

## **CAUCUS/FINANCE MEETING**

**May 4, 2022**

**A REGULAR SCHEDULED CAUCUS / FINANCE MEETING** of the Mayor and Council of the Borough of Carlstadt was held in the Council Chambers of the Borough Hall, 500 Madison Street, Carlstadt, New Jersey on Wednesday, May 4, 2022 at 7:01P.M.

Mayor Robert Zimmermann asked Claire Foy, Borough Clerk to call the roll: Mayor Robert Zimmermann, Council members David Stoltz, James Lenoy, Joseph Emerson, William Roseman, Suzanne Fonseca and Diane DeBiase were present.

Joseph Crifasi, Borough Administrator and Joseph Donahue, Borough Attorney were also present.

Mayor Zimmermann led all present in the Pledge of Allegiance to the Flag.

Mayor Zimmermann – This meeting has been called pursuant to the Open Public Meetings Law and in accordance with Section 5 of the Open Public Meetings Act, adequate notice of this meeting having been provided in the annual notice schedule which contained the time, date and location of the meeting, copies of which were sent and advertised in the following official newspapers of Carlstadt: The Record on January 6, 2022 and the Herald News on January 6, 2022 a copy of which is on the Bulletin Board in the Borough Hall and a copy on file in the office of the Borough Clerk.

### **PROFESSIONAL REPORTS**

Gregory Polyniak of Neglia Engineering read his report for the month regarding projects that are being done in the Borough of Carlstadt. A copy of his report is on file in the Borough Clerk's office. Councilman Emerson had a few questions regarding the street paving. This is the work PSE&G is doing in the Borough which started last year. Councilman Emerson said he is getting a lot of calls from residents asking when the streets are going to be repaved. Mr. Polyniak said he will reach out to PSE&G to find out when all of this will start. He did say it has to be ended by this year because the State has ended this project. All the paving should be done by the end of November of this year. He will get a schedule from PSE&G.

Robert Ceberio of RCM Ceberio, LLC Management Consultants read his report on Carlstadt Economic Development. A copy of his report is on file in the Borough Clerk's office.

Richard Allen, Esq. and Martin Truscott who are working on the affordable housing were in attendance at the meeting. They were there to talk about four affordable housing topics which included the ordinance, the spending plan and the third is asking for authorization to deal with the problem of 400 Hackensack Street. The fourth one is just a reminder with all of the redevelopment projects that are under way and all of the building that is going on in the Meadowlands. He also wanted to remind everyone that the Borough is entitled to a non-residential development fee from each of those projects, all of which will be deposited in the Borough's affordable housing trust fund. That money will go through some of the ideas on how to spend it which is required now to get approved. Mr. Allen went into detail on all of this. Mr. Allen asked Martin Truscott to explain to the Mayor and Council the changes that the Master Planner wanted in the ordinance. Mr. Truscott went into detail on this matter.

**CONSENT AGENDA**

**RESOLUTION NO. 2022-135**

**BE IT RESOLVED** by the Mayor and Council of the Borough of Carlstadt that the Carlstadt Firefighters Foundation, Inc. be granted permission to hold a raffle on Saturday, June 11, 2022 at 5:00 P.M. at the Carlstadt Borough Hall, 500 Madison Street, Carlstadt, NJ 07072 for which the application, fee and findings and determination sheet shall be forwarded to the Legalized Games of Chance Control Commission.

**RESOLUTION NO. 2022-136**

**RESOLUTION OF THE BOROUGH COUNCIL OF THE BOROUGH OF CARLSTADT, IN THE COUNTY OF BERGEN, NEW JERSEY, COVENANTING TO COMPLY WITH THE PROVISIONS OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED, APPLICABLE TO THE EXCLUSION FROM GROSS INCOME FOR FEDERAL INCOME TAX PURPOSES OF INTEREST ON OBLIGATIONS ISSUED BY THE BOROUGH OF CARLSTADT AND AUTHORIZING THE MAYOR, BOROUGH CLERK, CHIEF FINANCIAL OFFICER AND OTHER BOROUGH OFFICIALS TO TAKE SUCH ACTION AS THEY MAY DEEM NECESSARY OR ADVISABLE TO EFFECT SUCH COMPLIANCE AND DESIGNATING A \$9,000,000 BOND ANTICIPATION NOTE, DATED MAY 6, 2022 AND PAYABLE MAY 5, 2023, AS A "QUALIFIED TAX-EXEMPT OBLIGATION" PURSUANT TO SECTION 265(b)(3) OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED.**

**WHEREAS**, the Borough of Carlstadt, in the County of Bergen, New Jersey (the "Borough") from time-to-time issues bonds, notes and other obligations, the interest on which is excluded from gross income for Federal income tax purposes, and desires to take such action as may be necessary or advisable to establish and maintain such exclusion; and

**WHEREAS**, the Internal Revenue Code of 1986, as amended (the "Code"), contains provisions with respect to the exclusion from gross income for Federal income tax purposes of interest on obligations, including provisions, among others, which require issuers of tax-exempt obligations, such as the Borough to account for and rebate certain arbitrage earnings to the United States Treasury and to take other action to establish and maintain such Federal tax exclusion; and

**WHEREAS**, the Borough intends to issue a \$9,000,000 bond anticipation note, dated May 6, 2022 and payable May 5, 2023 (the "Note"); and

**WHEREAS**, the Borough desires to designate the Note as a "qualified tax-exempt obligation" pursuant to Section 265(b)(3) of the Code.

**NOW, THEREFORE, BE IT RESOLVED** by the Borough Council of the Borough of Carlstadt, in the County of Bergen, New Jersey, as follows:

**SECTION 1.** The Borough Council hereby covenants on behalf of the Borough, to the extent permitted by the Constitution and the laws of the State of New Jersey, to do and perform all acts and things permitted by law and necessary to assure that interest paid on bonds, notes or other obligations of the Borough (including the Note) be and remain excluded from gross income of the owners thereof for Federal income tax purposes pursuant to Section 103 of the Code.

**SECTION 2.** The Mayor, Borough Clerk, Chief Financial Officer and the other officials of the Borough are hereby authorized and directed to take such action, make such representations and give such assurances as they may deem necessary or advisable to effect compliance with the Code.

**SECTION 3.** The Note is hereby designated as a "qualified tax-exempt obligation" for the purpose of Section 265(b)(3) of the Code.

**SECTION 4.** It is hereby determined and stated that (1) said Note is not a "private activity bond" as defined in the Code and (2) the Borough and its subordinate entities, if any, do not reasonably anticipate issuing in excess of \$10 million of new money tax-exempt obligations (other than private activity bonds) during the calendar year 2022.

**SECTION 5.** It is further determined and stated that the Borough has not, as of the date hereof, issued any tax-exempt obligations (other than the Note) during the calendar year 2022.

**SECTION 6.** The Borough will, to the best of its ability, attempt to comply with respect to the limitations on issuance of tax-exempt obligations pursuant to Section 265(b)(3) of the Code; however, said Borough does not covenant to do so, and hereby expressly states that a covenant is not made hereby.

**SECTION 7.** The issuing officers of the Borough are hereby authorized to deliver a certified copy of this resolution to the original purchaser of the Note and to further provide such original purchaser with a certificate of obligations issued during the calendar year 2022 dated as of the date of delivery of the Note.

**SECTION 8.** This resolution shall take effect immediately upon its adoption.

**RESOLUTION NO. 2022-137**

**WHEREAS**, the Borough of Carlstadt adopted Tax Appeal Refund Resolution Number 2022-124 and now it has been determined that there are two separate law firms involved with said tax appeal so the refund must be divided by both law firms, the refund amount is the same but must be divided by each appeal year to each law firm; and

**WHEREAS**, Resolution Number 2022-124 is amended to read Tax Court of New Jersey County of Bergen as per Docket No. 005866-2018 dated 3/8/2022 shows an assessment reduction in the amount of \$316,100.00 or \$6,075.44 in 2018 property tax; and

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**WHEREAS**, the 2018 property tax refund shall be made payable to: “Michael I. Schneck, Trustee for ZORM 2009, LLC”. The payment shall be mailed to: Schneck Law Group, LLC. 301 South Livingston Avenue, Suite 105, Livingston, NJ 07039; and

**WHEREAS**, the Tax Court of New Jersey County of Bergen as per Docket No. 012911-2019 dated 3/8/2022 shows an assessment reduction in the amount of \$266,200.00 or \$4,884.77 in 2019 property tax; and

**WHEREAS**, the 2019 property tax refund shall be made payable to: “Brach Eichler, L.L.C. and Zorm 2009 LLC”. The payment shall be mailed to: Brach Eichler, LLC, 101 Eisenhower Parkway, Roseland, NJ 07068.

The Tax Collector shall adjust his books accordingly.

