

**TOWN OF WESTFIELD  
GENERAL ORDINANCE NO. 1999**

**“AN ORDINANCE AMENDING THE LAND USE ORDINANCE OF THE TOWN OF WESTFIELD INCORPORATING AFFORDABILITY REGULATIONS REQUIRED FOR MOUNT LAUREL AFFORDABLE HOUSING COMPLIANCE”**

WHEREAS, on January 23, 2013 the Superior Court of New Jersey (Honorable Frederic S. Kessler, J.S.C.) entered an Order of Remand and Scheduling of a Fairness Hearing and Compliance Hearing (the “Court Order”) in Mount Laurel affordable housing litigation entitled Sunnyside Senior Citizen Housing v. Westfield, et al., Docket No. UNN-L-135-09 (the “litigation”), which Court Order remanded to the Town Council of the Town of Westfield and the Westfield Planning Board the Town’s 2009 Housing Plan Element and Fair Share Plan to allow the Planning Board and the Town of Westfield to consider and vote on a new 2013 Affordable Housing Compliance Plan consisting of a new 2013 Housing Plan Element and Fair Share Plan (the “2013 HPE&FSP”) as well as ordinances implementing the 2013 HPE&FSP; and

WHEREAS, the Town Council is desirous of amending the Town’s Land Use Ordinance in accordance with the Court Order to implement the 2013 HPE&FSP by incorporating affordability regulations into the Land Use Ordinance, but which ordinance amendments shall not become effective until: (1) proper passage and publication in accordance with law; and (2) entry by the Court of a Final Judgment of Compliance and Repose in the litigation and (3) the expiration of the 45-day appeal period without an appeal having been filed; and

WHEREAS, this Ordinance 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 and that this Ordinance shall apply except where inconsistent with applicable law; and

WHEREAS, the Town’s Planning Board has adopted the 2013 HPE&FSP pursuant to the Municipal Land Use Law at N.J.S.A. 40:55D-1, et seq. and said Plan has been endorsed by the governing body, which Plan describes the ways in which the Town shall address its fair share for low- and moderate-income housing as determined by the New Jersey Superior Court, Union County and documented in the 2013 HPE&FSP; and

WHEREAS, this Ordinance implements and incorporates the Fair Share Plan and addresses the requirements of N.J.A.C. 5:97, as may be amended and supplemented; and

WHEREAS, The Town shall file such reports, as the Court may direct tracking the status of the implementation of the 2013 HPE&FSP; any such reports shall be made available to the public at the Town of Westfield Municipal Building, Municipal Clerk’s Office, East Broad Street, New Jersey.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF WESTFIELD, IN THE COUNTY OF UNION AND THE STATE OF NEW JERSEY, AS FOLLOWS.:

The Land Use Ordinance shall be amended by adding a new Article 23 entitled Affordable Housing Regulations to read in its entirety as follows:

**ARTICLE 23**

**AFFORDABLE HOUSING REGULATIONS**

**§ 23 Affordable Housing Regulations.**

**§ 23.01 Purpose.**

It is the purpose of this Article 23, Affordable Housing Regulations, to set forth the regulations applicable to the rehabilitation, development and operation of affordable housing in the Town of Westfield (the “Town”) consistent with the rules and regulations of the New Jersey Council on Affordable Housing (COAH) or such successor or entity as

may be established and applicable provisions of the State of New Jersey Uniform Housing Affordability Controls (UHAC) (N.J.A.C. 5:80-26.1 et seq.).

### § 23.02 Definitions

The following terms when used in this Ordinance shall have the meanings given in this Section:

- “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. 5:96, N.J.A.C. 5:97 and N.J.A.C. 5:80-26.1 et seq.
- “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 low- and moderate-income households.
- “Affordable” means, a sales price or rent within the means of a 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 or affordable housing units.
- “Affordable unit” or “Affordable housing unit” means a housing unit that is affordable to a low income household or moderate income household as herein defined based upon applicable law and is sometimes referred to herein as a “Restricted unit”.
- “Certified household” means a household that has been certified by an Administrative Agent as a low-income household or moderate-income household.
- “COAH” means the Council on Affordable Housing established under the New Jersey Fair Housing Act (N.J.S.A. 27D-301 et. seq.) or any successor agency thereto.
- “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 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.
- “Low-income household” means a household with a total gross annual household income equal to 50 percent or less of the median household income.
- “Low-income unit” means a restricted unit that is affordable to a low-income household.
- “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 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 the Department.
- “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.
- “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).
- “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 the New Jersey Department of Community Affairs for its Section 8 program.

