ORDINANCE 20 - 18

AN ORDINANCE OF THE MAYOR AND BOROUGH COUNCIL OF THE BOROUGH OF MOUNT ARLINGTON, IN THE COUNTY OF MORRIS, STATE OF NEW JERSEY, AMENDING AND SUPPLEMENTING THE CODE OF THE BOROUGH OF MOUNT ARLINGTON TO REVISE CHAPTER 17 LAND DEVELOPMENT, ARTICLE VIII ZONING, SECTION §17-28.12 PUD, PLANNED UNIT DEVELOPMENT ZONE TO ADD A NEW ITEM D. INCLUSIONARY RESIDENTIAL AFFORDABLE LOW AND MODERATE INCOME HOUSING WITH A SUBSECTION (1) HOWARD BOULEVARD INCLUSIONARY ZONE AND SUBSECTION (2) VALLEY ROAD INCLUSIONARY ZONE

WHEREAS, the Borough of Mount Arlington, in accordance with the Supreme Court's Order issued in IMO Adoption of N.J.A.C. 5:96 and 5:97 by the New Jersey Council on Affordable Housing, 221 N.J. 1 (2015), filed an application seeking Declaratory Judgment and Substantive Certification for its Fair Share Housing obligation in the action entitled IMO the Application of the Borough of Mount Arlington, bearing Docket No. MRS-L-1657-15, Morris County Superior Court, Chancery Division; and

WHEREAS, the Fair Share Housing Center, as it has been for all cases, is considered an Intervenor in the above-mentioned matter; and

WHEREAS, the Borough and Fair Share Housing Center entered into a settlement agreement which is being finalized at the Final Fairness and Compliance Hearing ("Settlement Agreement"), scheduled for February 8, 2019; and

WHEREAS, the Settlement Agreement provided that the Borough would propose and adopt any new or modified ordinances required to implement this Agreement, within one hundred twenty (120) days of the entry of an order by the Court approving this Agreement, unless a longer time period is otherwise agreed; and

WHEREAS, the Borough of Mt. Arlington the Borough Planner, Jessica Caldwell, of J. Caldwell & Associates LLC reviewed the Borough Code and determined Chapter 17 Land Development, Article VIII Zoning, Section §17-28.12 PUD, Planned Unit Development Zone be revised to add a new item D. Inclusionary Residential Affordable Low and Moderate Income Housing with a subsection (1) Howard Boulevard Inclusionary Zone and subsection (2) Valley Road Inclusionary Zone; and

WHEREAS, the Mayor and Council for the Borough of Mount Arlington reviewed the Borough Code and desires to amend and supplement the Borough Code Chapter 17 Land Development, Article VIII Zoning, Section §17-28.12 PUD, Planned Unit Development Zone to add a new item D. Inclusionary Residential Affordable Low and Moderate Income Housing with a subsection (1) Howard Boulevard Inclusionary Zone and subsection (2) Valley Road Inclusionary Zone; and

BE IT ORDAINED, by the Mayor and Borough Council of the Borough of Mount Arlington, County of Morris and State of New Jersey that the Borough Code Chapter 17 Land Development, Article VIII Zoning,

Section §17-28.12 PUD, Planned Unit Development Zone be revised to add a new item D. Inclusionary Residential Affordable Low and Moderate Income Housing with a subsection (1) Howard Boulevard Inclusionary Zone and subsection (2) Valley Road Inclusionary Zone.

SECTION 1. Chapter 17 Land Development, Article VIII Zoning, Section §17-28.12 PUD, Planned Unit Development Zone be revised to add a new item D. Inclusionary Residential Affordable Low and Moderate Income Housing with a subsection (1) Howard Boulevard Inclusionary Zone and subsection (2) Valley Road Inclusionary Zone is as set forth in its entirety as follows:

§17-28.12 PUD, Planned Unit Development Zone.
D. Inclusionary Residential Affordable Low and Moderate Income Housing

(1) Howard Boulevard Inclusionary Zone.

Purpose. The purpose of the Inclusionary Zone is to create a realistic opportunity for the construction of low and moderate income housing in Mount Arlington on land that is available for development, thereby addressing the Borough's fair share housing obligation under the New Jersey Fair Housing Act and constitutional obligations to provide affordable housing.

Location. The location of the Inclusionary Zone applies to Block 61.02, Lot 23.08.

Use. Residential units in the zone are subject to inclusionary affordable housing standards pursuant to "Low and Moderate Income Housing Requirements" below shall be permitted uses in the Inclusionary zone district in addition to those uses already permitted by the underlying zone district. To permit residential development over retail, service and office uses for sites not directly fronting on Howard Boulevard as a standalone town center type of development. To require a maximum density of fifteen (15) apartment dwelling units per acre. Other residential, retail, service and office uses would follow the current zone standards.

Inclusionary Residential Development Standards.

A. The property specified in the location above may be proposed for subdivision and/or site plan for residential development over retail and service or office uses.

B. The maximum density permitted would be fifteen (15) units per acre with a fifteen percent (15%) set aside for rentals and twenty percent (20%) set aside for owner-occupied units.

C. Bulk Standards:

a. Minimum lot size: 217,800 square feet
b. Minimum lot width: 200 feet
c. Maximum building height: 4 stories /50 feet
d. Minimum front yard: 25 feet
e. Minimum side yard: 10 feet
f. Minimum rear yard: 25 feet
g. Maximum lot coverage: 75%

All other regulations and requirements of the zone shall remain in effect.

(2) Valley Road Inclusionary Zone

Purpose. The purpose of the Inclusionary Zone is to create a realistic opportunity for the construction of low and moderate income housing in Mount Arlington on land that is available for development, thereby addressing the Borough's fair share housing obligation under the New Jersey Fair Housing Act and constitutional obligations to provide affordable housing.

Location. The location of the Inclusionary Zone applies to Block 61, Lots 23.03, 23.05 and 23.06. Other properties may be added to this zone in the future.

Use. Residential units in the zone are subject to inclusionary affordable housing standards pursuant to "Low and Moderate Income Housing Requirements" below shall be permitted uses in the Inclusionary zone district in addition to those uses already permitted by the underlying zone district. To permit residential development on the ground floor of retail, service and office uses. To require a maximum density of thirteen (13) apartment dwelling units per acre. To require a maximum density of 9.75 townhouse units per acre. Other residential, retail, service and office uses would follow the current PUD Zone standards.

Low and moderate income housing requirements.

A. The properties specified in the location above may be proposed for subdivision and/or site plan for townhouses residential development on the ground floor of retail and service and office uses.

B. With the exception to the density and the bulk requirements specified below, all townhouse developments shall follow regulations set in 17-28.12, Planned Unit Development Zone (PUD).