**RESOLUTION NO. 2022-138**

**RESOLUTION AUTHORIZING AGREEMENT WITH APPRAISAL SYSTEMS, INC. FOR PROGRAM OF ANNUAL RE-ASSESSMENT OF ALL REAL PROPERTY TAX EQUALIZATION PURPOSE FOR THE FIVE-YEAR PERIOD 2023 - 2027**

**WHEREAS**, the Borough of Carlstadt is engaged in a program to annually re-assess all lands, buildings and improvements contained within the boundaries of the Borough; and

**WHEREAS**, there exists a need for a Professional Appraisal service in connection with the Borough’s annual reassessment program for the five-year period including tax years 2023-2027; and

**WHEREAS**, the Mayor and Council of the Borough of Carlstadt has received and reviewed the scope of services for such annual re-assessment program and desires to contract with Rick Del Guercio, President of Appraisal Systems, Inc. (the “Firm”), 264 South Street, building 2, Suite 1B, Morristown, NJ 07960, as real estate appraiser for the purposes of providing professional appraisal services; and

**WHEREAS**, the Firm will provide in the appropriate format a complete annual re-assessment as prescribed by law (N.J.S.A. 54:1-35.35) the required services to the Borough; and

**WHEREAS**, pursuant to attached Contract, the Borough agrees to pay an annual sum of forty-five thousand (\$45,000.00) dollars per year for the implementation of the re-assessment program set to begin October 1, 2022 to be effective for the tax year 2023 and to continue October 1, 2023 to be effective for the tax year 2024; October 1, 2024 to be effective for the tax year 2025; October 1, 2025 to be effective for the tax year 2026; and October 1, 2026 to be effective for the tax year 2027; and

**WHEREAS**, the total amount of the five-year program will be \$225,000.00 as of January 1, 2023; and

**WHEREAS**, the Chief Financial Officer has certified that funds in an amount not to exceed \$225,000.00 are available to pay the anticipated amount of the contract for these services at the annual rate of \$45,000.00 per year for each of the five years of the program; and

**WHEREAS**, the Local Public Contract Law (N.J.S.A. 40A-11-1, et seq.) requires that a Resolution authorizing the award of contracts for “professional services” without competitive bids and the contract be made available for public inspection.

**NOW, THEREFORE BE IT RESOLVED** that the Mayor and Council of the Borough of Carlstadt, County of Bergen, New Jersey, as follows:

1. The Mayor and Council hereby authorizes and approves the retention of Rick Del Guercio, President of the firm of Appraisal Systems Inc., 264 South Street, building 2, Suite 1B, Morristown, NJ 07960, as real estate Appraiser consistent with the proposal dated January 14, 2022 to provide an annual re-assessment for the five-year period 2023-2027.

2. This contract is awarded without competitive bidding as a “Professional Service” in accordance with N.J.S.A. 40A:11-5(1)(a) of the Local Public Contracts Law because the contract is for professional appraisal services.

3. A Business Disclosure Entity Certification and the Determination of Value are to be placed on file with this resolution.

4. The Mayor be and hereby is authorized to sign the Contract for professional real estate appraisal services for the five-year re-assessment program in the form attached hereto subject to the approval of the Borough Attorney.

5. A notice of this action shall be printed once in the official newspaper of the Borough of Carlstadt in accordance with N.J.S.A. 40A:11-5(1)(a)(I).

**Certification as to the availability of funds:**

The Chief Financial Officer/Treasurer hereby certifies that sufficient funds are available to pay the anticipated amount of the contract for these services.

**RESOLUTION NO. 2022-139**  
**RESOLUTION-PREPARATION OF ESTIMATED TAX BILLS**

This Resolution shall rescind Borough of Carlstadt Resolution No. 2022-94.

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**WHEREAS**, the Governing Body has determined that there will be insufficient cash flow to support operations in late July 2022 unless third quarter revenue is received on time, and

**WHEREAS**, the Tax Collector, Chief Financial Officer, Domenick Giancaspro and Borough Auditor, Paul Garbarini have reviewed and computed an estimated tax levy in accordance with N.J.S.A. 54: 4-66.3.

**NOW, THEREFORE BE IT RESOLVED** that the Governing Body of the Borough of Carlstadt, County of Bergen, State of New Jersey, hereby authorizes that:

1. The Tax Collector is directed to prepare, and issue estimated tax bills for the Borough of Carlstadt for third quarter, August, 2022, in accordance with the provisions of N.J.S.A. 54: 4-66.2 et seq.
2. The estimated tax levy for 2022 is hereby set at \$50,032,708.56 and an estimated tax rate of 1.903 (105% of the 2021 Tax Levy).
3. The Tax Collector takes any additional steps necessary to immediately implement this Resolution.
4. On the advice of the Tax Collector, Chief Financial Officer, Domenick Giancaspro and Borough Auditor, Paul Garbarini should the need to process Estimated Tax Bills not be required then said Estimated Tax Bills will not be processed.

Approved for review: Domenick Giancaspro, CFO Carlstadt.

|       |                  |                 |
|-------|------------------|-----------------|
| 95%:  | \$ 45,267,688.70 | Rate: \$ 1.722% |
| 100%: | \$ 47,650,198.63 | Rate: \$ 1.813% |
| 105%: | \$ 50,032,708.56 | Rate: \$ 1.903% |

**RESOLUTION NO. 2022-140**

**BE IT RESOLVED** by the Mayor and Council of the Borough of Carlstadt that permission is granted to the following for the use of facilities on the specified date:

**Community Center:**

1. WERC Warriors Football and Cheering – Monday and Wednesday, May 9 and 11, 2022 from 6:00 P.M. to 9:00 P.M.

Mayor Zimmermann entertained a motion to approve the Consent Agenda. On motion by DeBiase, seconded by Stoltz, unanimous on call of roll.

Mayor Zimmermann entertained a motion to approve the minutes of 3/2/2022 Caucus/Finance Meeting, 3/16/2022 Caucus Meeting and 3/16/2022 Council Meeting (Open and Closed Sessions) On motion by Emerson, seconded by Fonseca, unanimous on call of roll. Councilman Stoltz abstained on the closed session.

Mayor Zimmermann entertained a motion to approve two Special Police Officers for the Primary Election on June 7, 2022, one for the School Picnic on June 18, 2022, one for the Summer Concerts and two for the Fire Department Anniversary on June 11, 2022.

On motion by Emerson, seconded by DeBiase, unanimous on call of roll.

Mayor Zimmermann opened the floor to a hearing of citizens.

On motion by Emerson, seconded by DeBiase, unanimous on call of roll.

Mayor Zimmermann asked if there was any citizen that wished to speak.

Gunter Kuprat, 507 Washington Street – he mentioned that in three weeks we will be having the Memorial Day Parade. He wanted to bring back having a wreath for the American Legion at Borough Hall with two men to do this. Mayor Zimmermann said to keep it the way it was. If we have it where it has been with two people were bringing it up, one person from the Legion and one person from the VFW carry up one wreath, bring it into Borough Hall, salute and do their service and go back into the ceremony.

Bruce Young, 720 Washington Street - said he spoke to Herb Scheidewig about this whole situation and Bruce's Florist, who has been in the business for forty years, has been making the wreaths for forty years. Mr. Young, who is the commander of the VFW Post in Carlstadt, talked about issues with the members that are not able to walk the parade route but they do have enough cars for them to ride in the Memorial Day Parade.

Assistant Fire Chief John Harr mentioned that May 21, 2022 will be the Fire Department Memorial Service at Memorial Park at 5:00 P.M. and returning to the firehouse for the inspection with refreshments afterwards. He asked for no parking signs on Division Avenue from Third Street to Hackensack Street. He also asked for a Special Police officer for about an hour and a half for the event.

Mayor Zimmermann asked if any other citizen wished to be heard.

Mayor Zimmermann said to let the record note there is no other citizen that wished to speak.

Mayor Zimmermann entertained a motion to close the floor to a hearing of citizens.

On motion by Fonseca, seconded by Stoltz, unanimous on call of roll.

### **CORRESPONDENCE**

Mayor Zimmermann said we received correspondence from Kenneth Foy, Principal of Carlstadt Public School regarding the Eighth Grade Annual Buffet on Thursday, June 16, 2022 at 6:00 P.M. This year the Awards Ceremony will be at the Fiesta. They will be presenting the Christopher Niederer-Technology/Life Skills Award this year. He is requesting \$25.00 from us for this award

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and \$30.00 for the dinner. Mayor Zimmermann entertained a motion to approve the \$25.00 and \$30.00 for the dinner. On motion by Roseman, seconded by Fonseca, unanimous on call of roll.

Mayor Zimmermann said we received correspondence from Frank Covelli of PIA. He congratulated us as a recipient of the 2021 Silver Safety Award with a \$750.00 Cash Award and also an attractive plaque from the South Bergen Municipal Joint Insurance Fund.

A letter was received from Lorraine Joewono, Director of Senior Services. There will be a Public Hearing on Thursday, May 12, 2022 at 9:00 A.M. on the needs of older adults in Bergen County. This will take place in the Public Meeting Room, 5<sup>th</sup> floor at the County Administration Building in Hackensack, N.J. Mayor Zimmermann said we should put this on the Borough website and get this out to the seniors to let them know that is available.

Mayor Zimmermann said the National Letter Carriers are conducting a National Food Drive on May 14, 2022. Perhaps we can contact Bob Lopinski who is with the Post Office. Maybe folks can drop off their food donations at Borough Hall.

Mayor Zimmermann said we received a letter from Chris Assenheimer, Tax Collector. He is requesting permission to attend the 2022 Spring Conference of the NJ Tax Collectors and Treasurers Association on Tuesday, May 17 and Wednesday, May 18, 2022. He will leave Tuesday, May 17, 2022 at noon.

Mayor Zimmermann entertained a motion to allow Chris Assenheimer to attend the event in Atlantic City. On motion by Emerson, seconded by Stoltz, unanimous on call of roll.

