

**BOROUGH OF ALLENHURST  
ORDINANCE #2023 \_\_\_\_**

**AN ORDINANCE OF THE BOROUGH OF ALLENHURST TO  
IMPLEMENT THE TERMS OF THE BOROUGH'S SETTLEMENT  
AGREEMENTS REACHED WITH FAIR SHARE HOUSING CENTER AND  
POWER STATION AT ALLENHURST, LLC AS APPROVED BY THE  
SUPERIOR COURT ON JULY 31, 2023**

**WHEREAS**, the Borough of Allenhurst ("Borough") in the County of Monmouth and State of New Jersey, in furtherance of its settlement agreements with Fair Share Housing Center ("FSHC") and Power Station at Allenhurst, LLC and to comply with the Order of Fairness and Preliminary Compliance entered by the Superior Court of New Jersey on July 31, 2023, must supplement and revise portions of its existing Borough Code, and;

**WHEREAS**, the Borough has sought, to the best of its ability as a built out municipality with a lack of available vacant land, to meet the intent and spirit of the Affordable Housing process by drafting an affordable housing plan, participating in the court led settlement process, and reviewing its existing land use ordinances, and;

**WHEREAS**, the FSHC settlement agreement and Order of Fairness and Preliminary Compliance require the Borough to enact a number of ordinances including a Development Fee Ordinance, an Affordable Housing Ordinance, a Mandatory Set Aside Ordinance, an Overlay Zone Ordinance and a Redevelopment Plan Amendment all in accordance with the Borough's Third Round Housing Element and Fair Share Plan, consistent with the terms of the Settlement Agreement reached with Fair Share Housing Center regarding compliance with the Borough's affordable housing obligations.

**NOW THEREFORE, BE IT ORDAINED** by the Governing Body of the Borough of Allenhurst that the Borough Code of the Borough of Allenhurst, be and is hereby amended, revised and supplemented to create the following Chapters and sections:

**SECTION I.** The Borough Code of the Borough of Allenhurst be and is hereby supplemented to create Chapter 21 entitled "Affordable Housing Development Fees" as follows:

21-1 Affordable Housing Development Fees, 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 or court approved spending plan may retain fees collected from non-residential development.

c. In In Re: Adoption of N.J.A.C. 5:96 and 5:97 by the New Jersey Council on Affordable Housing, 221 N.J. 1 (2015), also known as the Mount Laurel IV decision, the Supreme Court remanded COAH's duties to the Superior Court. As a result, affordable housing development fee collections and expenditures from the municipal affordable housing trust funds to implement municipal Third Round Fair Share Plans through July 1, 2025, are under the Court's jurisdiction and are subject to approval by the Court.

d. This section 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 section shall be used for the sole purpose of providing very low-, low and moderate income housing. This section shall be interpreted within the framework of COAH's rules on development fees, codified at N.J.A.C. 5:97-8.

21-2 Definitions. As used in this Chapter 21 of the Borough Code of the Borough of Allenhurst, the following terms shall have the following meanings:

a. **"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.

b. **"COAH"** or the **"Council"** means the New Jersey Council on Affordable Housing established under the Fair Housing Act.

c. **"Development fee"** means money paid by a developer for the improvement of property as authorized by Holmdel Builder's Association v. Holmdel Borough, 121 N.J. 550 (1990) and the Fair Housing Act of 1985, N.J.S.A. 52:27D-301, et seq., and the NJ Statewide Non-Residential Development Fee Act, P.L. 2008, c. 46 (N.J.S.A. 40:55D-8.1 et seq.), regulated by applicable COAH regulations.

d. **"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.

e. **"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).

f. **"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.

21-3 Basic Requirements.

a. This chapter shall not be effective until approved by the Court.

b. The Borough of Allenhurst shall not spend development fees until the Court has approved a Spending Plan.

21-4 Residential Development Fees:

a. Imposed Fees

1. Within all zoning districts, residential developers, except for developers of the types of development specifically exempted below, shall pay a fee of one and one half percent (1.5%) of the equalized assessed value for residential development provided no increased density is permitted.

2. 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 shall be required to pay a development fee of six percent (6%) 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.

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

1. 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 if permitted by ordinance shall be exempt from development fees.

2. 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.

3. Owner occupied residential structures demolished and replaced as a result of a fire, flood, or natural disaster shall be exempt from paying a development fee.

4. Development fees shall be imposed and collected when an existing structure undergoes a change to a more intense use, is demolished and replaced, or when the square footage is increased by the creation of a new bedroom. The development fee shall be calculated on the increase in the equalized assessed value of the improved structure.

5. Nonprofit organizations which have received tax exempt status pursuant to section 501(c)(3) of the Internal Revenue Code, providing current evidence of that status is submitted to the municipal clerk, together with a certification that services of the organization are provided at reduced rates to those who establish an inability to pay existing charges, shall be exempted from paying a development fee.

6. Federal, state, county and local governments shall be exempted from paying a development fee.

21-5 Non-Residential Development Fees

a. Imposed fees

1. Within all zoning districts, non-residential developers, except for developers of the types of development specifically exempted, shall pay a fee equal to two and one half percent (2.5%) of the equalized assessed value of the land and improvements, for all new non-residential construction on an unimproved lot or lots.

2. Non-residential developers, except for developers of the types of development specifically exempted, shall also pay a fee equal to two and one half percent (2.5%) of the increase in equalized assessed value resulting from any additions to existing structures to be used for non-residential purposes.
  3. Development fees shall be imposed and collected when an existing structure is demolished and replaced. The development fee of two and a half percent (2.5%) shall be calculated on the difference between the equalized assessed value of the pre existing land and improvement and the equalized assessed value of the newly improved structure, i.e., land and improvement, at the time final certificate of occupancy is issued. If the calculation required under this section results in a negative number, the non-residential development fee shall be zero.
- b. Eligible exactions, ineligible exactions and exemptions for non-residential development.
1. The non-residential portion of a mixed use inclusionary or market rate development shall be subject to the two and a half percent (2.5%) development fee, unless otherwise exempted below.
  2. The two and one half percent (2.5%) fee shall not apply to an increase in equalized assessed value resulting from alterations, change in use within existing footprint, reconstruction, renovations and repairs.
  3. 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 NRDF "State of New Jersey Non-Residential Development Certification/Exemption" Form. Any exemption claimed by a developer shall be substantiated by that developer.
  4. 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.
  5. 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 forty five (45) days of the termination of the property tax exemption. Unpaid non-residential development fees under these circumstances may be enforceable by Allenhurst as a lien against the real property of the owner.

#### 21-6 Collection Procedures

- a. Upon the granting of a preliminary, final or other applicable approval, for a development, the applicable approving authority shall direct its staff to notify the construction official or Zoning Officer responsible for the issuance of a building permit.
- b. For non-residential developments only, the developer shall also be provided with a copy of Form NRDF "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 NRDF 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 NRDF. The Tax assessor shall verify exemptions and prepare estimated and final assessments as per the instructions provided in Form NRDF.

c. 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.

d. Within ninety (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.

e. The construction official responsible for the issuance of a final certificate of occupancy shall notify the local assessor of any and all requests for the scheduling of a final inspection of property which is subject to a development fee.

f. Within ten (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.

g. Should Allenhurst fail to determine or notify the developer of the amount of the development fee within ten (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).

h. One hundred percent (100%) of the development fee shall be collected at the issuance of the certificate of occupancy.

i. Appeal of development fees

1. A developer may challenge residential development fees imposed by filing a challenge with the County Board of Taxation. Pending a review and determination by the Board, collected fees shall be placed in an interest bearing escrow account by Allenhurst. 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 ninety (90) days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.

2. A developer may challenge non-residential development fees imposed by filing a challenge with the Director of the Division of Taxation. Pending a review and determination by the Director, which shall be made within forty five (45) days of receipt of the challenge, collected fees shall be placed in an interest bearing escrow account by Allenhurst. Appeals from a determination of the Director may be made to the tax court in accordance with the provisions of the State Tax Uniform Procedure Law, R.S.54:48 1 et seq., within ninety (90) days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.