- “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, and is sometimes referred to herein as an Affordable unit.
- “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.

**§ 23.03 Affordable Housing Programs and Requirements.**

- A. Affordable Housing Programs.** The Town of Westfield will use the following mechanisms to fulfill its affordable housing obligations:

**1. Housing Rehabilitation.**

The Town’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. Both owner occupied and rental units shall be eligible for rehabilitation funds. All rehabilitated units shall remain affordable to low and moderate income households for a period of ten years.

The Town shall participate in the Union County Home Improvement Program (the “Program”) for the purpose of having the Town comply with its housing rehabilitation responsibilities in accordance with the Town’s 2013 Housing Plan Element and Fair Share Plan. If, after the adoption of this Ordinance, the governing body of the Town determines that the Program is unable to fulfill the Town’s Housing rehabilitation responsibilities, the Town will implement an alternative program or programs to address rehabilitation as described further below:

- a. **Reliance on the County Program for Rehabilitation.** The Town will participate in the Union County Home Improvement Program to enable eligible homeowners (owner occupied one and two family homes) to receive assistance for housing rehabilitation. The Town will undertake a marketing campaign to publicize the availability of the Union County Home Improvement Program to Westfield property owners.
- b. **Establishment of a Local Rehabilitation Program.** If the Town determines that the County Home Improvement Program is unable to satisfy the Town’s Rehabilitation obligation and/or the County Program’s funding is terminated in the future, the Town will establish a local program to address any remaining need for rehabilitation. Under those circumstances, the Town will contract with a qualified consultant to establish and administer such local rehabilitation program.

- c. **Establishment of a Local Rental Rehabilitation Program.** The Town will establish a local program to offer assistance to eligible property owners of rental units in need of rehabilitation (a "Rental Rehabilitation Program"). To address rental rehabilitation, the Town will retain a qualified consultant to administer a Rental Rehabilitation Program to insure that all rehabilitated units will meet applicable requirements. The Program will offer both grants and loans to eligible recipients, as shall be further specified upon the establishment of the Rental Rehabilitation Program to insure that, when applicable, funds will be repaid and made available for additional rental rehabilitation needs in the future. If the Union County Home Improvement Program, which is not currently eligible for rental units, is broadened to include the owners of substandard rental units, the Town will evaluate whether participation in the Union County Program will assist in fulfilling future rental rehabilitation needs in the Town.
  - d. **Funding of any Local Rehabilitation Program.** The funding of any local rehabilitation program established by the Town shall have use of the funds the Town has in its Housing Trust Fund, which funds were collected through the operation of the Town's Growth Share Ordinance.
  - e. **Monitoring Rehabilitation.** Westfield's Municipal Housing Liaison will monitor all rehabilitation to determine how many units may qualify for credit (i.e. the sufficiency of work undertaken and average funds expended per unit).
2. **Inclusionary Development.** The Town of Westfield has provided for six (6) inclusionary housing zones to accommodate both "for sale" and "rental" housing. Two (2) of the zones permit "for sale" housing only, while three (3) of the zones permit both "for sale" and "rental" housing, with a density bonus for development of rental housing. The RA-5C zone, requires "for sale" market units, and "rental" affordable units. The provisions of these zones are as follows:
- a. **For Sale Developments.**
    - i. The zoning of the RA-5A and RA-5B zones provides for a (20%) twenty percent set-aside for restricted units and a density of eight (8) units per acre.
    - ii. The zoning of the NA-AH, NS-AMFH and WSA-AH zones provide for a (20%) twenty percent set-aside for restricted units and a density of fifteen (15) units per acre.
  - b. **For Rental Developments.**
    - i. The zoning of the RA-5C zone provides for a (15%) fifteen percent set-aside for restricted units and a density of sixteen and one-half (16.5) units per acre, wherein the restricted units shall be rental units and the market rate units shall be for sale units.
    - ii. The zoning of the NA-AH, NS-AMFH and WSA-AH zones provide for a (20%) twenty percent set-aside for restricted units and a density of sixteen (16) units per acre.
3. **Supportive and Special Needs Housing.** Supportive and special needs housing developed after the effective date of adoption of this Article 23 shall comply with N.J.A.C. 5-97-6.10, as may be amended and supplemented. With the exception of units established with capital funding through a 20-year operating contract with the Department of Human