**FIRST READING**

**ORDINANCE NO. 22-5**

**BOROUGH OF CARLSTADT**

**AN ORDINANCE TO AMEND AND SUPPLEMENT THE CODE OF THE BOROUGH OF CARLSTADT TO IMPLEMENT THE BOROUGH'S AFFORDABLE HOUSING FAIR SHARE PLAN AS APPROVED BY THE SUPERIOR COURT.**

**BE IT ORDAINED by the Mayor and Council of the Borough of Carlstadt, County of Bergen as follows:**

**SECTION 1.**

Sections 21-22, and 21-23 of the Code of the Borough of Carlstadt are hereby deleted and amended and the following is inserted in its place and stead:

**“21-22 Affordable Housing Overlay Zones.**

a. Purpose. The Borough of Carlstadt is a fully developed community with no vacant land available for the development of affordable housing. A vacant land adjustment has been approved by the court. It is the Borough's desire to address its unmet housing need using overlay zones. Overlay zones provide an appropriate and realistic mechanism to promote the creation of affordable housing when vacant properties are developed, or existing developed sites are redeveloped.

b. Conflict in Requirements. The requirements of the zoning provisions of Chapter XXI apply to the AHO-1, AHO-1A, and AHO-2 Overlay Zones except where those requirements conflict with this section. In the event of such a conflict, the terms of this Section 21-22 shall prevail.

c. Zones. The Affordable Housing Overlay Zone 1 (AHO-1) is located on all properties in the Residential District and the Mixed Commercial District. The Affordable Housing Overlay Zone A (AHO-1A) is located on all properties fronting on Hoboken Road between Washington Street and Garden Street. The Affordable Housing Overlay Zone 2 (AHO-2) is located on all properties in the Light Industrial District.

d. Permitted Uses.

(1) The following uses are permitted and must include at least a 20% affordable housing set-aside in accordance with this Section 21-29:

1. Multifamily residential
2. Townhouse.
3. Garden apartments.

e. Development Standards.

1. The following bulk standards are applicable within the Affordable Housing Overlay Zones:

| Standard           | AHO-1              | AHO-1A             | AHO-2              |
|--------------------|--------------------|--------------------|--------------------|
| Minimum lot size   | 20,000 square feet | 10,000 square feet | 20,000 square feet |
| Maximum density    | 25 units per acre  | 35 units per acre  | 34 units per acre  |
| Front yard setback | 20 feet            | 20 feet            | 20 feet            |
| Side yard setback  | 10 feet each       | 10 feet each       | 10 feet each       |
| Rear yard setback  | 30 feet            | 30 feet            | 30 feet            |

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| Standard                            | AHO-1             | AHO-1A  | AHO-2             |
|-------------------------------------|-------------------|---|-------------------|
| Minimum open space                  | 30%               | 30%   | 30%               |
| Maximum impervious surface coverage | 70%               | If the lot size is equal to or greater than 11,100 square feet, then 70%; if lot size is less than 11,100 square feet, then this section is not applicable. | 70%               |
| Minimum permeable surface coverage  | Not Applicable    | 25%   | Not Applicable    |
| Maximum building height             | 35 feet/3 stories | 35 feet/3 stories   | 40 feet/4 stories |

**2.** Notwithstanding Paragraph g.1. in the AHO-1A Zone:

**(a)** Where the average prevailing setback of existing adjacent structures is less than 20 feet, the setback shall be reduced to the average setback line observed by buildings on the same side of the street between two intersecting streets.

**(b)** Where the height of the principal building on an adjacent lot (an "adjacent principal building") exceeds 35 feet, then the maximum height of the principal building on the subject lot shall be increased to the height of the adjacent principal building but not more than 40 feet.

**3.** Areas that can be counted toward the minimum permeable surface coverage include the following:

**(a)** Vegetative landscape, such as grass, trees, and shrubs.

**(b)** Permeable paving, properly installed, which must include porous above-ground materials (such as open pavers or engineered products) and a six-inch porous subbase and a base layer designed to ensure proper drainage away from the structure(s).

**f.** Parking. The following parking requirements apply to both the AHO-1 and AHO-2 Overlay Zones:

**1.** Parking space size and number requirements shall be in compliance with the New Jersey Residential Site Improvement Standards (RSIS).

**2.** No parking shall be permitted in the front yard.

**3.** Underground/under-building and structured parking shall be permitted.

4. Parking shall be permitted in the side and rear yards only. All parking must be located 10 feet from any side yard property line and five feet from any rear yard property line.

5. All perimeter areas surrounding a parking lot must be densely landscaped with year-round screening materials, including but not limited to evergreen shrubs.”

## **SECTION 2.**

Chapter 21-23 entitled “Senior Citizen Housing District” is hereby amended to delete and remove the entire section. The following shall be inserted in its place and stead: “21-23 Reserved”

## **SECTION 3.**

The following section is hereby established entitled “21-29 Affordable Housing” as follows:  
“21-29. Affordable Housing

### **29.1 Affordable Housing Obligation**

- (a) This Ordinance is intended to assure that very low, low- and moderate-income units ("affordable units") are created with controls on affordability over time and that low- and moderate-income households shall occupy these units. This Ordinance shall apply except where inconsistent with applicable law.
- (b) The Borough of Carlstadt 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 Fair Share Plan has been endorsed by the governing body. The Fair Share Plan describes the ways Borough of Carlstadt shall address its fair share for low- and moderate-income housing as determined by the Department of Community Affairs (the Department) and documented in the Housing Element.
- (c) This Ordinance implements and incorporates the Fair Share Plan and addresses the requirements of N.J.A.C. 5:97, as may be amended and supplemented.
- (d) The Borough shall file monitoring and status reports with Fair Share Housing Center (“FSHC”) and place the reports on its municipal website. Any plan evaluation report of the Housing Element and Fair Share Plan and monitoring evaluation report prepared by the Special Master in accordance with N.J.A.C. 5:91 shall be available to the public at the Carlstadt Municipal Building.
- (f) On or about August 20 of each year through the end of the period of Third Round Judgment of Repose, the Borough will 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 all parties to the Borough’s Court-approved Settlement Agreements, using forms previously developed for this purpose by the Council on Affordable Housing or any other forms endorsed by the Special Master and FSHC.

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1. By July 1, 2020, the Borough must prepare a midpoint realistic opportunity review, as required pursuant to N.J.S.A. 52:27D-313, which the Borough will post on its municipal website, with a copy provided to FSHC, a status report as to its implementation of its Plan and an analysis of whether any unbuilt sites or unfulfilled mechanisms continue to present a realistic opportunity. Such posting shall invite any interested party to submit comments to the municipality, with a copy to FSHC, regarding whether any sites no longer present a realistic opportunity and should be replaced and whether any mechanisms to meet unmet need should be revised or supplemented. Any interested party may by motion request a hearing before the Court regarding these issues. In the event the Court determines that a site or mechanism no longer presents a realistic opportunity and should be replaced or supplemented, then the municipality shall have the opportunity to supplement or revise its plan to correct any deficiency.
  
2. Within 30 days of the third anniversary of the Borough's Settlement Agreement with Fair Share Housing Center and every third year thereafter, the Borough shall prepare a review of compliance with the very-low-income housing requirements required by N.J.S.A. 52:27D-329.1 and its Court-approved Settlement Agreement with FSHC. 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 the family very-low-income requirements referenced herein and in the Borough's Settlement Agreement with FSHC. 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 housing obligation.

### 29.2 Definitions

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

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

"Administrative agent" means the entity designated by the Borough to administer affordable units in accordance with this Ordinance, N.J.A.C. 5:80-26, and N.J.A.C. 5:96.

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

"Affordable" means, a sales price or rent level that is within the means of a very-low household as defined as households earning thirty percent (30%) or less of the regional median income by household size, low- or moderate-income household as defined within N.J.A.C. 5:93-7.4, and, 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.

"Affordability average" means the average percentage of median income at which new restricted units in an affordable housing development are affordable to low- and moderate-income households.

"Affordable housing program(s)" means any mechanism in a municipal Housing Element and Fair Share Plan prepared or implemented to address a municipality's fair share obligation.

"Affordable unit" means a housing unit proposed or created pursuant to the Act and approved for crediting by the Court and/ or funded through an affordable housing trust fund.

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

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

"Alternative living arrangement" means a structure in which households live in distinct bedrooms, yet share kitchen and plumbing facilities, central heat and common areas. Alternative living arrangements include but are not limited to: transitional facilities for the homeless; Class A, B, C, D and E boarding homes as regulated by the State of 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.

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

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

"DCA" means the State of New Jersey Department of Community Affairs.

"Deficient housing unit" means a housing unit with health and safety code violations that requires 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.

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

"Inclusionary development" means a development containing both affordable units and market rate units. This term includes, but is not limited to: new construction, the conversion of a non-residential structure to residential use and the creation of new affordable units through the gut rehabilitation or reconstruction of a vacant residential structure.

"Low-income household" means a household with a total gross annual household income equal to fifty percent (50%) or less of the regional median household income by household size.

"Low-income unit" means a restricted unit that is affordable to a low-income household.

"Major system" means the primary structural, mechanical, plumbing, electrical, fire protection, or occupant service components of a building which include but are not limited to, weatherization, roofing, plumbing (including wells), heating, electricity, sanitary plumbing (including septic systems), lead paint abatement and load bearing structural systems.