## 21-7 Affordable Housing Trust Fund

a. There is hereby created a separate, interest bearing affordable 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 if permitted by ordinance;
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 Allenhurst's affordable housing program.

c. In the event of a failure by Allenhurst to comply with trust fund monitoring and reporting requirements or to submit accurate monitoring reports; or a failure to comply with the conditions of the judgment of compliance or a revocation of the judgment of compliance; or a failure to implement the approved Spending Plan and to expend funds within the applicable required time period as set forth in *In re Tp. of Monroe*, 442 N.J. Super. 565 (Law Div. 2015) (aft.'d 442 N.J. Super. 563); or the expenditure of funds on activities not approved by the Court; or for other good cause demonstrating the unapproved use(s) of funds, the Court may authorize the State of New Jersey, Department of Community Affairs, Division of Local Government Services (LGS), to direct the manner in which the funds in the Affordable Housing Trust Fund shall be expended, provided that all such funds shall, to the extent practicable, be utilized for affordable housing programs within Allenhurst, or, if not practicable, then within the County or the Housing Region.

d. Any party may bring a motion before the Superior Court presenting evidence of such condition(s), and the Court may, after considering the evidence and providing the municipality a reasonable opportunity to respond and/or to remedy the non compliant condition(s), and upon a finding of continuing and deliberate non compliance, determine to authorize LGS to direct the expenditure of funds in the Trust Fund. The Court may also impose such other remedies as may be reasonable and appropriate to the circumstances.

e. All interest accrued in the affordable housing trust fund shall only be used on eligible affordable housing activities approved by the Superior Court.

## 21-8 Use of Funds

a. The expenditure of all funds shall conform to a spending plan approved by the Superior Court. Funds deposited in the affordable housing trust fund may be used for any activity approved by the Superior Court to address Allenhurst'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 Allenhurst for past housing activities.

c. At least thirty (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.

1. Affordability assistance programs may include down payment assistance, security deposit assistance, low interest loans, rental assistance, assistance with homeowners' association or condominium fees and special assessments, and assistance with emergency repairs.

2. 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.

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

d. Allenhurst 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, in accordance with N.J.A.C. 5:96-18.

e. No more than twenty percent (20%) of all revenues collected from development fees and interest, 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 twenty percent (20%) of the revenues collected from development fees and interest 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 the court's monitoring requirements. Legal or other fees related to litigation opposing affordable housing sites or objecting to COAH's regulations and/or action are not eligible uses of the affordable housing trust fund.

## 21-9 Monitoring

a. On June 30, 2024, and June 30, 2025, Allenhurst shall provide annual reporting of trust fund activity to the New Jersey Department of Community Affairs ("DCA"), COAH, or other entity designated by the State of New Jersey, with a copy provided to Fair Share Housing Center and posted on the municipal website, using forms developed for this purpose by COAH, the Special Master or FSHC. This reporting shall include an accounting of all housing trust fund activity, including the collection of development fees from residential and nonresidential developers, payments in lieu of constructing affordable units on site, funds from the sale of units with extinguished controls, barrier free escrow funds, rental income, repayments from affordable housing program loans, and any other funds collected in

connection with Allenhurst's housing program, as well as the expenditure of revenues and implementation of the plan approved by the Court.

21-10 Ongoing collection of fees

a. The ability for Allenhurst to impose, collect and expend development fees shall expire with its Judgment of Compliance and Repose. If Allenhurst fails to renew its ability to impose and collect development fees prior to the expiration of its Judgment of Compliance and Repose 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). Allenhurst shall not impose a residential development fee on a development that receives preliminary or final site plan approval after the expiration of its Judgment of Compliance and Repose, nor shall Allenhurst retroactively impose a development fee on such a development. Allenhurst shall not expend development fees after the expiration of its Judgment of Compliance and Repose.

**SECTION II.** The Borough Code of the Borough of Allenhurst be and is hereby supplemented to create Chapter 22 entitled "Affordable Housing" as follows:

22-1 Affordable Housing, General Program Purposes & Procedures

a. Affordable Housing Obligation

Established hereby are the Borough's regulations regarding very low, low and moderate-income housing units in the Borough consistent with the provisions known as the "Substantive Rules of the New Jersey Council on Affordable Housing", N.J.A.C. 5:93 et seq., the Uniform Housing Affordability Controls ("UHAC"), N.J.A.C. 5:80-26.1 et seq., and the Borough's constitutional obligation provide a fair share of affordable housing for very low, low and moderate income households as reflected in the NJ Fair Housing Act ("FHA") at N.J.S.A 52:27D-301, except where modified by the requirements for very low-income housing as established in P.L. 2008, c.46 (the "Roberts Bill", codified at N.J.S.A. 52:27D-329.1) as reflected in the terms of a Settlement Agreement between the Borough and Fair Share Housing Center ("FSHC") such that the statutory requirement to provide very low-income units equal to 13% of affordable units approved and constructed after July 17, 2008, to be affordable to households at 30% of the regional median income, overrides the UHAC requirement that 10% of all low- and moderate-income units must be affordable at 35% of the regional median income.

b. This section 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 section shall apply to all inclusionary developments and 100% affordable developments (including those funded with low-income housing tax credit financing) except where inconsistent with applicable law.

c. The Borough of Allenhurst Planning Board has adopted a Housing Element and Fair Share Plan pursuant to the Municipal Land Use Law at N.J.S.A. 40:55D-1, et seq. The Plan has also been endorsed by the Borough Council of the Borough of Allenhurst. The Fair Share Plan describes the ways the Borough shall address its fair share for low- and



moderate-income housing as approved by the Superior Court and documented in the Borough's Housing Element and Fair Share Plan.

d. This section implements and incorporates the Fair Share Plan and addresses the requirements of N.J.A.C. 5:93, as may be amended and supplemented.

22-2 Definitions. As used in this Chapters 22 of the Borough Code of the Borough of Allenhurst, the following terms shall have the following meanings:

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

b. **"Act"** shall mean the Fair Housing Act of 1985, P.L. 1985, c. 222 (N.J.S.A. 52:27D-301 et seq.).

c. **"Adaptable"** shall mean constructed in compliance with the technical design standards of the Barrier Free Subcode, N.J.A.C. 5:23-7.

d. **"Administrative agent"** shall mean the entity responsible for the administration of affordable units in accordance with section 22-9(c) below, N.J.A.C. 5:91, N.J.A.C. 5:93 and N.J.A.C. 5:80-26.1 et seq.

e. **"Affirmative marketing"** shall mean a regional marketing strategy designed to attract buyers and/or renters of affordable units pursuant to N.J.A.C. 5:80-26.15.

f. **"Affordability average"** shall mean 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 per N.J.A.C. 5:80-26.3.

g. **"Affordable"** shall mean a sales price or rent within the means of a very-low, low- or moderate-income household as defined in N.J.A.C. 5:93-7.4; in the case of an ownership unit, that the sales price for the unit conforms to the standards set forth in N.J.A.C. 5:80-26.6, as may be amended and supplemented, and, in the case of a rental unit, that the rent for the unit conforms to the standards set forth in N.J.A.C. 5:80-26.12, as may be amended and supplemented.

h. **"Affordable development"** shall mean a housing development all or a portion of which consists of restricted units.

i. **"Affordable housing development"** shall mean a development included in the Housing Element and Fair Share Plan, and includes, but is not limited to, an inclusionary development, a municipal construction project or a 100 percent affordable development.

j. **"Affordable housing program(s)"** shall mean any mechanism in a municipal Fair Share Plan prepared or implemented to address a municipality's fair share obligation.

k. **"Affordable unit"** shall mean a housing unit proposed or created pursuant to the Act, credited pursuant to N.J.A.C. 5:93 and approved for crediting by the Court, and/or funded through an affordable housing trust fund.

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

m. **"Age-restricted unit"** shall mean 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.

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

o. **"Assisted living residence"** shall mean 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 4 or more adult persons unrelated to the proprietor and that offers units containing, at a minimum, 1 unfurnished room, a private bathroom, a kitchenette and a lockable door on the unit entrance.

p. **"Certified household"** shall mean a household that has been certified by an Administrative Agent as a very low-income household, a low-income household or moderate-income household.

q. **"COAH"** or the **"Council"** shall mean the New Jersey Council on Affordable Housing, as established by the New Jersey Fair Housing Act (N.J.S.A. 52:27D-301, et seq.) which had primary jurisdiction for the administration of housing obligations in accordance with sound regional planning consideration in the State.

r. **"DCA"** shall mean the State of New Jersey Department of Community Affairs.

s. **"Deficient housing unit"** shall mean 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.

t. **"Developer"** shall mean 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.

u. **"Development"** shall mean the division of a parcel of land into 2 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.

v. **"Development fee"** means money paid by a developer for the improvement of property as authorized by Holmdel Builder's Association v. Holmdel Borough, 121 N.J. 550 (1990) and the Fair Housing Act of 1985, N.J.S.A. 52:27D-301, et seq., and the NJ Statewide Non-Residential Development Fee Act, P.L. 2008, c. 46 (N.J.S.A. 40:55D-8.1 et seq.), regulated by applicable COAH regulations.