Services, Division of Developmental Disabilities, all group homes, residential health care facilities, supportive shared living housing and permanent supportive housing shall have appropriate controls on affordability in accordance with UHAC regulations.

**B. Affordable Housing Requirements.**

**1. Housing Rehabilitation.**

- a. Units in a rehabilitation program shall be exempt from N.J.A.C. 5:97-9 and Uniform Housing Affordability Controls (UHAC), but shall be administered in accordance with the following:
  1. For owner-occupied units, the controls on affordability shall be for a minimum of 10 years and may be in the form of a lien recorded with the Union County Clerk.
  2. For rental units, the controls on affordability shall be for a minimum of 10 years and in the form of a deed restriction and may also include a lien, each to be recorded with the County Clerk.
    - i. 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.
    - ii. 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.
    - iii. Rents in rehabilitated units may increase annually based on the standards in N.J.A.C. 5:97-9, as may be amended and supplemented.
    - iv. Applicant and/or tenant households shall be certified as income-eligible in accordance with N.J.A.C. 5:97-9 and UHAC, except that households in owner occupied units shall be exempt from the regional asset limit, as defined in NJAC 5:97-1.4.
- b. The Town of Westfield rehabilitation investment for hard costs shall average \$10,000 for each unit to be rehabilitated through the housing rehabilitation program.
- c. The Town of Westfield shall designate, subject to such required approvals, as are applicable, one or more Administrative Agents to administer the rehabilitation program in accordance with N.J.A.C. 5:96 and N.J.A.C. 5:97, as may be amended and supplemented. The Administrative Agent(s) shall provide a rehabilitation manual for the owner occupancy rehabilitation program and a rehabilitation manual for the rental occupancy rehabilitation program to be adopted by resolution of the Town Council and subject to such required approvals, as are applicable. Both rehabilitation manuals shall be available for public inspection in the Office of the Municipal Clerk and in the office(s) of the Administrative Agent(s).

2. **Inclusionary Development.**

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 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. At least (50%) fifty percent of all affordable units in a development shall be reserved for occupancy by low income households, which shall include the percentage, as set forth in (iii) below, of units reserved for occupancy by very low income households.
- iii. Thirteen percent of all low income affordable units in a development shall be reserved for occupancy by very low income households.
- iv. 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%) twenty percent of the total low- and moderate-income units;
  - (b) At least (30%) thirty percent of all low- and moderate-income units shall be two bedroom units;
  - (c) At least (20%) twenty percent of all low- and moderate-income units shall be three bedroom units; and
  - (d) The remaining units may be allocated among efficiency, one-, two- and three-bedroom units at the discretion of the developer.

b. **Layout of Affordable Housing Within Inclusionary Developments.**

- i. To the greatest extent practicable, affordable housing units provided within inclusionary developments shall be integrated with market rate units. It is the intent of this section to avoid development layout and design that would result in isolating or stigmatizing affordable housing. Buildings containing affordable units shall be designed to be architecturally compatible with the market-rate units. To that end, the scale, massing, roof pitch and architectural detailing (such as the selection of exterior materials, doors, windows, etc.) of the buildings containing affordable units shall be similar to and compatible with that of buildings containing market-rate units.
- ii. Affordable housing units shall be provided with the same source for heating as market-rate units within the development and the occupants of the affordable units shall

have access to all of the same common elements and facilities as the occupants of the market units within the development.