C. With the exception to the density, the bulk requirements specified below, and permitted apartments on the on the ground floor of retail, service and office uses, all residential apartment development shall follow regulations set in Section 17-28.12, Planned Unit Development Zone (PUD).

D. The maximum density for residential development shall not exceed thirteen (13) dwelling units per acre per acre for rental apartments with a minimum fifteen percent (15%) set aside for affordable rental units and 9.75 units per acre for townhouses or owner-occupied condominium units with a minimum twenty percent (20%) set aside for affordable owner-occupied units.

E. The minimum lot frontage or width, bulk and setback requirements shall apply to town house and residential mixed-use development in the Inclusionary Zone:

a. Minimum lot size: 217,800 square feet
b. Minimum lot width: 200 feet
c. Maximum building height: 4 stories /50 feet
d. Minimum front yard: 100 feet, no maximum
e. Minimum side yard: one side yard 50 feet, both side yards a total of 100 feet, no maximum
f. Minimum rear yard: 100 feet, no maximum
g. Maximum lot coverage: 50%

All other regulations and requirements of the PUD zone shall remain in effect.

SECTION 2. All ordinances or parts of ordinances inconsistent herewith are hereby repealed as to such inconsistencies.

SECTION 3. If any article, section, subsection, paragraph, phrase, or sentence is for any reason held to be unconstitutional or invalid, said article, section, subsection, paragraph, phrase or sentence shall be deemed separable.

SECTION 4. This Ordinance shall take effect upon final publication as provided by law.

I HEREBY CERTIFY this to be a true and correct Ordinance of the Mayor and Borough Council of the Borough of Mount Arlington, adopted on November 7, 2018 and will be further considered after a Public Hearing held on December 4, 2018 at the Municipal Building at 7:00 P.M.

INTRODUCED:
PUBLISHED:
ATTEST:

Linda DeSantis, RMC, Borough Clerk

BOROUGH OF MOUNT ARLINGTON
COUNTY OF MORRIS
STATE OF NEW JERSEY

Michael Stanzilis, Mayor

ORDINANCE 21 - 18

AN ORDINANCE OF THE MAYOR AND BOROUGH COUNCIL OF THE BOROUGH OF MOUNT ARLINGTON, IN THE COUNTY OF MORRIS, STATE OF NEW JERSEY, AMENDING AND SUPPLEMENTING THE BOROUGH CODE TO ADD A NEW ARTICLE XVII AFFORDABLE HOUSING OBLIGATIONS TO CHAPTER 17 LAND DEVELOPMENT

WHEREAS, the Borough of Mount Arlington, in accordance with the Supreme Court's Order issued in IMO Adoption of N.J.A.C. 5:96 and 5:97 by the New Jersey Council on Affordable Housing, 221 N.J. 1 (2015), filed an application seeking Declaratory Judgment and Substantive Certification for its Fair Share Housing obligation in the action entitled IMO the Application of the Borough of Mount Arlington, bearing Docket No. MRS-L-1657-15, Morris County Superior Court, Chancery Division; and

WHEREAS, the Borough and Fair Share Housing Center, Intervenor, agreed upon the Borough's affordable housing obligations and the compliance techniques necessary for the Borough of Mount Arlington to satisfy its "fair share" of the regional need for low-and moderate-income housing; and

WHEREAS, on June 12, 2018 the Mayor and Council for the Borough of Mount Arlington adopted Resolution 2018-98 approving and authorizing a settlement agreement between the Borough and Fair Share Housing Center, Intervenor, to be presented to the court for approval at a duly-noticed Mount Laurel Fairness Hearing on February 8, 2019, a copy of which Resolution is incorporated herein as if set forth at length; and

WHEREAS, pursuant to Resolution 2018-98, the Mayor and Council directed its Borough Planner to prepare and finalize the Borough's Housing Element and Fair Share Plan accordingly, and present it to the Borough Planning Board for adoption, and thereafter to be endorsed by the Mayor and Council; and

WHEREAS, in anticipation of the formal adoption and endorsement of the Borough's Housing Element and Fair Share Plan, the Mayor and Council for the Borough of Mount Arlington reviewed the Borough Planner's suggested revisions to the Borough Code and desires to amend and supplement the current code to add a new Article XVII AFFORDABLE HOUSING OBLIGATIONS to Chapter 17 Land Development to address the requirements of the Fair Housing Act and the Uniform Housing Affordability Controls (UHAC) regarding compliance with the Borough's Affordable Housing Obligations. The new Article will include

provisions addressing the Borough's constitutional obligation to provide for its fair share of low and moderate income housing, as directed by the New Jersey Superior Court and consistent with N.J.A.C. 5:93-1, et seq., as amended and supplemented, N.J.A.C. 5:80-26.1, et seq., as amended and supplemented, and the New Jersey Fair Housing Act of 1985. This Ordinance is intended to provide assurances that very low and low or moderate income units ("affordable units") are created with controls on affordability over time and that low and moderate income households shall occupy those units; and

BE IT ORDAINED by the Mayor and Council of the Borough of Mount Arlington, Morris County, New Jersey, that the Code of the Borough of Mount Arlington is hereby amended to include provisions addressing Mount Arlington's constitutional obligation to provide for its fair share of low and moderate income housing, as directed by the Superior Court and consistent with N.J.A.C. 5:93-1, et seq., as amended and supplemented, N.J.A.C. 5:80-26.1, et seq., as amended and supplemented, and the New Jersey Fair Housing Act of 1985. This Ordinance is intended to provide assurances that very low and low or moderate income units ("affordable units") are created with controls on affordability over time and that low and moderate income households shall occupy those units. This Ordinance shall apply except where inconsistent with applicable law.

BE IT FURTHER ORDAINED by the Mayor and Council of the Borough of Mount Arlington, Morris County, New Jersey, that the Mount Arlington Planning Board intends to adopt at its November 28, 2018 meeting a Housing Element and Fair Share Plan, a copy of which is incorporated herein as if set forth at length, pursuant to the Municipal Land Use Law at N.J.S.A. 40:55D-1, et seq. The Housing Element and Fair Share Plan will thereafter be endorsed by the Mayor and Council at its December 4, 2018 meeting. This Ordinance implements and incorporates the adopted and endorsed Housing Element and Fair Share Plan and addresses the requirements of N.J.A.C. 5:93-1, et seq., as amended and supplemented, N.J.A.C. 5:80-26.1, et seq., as amended and supplemented, and the New Jersey Fair Housing Act of 1985.

BE IT FURTHER ORDAINED by the Mayor and Borough Council of the Borough of Mount Arlington, County of Morris and State of New Jersey that a new Article XVII AFFORDABLE HOUSING OBLIGATIONS be added to Chapter 17 Land Development as set forth below.