- w. **"Equalized assessed value"** shall mean the assessed value of a property divided by the current average ratio of assessed to true value for the municipality in which the property is situated, as determined in accordance with sections 1, 5, and 6 of P.L.1973, c.123 (C.54:1-35a through C.54:1-35c).
- x. **"Fair Share Plan"** shall mean the plan that describes the mechanisms, strategies and the funding sources, if any, by which the Borough proposes to address its affordable housing obligation as established in the Housing Element, including the draft ordinances necessary to implement that plan, and addresses the requirements of N.J.A.C. 5:93-5.
- y. **"Green building strategies"** shall mean 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.
- z. **"Housing Element"** shall mean the portion of the Borough's Master Plan, required by the Municipal Land Use Law ("MLUL"), N.J.S.A. 40:55D-28b.(3) and the Act, that includes the information required by N.J.A.C. 5:93-5.1 and establishes the Borough's fair share obligation.
- aa. **"Inclusionary development"** shall mean 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.
- bb. **"Low-income household"** shall mean a household with a total gross annual household income equal to 50% or less of the median regional household income by household size.
- cc. **"Low-income unit"** shall mean a restricted unit that is affordable to a low-income household.
- dd. **"Major system"** shall mean 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.
- ee. **"Market-rate units"** shall mean housing not restricted to low- and moderate-income households that may sell or rent at any price.
- ff. **"Median income"** means the median income by household size for the applicable housing region, as adopted annually by the Borough pursuant to this section, by COAH or a successor entity approved by the Court.
- gg. **"Moderate-income household"** shall mean a household with a total gross annual household income in excess of 50% but less than 80% of the regional median household income by household size.
- hh. **"Moderate-income unit"** shall mean a restricted unit that is affordable to a moderate-income household.
- ii. **"Non-exempt sale"** shall mean 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.

- jj. **"Random selection process"** shall mean 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).
- kk. **"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 duly adopted Regional Income Limits published annually by COAH or a successor entity.
- ll. **"Rehabilitation"** shall mean the repair, renovation, alteration or reconstruction of any building or structure, pursuant to the Rehabilitation Subcode, N.J.A.C. 5:23-6.
- mm. **"Rent"** shall mean 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.
- nn. **"Restricted unit"** shall mean 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.
- oo. **"Special master"** shall mean an expert appointed by a judge to make sure that judicial orders are followed. A master's function is essentially investigative, compiling evidence or documents to inform some future action by the court.
- pp. **"UHAC"** shall mean the Uniform Housing Affordability Controls set forth in N.J.A.C. 5:80-26.1 et seq.
- qq. **"Very low-income household"** shall mean a household with a total gross annual household income equal to 30 percent or less of the regional median household income by household size.
- rr. **"Very low-income unit"** shall mean a restricted unit that is affordable to a very low-income household.
- ss. **"Weatherization"** shall mean 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 purposes of a rehabilitation program.

## 22-3 Monitoring and Reporting Requirements

a. The Borough of Allenhurst shall comply with the following monitoring and reporting requirements regarding the status of the implementation of its Court-approved Housing Element and Fair Share Plan:

1. Beginning on June 30, 2024, and on every anniversary of that date through June 30, 2025, the Borough shall provide annual reporting of its Affordable Housing Trust Fund activity to the New Jersey Department of Community Affairs ("NJDCA"), Council on Affordable Housing ("COAH"), or Local Government Services ("NJLGS"), or other entity designated by the State of New Jersey, with a copy provided to FSHC and posted on the municipal website, using forms developed for this purpose by the NJDCA, COAH, the Special Master or FSHC. The reporting shall include an accounting of all Affordable Housing Trust Fund activity, including the source and amount of funds collected and the amount and purpose for which any funds have been expended.

2. Beginning on June 30, 2024, and on every anniversary of that date through June 30, 2025, the Borough agrees to provide annual reporting of the status of all affordable housing activity within the municipality through posting on the municipal website with a copy of such posting provided to FSHC, using forms previously developed for this purpose by COAH or any other forms endorsed by the Special Master and FSHC.

3. By June 30, 2024, and every third year thereafter, as required by N.J.S.A. 52:27D-329.1, the Borough will post on its municipal website, with a copy provided to FSHC, a status report as to its satisfaction of its very low income requirements, including its family very low income requirements. Such posting shall invite any interested party to submit comments to the municipality and FSHC on the issue of whether the municipality has complied with its very low income and family very low income housing obligations.

#### 22-4 Applicability

a. The provisions of this section shall apply to all affordable housing developments and affordable housing units that currently exist and that are proposed to be created within the Borough of Allenhurst pursuant to the Borough's most recently adopted Housing Element and Fair Share Plan.

b. Moreover, this section shall apply to all developments that contain very low-, low- and moderate-income housing units, including any currently unanticipated future developments that will provide very- low, low- and moderate-income housing units.

c. Projects receiving Federal Low Income Housing Tax Credit financing shall comply with the income and bedroom distribution requirements of UHAC at N.J.A.C. 5:80-26.3 (with the exception that the UHAC requirement for 10% of the affordable units in rental projects being required to be at 35% of median income be modified as required by the statutory requirement, N.J.S.A. 52:27D-329.1 to 13% of affordable units in such projects shall be required to be at 30% of median income) and the length of the affordability controls applicable to such projects shall be not less than a thirty (30) year compliance period plus a 15 year extended use period.

#### 22-5 Borough-wide Affordable Housing Mandatory Set-Aside Requirement

a. If the Borough or the Borough's Land Use Board permits the construction of multi family or single family attached residential development consisting of five (5) or more net new dwelling units at a density of six (6) or more units per acre, that is "approvable" and "developable," as defined at N.J.A.C. 5:93-1.3, the Borough or the Borough's Land Use Board shall require that 20% (twenty percent) of the residential units be set aside for very-low, low and moderate income households.

b. This requirement shall apply beginning with the effective date the Ordinance creating this section was adopted to any multi family or single family attached residential development, including the residential portion of a mixed use project, which consists of five (5) or more net new residential units at a density of six (6) or more units per acre, whether permitted by a zoning amendment, a variance granted by the Borough's Land Use Board, or adoption of a Redevelopment Plan or amended Redevelopment Plan in areas in need of redevelopment or rehabilitation.

- c. Nothing in this section precludes the Borough or the Borough's Land Use Board from imposing an affordable housing set aside in a development not required to have a set aside pursuant to this paragraph consistent with N.J.S.A. 52:27D-311(h) and other applicable law.
- d. This requirement does not create any entitlement for a property owner or applicant for a zoning amendment, variance, or adoption of a Redevelopment Plan or amended Redevelopment Plan in areas in need of redevelopment or rehabilitation, or for approval of any particular proposed project.
- e. This requirement does not apply to any sites or specific zones otherwise identified in the Borough's Settlement Agreement with Power Station at Allenhurst, LLC and/or FSHC, or in the Borough's Housing Element and Fair Share Plan, for which density and set aside standards shall be governed by the specific standards set forth therein.
- f. Furthermore, this section shall not apply to developments containing four (4) or less net new dwelling units.
- g. All subdivision and site plan approvals of qualifying residential developments shall be conditioned upon compliance with the provisions of this section.
- h. Where a developer demolishes existing dwelling units and with the intent to construct new dwelling units on the same site, the provisions of this section shall apply only if the net number of new dwelling units is five (5) or more.
- i. All affordable housing units built as required by this section will comply with the requirements of Chapter 22 and any other applicable provisions of the Allenhurst Municipal Code relating to affordable housing.
- j. No subdivision shall be permitted or approved for the purpose of avoiding compliance with this requirement. For example, a developer cannot subdivide a project into two lots and then make each of them generate a number of units that is lower than the threshold.

22-6 New Construction. The following requirements shall apply to all new or planned developments that contain very low-, low- and moderate-income housing units.