- iii. Affordable units shall be phased in accordance with the following schedule:

% of Market-Rate Units Completed	Minimum % of Affordable Units Completed
25	0
25+1	10
50	50
75	75
90	100

c. 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 Sub-code, N.J.A.C. 5:23-7 and N.J.A.C. 5:97-3.14, as may be amended and supplemented.
- 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:
- (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 interior accessible route of travel shall not be required between stories within an individual unit;
  - (e) 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
  - (f) An accessible entranceway as set forth the Barrier Free Sub-code, N.J.A.C. 5:23-7 and N.J.A.C. 5:97-3.14, as may be amended or supplemented, or evidence that the Town of Westfield has collected funds from the developer sufficient to make (10%) ten 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 Town of Westfield's affordable housing trust fund sufficient to install accessible entrances in

(10%) ten percent of the affordable units that have been constructed with adaptable entrances.

- (3) The funds deposited in the Town of Westfield affordable housing trust fund shall be used 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 Town of Westfield.
- (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 Sub-code, N.J.A.C. 5:23-7 and N.J.A.C. 5:97-3.14, as may be amended and supplemented, and that the cost estimate of such conversion is reasonable, payment shall be made to the Town of Westfield'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 the site is impracticable to meet the requirements. Determinations of site impracticability shall be in compliance with the Barrier Free Sub-code, N.J.A.C. 5:23-7 and N.J.A.C. 5:97-3.14, as may be amended and supplemented.

d. 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. 5:80-26.6, 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 low- and moderate-income unit owners and 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.

- e. Buyer Income Eligibility.
  - i. Buyer income eligibility for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.7, as may be amended and supplemented.
  - ii. 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.
  - iii. Notwithstanding the foregoing, the Administrative Agent may, in accordance with COAH's criteria, permit moderate-income purchasers to buy low-income units in housing markets determined by COAH to have 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 restrictions for low-income units.
  - iv. 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 a certified household for a period not to exceed one year.

**§ 23.04 Control Periods for Restricted Ownership Units.**

- A. All affordable housing units, excluding those rehabilitated pursuant to a Housing Rehabilitation Program, shall be governed by and subject to recorded deed restrictions in the form required by UHAC regulations for a period of not less than (30) thirty years. In the case of a for-sale unit, the control period shall commence on the date the initial certified household takes title to the unit. In the case of rental housing, the control period shall commence on the first date that a certified household occupies the unit and shall remain in effect for a period of not less than (30) thirty years.
- B. 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.
- C. 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.
- D. 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.

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**§ 23.05 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 Town of Westfield elects to release the unit from such requirements pursuant to action taken in compliance with N.J.A.C. 5:80-26.11, 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. 5:80-26.11, as may be amended and supplemented, for at least (30) thirty 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 Clerk of Union County. A copy of the filed document shall be provided to the Administrative Agent within (30) thirty 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:
  - 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.
- D. The affordability controls period for the restricted rental units in a development shall commence on the first date that a certified household occupies a unit and shall terminate only at such time as the Town opts to release the unit from the requirements of this section in accordance with Paragraph (E) below, except that the affordability controls set forth in this section shall remain in effect until the date on which a rental unit shall become vacant, provided that the occupant household continues to earn a gross annual income of less than (80%) eighty percent of the applicable median income. If, at that time, a rental household's income is found to exceed (80%) eighty percent of the regional median income, the rental rate restriction shall expire at the later of either the next scheduled lease renewal or (60) sixty days.
- E. The Town may elect to release any or all of the restricted rental units in a development from the requirements of this section at a time to be established by Town ordinance, but after the expiration of the minimum control period specified under (A) above, provided that:
  - 1. The Town election to release the unit from the requirements of this section is made pursuant to an ordinance authorizing such election with respect to units located either in areas specifically identified in the Housing Element of the Town Master Plan or throughout the entire Town; and
  - 2. The Administrative Agent shall, within (60) sixty days of the Town's election, execute a release, in such form as may then be required, of all restriction instruments with respect to the unit(s). The owner of the restricted unit(s) shall be responsible for recording the release instruments and returning the recorded originals promptly to the Administrative Agent. Upon the expiration of the control period for a restricted rental unit established in this section, the owner of the unit shall be entitled to lease it to any tenant at fair market rent.