"Market-rate units" means housing not restricted to very low-, low- and moderate-income households that may sell or rent at any price.

"Median income" means the median income by household size for the applicable housing region, as adopted annually by COAH or a successor entity approved by the Court.

"Moderate-income household" means a household with a total gross annual household income in excess of fifty percent (50%) but less than eighty percent (80%) of the regional median household income by household size.

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

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

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

"Regional asset limit" means the maximum housing value in each housing region affordable to a four-person household with an income at eighty percent (80%) of the regional median as defined by duly adopted Regional Income Limits published annually by COAH or a successor entity.

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

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

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

"UHAC" means the Uniform Housing Affordability Controls set forth in N.J.A.C. 5:80-26-1, et seq.

"Very low-income household" means a household with a total gross annual household income equal to thirty percent (30%) or less of the regional median household income by household size.

"Very low-income unit" means a restricted unit that is affordable to a very low-income household.

"Weatherization" means building insulation (for attic, exterior walls and crawl space), siding to improve energy efficiency, replacement storm windows, replacement storm doors, replacement windows and replacement doors, and is considered a major system for purposes of a rehabilitation program.

### **21-29.3 Inclusionary Housing**

Other Affordable Housing Requirements. All development is subject to the Borough's zoning power where the development proposes 5 or more units; provided that this subsection shall not apply to residential expansions, additions, renovations, replacement, or any other type of residential development that does not result in a net increase in the number of dwellings of five or more; shall provide for affordable housing in accordance with the following requirements:

1. In a project where the units are sold, a minimum of 20% of the total number of approved units shall be set aside for occupancy by very low, low- and moderate-income households as defined by NJ Uniform Housing Affordability Controls.

2. In a project where the units are rented to tenants, a minimum of 15% of the total number of approved units shall be set aside for occupancy by very low, low- and moderate-income households as defined by NJ Uniform Housing Affordability Controls.

3. In any project, a minimum of 13% of the affordable housing units shall be set aside for occupancy by very low-income households as defined by NJ Uniform Housing Affordability Controls.

4. All affordable units shall comply with the terms and conditions of the Uniform Housing Affordability Controls relied upon by the Court and currently set forth in N.J.A.C. 5:80-26.1 et seq., as same may be amended and supplemented from time to time; provided that in each affordable development, at least 50 percent of the restricted units within each bedroom distribution shall be low-income units and the remainder may be moderate-income units. To ensure that at least 50 percent of restricted units shall be designated as low-income units, all projects providing an odd number of affordable units, shall designate the odd unit as low-income.

### **21-29.4. Administration**

(a) The position of Municipal Housing Liaison (MHL) for Borough of Carlstadt is established by this ordinance. The Mayor shall make the actual appointment of the MHL by means of a resolution and subject to approval by the Superior Court.

1. The MHL must be either a full-time or part-time employee of Borough of Carlstadt
2. The person appointed as the MHL must be reported to the Department.

3. The MHL must meet all the Department requirements for qualifications, including initial and periodic training.
4. The Municipal Housing Liaison shall be responsible for oversight and administration of the affordable housing program for the Borough of Carlstadt, 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 Carlstadt's Fair Share Plan;
  - v. Compiling, verifying and submitting annual reports as required by the Department or as required by Superior Court;
  - 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 offered or approved by the Department.
- (b) The Borough of Carlstadt shall designate by resolution of the Council, subject to the approval of the Department, one or more Administrative Agents to administer newly constructed affordable units in accordance with this ordinance.
- (c) An Operating Manual shall be provided by the Administrative Agent(s) to be adopted by resolution of the governing body and subject to approval of the Department. The Operating Manuals shall be available for public inspection in the Office of the Municipal Clerk and in the office(s) of the Administrative Agent(s).
- (d) The Administrative Agent shall perform the duties and responsibilities of an administrative agent as are set forth in UHAC and which are described in full detail in the Operating Manual, including those set forth in N.J.A.C. 5:80-26.14, 16 and 18 thereof, which includes:
  1. Attending continuing education opportunities on affordability controls, compliance monitoring, and affirmative marketing as offered or approved by the Department;
  2. Affirmative Marketing;
  3. Household Certification;

4. Affordability Controls;
5. Records retention;
6. Resale and re-rental;
7. Processing requests from unit owners; and
8. Enforcement, though the ultimate responsibility for retaining controls on the units rests with the municipality.
9. The Administrative Agent shall have authority to take all actions necessary and appropriate to carry out its responsibilities, hereunder.

(e) The fees of the Administrative Agent shall be paid by the owners of the affordable units for which the services of the Administrative Agent are required.

**21-29.5. Alternative living arrangements.**

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

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

(2) Affordability average and bedroom distribution (N.J.A.C. 5:80-26.3).

b. With the exception of units established with capital funding through a twenty-year operating contract with the Department of Human Services, Division of Developmental Disabilities, alternative living arrangements shall have at least thirty-year controls on affordability in accordance with UHAC, unless an alternative commitment is approved by the Court.

c. 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.

**21-29.6. Phasing & Bedroom Distribution.**

21-29.6.1 In inclusionary developments the following schedule shall be followed:

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

21-29.6.2 Low/moderate Split and Bedroom Distribution

(1) The fair share obligation shall be divided equally between very low-, low-, or moderate-income units, except that where there is an odd number of affordable housing units, the extra unit shall be a low-income unit. At least thirteen percent (13%) of all restricted rental units and all bedroom distributions shall be very low-income units (affordable to a household earning thirty percent (30%) or less of regional median income by household size).

The very low-income units shall be counted as part of the required number of low-income units within the development.

(2) In each affordable development, at least fifty percent (50%) of the restricted units within each bedroom distribution shall be very low or low-income units.

(3) Affordable developments that are not age-restricted shall be structured in conjunction with realistic market demands such that:

(a) The combined number of efficiency and one-bedroom units shall be no greater than twenty percent (20%) of the total very low-, low-, or moderate-income units;

(b) At least thirty percent (30%) of all very low-, low-, or moderate-income units shall be two-bedroom units;

(c) At least twenty percent (20%) of all very low-, low- or moderate-income units shall be three-bedroom units; and

(d) The remaining units may be allocated among two- and three-bedroom units at the discretion of the developer.

(4) Affordable developments that are age-restricted shall be structured such that the number of bedrooms shall equal the number of age restricted very low-, low-, or moderate-income units within the inclusionary development. This standard may be met by having all one-bedroom units or by having a two-bedroom unit for each efficiency unit.

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21-20.6.3 Design. In inclusionary developments, low- and moderate- income units shall be integrated with the market units.

21-29.6.4. Utilities. Affordable units shall utilize the same type of heating source as market units within the affordable development.

**21-29.7. New Construction**

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

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

1. The fair share obligation shall be divided equally between very low, low- and moderate-income units, except that where there is an odd number of affordable housing units, the extra unit shall be a low-income unit. Additionally, at least thirteen percent (13%) of all restricted units shall be very-low-income units (affordable to a household earning thirty percent (30%) or less of the regional median income by household size). The very-low-income units shall be counted as part of the required number of low-income units in the development.
2. In each affordable development, at least 50 percent of the restricted units within each bedroom distribution shall be low-income units, with at least 13% affordable to very-low-income households. The very-low-income units shall be counted as part of the required number of low-income units in the development.
3. 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 low- and moderate-income units;
  - ii. At least 30 percent of all low- and moderate-income units shall be two-bedroom units;
  - iii. At least 20 percent of all low- and moderate-income units shall be three-bedroom units; and
  - iv. The remaining units may be allocated among two- and three-bedroom units at the discretion of the developer.
  - v. Affordable developments that are age-restricted shall be structured such that the number of bedrooms shall equal the number of age-restricted low- and moderate-income units within the inclusionary development.

- a. The standard may be met by having all one-bedroom units or by having a two-bedroom unit for each efficiency unit.

(b) Accessibility Requirements:

1. The first floor of all restricted townhouse dwelling units and all restricted units in all other multistory buildings shall be subject to the technical design standards of the Barrier Free Subcode, N.J.A.C. 5:23-7 and N.J.A.C. 5:97-3.14.
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 interior accessible route of travel shall not be required between stories within an individual unit;
  - v. 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
  - 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 and N.J.A.C. 5:97-3.14, or evidence that the Borough of Carlstadt 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 Carlstadt '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 B. above shall be used by the Borough of Carlstadt 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 Carlstadt.
- 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 N.J.A.C. 5:97-3.14, and that the cost estimate of such conversion is reasonable, payment shall be made to the Borough of Carlstadt's affordable housing trust fund in care of the Municipal Treasurer who shall ensure that the funds are deposited into the affordable housing trust fund and appropriately earmarked.
- 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 and N.J.A.C. 5:97-3.14.