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

Maximum Percentage of Market-Rate Units Completed	Minimum Percentage of Low- and Moderate- Income Units Completed
25	0
25+1	10
50	50
75	75
90	100

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

2. In inclusionary developments, very-low, low- and moderate-income units shall have access to all of the same common elements and facilities as the market-rate units.
- c. Payments in lieu and off-site construction. Off-site construction of required affordable units shall not be permitted. Payments in lieu of constructing affordable units on-site shall not be permitted, with the exception of fractional units that are part of a required set-aside calculation, as follows:

In the event that the 20% inclusionary set-aside percentage of the total number of residential units does not result in a full integer, the developer may choose one of two options of addressing the fractional unit:

1. If the set-aside includes a fractional unit equal to 0.5 or more, the developer shall round the set-aside upward to construct a whole additional affordable unit; or
  2. If the set-aside includes a fractional unit less than 0.5, the developer may either round the set-aside upward and provide an additional affordable unit; or may round the set-aside downward and construct the lesser whole number of affordable units, in which case the developer shall also make a payment in-lieu of constructing the fractional additional unit ("fractional payment in-lieu").
    - i. The fractional payment in-lieu amount shall be calculated as the fractional unit multiplied by the base payment in-lieu dollar amount established N.J.A.C. 5:97-6.4(c)3, as may be increased. For Example: If seven (7) total units are developed at an inclusionary site, a 20% set-aside would require 1.4 affordable units. Per the requirements above, the developer shall either:
      - A. Round up the 0.4 unit to one (1) whole affordable unit so as to construct a total of two (2) affordable housing units; or
      - B. Round the set-aside downward so as to construct only (1) affordable unit AND shall pay into the Borough's affordable housing trust fund a fractional in-lieu payment equal to 0.4 times the dollar amount established in N.J.A.C. 5:97-6.4(c)3, as may be increased.
- d. Utilities. Affordable units shall utilize the same type of heating source as market units within the affordable development.
- e. Low/Moderate Split and Bedroom Distribution of Affordable Housing Units:
  1. The fair share obligation shall be divided equally between low- and moderate-income units N.J.A.C. 5:93-2.20, except that where there is an odd number of affordable housing units, the extra unit shall be a low-income unit.
  2. In each affordable development, at least 50 percent of the restricted units shall be affordable to low-income households. Also, at least 50 percent of the restricted units within each bedroom distribution shall be low-income units.
  3. Within rental developments, of the total number of affordable rental units, at least 13 percent shall be affordable to very-low income households.
  4. Affordable developments that are not age-restricted shall be structured in conjunction with realistic market demands such that:
    - i. 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;

- ii. At least 30 percent of all very-low, low- and moderate-income units shall be two bedroom units;
    - iii. At least 20 percent of all very-low, low- and moderate-income units shall be three bedroom units; and
    - iv. The remaining affordable units may be allocated among 2 and 3 bedroom units at the discretion of the developer.
  - 5. 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.
- f. Accessibility Requirements:
- 1. The first floor of all restricted townhouse dwelling units and all restricted units in all other multistory buildings shall be subject to the technical design standards of the Barrier Free Subcode, N.J.A.C. 5:23-7 and the following:
  - 2. All restricted townhouse dwelling units and all restricted units in other multistory buildings in which a restricted dwelling unit is attached to at least one other dwelling unit shall have the following features:
    - i. An adaptable toilet and bathing facility on the first floor;
    - ii. An adaptable kitchen on the first floor;
    - iii. An interior accessible route of travel on the first floor;
    - iv. 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
    - v. If not all of the foregoing requirements in 2.i. through 2.iv can be satisfied, then an interior accessible route of travel must be provided between stories within an individual unit, but if all of the terms of paragraphs 2.i) through 2.vi) above have been satisfied, then an interior accessible route of travel shall not be required between stories within an individual unit; and
    - vi. An accessible entranceway as set forth at P.L. 2005, c. 350 (N.J.S.A. 52:27D-311a et seq.) and the Barrier Free Subcode, N.J.A.C. 5:23-7, or evidence that the Borough has collected funds from the developer sufficient to make 10 percent of the adaptable entrances in the development accessible:
      - A. 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.
      - B. To this end, the builder of restricted units shall deposit funds within the Borough of Allenhurst's affordable housing trust fund sufficient to install accessible entrances in 10 percent of the affordable units that have been constructed with adaptable entrances.
      - C. The funds deposited under paragraph (f.2.vi.B) herein, shall be used by the Borough for the sole purpose of making the adaptable entrance of any affordable unit accessible when requested to do so by a person with a disability who occupies or intends to occupy the unit and requires an accessible entrance.



D. The developer of the restricted units shall submit a design plan and cost estimate for the conversion from adaptable to accessible entrances to the Construction Official of the Borough of Allenhurst.

E. Once the Construction Official has determined that the design plan to convert the unit entrances from adaptable to accessible meet the requirements of the Barrier Free Subcode, N.J.A.C. 5:23-7, and that the cost estimate of such conversion is reasonable, payment shall be made to the Borough of Allenhurst's affordable housing trust fund in care of the Chief Financial Officer who shall ensure that the funds are deposited into the affordable housing trust fund and appropriately earmarked.

F. 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.

g. Maximum Rents and Sales Prices. In conjunction with realistic market information, the following criteria shall be used in determining maximum rents and sale prices:

1. In establishing rents and sales prices of affordable housing units, the Administrative Agent shall follow the procedures set forth in UHAC, utilizing the most recently published regional weighted average of the uncapped Section 8 income limits published by HUD and the calculation procedures as approved by the Court and detailed herein.

Regional income units shall be established for the region that the Borough is located within (i.e., Region 4) based on the median income by household size, which shall be established by a regional weighted average of the uncapped Section 8 income limits published by HUD. To compute this regional income limit, the HUD determination of median county income for a family of four is multiplied by the estimated households within the county according to the most recent decennial Census. The resulting product for each county within the housing region is summed. The sum is divided by the estimated total households from the most recent decennial Census in the Borough's housing region. This quotient represents the regional weighted average of median income for a household of four. The income limit for a moderate-income unit for a household of four shall be 80 percent of the regional weighted average median income for a family of four. The income limit for a low-income unit for a household of four shall be 50 percent of the HUD determination of the regional weighted average median income for a family of four. The income limit for a very low income unit for a household of four shall be 30 percent of the regional weighted average median income for a family of four. These income limits shall be adjusted by household size based on multipliers used by HUD to adjust median income by household size. In no event shall the income limits be less than those for the previous year.

2. The 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.

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

i. Very low-Income. At least 13 percent of all very-low, low- and moderate-income rental units shall be affordable to households earning no more than 30 percent of median income.

4. The maximum sales price of restricted ownership units within each affordable development shall be affordable to households earning no more than 70 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 low-income ownership units must be available for at least two different prices for each bedroom type.

5. In determining the initial sales prices and rents for compliance with the affordability average requirements for restricted units other than assisted living facilities, the following standards shall be met:

i. A studio or efficiency unit 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 sales prices and rents for compliance with the affordability average requirements for restricted units in assisted living facilities and age-restricted developments, the following standards shall be met:

i. A studio or efficiency unit 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 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.

8. 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.

9. 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.

10. 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 9 percent in any one year. Rent increases for units constructed pursuant to very-low, low- income housing tax credit regulations shall be indexed pursuant to the regulations governing low- income housing tax credits.

11. 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.

## 22-7 Condominium and Homeowners Association Fees

For any affordable housing unit that is part of a condominium association and/or homeowners association, the Master Deed shall reflect that the association fee assessed for each affordable housing unit shall be established at 100 percent of the market rate fee.

## 22-8 Affordable Unit Controls and Requirements

a. Purpose. The requirements of this subsection apply to all developments that contain affordable housing units, including any currently unanticipated future developments that will provide very-low, low- and moderate- income housing units.

### b. Affirmative Marketing

1. The Borough shall adopt by resolution an Affirmative Marketing Plan, subject to approval of the Superior Court, compliant with N.J.A.C. 5:80-26.15, as may be amended and supplemented.

2. The affirmative marketing plan is a regional marketing strategy designed to attract buyers and/or renters of all majority and minority groups, regardless of race, creed, color, national origin, ancestry, marital or familial status, gender, affectional or sexual orientation, disability, age or number of children to housing units which are being marketed by a developer, sponsor or owner of affordable housing. The affirmative marketing plan is also intended to target those potentially eligible persons who are least likely to apply for affordable units in that region. It is a continuing program that directs all marketing activities toward COAH Housing Region 4 and is required to be followed throughout the period of deed restriction.