**§ 23.06 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 in 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.
  - D. The rent may be increased at the anniversary date of the tenancy of a certified household occupying a restricted rental unit if such increase is consistent with regional income limits as most recently published by COAH or any successor agency thereto and has been filed with the Administrative Agent. If a landlord has charged a tenant less than the initial maximum allowable rent for a restricted unit the landlord may, with the approval of the Administrative Agent, use the then maximum allowable rent in establishing rent for a new tenant under a new lease.
  - E. Approved initial rents may not be increased when an announcement of a COAH-adopted increase occurs during the initial lease-up activity. Rents may not be increased more than once a year. Rents may not be increased by more than one COAH-approved increment at any one time. Rents may not be increased at the time of a new occupancy if the new occupancy occurs within a year of the last occupancy and prior to the next published COAH-adopted increase.
  - F. Final lease agreements are the responsibility of the landlord and prospective tenant. Tenants are responsible for security deposits and the full amount of the rent as stated in the lease. All lease provisions shall comply with applicable law.

**§ 23.07 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%) thirty percent of median income.
  - 2. Low-income rental units shall be reserved for households with a gross household income less than or equal to (50%) fifty percent of median income.
  - 3. Moderate-income rental units shall be reserved for households with a gross household income less than (80%) eighty 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-income, low-income or a moderate-income household, as applicable to the unit, and the rent proposed for the unit does not exceed (35%) thirty-five 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:
  - 1. The household currently pays more than (35%) thirty-five percent (40 percent for households eligible for age-restricted units) of its gross household income for rent, and the proposed rent will reduce its housing costs;

- 2. The household has consistently paid more than (35%) thirty-five percent (40 percent for households eligible for age-restricted units) of eligible monthly income for rent in the past and has proven its ability to pay;
- 3. The household is currently in substandard or overcrowded living conditions;
- 4. The household documents the existence of assets with which the household proposes to supplement the rent payments; or
- 5. The household documents proposed third-party assistance from an outside source such as a family member in a form acceptable to the Administrative Agent and the owner of the unit.

(c) The applicant shall file documentation sufficient to establish the existence of the circumstances in (b) 1 through 5 above with the Administrative Agent, who shall counsel the household on budgeting.

**§ 23.08 Maximum Rents and Sales Prices**

- 1. In establishing rents and sales prices of affordable housing units, the administrative agent shall follow the procedures set forth in UHAC and in applicable regulations, utilizing established regional income limits.
- 2. The maximum rent for restricted rental units within each affordable development shall be affordable to households earning no more than (60%) sixty percent of median income, and the average rent for restricted low- and moderate-income units shall be affordable to households earning no more than (52%) fifty-two percent 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.
- 4. The maximum sales price of restricted ownership units within each affordable development shall be affordable to households earning no more than (70%) seventy percent of median income, and each affordable development must achieve an affordability average of (55%) fifty-five 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 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:
  - i. A studio shall be affordable to a one-person household;
  - ii. A one-bedroom unit shall be affordable to a one and one-half person household;
  - iii. A two-bedroom unit shall be affordable to a three-person household;
  - iv. A three-bedroom unit shall be affordable to a four and one-half person household; and
  - v. 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:
  - i. A studio shall be affordable to a one-person household;

- ii. A one-bedroom unit shall be affordable to a one and one-half person household; and
  - iii. 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%) ninety-five 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%) twenty-eight 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.
  8. As to an owner occupied unit, prior to incurring any indebtedness to be secured by a restricted ownership unit, the owner must advise the Administrative Agent in writing that it intends to incur indebtedness and thereafter the Administrative Agent shall determine in writing whether the proposed indebtedness complies with the provisions of this section.
  9. 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).
  10. 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.
  11. The initial rent for a restricted rental unit shall be calculated so as not to exceed (30%) thirty 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.
  12. 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 nine percent in any one year. Rents for units constructed pursuant to low- income housing tax credit regulations shall be indexed pursuant to the regulations governing low-income housing tax credits.