(c) Maximum Rents and Sales Prices

- 1. In establishing rents and sales prices of affordable housing units, the administrative agent shall follow the procedures set forth in UHAC and by the Superior Court, utilizing the regional income limits established.
- 2. The maximum rent for restricted rental units within each affordable development shall be affordable to households earning no more than 60 percent of median income, and the average rent for restricted low- and moderate-income units shall be affordable to households earning no more than 52 percent of median income.
- 3. The developers and/or municipal sponsors of restricted rental units shall establish at least one rent for each bedroom type for both low-income and moderate-income units.
  - (a) At least 13% of all low- and moderate-income rental units shall be affordable to households earning no more than 30% of median income.
- 4. The maximum sales price of restricted ownership units within each affordable development shall be affordable to households earning no more than 70 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 used:
  - i. A studio shall be affordable to a one-person household;
  - ii. A one-bedroom unit shall be affordable to a one- and one-half-person household;
  - iii. A two-bedroom unit shall be affordable to a three-person household;
  - iv. A three-bedroom unit shall be affordable to a four and one-half person household;  
and
  - v. A four-bedroom unit shall be affordable to a six-person household.
6. In determining the initial rents for compliance with the affordability average requirements for restricted units in assisted living facilities, the following standards shall be used:
  - i. A studio shall be affordable to a one-person household;
  - ii. A one-bedroom unit shall be affordable to a one- and one-half-person household; and
  - iii. A two-bedroom unit shall be affordable to a two-person household or to two one-person households.
7. The initial purchase price for all restricted ownership units shall be calculated so that the monthly carrying cost of the unit, including principal and interest (based on a mortgage loan equal to 95 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.

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In no event shall the maximum resale price established by the administrative agent be lower than the last recorded purchase price.

All units shall include the required bedroom distribution, be governed by controls on affordability and affirmatively marketed in conformance with the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.1 et seq. or any successor regulation, except that in lieu of the 10 percent of affordable units in rental projects required to be at 35% of median income, 13% of all affordable units shall be "very low income" as defined in N.J.S.A.52:270-304, and all other applicable law. The Borough as part of its HEFSP shall adopt and/or update appropriate implementing ordinances in conformance with standard ordinances and guidelines developed by COAH to ensure that this provision is satisfied. Income limits for all units that are part of the Plan required by this Agreement and for which income limits are not already established through a federal program exempted from the Uniform Housing Affordability Controls pursuant to N.J.A.C. 5:80-26.1 shall be updated by the Borough within 30 days of the publication of determinations of median income by HUD, but not more frequently than annually, as follows:

- (a) Regional income limits shall be established for the Region 1 based on the median income by household size, which shall be established by a regional weighted average of the uncapped Section 8 income limits published by HUD. To compute this regional income limit, the HUD determination of median county income for a family of four is multiplied by the estimated households within the county according to the most recent decennial Census. The resulting product for each county within the housing region is summed. The sum is divided by the estimated total households from the most recent decennial Census in Region 1. This quotient represents the regional weighted average of median income for a household of four. The income limit for a moderate-income unit for a household of four shall be 80 percent of the regional weighted average median income for a family of four. The income limit for a low-income unit for a household of four shall be 50 percent of the HUD determination of the regional weighted average median income for a family of four. The income limit for a very-low-income unit for a household of four shall be 30 percent of the regional weighted average median income for a family of four. These income limits shall be adjusted by household size based on multipliers used by HUD to adjust median income by household size. In no event shall the income limits be less than those for the previous year.
- (b) The income limits calculated each year shall be the result of applying the percentages set forth in paragraph (a) above to HUD's

determination of median income for the relevant fiscal year, and shall be utilized until the Borough updates the income limits after HUD has published revised determinations of median income for the next fiscal year.

- (c) The Regional Asset Limit used in determining an applicant's eligibility for affordable housing pursuant to N.J.A.C. 5:80-26.16(b)3 shall be calculated by the Borough annually by taking the percentage increase of the income limits calculated pursuant to paragraph (a) above over the previous year's income limits, and applying the same percentage increase to the Regional Asset Limit from the prior year. In no event shall the Regional Asset Limit be less than that for the previous year.

- 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 nine percent in any one year. Rents for units constructed pursuant to low- income housing tax credit regulations shall be indexed pursuant to the regulations governing low- income housing tax credits.
- 11. Utilities. Tenant-paid utilities that are included in the utility allowance shall be so stated in the lease and shall be consistent with the utility allowance approved by DCA for its Section 8 program.

### **21-29.8. Affirmative Marketing Requirements**

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

The Borough Affirmative Marketing Plan is amended to include pursuant to N.J.A.C. 5:8-26.15 (f)(5) , the following organizations: the Fair Share Housing Center, the New Jersey State Conference of the NAACP, the Latino Action Network, the Bergen County Chapter of the NAACP, and the Bergen County Urban League as part of the regional affirmative marketing strategies during implementation of the affirmative marketing plan.
- (b) The affirmative marketing plan is a regional marketing strategy designed to attract buyers and/or renters of all majority and minority groups, regardless of race, creed, color, national origin, ancestry, marital or familial status, gender, affectional or sexual orientation, disability, age or number of children to housing units which are being marketed by a developer, sponsor or owner of affordable housing. The affirmative marketing plan is also intended to target those potentially eligible persons who are least likely to apply for affordable units in that region. It is a continuing program that directs all marketing activities toward Housing Region #1 and covers the period of deed restriction.

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- (d) The Administrative Agent designated by the Borough of Carlstadt shall assure the affirmative marketing of all affordable units consistent with the Affirmative Marketing Plan for the municipality.
- (e) In implementing the affirmative marketing plan, the Administrative Agent shall provide a list of counseling services to low- and moderate-income applicants on subjects such as budgeting, credit issues, mortgage qualification, rental lease requirements, and landlord/tenant law.
- (f) The affirmative marketing process for available affordable units shall begin at least four months prior to the expected date of occupancy.
- (g) The costs of advertising and affirmative marketing of the affordable units shall be the responsibility of the developer, sponsor or owner, unless otherwise determined or agreed to by Borough of Carlstadt.

**21-29.9. Occupancy Standards**

- (a) In referring certified households to specific restricted units, to the extent feasible, and without causing an undue delay in occupying the unit, the Administrative Agent shall strive to:
  - 1. Provide an occupant for each bedroom;
  - 2. Provide separate bedrooms for parents and children.
  - 3. Provide children of different sex with separate bedrooms; and
  - 4. Prevent more than two persons from occupying a single bedroom.
- (b) Additional provisions related to occupancy standards (if any) shall be provided in the municipal Operating Manual.

**21-29.10. Control Periods for Restricted Ownership Units and Enforcement Mechanisms**

- (a) Control periods for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.5, as may be amended and supplemented, and each restricted ownership unit shall remain subject to the requirements of this Ordinance until the Borough elects to release the unit from such requirements however, and prior to such an election, a restricted ownership unit must remain subject to the requirements of N.J.A.C. 5:80-26.1, as may be amended and supplemented, for at least 30 years.
- (b) The affordability control period for a restricted ownership unit shall commence on the date the initial certified household takes title to the unit.

- (c) Prior to the issuance of the initial certificate of occupancy for a restricted ownership unit and upon each successive sale during the period of restricted ownership, the administrative agent shall determine the restricted price for the unit and shall also determine the non-restricted, fair market value of the unit based on either an appraisal or the unit's equalized assessed value.
- (d) At the time of the first sale of the unit, the purchaser shall execute and deliver to the Administrative Agent a recapture note obligating the purchaser (as well as the purchaser's heirs, successors and assigns) to repay, upon the first non-exempt sale after the unit's release from the requirements of this Ordinance, an amount equal to the difference between the unit's non-restricted fair market value and its restricted price, and the recapture note shall be secured by a recapture lien evidenced by a duly recorded mortgage on the unit.
- (e) The affordability controls set forth in this Ordinance shall remain in effect despite the entry and enforcement of any judgment of foreclosure with respect to restricted ownership units.
- (f) A restricted ownership unit shall be required to obtain a Continuing Certificate of Occupancy or a certified statement from the Construction Official stating that the unit meets all code standards upon the first transfer of title that follows the expiration of the applicable minimum control period provided under N.J.A.C. 5:80-26.5(a), as may be amended and supplemented.

**21-29.11. 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:

- (a) The initial purchase price for a restricted ownership unit shall be approved by the Administrative Agent.
- (b) The Administrative Agent shall approve all resale prices, in writing and in advance of the resale, to assure compliance with the foregoing standards.
- (c) The method used to determine the condominium association fee amounts and special assessments shall be indistinguishable between the very low, low- and moderate-income unit owners and the market unit owners.
- (d) The owners of restricted ownership units may apply to the Administrative Agent to increase the maximum sales price for the unit on the basis of capital improvements. Eligible capital improvements shall be those that render the unit suitable for a larger household or the addition of a bathroom.

**21-29.12. Buyer Income Eligibility**

- (a) Buyer income eligibility for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.1, as may be amended and supplemented, such that low-income ownership units shall be reserved for households with a gross household income less than or equal to 50 percent of median income and moderate-income ownership units shall be reserved for households with a gross household income less than 80 percent of median income.
- (b) The Administrative Agent shall certify a household as eligible for a restricted ownership unit when the household is a very low, low-income household or a moderate-income household, as applicable to the unit, and the estimated monthly housing cost for the particular unit (including principal, interest, taxes, homeowner and private mortgage insurance and condominium or homeowner association fees, as applicable) does not exceed 33 percent of the household's certified monthly income.

