be a low income unit unless the Township Council authorizes it to be a moderate income unit. Thirteen percent (13%) of the total affordable housing units shall be affordable to "very low income" households.

**5. Compliance with COAH's Rules and this Ordinance.**

- a) All affordable housing units shall fully comply with all applicable "Substantive Rules" and policies of COAH including, unless modified above, but not limited to, bedroom distribution, controls on affordability, household income qualification and eligibility, range of affordability, affirmative marketing and the construction phasing of the market-rate versus the affordable housing units. Thirteen percent (13%) of the total affordable housing units shall be affordable to "very low income" households.

**6. Payments in Lieu.**

- a) Pursuant to N.J.S.A. 52:27D-329.2 and 52:27D-329(a), a developer of a site zoned for inclusionary development may pay a fee in lieu of building low and moderate income units. For any residential development which proposes four or more residential units, the developer shall be required to provide on-site production of affordable housing. For any fractional or partial obligation remaining after the production of the mandated affordable housing units, the developer shall investigate alternative options for the required units and or partial unit under Section 7. If after thorough investigation to the satisfaction of the Township Council, none of the options are available, the developer shall pay the pro rata contribution for each new housing unit in an amount agreed to by the applicant and the Township of Hardyston.

**7. Alternative Methods of Compliance.**

- a) Except for major subdivision or site plan approvals involving four or more units or 10,000 square feet of commercial space which require on-site production of affordable housing units,

and further provided the developer obtains, as a condition of approval, written permission from the Hardyston Township Council, the developer may choose to satisfy its affordable housing obligation calculated in accordance with Sections 2 and 3, in compliance with one or more of the following alternatives as permitted by COAH's "Substantive Rules" as set forth below:

- i. On-site production of affordable housing units;
  - ii. The purchase of an existing market rate dwelling unit within the municipality and its conversion to an affordably priced and affordably deed restricted unit;
  - iii. The purchase of an existing market rate dwelling unit within the municipality and its conversion to a "supportive and special needs housing" facility (i.e., group home); and/or
  - iv. Participation in gut rehabilitation and/or buy down/write down or buy-down/rent down programs; and/or
  - v. Payment in accordance with Section 6, above.
- b) The developer's plan for satisfying the affordable housing obligation created by the proposed development shall be submitted to the Township Planning Board or Zoning Board at the time the application for development is submitted for review and approval and shall be considered a condition for the application being determined "complete". The developer shall obtain written permission from the Township Council endorsing the developer's plan for satisfying the affordable housing obligation after the Council has received a recommendation from the Planning Board.

## **8. Other Design Considerations.**

- a) More than one affordable unit may be on a building lot. Affordable single-family, duplex, triplex and quadraplex structures are hereby permitted in Hardyston Township.
- b) The affordable housing structures shall be consistent in size and architectural features with the neighborhood or as approved by the Township Planning Board and/or Township Zoning Board of Adjustment.
- c) Septic systems for the affordable housing units on the same lot (other than in the Hardyston Town Center, which shall be connected to the sewer system) may only share the leach field and shall be maintained with an annual maintenance fee from each unit. Each owner shall maintain other septic system components. Any septic system arrangement under this provision is subject to the Board of Health approval.
- d) Affordable housing units must comply with the accessibility requirements of N.J.A.C. 5:94-3.14.

## **9. Construction of Affordable Units.**

- a) Residential units shall be constructed on a schedule in accordance with the COAH regulations as set forth below:

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

**10. Housing permitted.**

- a) Incentive zoning affordable housing is a permitted use in every residential and non-residential zoning district, except industrial zone districts, to the extent that production of affordable housing units is mandated by this Ordinance.

**11. Appeals**

- a) Developers subject to this inclusionary incentive zoning and mandatory set aside ordinance may appeal to the reviewing Board pursuant to N.J.S.A. 40:55D-70c (1) hardship standards to demonstrate to the satisfaction of the Board that the increased density or intensity and/or reduced costs do not provide an appropriate level of compensation commensurate with the amount of affordable housing required. The reviewing Board may grant relief including, but not limited to, additional incentives or reductions in the affordable units required or any combination thereof deemed appropriate by the Board to eliminate the “hardship” and provide sufficient incentives.

**REPEALER**

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

**SEVERABILITY**

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

**EFFECTIVE DATE**

This ordinance shall take effect upon passage and publication as provided by law.

**NOTICE**

**PLEASE TAKE NOTICE** that the above Ordinance was introduced and passed upon first reading at a regular meeting of the Hardyston Township Council held at the Municipal Building, 149 Wheatsworth Road, Hardyston, New Jersey 07419 on Wednesday, April 12, 2017, and will be considered for final passage and adoption at the regularly scheduled meeting of the Township Council of the Township of Hardyston to be held at the Municipal Building, 149 Wheatsworth Road, Hardyston, New Jersey 07419, on Wednesday, May 10, 2017 at 7:00 p.m., at which time and place all persons interested therein or affected thereby will be given an opportunity to be heard concerning the same.

BY ORDER OF THE TOWNSHIP COUNCIL OF THE TOWNSHIP OF HARDYSTON

Jane Bakalarczyk, Township Clerk

**PLEASE TAKE FURTHER NOTICE** that Notice is hereby given that the above ordinance was introduced and passed at the regular meeting of the Hardyston Township Council held at the Municipal Building at 149 Wheatsworth Road, Hardyston, New Jersey, 07419 on Wednesday, April 12, 2017. The same came up for final adoption at a meeting of the Township Council of the Township of Hardyston held on Wednesday, May 10, 2017 and after all persons present were given the opportunity to be heard concerning the same, it was finally passed, adopted and will be in full force and effect in the Township according to law.

BY ORDER OF THE TOWNSHIP COUNCIL OF THE TOWNSHIP OF HARDYSTON.

Jane Bakalarczyk, Township Clerk