SECTION 1. Article XVII AFFORDABLE HOUSING OBLIGATIONS is set forth to read in its entirety as follows:

§17-67 MONITORING AND REPORTING REQUIREMENTS.

The Borough of Mount Arlington shall comply with the following monitoring and reporting requirements regarding the status of the implementation of its court-approved Housing Element and Fair Share Plan:

1. Beginning on February 8, 2020, one (1) year from the court's approval of the Borough's Spending Plan, and on every anniversary of that date through July 1, 2025, the Borough agrees to provide annual reporting of its Affordable Housing Trust Fund activity to the New Jersey Department of Community Affairs, Council on Affordable Housing (COAH), or Local Government Services, or other entity designated by the State of New Jersey, with a copy provided to Fair Share Housing Center (FSHC) and posted on the municipal website, using forms developed for this purpose by the New Jersey Department of Community Affairs (NJDCA), Council on Affordable Housing (COAH), or Local Government Services (NJLGS). The reporting shall include an accounting of all Affordable Housing Trust Fund activity, including the source and amount of funds collected and the amount and purpose for which any funds have been expended.

2. Beginning on February 8, 2020, and on every anniversary of that date through February 8, 2025, the Borough agrees to provide annual reporting of the status of all affordable housing activity within the municipality through posting on the municipal website with a copy of such posting provided to Fair Share Housing Center, using forms previously developed for this purpose by COAH or any other forms endorsed by the Special Master and FSHC.

3. By July 1, 2020, as required pursuant to N.J.S.A. 52:27D-313, 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 and whether any mechanisms to meet unmet need should be revised or supplemented. 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.

4. By March 1, 2020, and every third year thereafter, as required by N.J.S.A. 52:27D-329.1, the Borough will post on its municipal website, with a copy provided to FSHC, a status report as to its satisfaction of its very low income requirements, including its family very low income requirements. Such posting shall invite any interested party to submit comments to the municipality and FSHC on the issue of whether the municipality has complied with its very low income and family very low-income housing obligations.

§17-68 DEFINITIONS.

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

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

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

"Administrative agent" means the entity designated by the Borough who is responsible for administering the affordability controls of the units in the affordable housing program for the Borough to ensure that the restricted units under administration are affirmatively marketed and sold or rented, as applicable, only to low- and moderate-income households in accordance with this Ordinance, N.J.A.C. 5:93, and UHAC (N.J.A.C. 5:80-26).

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

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

"Affordable" means, a sales price or rent level that is within the means of a 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.

"Affordable housing development" means a development included in or approved pursuant to the Housing Element and Fair Share Plan or otherwise intended to address the Borough's fair share obligation, and includes, but is not limited to, an inclusionary development, a municipal construction project or a 100 percent affordable housing development.

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

"Affordable unit" means a housing unit proposed or created pursuant to the Act and approved for crediting by the court, Council on Affordable Housing (COAH) 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.

"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 low-income household or moderate-income household.

"COAH" means the Council on Affordable Housing, as established by the New Jersey Fair Housing Act (N.J.S.A. 52:27D-301, et seq.).

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

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

"Developer" means any person, partnership, association, company or corporation that is the legal or beneficial owner or owners of a lot or any land included in a proposed development including the holder of an option to contract to purchase, or other person having an enforceable proprietary interest in such land.

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

"Inclusionary development" means a development containing both affordable units and market rate units. This term includes, but is not 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 50 percent 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 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 Council on Affordable Housing (COAH).

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

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

"Municipal Housing Liaison" is the employee charged with the responsibility for oversight and administration of the affordable housing program.

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

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

"Regional asset limit" means the maximum housing value in each housing region affordable to a four-person household with an income at 80 percent of the regional median as defined by 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 30 percent 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.

§17-69 APPLICABILITY.

1. The provisions of this Ordinance shall apply to all affordable housing developments and affordable housing units that currently exist and that are proposed to be created within the Borough of Mount Arlington pursuant to the Borough's 2018 Third Round Housing Element and Fair Share Plan.

2. Moreover, the provisions of this Ordinance shall apply to all developments that contain very low-, low- and moderate-income housing units, including any currently unanticipated future developments that will provide very low-, low- and moderate-income housing units, and also including projects that may be funded with Low Income Housing Tax Credit financing, which shall comply with the income and bedroom distribution requirements of this Ordinance.

3. Any property in the Borough of Mount Arlington that is currently zoned for nonresidential uses and subsequently receives a zoning change or use variance or approval of a redevelopment plan to permit multi-family residential development, or that is currently zoned for residential uses and receives a zoning change or density variance or approval of a redevelopment plan to permit multi-family residential development, which multi-family residential development will be constructed at a density of six (6) or more units per acre and yielding five (5) or more new dwelling units, shall provide an affordable housing set-aside of 15percent if the affordable

units will be for rent and 20percent if the affordable units will be for sale. This provision does not affect residential development on sites that are zoned for inclusionary residential development as part of the Borough's Housing Element and Fair Share Plan, which are subject to the affordable housing set-aside requirements set forth in the applicable zoning. This requirement does not give any developer the right to any such rezoning, variance or other relief, or establish any obligation on the part of the Borough of Mount Arlington to grant such rezoning, variance or other relief. A property shall not be permitted to be subdivided so as to avoid compliance with this requirement. All affordable units created pursuant to this paragraph shall be governed by the provisions of this Ordinance.

§17-70 ALTERNATIVE LIVING ARRANGEMENTS.

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

a. 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;

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

2. With the exception of units established with capital funding through a 20-year operating contract with the Department of Human Services, Division of Developmental Disabilities, alternative living arrangements shall have at least thirty (30) year controls on affordability in accordance with UHAC, unless an alternative commitment is approved by the court.

3. The service provider for the alternative living arrangement shall act as the Administrative Agent for the purposes of administering the affirmative marketing and affordability requirements for the alternative living arrangement.

§17-71 PHASING SCHEDULE FOR INCLUSIONARY ZONING.

In inclusionary developments the following schedule shall be followed:

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

§17-72 NEW CONSTRUCTION.

1. Low/Moderate Split and Bedroom Distribution of Affordable Housing Units:

a. 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 13 percent of all restricted rental units shall be very low-income units (affordable to a household earning 30 percent 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.

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

c. Affordable developments that are not age-restricted shall be structured in conjunction with realistic market demands such that:

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

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

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

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

d. 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.