**21-29.13. Limitations on indebtedness secured by ownership unit; subordination**

- (a) Prior to incurring any indebtedness to be secured by a restricted ownership unit, the administrative agent shall determine in writing that the proposed indebtedness complies with the provisions of this section.
- (b) With the exception of original purchase money mortgages, during a control period neither an owner nor a lender shall at any time cause or permit the total indebtedness secured by a restricted ownership unit to exceed 95 percent of the maximum allowable resale price of that unit, as such price is determined by the administrative agent in accordance with N.J.A.C.5:80-26.6(b).

**21-29.14. Control Periods for Restricted Rental Units**

- (a) Control periods for restricted rental units shall be in accordance with N.J.A.C. 5:80-26.11, as may be amended and supplemented, and each restricted rental unit shall remain subject to the requirements of this Ordinance until the Borough of Carlstadt elects to release the unit from such requirements pursuant to action taken in compliance with N.J.A.C. 5:80-26.1, as may be amended and supplemented, and prior to such an election, a restricted rental unit must remain subject to the requirements of N.J.A.C. 5:80-26.1, as may be amended and supplemented, for at least 30 years.
- (b) Deeds of all real property that include restricted rental units shall contain deed restriction language. The deed restriction shall have priority over all mortgages on the property, and the deed restriction shall be filed by the developer or seller with the records office of the County of Bergen. A copy of the filed document shall be provided to the Administrative Agent within 30 days of the receipt of a Certificate of Occupancy.
- (c) A restricted rental unit shall remain subject to the affordability controls of this Ordinance, despite the occurrence of any of the following events:

1. Sublease or assignment of the lease of the unit;
2. Sale or other voluntary transfer of the ownership of the unit; or
3. The entry and enforcement of any judgment of foreclosure.

**21-29.15. Control Periods for Rehabilitated Housing Units.**

- (a) Rehabilitated owner-occupied housing units that are improved to code standards shall be subject to affordability controls for a period of ten (10) years.

**21-29.16. Price Restrictions for Rental Units; Leases**

- (a) A written lease shall be required for all restricted rental units, except for units in an assisted living residence, and tenants shall be responsible for security deposits and the full amount of the rent as stated on the lease. A copy of the current lease for each restricted rental unit shall be provided to the Administrative Agent.
- (b) No additional fees or charges shall be added to the approved rent (except, in the case of units in an assisted living residence, to cover the customary charges for food and services) without the express written approval of the Administrative Agent.
- (c) Application fees (including the charge for any credit check) shall not exceed five percent of the monthly rent of the applicable restricted unit and shall be payable to the Administrative Agent to be applied to the costs of administering the controls applicable to the unit as set forth in this Ordinance.

**21-29.17. Tenant Income Eligibility**

- (a) Tenant income eligibility shall be in accordance with N.J.A.C. 5:80-26.13, as may be amended and supplemented, and shall be determined as follows:
  1. Very low-income rental units shall be reserved for households with a gross household income less than or equal to 30 percent of median income.
  2. Low-income rental units shall be reserved for households with a gross household income less than or equal to 50 percent of median income.
  3. Moderate-income rental units shall be reserved for households with a gross household income less than 80 percent of median income.
- (b) The Administrative Agent shall certify a household as eligible for a restricted rental unit when the household is a very low-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

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determined pursuant to N.J.A.C. 5:80-26.16, as may be amended and supplemented; provided, however, that this limit may be exceeded if one or more of the following circumstances exists:

1. The household currently pays more than 35 percent (40 percent for households eligible for age-restricted units) of its gross household income for rent, and the proposed rent will reduce its housing costs;
  2. The household has consistently paid more than 35 percent (40 percent for households eligible for age-restricted units) of eligible monthly income for rent in the past and has proven its ability to pay;
  3. The household is currently in substandard or overcrowded living conditions;
  4. The household documents the existence of assets with which the household proposes to supplement the rent payments; or
  5. The household documents proposed third-party assistance from an outside source such as a family member in a form acceptable to the Administrative Agent and the owner of the unit.
- (c) The applicant shall file documentation sufficient to establish the existence of the circumstances in (b)1 through 5 above with the Administrative Agent, who shall counsel the household on budgeting.

**21-29.18. Enforcement of Affordable Housing Regulations**

- (a) Upon the occurrence of a breach of any of the regulations governing the affordable unit by an Owner, Developer or Tenant the municipality shall have all remedies provided at law or equity, including but not limited to foreclosure, tenant eviction, municipal fines, a requirement for household recertification, acceleration of all sums due under a mortgage, recoupment of any funds from a sale in the violation of the regulations, injunctive relief to prevent further violation of the regulations, entry on the premises, and specific performance.
- (b) After providing written notice of a violation to an Owner, Developer or Tenant of a low- or moderate-income unit and advising the Owner, Developer or Tenant of the penalties for such violations, the municipality may take the following action against the Owner, Developer or Tenant for any violation that remains uncured for a period of 60 days after service of the written notice:
  1. The municipality may file a court action pursuant to N.J.S.A. 2A:58-11 alleging a violation, or violations, of the regulations governing the affordable housing unit. If the Owner, Developer or Tenant is found by the court to have violated any provision of the regulations governing affordable housing units the Owner, Developer or Tenant shall be subject to one or more of the following penalties, at the discretion of the court:

- i. A fine of not more than \$10,000 or imprisonment for a period not to exceed 90 days, or both. Each and every day that the violation continues or exists shall be considered a separate and specific violation of these provisions and not as a continuing offense;
    - ii. In the case of an Owner who has rented his or her low- or moderate-income unit in violation of the regulations governing affordable housing units, payment into the Borough of Carlstadt Affordable Housing Trust Fund of the gross amount of rent illegally collected;
    - iii. In the case of an Owner who has rented his or her low- or moderate-income unit in violation of the regulations governing affordable housing units, payment of an innocent tenant's reasonable relocation costs, as determined by the court.
  2. The municipality may file a court action in the Superior Court seeking a judgment, which would result in the termination of the Owner's equity or other interest in the unit, in the nature of a mortgage foreclosure. Any judgment shall be enforceable as if the same were a judgment of default of the First Purchase Money Mortgage and shall constitute a lien against the low- and moderate-income unit.
- (c) Such judgment shall be enforceable, at the option of the municipality, by means of an execution sale by the Sheriff, at which time the low- and moderate-income unit of the violating Owner shall be sold at a sale price which is not less than the amount necessary to fully satisfy and pay off any First Purchase Money Mortgage and prior liens and the costs of the enforcement proceedings incurred by the municipality, including attorney's fees. The violating Owner shall have the right to possession terminated as well as the title conveyed pursuant to the Sheriff's sale.
- (d) The proceeds of the Sheriff's sale shall first be applied to satisfy the First Purchase Money Mortgage lien and any prior liens upon the low- and moderate-income unit. The excess, if any, shall be applied to reimburse the municipality for any and all costs and expenses incurred in connection with either the court action resulting in the judgment of violation or the Sheriff's sale. In the event that the proceeds from the Sheriff's sale are insufficient to reimburse the municipality in full as aforesaid, the violating Owner shall be personally responsible for and to the extent of such deficiency, in addition to any and all costs incurred by the municipality in connection with collecting such deficiency. In the event that a surplus remains after satisfying all of the above, such surplus, if any, shall be placed in escrow by the municipality for the Owner and shall be held in such escrow for a maximum period of two years or until such earlier time as the Owner shall make a claim with the municipality for such. Failure of the Owner to claim such balance within the two-year period shall automatically result in a forfeiture of such balance to the municipality. Any interest accrued or earned on such balance while being held in escrow shall belong to and shall be paid to the municipality, whether such balance shall be paid to the Owner or forfeited to the municipality.

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- (e) Foreclosure by the municipality due to violation of the regulations governing affordable housing units shall not extinguish the restrictions of the regulations governing affordable housing units as the same apply to the low- and moderate-income unit. Title shall be conveyed to the purchaser at the Sheriff's sale, subject to the restrictions and provisions of the regulations governing the affordable housing unit. The Owner determined to be in violation of the provisions of this plan and from whom title and possession were taken by means of the Sheriff's sale shall not be entitled to any right of redemption.
- (f) If there are no bidders at the Sheriff's sale, or if insufficient amounts are bid to satisfy the First Purchase Money Mortgage and any prior liens, the municipality may acquire title to the low- and moderate-income unit by satisfying the First Purchase Money Mortgage and any prior liens and crediting the violating owner with an amount equal to the difference between the First Purchase Money Mortgage and any prior liens and costs of the enforcement proceedings, including legal fees and the maximum resale price for which the low- and moderate-income unit could have been sold under the terms of the regulations governing affordable housing units. This excess shall be treated in the same manner as the excess which would have been realized from an actual sale as previously described.
- (g) Failure of the low- and moderate-income unit to be either sold at the Sheriff's sale or acquired by the municipality shall obligate the Owner to accept an offer to purchase from any qualified purchaser which may be referred to the Owner by the municipality, with such offer to purchase being equal to the maximum resale price of the low- and moderate-income unit as permitted by the regulations governing affordable housing units.
- (h) The Owner shall remain fully obligated, responsible and liable for complying with the terms and restrictions of governing affordable housing units until such time as title is conveyed from the Owner.

**21-29.19. Appeals**

Appeals from all decisions of an Administrative Agent designated pursuant to this Ordinance shall be filed in writing with the Commissioner of the Department.