#### **§23.09 Affordable housing administration, marketing and monitoring.**

The procedures for the administration of all affordable housing in the Town of Westfield shall be undertaken by the Municipal Housing Liaison, and/or an Administrative Agent for specified housing programs or projects, consistent with COAH rules, UHAC regulations and the duties and responsibilities described herein. The Municipal Housing Liaison is the employee charged by the Town Council with the responsibility for oversight and administration of the affordable housing program for the Town of Westfield. An Administrative Agent, if appointed by the Town Council, is the entity responsible for administering the affordability controls of some or all of the affordable units pursuant to the Fair Share Plan to ensure that said units are affirmatively marketed and sold or rented, as applicable, only to income-eligible households.

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**A. Municipal Housing Liaison.** There is hereby established the position of Municipal Housing Liaison (MHL) for the Town of Westfield. Subject to such approval of COAH, as may be required (or in the absence of COAH any successor agency to COAH, or subject to the approval, as may be required, of the Superior Court of New Jersey, Union County), the MHL may be appointed by Resolution of the Town Council and must be a full or part time employee of the Town with compensation to be fixed by the Town Council at the time of appointment. The name of the person appointed as the MHL shall be reported to COAH or any successor agency to COAH or to the Superior Court of New Jersey, as may be required. The MHL must meet all COAH requirements for qualifications, including initial and periodic training. The MHL shall be responsible for oversight and administration of the affordable housing program for the Town of Westfield, including the following responsibilities, which shall not be undertaken by or contracted out to a third party:

1. Serving as the Town's primary point of contact for all inquiries from the State of New Jersey, affordable housing providers, administrative agents, and interested households;
2. Monitoring the status of all affordable units in the Town's Housing Element and Fair Share Plan;
3. Compiling, verifying, and submitting annual reports as may be required by COAH and reports to the Town Council at such intervals as deemed appropriate by the Council;
4. Coordinating meetings with affordable housing providers and administrative agents, as applicable;
5. Attending continuing education opportunities on affordability controls, compliance monitoring, and affirmative marketing as offered or approved by COAH or any successor thereof;
6. Supervising the administrative agent(s), if any, contracted or authorized by the Town Council to administer some or all of the affordable units in the Town;
7. Upon inquiry, providing written notice to the landlord of any affordable rental unit that an annual rent increase may be permitted in accordance with COAH and UHAC regulations; and
8. The MHL shall be responsible for the additional duties listed below that are not specifically delegated by the Town Council to an administrative agent.

**B. Administrative Agent.** An administrative agent may be designated by the Town Council as the entity responsible for administering the affordability controls of some or all units in the Town of Westfield to ensure that the units are affirmatively marketed and sold or rented, as applicable, only to income-eligible households. Subject to approval by COAH, as may be required (or in the absence of COAH any successor agency to COAH), or subject to the approval, as may be required, of the Superior Court of New Jersey, Union County, the Town of Westfield may contract with or authorize a consultant, authority, government or any agency, which entity shall have the responsibility for administering specified affordable units, projects or housing programs, to undertake the duties listed herein below.

The administrative agent shall have the authority to take all actions necessary and appropriate to carry out its responsibilities hereunder, including the hiring of qualified staff, consultants and/or professional management to assist in the implementation of these responsibilities, and shall conduct all of its actions and duties in conformance with COAH regulations, or applicable regulations of any successor agency, UHAC regulations, and Town ordinances and shall have responsibility for the following:

1. Attending continuing education opportunities on affordability controls, compliance monitoring, and affirmative marketing as offered or approved by COAH or any successor agency thereto.
2. Affirmative Marketing;
3. Household Certification;
4. Affordability Controls;
5. Records retention;
6. Resale and re-rental;
7. Processing requests from unit owners;
8. Providing an Operating Manual to be adopted by Resolution of the Town Council and if required, obtain approval of COAH, or the Superior Court of New Jersey, Union County. The Operating Manuals shall be available for public inspection in the Office of the Town Clerk and in the office(s) of the Administrative Agent(s).
9. Maintaining a waiting list of all eligible candidates in accordance with the provisions of N.J.A.C. 5:80-26 and using a random selection process to select occupants of low-and moderate-income housing.
10. Enforcement, although the ultimate responsibility for enforcing affordability controls on affordable units rests with the Town; and
11. The Administrative Agent shall have authority to take all actions necessary and appropriate to carry out its responsibilities, hereunder.