2. Accessibility Requirements:

a. The first floor of all restricted townhouse dwelling units and all restricted units in all other multistory buildings shall be subject to the technical design standards of the Barrier Free SubCode, N.J.A.C. 5:23-7 and the following:

b. All restricted townhouse dwelling units and all restricted units in other multistory buildings in which a restricted dwelling unit is attached to at least one other dwelling unit shall have the following features:

1) An adaptable toilet and bathing facility on the first floor; and

2) An adaptable kitchen on the first floor; and

3) An interior accessible route of travel on the first floor; and

4) 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

5) If not all of the foregoing requirements in b.1) through b.4) can be satisfied, then an interior accessible route of travel must be provided between stories within an individual unit, but if all of the terms of paragraphs b.1) through b.4) above have been satisfied, then an interior accessible route of travel shall not be required between stories within an individual unit; and

6) An accessible entranceway as set forth at P.L. 2005, c. 350 (N.J.S.A. 52:27D-311a, et seq.) and the Barrier Free SubCode, N.J.A.C. 5:23-7, or evidence that Mount Arlington 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 Mount Arlington'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 6)b) above shall be used by the Borough of Mount Arlington for the sole purpose of making the adaptable entrance of an 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 to the Construction Official of the Borough of Mount Arlington for the conversion of adaptable to accessible entrances.

e) Once the Construction Official has determined that the design plan to convert the unit entrances from adaptable to accessible meet the requirements of the Barrier Free SubCode, N.J.A.C. 5:23-7, and that the cost estimate of such conversion is reasonable, payment shall be made to the Borough's Affordable Housing Trust Fund in care of the Borough Treasurer who shall ensure that the funds are deposited into the Affordable Housing Trust Fund and appropriately earmarked.

6) Full compliance with the foregoing provisions shall not be required where an entity can demonstrate that it is "site impracticable" to meet the requirements. Determinations of site impracticability shall be in compliance with the Barrier Free SubCode, N.J.A.C. 5:23-7.

3. Design:

a. In inclusionary developments, to the extent possible, very low-, low- or moderate-income units shall be integrated with the market units.

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

4. Maximum Rents and Sales Prices:

a. In establishing rents and sales prices of affordable housing units, the Administrative Agent shall follow the procedures set forth in UHAC, utilizing the most recently published regional weighted average of the uncapped Section 8 income limits published by HUD and the calculation procedures set forth in the Consent Order entered on December 16, 2016, by the Honorable Douglas K. Wolfson, JSC, in In the Matter of the Township of East Brunswick for a Judgment of Compliance of its Third Round Housing Element and Fair Share Plan, Docket No.: MID-L-004013-15.

b. 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 rental units shall be affordable to households earning no more than 52 percent of median income.

c. 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, provided that at least 13 percent of all low- and moderate-income rental units shall be affordable to very low-income households, which very low-income units shall be part of the low-income requirement.

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

e. In determining the initial sales prices and rent levels for compliance with the affordability average requirements for restricted units other than assisted living facilities and age-restricted developments, the following standards shall be used:

1) A studio shall be affordable to a one-person household;

2) A one-bedroom unit shall be affordable to a one- and one-half person household;

3) A two-bedroom unit shall be affordable to a three-person household;

4) A three-bedroom unit shall be affordable to a four- and one-half person household; and

5) A four-bedroom unit shall be affordable to a six-person household.

f. In determining the initial sales prices and rents for compliance with the affordability average requirements for restricted units in assisted living facilities and age-restricted developments, the following standards shall be used:

1) A studio shall be affordable to a one-person household;

2) A one-bedroom unit shall be affordable to a one- and one-half person household; and

3) A two-bedroom unit shall be affordable to a two-person household or to two one-person households.

g. 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.

h. 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 size household, including an allowance for tenant paid utilities, 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.

i. The price of owner-occupied very low-, low- or moderate-income units may increase annually based on the percentage increase in the regional median income limit for each housing region. In no event shall the maximum resale price established by the Administrative Agent be lower than the last recorded purchase price.

j. The rents of very low, very low, low or moderate income units may be increased annually based on the permitted percentage increase in the Housing Consumer Price Index for the Northeast Urban Area. This increase shall not exceed nine percent in any one year. Rent increases for units constructed pursuant to low- income housing tax credit regulations shall be indexed pursuant to the regulations governing low- income housing tax credits.

§17-73 UTILITIES.

1. Affordable units shall utilize the same type of heating source as market units within an inclusionary development.

2. Tenant-paid utilities included in the utility allowance shall be set forth in the lease and shall be consistent with the utility allowance approved by HUD for the Section 8 program.

§17-74 OCCUPANCY STANDARDS.

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

1. Provide an occupant for each bedroom;

2. Provide children of different sexes with separate bedrooms;

3. Provide separate bedrooms for parents and children; and

4. Prevent more than two persons from occupying a single bedroom.

§17-75 CONTROL PERIODS FOR RESTRICTED OWNERSHIP UNITS AND ENFORCEMENT MECHANISMS.

1. Control periods for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.5, as may be amended and supplemented, and each restricted ownership unit shall remain subject to the requirements of this Ordinance for a period of at least thirty (30) years, until Mount Arlington takes action to release the unit from such requirements; prior to such action, a restricted ownership unit must remain subject to the requirements of N.J.A.C. 5:80-26.1, as may be amended and supplemented.

2. The affordability control period for a restricted ownership unit shall commence on the date the initial certified household takes title to the unit.

3. Prior to the issuance of the initial certificate of occupancy for a restricted ownership unit and upon each successive sale during the period of restricted ownership, the Administrative Agent shall determine the restricted price for the unit and shall also determine the non-restricted, fair market value of the unit based on either an appraisal or the unit's equalized assessed value without the restrictions in place.

4. At the time of the initial sale of the unit, the initial purchaser shall execute and deliver to the Administrative Agent a recapture note obligating the purchaser (as well as the purchaser's heirs, successors and assigns) to repay, upon the first non-exempt sale after the unit's release from the restrictions set forth in this Ordinance, an amount equal to the difference between the unit's non-restricted fair market value and its restricted price, and the recapture note shall be secured by a recapture lien evidenced by a duly recorded mortgage on the unit.

5. The affordability controls set forth in this Ordinance shall remain in effect despite the entry and enforcement of any judgment of foreclosure with respect to restricted ownership units.

6. A restricted ownership unit shall be required to obtain a Continuing Certificate of Occupancy or a certified statement from the Construction Official stating that the unit meets all Code standards upon the first transfer of title following the removal of the restrictions provided under N.J.A.C. 5:80-26.5(a), as may be amended and supplemented.

§17-76 PRICE RESTRICTIONS FOR RESTRICTED OWNERSHIP UNITS, HOMEOWNER ASSOCIATION FEES AND RESALE PRICES.

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

1. The initial purchase price for a restricted ownership unit shall be approved by the Administrative Agent.

2. The Administrative Agent shall approve all resale prices, in writing and in advance of the resale, to assure compliance with the foregoing standards.

3. The master deeds of inclusionary developments shall provide no distinction between the condominium or homeowner association fees and special assessments paid by low- and moderate-income purchasers and those paid by market purchasers.