**SECTION 4.**

**The following section is hereby established entitled “21-30. Affordable Housing Development**

**Fees” as follows:**

**21-30. Affordable Housing Development Fees**

a. Purpose. This Ordinance establishes standards for the collection, maintenance, and expenditure of development fees that are consistent with COAH's regulations developed in response to P.L. 2008, c. 46, Sections 8 and 32-38 (N.J.S.A. 52:27D-329.2) and the

Statewide Non-Residential Development Fee Act (N.J.S.A. 40:55D-8.1 through 8.7). Fees collected pursuant to this Ordinance shall be used for the sole purpose of providing very low, low- and moderate-income housing in accordance with a Court-approved Spending Plan approved as required by law.

b. Definitions The following terms, as used in this Section, shall have the following meanings:

“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 housing development.

“COAH” or the “Council” means the New Jersey Council on Affordable Housing established under the Fair Housing Act.

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

“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.

“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).

“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.

c. Residential Development Fees

(1) Imposition of Fees

(A) Within the Borough of Carlstadt, all residential developers, except for developers of the types of developments specifically exempted in Section 4.B. below and developers of developments that include affordable housing, shall pay a fee of one and one-half percent (1.5%) of the equalized assessed value for all new residential development provided no increased density is permitted.

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Development fees shall also be imposed and collected for improvements to an existing residential structure or construction of an addition dwelling unit; in such cases, the fee shall be calculated based on the increase in the equalized assessed value of the parcel in question.

(B) When an increase in residential density is permitted pursuant to a “d” variance granted under N.J.S.A. 40:55D-70d(5), developers shall be required to pay a “bonus” development fee of six percent (6.0%) percent of the equalized assessed value for each additional unit that may be realized, except that this provision shall not be applicable to a development that will include affordable housing. 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.

(2) Eligible Exactions, Ineligible Exactions and Exemptions for Residential Developments

(A) Affordable housing developments and/or developments where the developer has made a payment in lieu of on-site construction of affordable units, if permitted by Ordinance and approved by the Court as part of its approval of the settlement of litigation in In the Matter of the Application of the Borough of Carlstadt, Docket No BER-L-6392-15 shall be exempt from the payment of development fees.

(B) Developments that have received preliminary or final site plan approval prior to the adoption of this Ordinance shall be exempt from the payment of development fees, unless the developer seeks a substantial change in the original approval. Where site plan approval is not applicable, the issuance of a Zoning Permit and/or Construction Permit shall be synonymous with preliminary or final site plan approval for the purpose of determining the right to an exemption. In all cases, the applicable fee percentage shall be determined based upon the Development Fee Ordinance in effect on the date that the Construction Permit is issued.

(C) Improvements or additions to existing one and two-family dwellings on individual lots shall not be required to pay a development fee, but a development fee shall be charged for any new dwelling constructed as a replacement for a previously existing dwelling on the same lot that was or will be demolished, unless the owner resided in the previous dwelling for a period of one year or more prior to obtaining a demolition permit. Where a development fee is charged for a replacement dwelling, the development fee shall be calculated on the increase in the equalized assessed value of the new structure as compared to the previous structure.

(D) Homes replaced as a result of a natural disaster (such as a fire or flood) shall be exempt from the payment of a development fee.

d. Non-Residential Development Fees

(1) Imposition of Fees

(A) Within all zoning districts, non-residential developers, except for developers of the types of developments specifically exempted below, 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.

(B) Within all zoning districts, non-residential developers, except for developers of the types of developments specifically exempted below, 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.

(C) 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 improvements and the equalized assessed value of the newly improved structure, i.e. land and improvements, and such calculation shall be made at the time a final Certificate of Occupancy is issued. If the calculation required under this Section results in a negative number, the non-residential development fee shall be zero.

(2) Eligible Exactions, Ineligible Exactions and Exemptions for Non-residential Development

(A) The non-residential portion of a mixed-use inclusionary or market rate development shall be subject to a two and a half percent (2.5%) development fee, unless otherwise exempted below.

(B) The 2.5 percent fee shall not apply to an increase in equalized assessed value resulting from alterations, change in use within existing footprint, reconstruction, renovations and repairs.

(C) Non-residential developments shall be exempt from the payment of non-residential development fees in accordance with the exemptions required pursuant to the Statewide Non-Residential Development Fee Act (N.J.S.A. 40:55D-8.1 through 8.7), as specified in Form N-RDF "State of New Jersey Non-Residential Development Certification/Exemption". Any exemption claimed by a developer shall be substantiated by that developer.

(D) A developer of a non-residential development exempted from the non-residential development fee pursuant to the Statewide Non-Residential Development Fee Act shall be subject to the fee at such time as the basis for the exemption no longer applies and shall make the payment of the non-residential development fee, in that event, within three years after that event or after the issuance of the final Certificate of Occupancy for the non-residential development, whichever is later.

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(E) If a property which was exempted from the collection of a non-residential development fee thereafter ceases to be exempt from property taxation, the owner of the property shall remit the fees required pursuant to this Section within 45 days of the termination of the property tax exemption. Unpaid non-residential development fees under these circumstances may be enforceable by the Borough of Carlstadt as a lien against the real property of the owner.

e. Collection Procedures

(1) Upon the granting of a preliminary, final or other applicable approval for a development, the approving authority or entity shall notify or direct its staff to notify the Construction Official responsible for the issuance of a Construction Permit.

(2) For non-residential developments only, the developer shall also be provided with a copy of Form N-RDF "State of New Jersey Non-Residential Development Certification/Exemption" to be completed as per the instructions provided. The developer of a non-residential development shall complete Form N-RDF as per the instructions provided. The Construction Official shall verify the information submitted by the non-residential developer as per the instructions provided in the Form N-RDF. The Tax Assessor shall verify exemptions and prepare estimated and final assessments as per the instructions provided in Form N-RDF.

(3) The Construction Official responsible for the issuance of a Construction Permit shall notify the Borough Tax Assessor of the issuance of the first Construction Permit for a development which is subject to a development fee.

(4) Within 90 days of receipt of such notification, the Borough Tax Assessor shall prepare an estimate of the equalized assessed value of the development based on the plans filed.

(5) The Construction Official responsible for the issuance of a final Certificate of Occupancy shall notify the Borough Tax Assessor of any and all requests for the scheduling of a final inspection on a property which is subject to a development fee.

(6) Within 10 business days of a request for the scheduling of a final inspection, the Borough Tax Assessor shall confirm or modify the previously estimated equalized assessed value of the improvements associated with the development; calculate the development fee; and thereafter notify the developer of the amount of the fee.

(7) Should the Borough of Carlstadt fail to determine or notify the developer of the amount of the development fee within 10 business days of the request for final inspection, the developer may estimate the amount due and pay that estimated amount consistent with the dispute process set forth in Subsection b. of Section 37 of P.L. 2008, c.46 (C.40:55D-8.6).

(8) Except as provided in Section 5.A.3) hereinabove, fifty percent (50%) of the initially calculated development fee shall be collected at the time of issuance of the Construction Permit. The remaining portion shall be collected at the time of issuance of the Certificate of

Occupancy. The developer shall be responsible for paying the difference between the fee calculated at the time of issuance of the Construction Permit and that determined at the time of issuance of the Certificate of Occupancy. No certificate of occupancy shall be issued to the developer until all remaining developer fees have been paid in full.

(9) Appeal of Development Fees

(A) 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 the Borough of Carlstadt. Appeals from a determination of the Board may be made to the tax court in accordance with the provisions of the State Tax Uniform Procedure Law, R.S. 54:48-1, *et seq.*, within 90 days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.

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

**SECTION 5.**

**The following section is hereby established entitled “21-31. Affordable Housing Trust Fund” as follows:**

**21-31. Affordable Housing Trust Fund**

21-31.1 There is hereby created a separate, interest-bearing Affordable Housing Trust Fund to be maintained by the Chief Financial Officer of the Borough of Carlstadt for the purpose of depositing development fees collected from residential and non-residential developers and proceeds from the sale of units with extinguished controls.

21-31.2 The following additional funds shall be deposited in the Affordable Housing Trust Fund and shall always be identifiable by source and amount:

(1) Payments in lieu of on-site construction of a fraction of an affordable unit, where permitted by Ordinance or by Agreement with the Borough of Carlstadt;

(2) Funds contributed by developers to make ten percent (10%) of the adaptable entrances in a townhouse or other multistory attached dwelling unit development accessible;

- (3) Rental income from municipally operated units;
- (4) Repayments from affordable housing program loans;
- (5) Recapture funds;
- (6) Proceeds from the sale of affordable units; and
- (7) Any other funds collected in connection with Carlstadt's affordable housing program.

21-31.3 In the event of a failure by the Borough of Carlstadt to comply with trust fund monitoring and reporting requirements or to submit accurate monitoring reports; or a failure to comply with the conditions of the judgment of compliance or a revocation of the judgment of compliance; or a failure to implement the approved Spending Plan and to expend funds within the applicable required time period as set forth in In re Tp. of Monroe, 442 N.J.Super. 565 (Law Div. 2015) (aff'd 442 N.J.Super. 563); or the expenditure of funds on activities not approved by the Court; or for other good cause demonstrating the unapproved use(s) of funds, the Court may authorize the State of New Jersey, Department of Community Affairs, Division of Local Government Services (LGS), to direct the manner in which the funds in the Affordable Housing Trust Fund shall be expended, provided that all such funds shall, to the extent practicable, be utilized for affordable housing programs within the Borough of Carlstadt, or, if not practicable, then within the County or the Housing Region.