**C. Applications for Affordable Housing.** Applications for affordable housing shall be available in several locations, including, at a minimum, the County Administration Building and/or the County Library for each county within the housing region; the Town Municipal Building and the Town Library. In addition, applications for affordable housing shall be available at the rental office or, if none, the principal office of any Developer involved in the development of a project that includes affordable units. Applications shall be mailed to prospective applicants upon request.

#### **§23.10 Affirmative Marketing**

In fulfilling the Affirmative Marketing responsibilities set forth in §23.09 B.2, the Administrative Agent shall be guided as follows:

- (a) The Affirmative Marketing Plan is a regional marketing strategy designed to attract buyers and/or renters of all majority and minority groups, regardless of race, creed, color, national origin, ancestry, marital or familial status, gender, affectional or sexual orientation, disability, age or number of children to housing units which are being marketed by a developer, 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 2 and covers the period of deed restriction.
- (b) The Affirmative Marketing Plan shall provide a regional preference for all households that live and/or work in COAH Housing Region 2, comprised of Essex, Morris, Union and Warren Counties.
- (c) Although the Town has the ultimate responsibility for implementing all aspects of Westfield's affordable housing program, the Administrative Agent designated by the Town shall assure the affirmative marketing of all affordable units is consistent with the Affirmative Marketing Plan for the Town.

(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 Town of Westfield.

(g) The Affirmative Marketing Plan for each affordable housing development shall describe the media to be used in advertising and publicizing the availability of housing. In implementing the Affirmative Marketing Plan, the Administrative Agent shall consider the use of language translations where appropriate.

**§23.11 Enforcement**

(a) Upon the occurrence of a breach of any of the regulations governing an affordable unit by any owner, developer or tenant, the Town 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 Town 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 Town 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:

i. A fine of not less than \$1,000 and not more than \$10,000 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;

ii. 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 Town of Westfield Affordable Housing Trust Fund of the gross amount of rent illegally collected;

iii. 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 Town 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 a 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 Town, 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 Town, 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 Sheriff's sale shall first be applied to satisfy the first purchase money mortgage lien and any prior liens upon the low- and moderate-income unit. The excess, if any, shall be applied to reimburse the Town 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 Town 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 Town 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 Town 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 Town 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 Town. Any interest accrued or earned on such balance while being held in escrow shall belong to and shall be paid to the Town, whether such balance shall be paid to the owner or forfeited to the Town.
- (e) Foreclosure by the Town due to violation of the regulations governing affordable housing units shall not extinguish the restrictions contained in the regulations governing affordable housing units as the same apply to the low- and moderate-income units. 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. Any 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 Town 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 in (d) above.
- (g) Failure of the low- and moderate-income unit to be either sold at the Sheriff's sale or acquired by the Town shall obligate the owner to accept an offer to purchase from any qualified purchaser which may be referred to the owner by the Town, 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 governing affordable housing units until such time as title is conveyed by the owner.

**§23.12 Development Applications.** The checklists for preliminary and final site plan applications and preliminary and final subdivisions shall be amended to require that the developer of affordable housing shall incorporate on the plan a table identifying the location, required bedroom distribution, and intended occupancy (low or moderate income) of all affordable units, in compliance with UHAC regulations.

**§23.13 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

**§23.14 Effective Date.** The within new Article 23 of the Land Development Ordinance shall not become effective until: (1) proper passage and publication in accordance with law; and (2) entry by the Superior Court of New Jersey of a Final Judgment of Compliance and Repose in litigation entitled Sunnyside Senior Citizen Housing v. Westfield, et al., Docket No. UNN-L-135-09 and (3) the expiration of the 45-day appeal period without an appeal of the Judgment of Compliance and Repose having been filed.

PASSED AND ADOPTED: May 7, 2013

ATTEST: Claire J. Gray  
Town Clerk

Robert M. Gray  
Mayor