4. The owners of restricted ownership units may apply to the Administrative Agent to increase the maximum sales price for the unit on the basis of anticipated capital improvements. Eligible capital improvements shall be those that render the unit suitable for a larger household or the addition of a bathroom. See Section 13.

§17-77 BUYER INCOME ELIGIBILITY.

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

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

3. A certified household that purchases a restricted ownership unit must occupy it as the certified household's principal residence and shall not lease the unit; provided, however, that the Administrative Agent may permit the owner of a restricted ownership unit, upon application and a showing of hardship, to lease the restricted unit to another certified household for a period not to exceed one year. Violations of this provision shall be subject to the applicable enforcement provisions of Section 20 of this Ordinance.

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

§17-78 LIMITATIONS ON INDEBTEDNESS SECURED BY OWNERSHIP UNIT; SUBORDINATION.

1. Prior to incurring any indebtedness to be secured by a restricted ownership unit, the owner shall apply to the Administrative Agent for a determination in writing that the proposed

indebtedness complies with the provisions of this Section, and the Administrative Agent shall issue such determination prior to the owner incurring such indebtedness.

2. With the exception of First Purchase Money Mortgages, 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 the unit, as such price is determined by the Administrative Agent in accordance with N.J.A.C.5:80-26.6(b).

§17-79 CAPITAL IMPROVEMENTS TO OWNERSHIP UNITS.

1. 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 made since the purchase of the unit. Eligible capital improvements shall be those that render the unit suitable for a larger household or that add an additional bathroom. In no event shall the maximum sales price of an improved housing unit exceed the limits of affordability for the larger household.

2. Upon the resale of a restricted ownership unit, all items of property that are permanently affixed to the unit or were included when the unit was initially restricted (for example, refrigerator, range, washer, dryer, dishwasher, wall-to-wall carpeting) shall be included in the maximum allowable resale price. Other items may be sold to the purchaser at a reasonable price that has been approved by the Administrative Agent at the time of the signing of the agreement to purchase. The purchase of central air conditioning installed subsequent to the initial sale of the unit and not included in the base price may be made a condition of the unit resale provided the price, which shall be subject to 10-year, straight-line depreciation, has been approved by the Administrative Agent. Unless otherwise approved by the Administrative Agent, the purchase of

any property other than central air conditioning shall not be made a condition of the unit resale. The owner and the purchaser must personally certify at the time of closing that no unapproved transfer of funds for the purpose of selling and receiving property has taken place at the time of or as a condition of resale.

§17-80 CONTROL PERIODS FOR RESTRICTED RENTAL UNITS

1. Control periods for restricted rental units shall be in accordance with N.J.A.C. 5:80-26.11, as may be amended and supplemented, and each restricted rental unit shall remain subject to the requirements of this Ordinance for a period of at least 30 years, until Mount Arlington takes action to release the unit from such requirements. Prior to such action, a restricted rental unit must remain subject to the requirements of N.J.A.C. 5:80-26.1, as may be amended and supplemented.

2. 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 Morris. A copy of the filed document shall be provided to the Administrative Agent within 30 days of the receipt of a Certificate of Occupancy.

3. A restricted rental unit shall remain subject to the affordability controls of this Ordinance despite the occurrence of any of the following events:

a. Sublease or assignment of the lease of the unit;

b. Sale or other voluntary transfer of the ownership of the unit; or

3. The entry and enforcement of any judgment of foreclosure on the property containing the unit.

§17-81 RENT RESTRICTIONS FOR RENTAL UNITS; LEASES.

1. A written lease shall be required for all restricted rental units and tenants shall be responsible for security deposits and the full amount of the rent as stated on the lease. A copy of the current lease for each restricted rental unit shall be provided to the Administrative Agent.

2. No additional fees or charges shall be added to the approved rent (except, in the case of units in an assisted living residence, to cover the customary charges for food and services) without the express written approval of the Administrative Agent.

3. Application fees (including the charge for any credit check) shall not exceed 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.

4. No rent control ordinance or other pricing restriction shall be applicable to either the market units or the affordable units in any development in which at least 15% of the total number of dwelling units are restricted rental units in compliance with this Ordinance.

§17-82 TENANT INCOME ELIGIBILITY.

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

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

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

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

2. The Administrative Agent shall certify a household as eligible for a restricted rental unit when the household is a very low-income household, low-income household or a moderate-income household, as applicable to the unit, and the rent proposed for the unit does not exceed 35 percent (40 percent for age-restricted units) of the household's eligible monthly income as determined pursuant to N.J.A.C. 5:80-26.16, as may be amended and supplemented; provided, however, that this limit may be exceeded if one or more of the following circumstances exists:

a. 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;

b. 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;

c. The household is currently in substandard or overcrowded living conditions;

d. The household documents the existence of assets with which the household proposes to supplement the rent payments; or

e. The household documents reliable anticipated third-party assistance from an outside source such as a family member in a form acceptable to the Administrative Agent and the owner of the unit.

3. The applicant shall file documentation sufficient to establish the existence of the circumstances in 1.a. through 2.e. above with the Administrative Agent, who shall counsel the household on budgeting.

§17-83 MUNICIPAL HOUSING LIAISON.

1. The Borough shall appoint a specific municipal employee to serve as a Municipal Housing Liaison responsible for administering the Borough's affordable housing program, including overseeing the administration of affordability controls on the affordable units and the affirmative marketing of available affordable units in accordance with the Borough's Affirmative Marketing Plan; fulfilling monitoring and reporting requirements; and supervising any Administrative Agent(s). A Resolution appointing the person to fulfill the position of Municipal Housing Liaison should be adopted at the Reorganization meeting or as soon thereafter as possible. The Municipal Housing Liaison shall be appointed by the Mayor and may be a full or part time municipal employee. The Municipal Housing Liaison is subject to the approval of the Council on Affordable Housing (COAH) and shall be duly qualified through a training program sponsored by Affordable Housing Professionals of New Jersey before assuming the duties of Municipal Housing Liaison.

2. The Municipal Housing Liaison shall be responsible for oversight and administration of the affordable housing program for Mount Arlington, including the following responsibilities which also may be contracted out to the Administrative Agent:

a. Serving as Mount Arlington's primary point of contact for all inquiries from the State, affordable housing providers, Administrative Agents and interested households;

b. Monitoring the status of all restricted units in Mount Arlington's Fair Share Plan;

c. Compiling, verifying, submitting and posting all monitoring and/or annual reports as required by the Council on Affordable Housing (COAH) and by this Ordinance;

d. Coordinating meetings with affordable housing providers and Administrative Agents, as needed; and

e. Attending continuing education opportunities on affordability controls, compliance monitoring and affirmative marketing as offered or approved by COAH.