3. The affirmative marketing plan shall provide a regional preference for all households that live and/or work in COAH Housing Region 4, comprised of Mercer, Monmouth and Ocean counties.

4. The municipality has the ultimate responsibility for adopting the affirmative marketing plan and for the proper administration of the affirmative marketing program, including initial sales and rentals and resales and rerentals. The Administrative Agent designated by the Borough shall assure the affirmative marketing of all affordable units is consistent with the affirmative marketing plan for the municipality.

5. 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.

6. The affirmative marketing process for available affordable units shall begin at least 4 months (120 days) prior to the expected date of occupancy.

7. The costs of advertising and affirmative marketing of the affordable units shall be the responsibility of the developer, sponsor or owner, unless otherwise determined or agreed to by the Borough of Allenhurst.

8. 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 municipal administration building and the municipal library in the municipality in which the units are located; and the developer's rental office. Applications shall be mailed to prospective applicants upon request.

9. In addition to other affirmative marketing strategies, the Administrative Agent shall provide specific notice of the availability of affordable housing units in Allenhurst Borough, and copies of the application forms, to the following entities: Fair Share Housing Center, the New Jersey State Conference of the NAACP, the Latino Action Network, STEPS, OCEAN, Inc., the Greater Red Bank, Asbury Park/Neptune, Bayshore, Greater Freehold, Greater Long Branch, and Trenton Branches of the NAACP, and the Supportive Housing Association.

10. The affirmative marketing plan shall include posting of all affordable units on the New Jersey Housing Resource Center ("HRC") website in accordance with applicable law. The Borough also agrees to require any other entities, including developers or persons or companies retained to do affirmative marketing, to comply with this Paragraph.

c. Occupancy Standards

1. In referring certified households to specific restricted units, to the extent feasible, and without causing an undue delay in occupying the unit, the Administrative Agent shall strive to:

- i. Provide an occupant for each bedroom;
- ii. Provide children of different sex with separate bedrooms;
- iii. Prevent more than 2 persons from occupying a single bedroom; and
- iv. Provide separate bedrooms for parents and children.

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

- d. Selection of Occupants of Affordable Housing Units
  - 1. The Administrative Agent shall use a random selection process to select occupants of very-low, low- and moderate- income housing.
  - 2. A waiting list of all eligible candidates will be maintained in accordance with the provisions of N.J.A.C. 5:80-26.1 et seq.
- e. Control Periods for Restricted Ownership Units and Enforcement Mechanisms
  - 1. Control periods for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.5, as may be amended and supplemented, and each restricted ownership unit shall remain subject to the requirements of this ordinance for a period of at least thirty (30) years, until Allenhurst Borough takes action to release the unit from such requirements; prior to such action, 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.
  - 2. The affordability control period for a restricted ownership unit shall commence on the date the initial certified household takes title to the unit.
  - 3. 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 without the restrictions in place.
  - 4. At the time of the initial sale of the unit, the initial 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 restrictions set forth in 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.
  - 5. 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.
  - 6. 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 following the removal of the restrictions provided under N.J.A.C. 5:80-26.5(a), as may be amended and supplemented.
- f. Price Restrictions for Restricted Ownership Units, Homeowner Association Fees and Resale Prices. Price restrictions for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.1, as may be amended and supplemented, including:
  - 1. The initial purchase price for a restricted ownership unit shall be approved by the Administrative Agent.
  - 2. The Administrative Agent shall approve all resale prices, in writing and in advance of the resale, to assure compliance with the foregoing standards.
  - 3. 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.

4. 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. In no event shall the maximum sales price of an improved housing unit exceed the limits of affordability for the larger household.

5. Upon the resale of a restricted ownership unit, all items of property that are permanently affixed to the unit or were included when the unit was initially restricted (for example, refrigerator, range, washer, dryer, dishwasher, wall-to-wall carpeting) shall be included in the maximum allowable resale price. Other items may be sold to the purchaser at a reasonable price that has been approved by the Administrative Agent at the time of the signing of the agreement to purchase. The purchase of central air conditioning installed subsequent to the initial sale of the unit and not included in the base price may be made a condition of the unit resale provided the price, which shall be subject to 10-year, straight-line depreciation, has been approved by the Administrative Agent. Unless otherwise approved by the Administrative Agent, the purchase of any property other than central air conditioning shall not be made a condition of the unit resale. The owner and the purchaser must personally certify at the time of closing that no unapproved transfer of funds for the purpose of selling and receiving property has taken place at the time of or as a condition of resale.

g. Buyer Income Eligibility

1. Buyer income eligibility for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.1, as may be amended and supplemented, such that low-income ownership units shall be reserved for households with a gross household income less than or equal to 50 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.

2. The Administrative Agent shall certify a household as eligible for a restricted ownership unit when the household is a low-income household or a moderate-income household, as applicable to the unit, and the estimated monthly housing cost for the particular unit (including principal, interest, taxes, homeowner and private mortgage insurance and condominium or homeowner association fees, as applicable) does not exceed 33 percent of the household's certified monthly income.

3. Notwithstanding the foregoing, the Administrative Agent may, upon approval by the Borough, and subject to the Court's approval, permit a moderate-income purchaser to buy a low-income unit if and only if the Administrative Agent can demonstrate that there is an insufficient number of eligible low-income purchasers in the housing region to permit prompt occupancy of the unit and all other reasonable efforts to attract a low income purchaser, including pricing and financing incentives, have failed. Any such low-income unit that is sold to a moderate-income household shall retain the required pricing and pricing restrictions for a low-income unit.

4. A certified household that purchases a restricted ownership unit must occupy it as the certified household's principal residence and shall not lease the unit; provided, however, that the Administrative Agent may permit the owner of a restricted ownership unit, upon application and a showing of hardship, to lease the restricted unit to another certified household for a period not to exceed one year.

- h. Limitations on Indebtedness Secured by Ownership Unit; Subordination
  - 1. Prior to incurring any indebtedness to be secured by a restricted ownership unit, the administrative agent shall determine in writing that the proposed indebtedness complies with the provisions of this section, and the Administrative Agent shall issue such determination prior to the owner incurring such indebtedness.
  - 2. 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).
- i. Control Periods for Restricted Rental Units
  - 1. Control periods for restricted rental units shall be in accordance with N.J.A.C. 5:80-26.11, as may be amended and supplemented, and each restricted rental unit shall remain subject to the requirements of this ordinance for a period of at least 30 years, until Allenhurst Borough takes action to release the unit from such requirements. Prior to such action, 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.
  - 2. Rehabilitated renter-occupied or owner-occupied housing units that are improved to code standards shall be subject to affordability controls for a period of 10 years.
  - 3. Deeds of all real property that include restricted rental units shall contain deed restriction language. The deed restriction shall have priority over all mortgages on the property, and the deed restriction shall be filed by the developer or seller with the records office of the County of Monmouth. A copy of the filed document shall be provided to the Administrative Agent within 30 days of the receipt of a Certificate of Occupancy.
  - 4. A restricted rental unit shall remain subject to the affordability controls of this section, 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 on the property containing the unit.
- j. Rent Restrictions for Rental Units; Leases
  - 1. A written lease shall be required for all restricted rental units, except for units in an assisted living residence, and tenants shall be responsible for security deposits and the full amount of the rent as stated on the lease. A copy of the current lease for each restricted rental unit shall be provided to the Administrative Agent.
  - 2. No additional fees or charges shall be added to the approved rent (except, in the case of units in an assisted living residence, to cover the customary charges for food and services) without the express written approval of the Administrative Agent.
  - 3. Application fees (including the charge for any credit check) shall not exceed 5 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 section.
  - 4. No rent control ordinance or other pricing restriction shall be applicable to either the market units or the affordable units in any development in which at least

20% of the total number of dwelling units are restricted rental units in compliance with this ordinance.

k. Tenant Income Eligibility

1. Tenant income eligibility shall be in accordance with N.J.A.C. 5:80-26.13, as may be amended and supplemented, and shall be determined as follows:

i. Very low-income rental units shall be reserved for households with a gross household income less than or equal to 30 percent of regional median income by household size.

ii. Low-income rental units shall be reserved for households with a gross household income less than or equal to 50 percent of regional median income by household size.

iii. Moderate-income rental units shall be reserved for households with a gross household income less than 80 percent of regional median income by household size.