21-31.4 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.

21.31.5 Interest accrued in the Affordable Housing Trust Fund shall only be used to fund eligible affordable housing activities approved by the Court.

21-31.6 The expenditure of all funds shall conform to a Spending Plan approved by the Court. Funds deposited in the Affordable Housing Trust Fund may be used for any activity approved by the Court to address the Borough of Carlstadt's fair share obligation and may be set up as a grant or revolving loan program. Such activities include, but are not limited to: preservation or purchase of housing for the purpose of maintaining or implementing affordability controls; housing rehabilitation; new construction of affordable housing units and related costs; accessory apartments; a market to affordable program; Regional Housing Partnership programs; conversion of existing 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; and/or any other activity permitted by the Court and specified in the approved Spending Plan.

21-31.7 At least 30 percent of all development fees collected, and interest earned on such fees shall be used to provide affordability assistance to 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 the median income for Housing Region 1, in which Carlstadt is located.

(1) Affordability assistance programs may include down payment assistance, security deposit assistance, low interest loans, rental assistance, assistance with homeowner's association or condominium fees and special assessments, and assistance with emergency repairs. The specific programs to be used for affordability assistance shall be identified and described within the Spending Plan.

(2) Affordability assistance to households earning 30 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. The specific programs to be used for very low-income affordability assistance shall be identified and described within the Spending Plan.

(3) Payments in lieu of constructing affordable housing units on site, if permitted by Ordinance or by Agreement with the Borough of Carlstadt, and funds from the sale of units with extinguished controls shall be exempt from the affordability assistance requirement.

21-31.8 The Borough of Carlstadt may contract with a private or public entity to administer any part of its Housing Element and Fair Share Plan, including its programs for affordability assistance.

21-31.9 No more than 20 percent of all revenues collected from development fees may be expended on administration, including, but not limited to, salaries and benefits for municipal employees or consultants' fees necessary to develop or implement a new construction program, prepare a Housing Element and Fair Share Plan, and/or administer an affirmative marketing program or a rehabilitation program.

(1) In the case of a rehabilitation program, the administrative costs of the rehabilitation program shall be included as part of the 20 percent of collected development fees that may be expended on administration.

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(2) Administrative funds may be used for income qualification of households, monitoring the turnover of sale and rental units, and compliance with COAH's monitoring requirements. Legal or other fees related to litigation opposing affordable housing sites or related to securing or appealing a judgment from the Court are not eligible uses of the Affordable Housing Trust Fund.

21-31.10. The Borough of Carlstadt shall provide annual reporting of Affordable Housing Trust Fund activity to the State of New Jersey, Department of Community Affairs, Council on Affordable Housing or Local Government Services 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 the New Jersey Department of Community Affairs, Council on Affordable Housing or Local Government Services. The reporting shall include an accounting of all Affordable Housing Trust Fund activity, including the sources and amounts of funds collected and the amounts and purposes for which any funds have been expended. Such reporting shall include an accounting of development fees collected from residential and non-residential developers, payments in lieu of constructing affordable units on site (if permitted by Ordinance or by Agreement with the Borough), funds from the sale of units with extinguished controls, barrier free escrow funds, rental income from Borough owned affordable housing units, repayments from affordable housing program loans, and any other funds collected in connection with Carlstadt's affordable housing programs, as well as an accounting of the expenditures of revenues and implementation of the Spending Plan approved by the Court.

21-31.11 Ongoing Collection of Fees

(1) The ability for the Borough of Carlstadt to impose, collect and expend development fees shall expire with the expiration of the repose period covered by its Judgment of Compliance unless the Borough of Carlstadt has first filed an adopted Housing Element and Fair Share Plan with the Court or with a designated State administrative agency, has petitioned for a Judgment of Compliance from the Court or for Substantive Certification or its equivalent from a State administrative agency authorized to approve and administer municipal affordable housing compliance and has received approval of its Development Fee Ordinance from the entity that will be reviewing and approving the Housing Element and Fair Share Plan.

(2) If the Borough of Carlstadt fails to renew its ability to impose and collect development fees prior to the expiration of its Judgment of Compliance, it may be subject to forfeiture of any or all funds remaining within its Affordable Housing Trust Fund. Any funds so forfeited shall be deposited into the "New Jersey Affordable Housing Trust Fund" established pursuant to Section 20 of P.L. 1985, c. 222 (C. 52:27D-320).

(3) The Borough of Carlstadt 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, nor shall the Borough of Carlstadt retroactively impose a development fee on such a development. The Borough of Carlstadt also shall not expend any of its collected development fees after the expiration of its Judgment of Compliance.

**SECTION 6.**

Any article, section, paragraph, subsection, clause, or other provision of the Borough of Carlstadt Municipal Code inconsistent with the provisions of this ordinance is hereby repealed to the extent of such inconsistency.

**SECTION 7.**

If any section, paragraph, subsection, clause, or provision of this ordinance shall be adjudged by a court of competent jurisdiction to be invalid, such adjudication shall apply only to the section, paragraph, subsection, clause, or provision so adjudged, and the remainder of this ordinance shall be deemed valid and effective.

**SECTION 8.**

This ordinance shall take effect upon its passage and publication and filing with the Bergen County Planning Board, and as otherwise provided for by law.

**RESOLUTION NO. 2022-141**

**BE IT RESOLVED** that the ordinance entitled:

**AN ORDINANCE TO AMEND AND SUPPLEMENT THE CODE OF THE BOROUGH OF CARLSTADT TO IMPLEMENT THE BOROUGH'S AFFORDABLE HOUSING FAIR SHARE PLAN AS APPROVED BY THE SUPERIOR COURT.**

heretofore reintroduced, does now pass on first reading, and that said ordinance be further considered for final passage at a meeting to be held on the 1<sup>st</sup> day of June, 2022 at 7:00 o'clock P.M. or as soon thereafter as the matter can be reached, at the regular meeting place of the Carlstadt Borough Council, and that at such time and place all persons interested be given an opportunity to be heard concerning said ordinance, and that the Borough Clerk be, and she hereby is, authorized and directed to publish said ordinance according to law with a notice of its introduction and passage on first reading and of the time and place when and where said ordinance will be further considered for final passage.

Mayor Zimmermann entertained a motion to amend Ordinance No. 22-5 (Affordable Housing) and publish it as re-introduced. On motion by Stoltz, seconded by Emerson, unanimous on call of roll.

Mayor Zimmermann entertained a motion to authorize Richard Allen to write a letter to the owners of 400 Hackensack Street.

On motion by DeBiase, seconded by Stoltz, unanimous on call of roll.

Mayor Zimmermann entertained a motion to approve the spending plan for the affordable housing. On motion by Emerson, seconded by Stoltz, unanimous on call of roll.

Mayor Zimmermann entertained a motion to approve a Special Police Officer for an hour and a half for the Memorial Services on May 21, 2022.

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On motion by Stoltz, seconded by Roseman, unanimous on call of roll.

**EXECUTIVE SESSION MEETING ACT  
RECESS INTO CLOSED SESSION**

**WHEREAS**, it is necessary for the Governing Body of the Borough of Carlstadt to conduct an executive session closed to the public in order to discuss one or more of the following subjects: Personnel and property.

**NOW, THEREFORE BE IT RESOLVED** that the Mayor and Council of the Borough of Carlstadt hereby moves to go into executive session in accordance with the provisions of the Open Public Meetings Act, N.J.S.A. 10:4-6 et. Seq. for the purpose of discussing one or more of the following subjects: personnel and property.

**AND, BE IT FURTHER RESOLVED** that the public will be informed either later this evening after reconvening the public meeting or at a future public meeting said date is not predictable at the present time.

**AND, BE IT FURTHER RESOLVED** that the matters discussed in and minutes of the closed session shall be disclosed to the public when the reason for confidentiality no longer exists. Mayor Zimmermann entertained a motion to go into closed session at 8:05 P.M. On motion by Lenoy, seconded by Fonseca, unanimous on call of roll.

Mayor Zimmermann entertained a motion to go back into open session at 10:10 P.M. On motion by Emerson, seconded by DeBiase, unanimous on call of roll.

Mayor Zimmermann entertained a motion to appoint the Director for Recreation, Ashley Brown, the Assistant Director, Daniele Bartlett and the two Senior Counselors, Tyler Koch and Karl Ross. On motion by Emerson, seconded by Emerson, seconded by Roseman, unanimous on call of roll.

Mayor Zimmermann entertained a motion to give Joseph Crifasi permission for \$11,750.00 to be made to the Veterans Memorial Fund and to verify the records for the Memorial Day Parade. On motion by Emerson, seconded by DeBiase, unanimous on call of roll.

Mayor Zimmermann entertained a motion to authorize the Deputy Chief of Police to notify the four candidates for the May 18, 2022 meeting. They will be sworn in on that date. On motion by Emerson, seconded by Stoltz, unanimous on call of roll.

Mayor Zimmerman entertained a motion to adjourn the meeting at 10:14 P.M.  
On motion by Emerson, seconded by DeBiase, the meeting was unanimously adjourned.

APPROVED: \_\_\_\_\_  
ROBERT J. ZIMMERMANN, MAYOR

ATTEST: \_\_\_\_\_  
CLAIRE FOY, BOROUGH CLERK