3. The Mayor shall designate one or more Administrative Agent(s) to administer and to affirmatively market the affordable units constructed in the Borough in accordance with UHAC and this Ordinance. An Operating Manual for each affordable housing program shall be provided by the Administrative Agent(s) to be adopted by resolution of the governing body and subject to approval of the Council on Affordable Housing (COAH). The Operating Manual(s) shall be available for public inspection in the office of the Borough Clerk; in the office of the Municipal Housing Liaison; and in the office(s) of the Administrative Agent(s). The Municipal Housing Liaison shall supervise the work of the Administrative Agent(s).

4. Compensation. Compensation shall be fixed by the Borough in its salary ordinance.

§17-84 ADMINISTRATIVE AGENT.

An Administrative Agent shall be an independent entity serving under contract to and reporting to the municipality. 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. The Administrative Agent shall perform the duties and responsibilities of an Administrative Agent as set forth in UHAC, including those set forth in Sections 5:80-26.14, 16 and 18 thereof, which includes:

1. Affirmative Marketing:

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

b. Providing counseling or contracting to provide counseling services to low and moderate income applicants on subjects such as budgeting, credit issues, mortgage qualification, rental lease requirements, and landlord/tenant law.

2. Household Certification:

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

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

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

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

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

f. Employing a random selection process as provided in the Affirmative Marketing Plan of the Borough of Mount Arlington when referring households for certification to affordable units; and

g. Notifying the following entities of the availability of affordable housing units in the Borough of Mount Arlington: Fair Share Housing Center, the New Jersey State Conference of the NAACP, the Latino Action Network, Morris County NAACP, Newark NAACP, East

Orange NAACP, Housing Partnership for Morris County, Community Access Unlimited, Inc., Northwest New Jersey Community Action Program, Inc. (NORWESCAP), Homeless Solutions of Morristown, and the Supportive Housing Association.

3. Affordability Controls:

a. Furnishing to attorneys or closing agents forms of deed restrictions and mortgages for recording at the time of conveyance of title of each restricted unit;

b. Creating and maintaining a file on each restricted unit for its control period, including the recorded deed with restrictions, recorded mortgage and note, as appropriate;

c. Ensuring that the removal of the deed restrictions and cancellation of the mortgage note are effectuated and properly filed with the Morris County Register of Deeds or Morris County Clerk's office after the termination of the affordability controls for each restricted unit;

d. Communicating with lenders and the Borough Attorney regarding foreclosures; and

e. Ensuring the issuance of Continuing Certificates of Occupancy or certifications pursuant to N.J.A.C. 5:80-26.10.

4. Resales and Re-rentals:

a. Instituting and maintaining an effective means of communicating information between owners, the Administrative Agent and the Borough Attorney regarding the availability of restricted units for resale or re-rental; and

b. Instituting and maintaining an effective means of communicating information to low (or very low) and moderate income households regarding the availability of restricted units for resale or re-rental.

5. Processing Requests from Unit Owners:

a. Reviewing and approving requests for determination from owners of restricted units who wish to take out home equity loans or refinance during the term of their ownership that the amount of indebtedness to be incurred will not violate the terms of this Ordinance;

b. Reviewing and approving requests to increase sales prices from owners of restricted units who wish to make capital improvements to the units that would affect the selling price, such authorizations to be limited to those improvements resulting in additional bedrooms or bathrooms and the depreciated cost of central air conditioning systems;

c. Notifying the municipality of an owner's intent to sell a restricted unit; and

d. Processing requests and making determinations on requests by owners of restricted units for hardship waivers.

6. Enforcement:

a. Securing annually from the municipality a list of all affordable housing units for which tax bills are mailed to absentee owners, and notifying all such owners that they must either move back to their unit or sell it;

b. Securing from all developers and sponsors of restricted units, at the earliest point of contact in the processing of the project or development, written acknowledgement of the requirement that no restricted unit can be offered, or in any other way committed, to any person, other than a household duly certified to the unit by the Administrative Agent;

c. Posting annually, in all rental properties (including two (2) family homes), a notice as to the maximum permitted rent together with the telephone number of the Administrative Agent where complaints of excess rent or other charges can be made;

d. Sending annual mailings to all owners of affordable dwelling units, reminding them of the notices and requirements outlined in N.J.A.C. 5:80-26.18(d)4;

e. Establishing a program for diverting unlawful rent payments to the municipality's Affordable Housing Trust Fund; and

f. Creating and publishing a written operating manual for each affordable housing program administered by the Administrative Agent, to be approved by the Borough Council and the Council on Affordable Housing (COAH), setting forth procedures for administering the affordability controls.

g. Providing annual reports to COAH as required.

7. Additional Responsibilities:

a. The Administrative Agent shall have the authority to take all actions necessary and appropriate to carry out its responsibilities hereunder.

b. The Administrative Agent shall prepare monitoring reports for submission to the Municipal Housing Liaison in time to meet the Council on Affordable Housing (COAH) approved monitoring and reporting requirements in accordance with the deadlines set forth in this Ordinance.

c. Records received, retained, retrieved, or transmitted in performance of these administrative duties may constitute public records of the Borough as defined by N.J.S.A. 47:3-16, and are legal property of the Borough. The Administrative Agent named in this Ordinance must agree to administer and dispose of such records in compliance with the State's public records laws and associated administrative rules.

The Borough has identified the following as public records, subject to the above-cited provisions:

- Affordable Housing Project File
- Affordable Housing Project File-Approved
- Affordable Housing Project File-Denied/Withdrawn
- Affordable Housing Project File-Referral List
- Affordable Housing Application File-Individual
- Affordable Housing Application File-Certification Denied or Expired
- Affordable Housing Unit File
- Affordable Housing Unit File-Mailing Notification of Responsibilities
- Affordable Housing Unit Inventory
- Affordable Housing Trust Fund and/or Regional Contribution Agreement (RCA) Bank Account
- Enforcement File-Projects and Units
- Monitoring Reports-Annual Submission
- Operations Manual

Although the State has used its best efforts to identify all records which qualify as public records, the State reserves the right to amend the above list from time to time as warranted.

d. The Administrative Agent shall attend continuing education sessions on affordability controls, compliance monitoring, and affirmative marketing at least annually and more often as needed.

§17-85 AFFIRMATIVE MARKETING REQUIREMENTS.

1. The Borough of Mount Arlington shall adopt by resolution an Affirmative Marketing Plan, subject to approval of the Council on Affordable Housing (COAH), that is compliant with N.J.A.C. 5:80-26.15, as may be amended and supplemented.

2. The Affirmative Marketing Plan is a regional marketing strategy designed to attract buyers and/or renters of all majority and minority groups, regardless of race, creed, color, national origin, ancestry, marital or familial status, gender, affectional or sexual orientation, disability, age or number of children to housing units which are being marketed by a developer, sponsor or owner of affordable housing. The Affirmative Marketing Plan is 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 marketing activities toward Housing Region 2 and is required to be followed throughout the period of restriction.