2. The Administrative Agent shall certify a household as eligible for a restricted rental unit when the household is a very low-income, low-income household or a moderate-income household, as applicable to the unit, and the rent proposed for the unit does not exceed 35 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 reliable anticipated third-party assistance from an outside source such as a family member in a form acceptable to the Administrative Agent and the owner of the unit.

3. The applicant shall file documentation sufficient to establish the existence of the circumstances in paragraphs k.2(i) through k.2(v) above with the Administrative Agent, who shall counsel the household on budgeting.

l. Conversions. Each housing unit created through the conversion of a non-residential structure shall be considered a new housing unit and shall be subject to the affordability controls for a new housing unit.

m. Alternative Living Arrangements

1. The administration of an alternative living arrangement shall be in compliance with N.J.A.C. 5:93-5.8 and UHAC, with the following exceptions:

i. Affirmative marketing (N.J.A.C. 5:80-26.15), provided, however, that the units or bedrooms may be affirmatively marketed by the provider in accordance with an alternative plan approved by the Court;



- ii. Affordability average and bedroom distribution (N.J.A.C. 5:80-26.3).
- 2. With the exception of units established with capital funding through a 20-year operating contract with the Department of Human Services, Division of Developmental Disabilities, alternative living arrangements shall have at least 30-year controls on affordability in accordance with UHAC, unless an alternative commitment is approved by the Court.
- 3. The service provider for the alternative living arrangement shall act as the Administrative Agent for the purposes of administering the affirmative marketing and affordability requirements for the alternative living arrangement.

22-9 Administration

- a. Unnecessary Cost-Generating Features. Section 14(b) of the Fair Housing Act, N.J.S.A. 52:27D-301 et seq. incorporates the need to eliminate unnecessary cost-generating features from Allenhurst Borough's land use ordinances. Accordingly, the Borough will eliminate development standards that are not essential to protect the public welfare and to expedite or fast-track municipal approvals/denials on inclusionary development applications. Allenhurst Borough will adhere to the components of N.J.A.C. 5:93-10.1 - 10.3.
- b. Municipal Housing Liaison
  - 1. The Borough shall appoint a Municipal Housing Liaison by duly adopted resolution of the Borough, and be subject to the approval by the Superior Court.
  - 2. The Municipal Housing Liaison must be either a full-time or part-time employee of the Borough of Allenhurst.
  - 3. The Municipal Housing Liaison must meet the requirements for qualifications, including initial and periodic training found in N.J.A.C. 5:93.
  - 4. The Municipal Housing Liaison shall be responsible for oversight and administration of the affordable housing program for the Borough of Allenhurst, including the following responsibilities which may not be contracted out to the Administrative Agent:
    - i. Serving as the municipality's primary point of contact for all inquiries from the State, affordable housing providers, Administrative Agents and interested households;
    - ii. The implementation of the Affirmative Marketing Plan and affordability controls;
    - iii. When applicable, supervising any contracting Administrative Agent;
    - iv. Monitoring the status of all restricted units in the Borough of Allenhurst's Fair Share Plan;
    - v. Compiling, verifying and submitting annual reports as required by the Court and this ordinance;
    - vi. Coordinating meetings with affordable housing providers and Administrative Agents, as applicable; and
    - vii. Attending continuing education opportunities on affordability controls, compliance monitoring and affirmative marketing as approved by the Superior Court.
- c. Administrative Agent
  - 1. Should affordable units be developed through any of the Borough's Unmet Need mechanisms, the Borough shall designate by resolution of the Borough, subject

to the approval of the Court, one or more Administrative Agents to administer and to affirmatively market the affordable units in accordance with N.J.A.C. 5:93, UHAC and this ordinance.

2. An Operating Manual for each program shall be provided by the Administrative Agent(s) to be adopted by resolution of the Governing Body and subject to approval of the Superior Court. The Operating Manuals shall be available for public inspection in the Office of the Municipal Clerk, the Municipal Housing Liaison, and in the office(s) of the Administrative Agent(s).

3. The Administrative Agent(s) 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 at least annually and more often as needed.

ii. Affirmative marketing:

A. Conducting an outreach process to affirmatively market affordable housing units in accordance with the Affirmative Marketing Plan of the Borough of Allenhurst and the provisions of N.J.A.C. 5:80-26.15; and

B. Providing counseling or contracting to provide 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.

C. Household certification:

1. Soliciting, scheduling, conducting and following up on interviews with interested households;

2. Conducting interviews and obtaining sufficient documentation of gross income and assets upon which to base a determination of income eligibility for a very-low, low- or moderate-income unit;

3. Providing written notification to each applicant as to the determination of eligibility or non-eligibility;

4. Requiring that all certified applicants for restricted units execute a certificate substantially in the form, as applicable, of either the ownership or rental certificates set forth in Appendices J and K of N.J.A.C. 5:80-26.1 et seq.;

5. Creating and maintaining a referral list of eligible applicant households living in the housing region and eligible applicant households with members working in the housing region where the units are located; and

6. Employing a random selection process as provided in the Affirmative Marketing Plan of the Borough of Allenhurst when referring households for certification to affordable units.

4. Affordability controls:
  - i. Furnishing to attorneys or closing agents forms of deed restrictions and mortgages for recording at the time of conveyance of title of each restricted unit;
  - ii. Creating and maintaining a file on each restricted unit for its control period, including the recorded deed with restrictions, recorded mortgage and note, as appropriate;
  - iii. Ensuring that the removal of the deed restrictions and cancellation of the mortgage note are effectuated and properly filed with the Monmouth County Register of Deeds or Monmouth County Clerk's office after the termination of the affordability controls for each restricted unit;
  - iv. Communicating with lenders regarding foreclosures; and
  - v. Ensuring the issuance of Continuing Certificates of Occupancy or certifications pursuant to N.J.A.C. 5:80-26.10.
5. Records retention; Per State of New Jersey, Municipal Agencies General Records Retention Schedule, subsection M500000-002, Municipal Housing and Development records retention guidelines.
6. Resale and re-rental:
  - i. Instituting and maintaining an effective means of communicating information between owners and the Administrative Agent regarding the availability of restricted units for resale or re-rental; and
  - ii. Instituting and maintaining an effective means of communicating information to low- (or very low-) and moderate-income households regarding the availability of restricted units for resale or re-rental.
7. Processing requests from unit owners:
  - i. Reviewing and approving requests for determination from owners of restricted units who wish to take out home equity loans or refinance during the term of their ownership that the amount of indebtedness to be incurred will not violate the terms of this ordinance;
  - ii. Reviewing and approving requests to increase sales prices from owners of restricted units who wish to make capital improvements to the units that would affect the selling price, such authorizations to be limited to those improvements resulting in additional bedrooms or bathrooms and the depreciated cost of central air conditioning systems;
  - iii. Notifying the municipality of an owner's intent to sell a restricted unit; and
  - iv. Making determinations on requests by owners of restricted units for hardship waivers.
8. Enforcement, although the ultimate responsibility for retaining controls on the units rests with the municipality:
  - i. Securing annually from the municipality a list of all affordable for-sale housing units for which tax bills are mailed to absentee owners, and notifying all such owners that they must either move back to their unit or sell it;

- ii. Securing from all developers and sponsors of restricted units, at the earliest point of contact in the processing of the project or development, written acknowledgment of the requirement that no restricted unit can be offered, or in any other way committed, to any person, other than a household duly certified to the unit by the Administrative Agent;
    - iii. Posting annually, in all rental properties (including two-family homes), a notice as to the maximum permitted rent together with the telephone number of the Administrative Agent where complaints of excess rent or other charges can be made;
    - iv. Sending annual mailings to all owners of affordable dwelling units, reminding them of the notices and requirements outlined in N.J.A.C. 5:80-26.18(d)4;
    - v. Establishing a program for diverting unlawful rent payments to the municipality's Affordable Housing Trust Fund; and
    - vi. Creating and publishing a written operating manual for each affordable housing program administered by the Administrative Agent, to be approved by the Borough and the Court, setting forth procedures for administering the affordability controls.
  - 9. Preparation of monitoring reports for submission to the Municipal Housing Liaison in time to meet the Court-approved monitoring and reporting requirements in accordance with the deadlines set forth in this ordinance; and
  - 10. The Administrative Agent shall, as delegated by the Borough, have the authority to take all actions necessary and appropriate to carry out its responsibilities, hereunder.
- d. Enforcement of Affordable Housing Regulations
  - 1. Upon the occurrence of a breach of any of the regulations governing the affordable unit by an Owner, Developer or Tenant, the municipality shall have all remedies provided at law or equity, including but not limited to foreclosure, tenant eviction, municipal fines, a requirement for household recertification, acceleration of all sums due under a mortgage, recoupment of any funds from a sale in the violation of the regulations, injunctive relief to prevent further violation of the regulations, entry on the premises, and specific performance.
  - 2. After providing written notice of a violation to an Owner, Developer or Tenant of a 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:
      - A. A fine of not more than five hundred (\$500.00) dollars or imprisonment for a period not to exceed 90 days, or both. Each and

every day that the violation continues or exists shall be considered a separate and specific violation of these provisions and not as a continuing offense;

B. In the case of an Owner who has rented his or her very-low, low- or moderate- income unit in violation of the regulations governing affordable housing units, payment into the Borough of Allenhurst Affordable Housing Trust Fund of the gross amount of rent illegally collected;

C. In the case of an Owner who has rented his or her 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- and moderate-income unit.