3. The Affirmative Marketing Plan shall provide a regional preference for all households that live and/or work in Housing Region 2, comprised of Morris, Essex, Union and Warren Counties.

4. The municipality has the ultimate responsibility for adopting the Affirmative Marketing Plan and for the proper administration of the Affirmative Marketing Program, including initial sales and rentals and resales and re-rentals. The Administrative Agent designated by the

Borough of Mount Arlington shall implement the Affirmative Marketing Plan to assure the affirmative marketing of all affordable units.

5. 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.

6. The Affirmative Marketing Plan shall describe the media to be used in advertising and publicizing the availability of housing. In implementing the Affirmative Marketing Plan, the Administrative Agent shall consider the use of language translations where appropriate.

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

8. Applications for affordable housing shall be available in several locations, including, at a minimum, the County Administration Building and/or the County Library for each county within the housing region; the municipal administration building and the municipal library in the municipality in which the units are located; and the developer's rental office. Applications shall be mailed to prospective applicants upon request.

9. In addition to other affirmative marketing strategies, the Administrative Agent shall provide specific notice of the availability of affordable housing units in Mount Arlington, and copies of the application forms, to the following entities: Fair Share Housing Center, the New Jersey State Conference of the NAACP, the Latino Action Network, Morris County NAACP, Newark NAACP, East Orange NAACP, Housing Partnership for Morris County, Community Access Unlimited, Inc., Northwest New Jersey Community Action Program, Inc. (NORWESCAP), Homeless Solutions of Morristown, and the Supportive Housing Association.

10. The costs of advertising and affirmative marketing of the affordable units shall be the responsibility of the developer, sponsor or owner.

§17-86 ENFORCEMENT OF AFFORDABLE HOUSING REGULATIONS.

1. Upon the occurrence of a breach of any of the regulations governing an 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, a requirement for household recertification, acceleration of all sums due under a mortgage, recuperation of any funds from a sale in violation of the regulations, injunctive relief to prevent further violation of the regulations, entry on the premises, and specific performance.

2. After providing written notice of a violation to an Owner, Developer or Tenant of a 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(s) against the Owner, Developer or Tenant for any violation that remains uncured for a period of 60 days after service of the written notice:

a. 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 adjudged by the court to have violated any provision of the regulations governing affordable housing units the Owner, Developer or Tenant shall be subject to one or more of the following penalties, at the discretion of the court:

1) A fine of not more than $500.00 per day or imprisonment for a period not to exceed 90 days, or both, provided that each and every day that the violation continues or exists shall be considered a separate and specific violation of these provisions and not a continuation of the initial offense;

2) In the case of an Owner who has rented a low- or moderate-income unit in violation of the regulations governing affordable housing units, payment into the Borough of Mount Arlington Affordable Housing Trust Fund of the gross amount of rent illegally collected;

3) In the case of an Owner who has rented a 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.

b. The municipality may file a court action in the Superior Court seeking a judgment that would result in the termination of the Owner's equity or other interest in the unit, in the nature of a mortgage foreclosure. Any such 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- or moderate-income unit.

1) The judgment shall be enforceable, at the option of the municipality, by means of an execution sale by the Sheriff, at which time the very low- , low- or moderate income unit of the violating Owner shall be sold at a sale price which is not less than the amount necessary to fully satisfy and pay off any First Purchase Money Mortgage, any prior liens held by the municipality, and the costs of the enforcement proceedings incurred by the municipality, including attorney's fees, as long as that amount is not more than the maximum allowable restricted sales price at the time of foreclosure pursuant to N.J.A.C. 5:80-26.1, *et seq.* The violating Owner shall have his right to possession terminated as well as his title conveyed pursuant to the Sheriff's sale.

2) The proceeds of the Sheriff's sale shall first be applied to satisfy the First Purchase Money Mortgage lien and any prior liens upon the very low-, low- or moderate-income unit.

The excess, if any, shall be applied to reimburse the municipality for any and all costs and expenses incurred in connection with either the court action resulting in the judgment of violation or the Sheriff's sale. In the event that the proceeds from the Sheriff's sale are insufficient to reimburse the municipality in full as aforesaid, the violating Owner shall be personally responsible for the full 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.

3) Foreclosure by the municipality due to violation of the regulations governing affordable housing units shall not extinguish the restrictions of the regulations governing affordable housing units as the same apply to the very low-, low- or moderate-income unit. Title shall be conveyed to the purchaser at the Sheriff's sale, subject to the restrictions and provisions of the regulations governing the affordable housing unit. An 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.

4) If there are no bidders at the Sheriff's sale, or if insufficient amounts are bid to satisfy the First Purchase Money Mortgage and any prior liens, the municipality may acquire title to the very low-, low- or moderate-income unit by satisfying the First Purchase Money Mortgage and any prior liens and crediting the violating owner with an amount equal to the difference between the First Purchase Money Mortgage and any prior liens and costs of the enforcement proceedings, including legal fees and the maximum resale price for which the very low-, low- or moderate-income unit could have been sold under the terms of the regulations governing affordable housing units. This excess shall be treated in the same manner as the excess which would have been realized from an actual sale as previously described.

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

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

§17-87 APPEALS.

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

§17-88 AFFIRMATIVE MARKETING PLAN.

A. All affordable housing units in the Borough of Mount Arlington shall be marketed in accordance with the provisions herein, unless otherwise provided by law or regulation of the State of New Jersey.

B. The Borough of Mount Arlington has a Prior Round obligation that it has fulfilled and a Third Round obligation covering the years from 1999-2025. This Affirmative Marketing Plan shall apply to all developments that contain or will contain very low-, low- and moderate-income units, including those that are part of the Borough's prior round Fair Share Plan and its current Fair Share Plan and those that may be constructed in future developments not yet anticipated by the Fair Share Plan. This Affirmative Marketing Plan shall also apply to any rehabilitated rental units that are vacated and re-rented during the applicable period of controls for rehabilitated rental units.

C. The Affirmative Marketing Plan shall be implemented by the Administrative Agent(s) designated by and/or under contract with the Borough of Mount Arlington. All of the costs of advertising and affirmatively marketing affordable housing units shall be borne by the developers/sellers/owners of affordable unit(s), and all such advertising and affirmative marketing shall be subject to approval and oversight by the designated Administrative Agent.

D. In implementing the Affirmative Marketing Plan, the Administrative Agent, acting on behalf of the Borough of Mount Arlington, shall undertake, at the minimum, all of the following strategies:

1. Publication of newspaper advertisements as provided in F.1. below.

2. Broadcasting of advertisements by a radio or television station broadcasting throughout the housing region.

3. At least one additional regional marketing strategy using the other sources provided for by this Affirmative Marketing Plan.