3. Such judgment shall be enforceable, at the option of the municipality, by means of an execution sale by the Sheriff, at which time the very-low, low- and moderate-income unit of the violating Owner shall be sold at a sale price which is not less than the amount necessary to fully satisfy and pay off any First Purchase Money Mortgage and prior liens and the costs of the enforcement proceedings incurred by the municipality, including attorney's fees. The violating Owner shall have the right to possession terminated as well as the title conveyed pursuant to the Sheriff's sale.

4. The proceeds of the Sheriff's sale shall first be applied to satisfy the First Purchase Money Mortgage lien and any prior liens upon the very-low, low- and moderate-income unit. The excess, if any, shall be applied to reimburse the municipality for any and all costs and expenses incurred in connection with either the court action resulting in the judgment of violation or the Sheriff's sale. In the event that the proceeds from the Sheriff's sale are insufficient to reimburse the municipality in full as aforesaid, the violating Owner shall be personally responsible for and to the extent of such deficiency, in addition to any and all costs incurred by the municipality in connection with collecting such deficiency. In the event that a surplus remains after satisfying all of the above, such surplus, if any, shall be placed in escrow by the municipality for the Owner and shall be held in such escrow for a maximum period of two years or until such earlier time as the Owner shall make a claim with the municipality for such. Failure of the Owner to claim such balance within the two-year period shall automatically result in a forfeiture of such balance to the municipality. Any interest accrued or earned on such balance while being held in escrow shall belong to and shall be paid to the municipality, whether such balance shall be paid to the Owner or forfeited to the municipality.

5. Foreclosure by the municipality due to violation of the regulations governing affordable housing units shall not extinguish the restrictions of the regulations governing affordable housing units as the same apply to the very-low, low- and

moderate-income unit. Title shall be conveyed to the purchaser at the Sheriff's sale, subject to the restrictions and provisions of the regulations governing the affordable housing unit. The Owner determined to be in violation of the provisions of this plan and from whom title and possession were taken by means of the Sheriff's sale shall not be entitled to any right of redemption.

6. If there are no bidders at the Sheriff's sale, or if insufficient amounts are bid to satisfy the First Purchase Money Mortgage and any prior liens, the municipality may acquire title to the very-low, 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 very-low, low- and moderate-income unit could have been sold under the terms of the regulations governing affordable housing units. This excess shall be treated in the same manner as the excess which would have been realized from an actual sale as previously described.

7. Failure of the very-low, low- and moderate-income unit to be either sold at the Sheriff's sale or acquired by the municipality shall obligate the Owner to accept an offer to purchase from any qualified purchaser which may be referred to the Owner by the municipality, with such offer to purchase being equal to the maximum resale price of the very-low, low- and moderate-income unit as permitted by the regulations governing affordable housing units.

8. The Owner shall remain fully obligated, responsible and liable for complying with the terms and restrictions of governing affordable housing units until such time as title is conveyed from the Owner.

e. Appeals. Appeals from all decisions of an Administrative Agent designated pursuant to this section shall be filed in writing to the Borough.

**SECTION III.** The Borough Code of the Borough of Allenhurst be and is hereby amended to revise sections of Chapter 26 to create the Main Street Commercial District Inclusionary Overlay Zone (MS CD) as follows:

**III. A.:** Insert under §26-3 ZONING DISTRICTS AND ZONING MAP:

The MS CD zone shall include the following lots as described on the Tax Map of the Borough of Allenhurst:

- Block 9, Lot 1
- Block 10, Lots 1 and 18
- Block 14 Lots 1.01, 1.02, 2.01, 13, 14, 15 and 16
- Block 16, Lots 1, 2 and 19
- Block 19, Lots 1 and 2
- Block 21, Lots 1, 1.01, 8, 9, 10, 11, 12 and 13
- Block 22, Lots 1, 2 and 3
- Block 23, Lot 2
- Block 24, Lots 1, 2, 3 and 4
- Block 25, Lot 1

**III. B.:** The existing Chapter §26-3.1 is hereby deleted to be replaced in its entirety by the following:

26-3.1 For the purposes of this chapter, the Borough is hereby divided into seven (7) districts with one Overlay zone as follows:

Zone Designation	Primary Use
R 1	Residential
R 2	Residential
B 1	Business Office
B 2	Business Office
C 1	Commercial
C 2	Commercial
C 3	Commercial
MS CD	Main Street Commercial District Inclusionary Overlay Zoning

**III. C.:** The existing Chapter 26-3.2 is hereby deleted and replaced in its entirety by the following:

26-3.2 Zoning Map: The boundaries of each of the districts are established as shown on the map entitled "Allenhurst Borough Zoning Map" prepared by Leon S. Avakian, Inc. dated August 26, 2020, which is hereby made a part of this chapter. The Zoning Map referred to herein can be found on file at the office of the Borough Clerk.

**III. D.:** The existing Chapter 26-4.10 entitled "Multifamily Overlay District" is hereby deleted, to be replaced in its entirety by the following:

26-4.10 Main Street Commercial District Inclusionary Overlay Zone

a. Purpose. The purpose of this section is to establish a Main Street Commercial District Inclusionary Overlay Zone (MS CD) that places an overlay zone over specific areas of the Borough. Given the built out nature of the Borough, an effective inclusionary housing overlay zone will produce affordable units when suitable opportunities become available through redevelopment or other planning mechanisms. This overlay zone would provide for inclusionary residential housing to be developed either over first floor commercial development along Main Street or completely as inclusionary residential development not fronting Main Street on tax lots included in the overlay zone. The specific areas included are the portions of the Borough that can realistically accommodate inclusionary housing development, which are in proximity to public transit and the Borough's main mixed use commercial thoroughfares.

The inclusionary overlay zone will regulate said developments through bulk and design standards. However, the Borough's underlying zoning will still be in effect. This will allow inclusionary affordable housing to be approved under local ordinance and regulations without detriment to the existing Borough zoning plan and ordinance. This creates a realistic opportunity to provide for the development of affordable housing in conformance with the requirements of the Court, the Fair Housing Act (N.J.S.A. 52:27D-301), the New Jersey Council on Affordable Housing ("COAH") prior round regulations, the Housing Element and Fair Share Plan of the Borough of Allenhurst prepared by the Borough to address its Prior Round and Third Round affordable housing obligation and the court-approved Settlement Agreement between the Borough and FSHC. Permitted and conditional uses within the MS-CD Inclusionary Overlay Zone shall include all permitted and conditional uses in the underlying zoning district in which the Overlay Zone is located and allow for inclusionary housing development within the provisions of this section.

- b. Principal Permitted Uses:
  - 1. All uses permitted within the zoning districts underlying this overlay zone.
  - 2. Multi-family residential development for sale or for rent, as follows:
    - i. On upper floors above ground-floor commercial space (mixed use buildings) of properties that front on Main Street;
    - ii. On any floor of properties that do not front on Main Street.
- c. Permitted Accessory Uses: Uses that are customary and incidental to multi family housing, including, but not limited to:
  - 1. Parking
  - 2. Garages
  - 3. Signs
  - 4. Fences
  - 5. Trash Enclosure
  - 6. Temporary construction trailers
  - 7. Utility pump stations, transformers, switches and meter facilities to support the development
  - 8. HVAC units
  - 9. Generators
- d. Bulk regulations: For purposes of this Overlay District, for lots that abut Main Street and also abut any other intersecting street, Main Street shall be considered the front yard and any intersecting street shall be considered the side yard.

No.	Description	Measurement in Feet (unless noted otherwise)
1.	Minimum Lot Frontage (Feet)	50
2.	Minimum Lot Depth (Feet)	75
3.	Minimum Front Yard Setback (Feet)	0 feet, unless not facing Main Street, in which case setback shall be as per underlying zone requirements
4.	Minimum Side Yard Setback (Feet, total both)	6 (only when building not attached to adjacent building)
5.	Minimum Rear Yard Setback (Feet)	15 feet or 20% of lot depth, whichever is greater.



6.	Maximum Height (Stories/Feet)	3 stories/ 45 feet
7.	Maximum Building Coverage (Percent)	45%
8.	Maximum Improved Lot Coverage (Percent)	85%
9.	Maximum Residential Density	15 units/acre

e. Projections from buildings, such as, but not limited to balconies, patios, chimneys and windows, may extend into the building set back provided they shall be set back a minimum of 5' from all property lines.

f. All property lines abutting a residential use (unless the building abuts an adjacent building) shall provide a 5 foot landscaped buffer . Said buffer shall not be in addition to the required setback.

g. Area, Yard and Bulk Requirements for Accessory Structures (including parking) & Uses. No accessory structures shall be permitted in the front yard set back.

No.	Description	Measurement in Feet (unless noted otherwise)
1.	Minimum Side Yard Set back (Feet)	3
2.	Minimum Rear Yard Setback (Feet)	5
3.	Minimum Distance Between Accessory and Principal Structures (Feet)	0
4.	Maximum Height (Stories/Feet)	1 story /15 feet

h. Parking

1. Commercial uses 0 spaces

2. Residential uses 1.5 spaces per unit as may be further modified through shared parking studies.

i. Affordable housing requirement: A 20% set aside shall apply. In the event that the 20% inclusionary set-aside percentage of the total number of residential units does not result in a full integer, section 22-6.c. et seq. of the Borough of Allenhurst's Affordable Housing Ordinance shall apply. All affordable housing developments shall conform to the standards found in the Borough of Allenhurst's Affordable Housing Ordinance including provisions for affordability, very low income units, and UHAC standards as modified per the Borough's FSHC Settlement Agreement.

**SECTION IV. ADOPTING THE AMENDED MAIN STREET REDEVELOPMENT PLAN PURSUANT TO THE LOCAL REDEVELOPMENT AND HOUSING LAW**

**WHEREAS**, on November 15, 2004, in accordance with the provisions of the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq. (the "Redevelopment Law"), the Borough designated certain properties fronting on Main Street and Deal Lake as an area in need of redevelopment (as further described in the Redevelopment Plan defined below, the "Redevelopment Area"); and

**WHEREAS**, in accordance with the provisions of the Redevelopment Law, the Borough enacted the "Main Street Redevelopment Plan" in October 2006, as amended November 2007 (the "Prior Redevelopment Plan") for the Redevelopment Area; and

**WHEREAS**, an action entitled *Power Station at Allenhurst, LLC v. Borough of Allenhurst, Board of Commissioners of the Borough of Allenhurst and Allenhurst Planning Board*, Superior Court of New Jersey, Law Division, Docket No.: MON-L-2551-21 was brought by Power Station at Allenhurst, LLC (hereinafter "Developer") alleging that the Borough had failed to provide a realistic opportunity for the construction of affordable housing and to meet the Borough's fair share of the region's need for such housing, in addition to related relief in accordance with the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301 and Mount Laurel jurisprudence (hereinafter "Builder's Remedy Action"); and

**WHEREAS**, as a result of extensive settlement negotiations and in excess of a year of mediation between the Parties, the Parties arrived at agreements to resolve their differences and at a Fairness Hearing on July 6, 2023 before the Superior Court of New Jersey, the Hon. Linda Grasso Jones, J.S.C. determined the Affordable Housing Settlement Agreement to be "fair, reasonable, and adequately protects the interests of very low, low, and moderate-income households, and the Court hereby approves"; and

**WHEREAS**, in order to comply with the Affordable Housing Settlement Agreement and the Order of Fairness and Preliminary Compliance entered by the Superior Court on July 31, 2023, the Board of Commissioners of the Borough of Allenhurst is obligated to adopt an amended and restated redevelopment plan for the Redevelopment Area; and

**WHEREAS**, an amended and restated "Main Street Redevelopment Plan" was prepared by the Borough's Planner, Jennifer C. Beahm, PP, AICP, in keeping with the terms and conditions of the settlement agreements between the parties and the Order of the Court, which Amended Redevelopment Plan is on file in the Office of the Borough Clerk and available for public inspection; and

**WHEREAS**, the Borough now desires to adopt the Amended Main Street Redevelopment Plan.

**IV. A.:** The recitals set forth above be and are hereby incorporated in this Ordinance as if more fully set forth herein at length.

**IV. B.:** In further compliance with the Settlement Agreements and as directed by the Court in the July 31, 2023 Order of Fairness and Preliminary Compliance, the Amended Main Street Redevelopment Plan be and is hereby approved and adopted pursuant to N.J.S.A. 40A:12A-7 and shall supersede any previous Redevelopment Plan in its entirety. As such, the Prior Redevelopment Plan is no longer of any effect.

**IV. C.:** The Board of Commissioners does hereby refer the Amended Main Street Redevelopment Plan to the Planning Board for their determination that the same is in accordance

with the master plan and the Planning Board's obligations as a party to the Settlement Agreements and the Order of Fairness and Preliminary Compliance set forth above.

**IV. D.:** All of the provisions of the Amended Main Street Redevelopment Plan shall supersede the applicable development regulations of the Borough's municipal code in accordance with the terms of the Amended Main Street Redevelopment Plan, and the sections of the zoning map of the Borough that relate to the Redevelopment Area are hereby amended to incorporate the provisions of the Amended Main Street Redevelopment Plan.

**IV. E.:** If any article, section, subsection, sentence, clause or phrase of this Ordinance is, for any reason, held to be unconstitutional or invalid, such decision shall not affect the remaining portions of this Ordinance and they shall remain in full force and effect.

**IV. F.:** In the event of any inconsistencies between the provisions of this Ordinance and any prior ordinance of the Borough of Allenhurst, the provisions hereof shall be determined to govern. All other parts, portions and provisions of the Revised General Ordinances of the Borough of Allenhurst are hereby ratified and confirmed, except where inconsistent with the terms hereof.

**SECTION V.:** REPEALER. The remainder of all other sections and subsections of the aforementioned ordinances not specifically amended by this Ordinance shall remain in full force and effect.

**SECTION VI.:** INCONSISTENT ORDINANCES. All other Ordinances or parts thereof inconsistent with the provisions of this Ordinance are hereby repealed as to such inconsistency.

**SECTION VII.:** SEVERABILITY. If any section, paragraph, subdivision, clause, or provision of this Ordinance shall be adjudged invalid, such adjudication shall apply only to the section, paragraph, subdivision, clause, or provision so adjudged and the remainder of this Ordinance shall be deemed valid and effective.

**SECTION VIII.:** EFFECTIVE DATE. This Ordinance shall take effect upon its passage and publication according to law.

VOTE: Comm. McLoughlin \_\_\_\_; Comm. Cumiskey \_\_\_\_; Mayor McLaughlin \_\_\_\_.

APPROVED: \_\_\_\_\_, 2023

ADOPTED: \_\_\_\_\_, 2023

## **BOROUGH OF ALLENHURST**

The ordinance published herewith was introduced and approved upon first reading at a meeting of the governing body of the Borough of Allenhurst, in the County of Monmouth, New Jersey, held on October 17, 2023. It will be further considered for final passage and adoption after

public hearing thereon, at a meeting of said governing body to be held at the Borough Hall, 125 Corlies Avenue, Allenhurst, New Jersey, on November 14, 2023. at 7:30 PM, or as soon thereafter as said matter can be reached, at which time and place all persons who may be interested therein will be given an opportunity to be heard concerning the same.

A copy of this ordinance has been posted on the bulletin board upon which public notices are customarily posted in the Borough Hall of the Borough during the week prior to and including the date of such meeting; copies of the ordinance are available to the general public of the Borough who shall request such copies, at the office of the Borough Clerk in said Borough of Allenhurst, in the County of Monmouth, New Jersey.