E. The Affirmative Marketing Plan is a regional marketing strategy designed to attract buyers and/or renters of all majority and minority groups, regardless of race, creed, color, national origin, ancestry, marital or familial status, gender, affectional or sexual orientation, disability, age or number of children to housing units which are being marketed by a developer or sponsor of affordable housing. The Affirmative Marketing Plan is also intended to target those potentially eligible persons who are least likely to apply for affordable units in that region. It is a continuing program that directs all marketing activities toward the COAH Housing Region in which the municipality is located. The Borough of Mount Arlington is located in COAH Housing Region 2, consisting of Morris, Essex, Union and Warren Counties.

F. The Affirmative Marketing Plan is a <u>continuing</u> program that shall be followed at every change in ownership or occupancy of a restricted affordable unit throughout the entire period of time that the unit is restricted as an affordable unit. The Affirmative Marketing Plan shall meet the following requirements:

1. All newspaper articles, announcements and requests for applications for very low, low- and moderate-income units shall appear in the Star Ledger, the Daily Record and the Express Times.

2. The primary marketing shall take the form of at least one press release and a paid display advertisement in the above newspapers once a week for four consecutive weeks. Additional advertising and publicity shall be on an "as needed" basis. The developer/owner shall disseminate all public service announcements and pay for display advertisements. The developer/owner shall provide proof of all publications to the Administrative Agent. All press releases and advertisements shall be approved in advance by the Administrative Agent.

3. The advertisement shall include a description of the:

   a. Location of the units;

   b Directions to the units;

   c. Range of prices for the units;

   d. Size, as measured in bedrooms, of units;

   e. Maximum income permitted to qualify for the units;

   f. Location of applications;

   g. Business hours when interested households may obtain an application; and

   h. Application fees.

4. Newspaper articles, announcements and information on where to request applications for very low, low- and moderate-income housing shall appear at least once a week for four consecutive weeks in at least three locally oriented newspapers serving the housing region, one of which shall be circulated primarily in Morris County and the other two of which shall be circulated primarily outside of Morris County but within the housing region.

5. The following regional cable television stations or regional radio stations shall be used during the first month of advertising. The developer must provide satisfactory proof of public dissemination:

   a. Cablevision of Morris

   b. Comcast of New Jersey

   c. Comcast of Northwest New Jersey

d. WBLS (107.5)

e. WCAA (105.9)

f. WPRB (103.3)

G. Applications, brochure(s), sign(s) and/or poster(s) used as part of the affirmative marketing program shall be available/posted in the following locations:

1. Mount Arlington Borough Hall

2. Mount Arlington Borough Web Site

3. Developer's Sales/Rental Offices

4. Morris, Essex, Union and Warren County Administration Buildings

5. Morris, Essex, Union and Warren County Libraries (all branches)

6. Other public buildings and agencies as deemed appropriate by the Administrative Agent.

Applications shall be mailed by the Administrative Agent and Municipal Housing Liaison to prospective applicants upon request. Also, applications shall be available at the developer's sales/rental office and multiple copies of application forms shall be mailed to Fair Share Housing Center, the New Jersey State Conference of the NAACP, the Latino Action Network, Morris County NAACP, Newark NAACP, East Orange NAACP, Housing Partnership for Morris County, Community Access Unlimited, Inc., Northwest New Jersey Community Action Program, Inc. (NORWESCAP), Homeless Solutions of Morristown, and the Supportive Housing Association for dissemination to their respective constituents. In addition, the foregoing entities shall be notified directly whenever an affordable housing unit(s) becomes available in Mount Arlington.

H. The Administrative Agent shall develop, maintain and update a list of community contact person(s) and/or organizations(s) in Morris, Essex, Union and Warren Counties, including those entities listed in G.6. above that will aid in the affirmative marketing program with particular emphasis on those contacts that are able to reach out to groups that are least likely to apply for housing within the region, including major regional employers identified in Attachment A, Part III, Marketing, Section 3d of COAH's Affirmative Fair Housing Marketing Plan for Affordable Housing in Region 2 (attached to and hereby made part of this Resolution) as well as the following entities:

1. Quarterly informational flyers and applications shall be sent to the Morris, Essex, Union and Warren County Boards of Realtors for publication in their journals and for circulation among their members.

2. Quarterly informational circulars and applications shall be sent to the administrators of each of the following agencies within the municipalities and counties of Morris, Essex, Union and Warren:

   Welfare or Social Service Board (via the Director)
   Rental Assistance Office (local office of DCA)
   Office on Aging
   Housing Authority (municipal or county)
   Community Action Agencies
   Community Development Departments

3. Quarterly informational circulars and applications shall be sent to the chief personnel administrators of all of the major employers within the region, as listed on Attachment A, Part III, Marketing, Section 3d.

I. The following is a listing of community contact person(s) and/or organizations in Morris, Essex, Union and Warren Counties that will aid in the affirmative marketing program and provide guidance and counseling services to prospective occupants of very low-, low-and moderate-income units:

1. Housing Partnership for Morris County, 2 East Blackwell Street, Dover, NJ 07801.

2. Community Access Unlimited, Inc., 80 West Grand Street, Elizabeth, NJ 07202.

3. Northwest New Jersey Community Action Program, Inc. (NORWESCAP), 350 Marshall Street, Phillipsburg, NJ 08865.

J. A random selection method to select occupants of very low-, low- and moderate-income housing will be used by the Administrative Agent, in conformance with N.J.A.C. 5:80-26.16 (l). The Affirmative Marketing Plan shall provide a regional preference for very low-, low- and moderate-income households that live and/or work in COAH Housing Region 2, comprised of Morris, Essex, Union and Warren Counties. Pursuant to the New Jersey Fair Housing Act (C.52:27D-311), a preference for very low-, low- and moderate-income veterans duly qualified under N.J.A.C. 54:4-8.10 may also be exercised, provided an agreement to this effect has been executed between the developer or landlord and the Borough prior to the affirmative marketing of the units.

K. The Administrative Agent shall administer the Affirmative Marketing Plan. The Administrative Agent has the responsibility to income qualify very low-, low- and moderate-income households; to place income eligible households in very low-, low- and moderate-income units upon initial occupancy; to provide for the initial occupancy of very low, low and moderate income units with income qualified households; to continue to qualify households for re-occupancy of units as they become vacant during the period of affordability controls; to assist with outreach to very low-, low- and moderate-income

households; and to enforce the terms of the deed restriction and mortgage loan as per N.J.A.C 5:80-26-1, et seq.

L. The Administrative Agent shall provide or direct qualified very low-, low- and moderate-income applicants to counseling services on subjects such as budgeting, credit issues, mortgage qualifications, rental lease requirements and landlord/tenant law and shall develop, maintain and update a list of entities and lenders willing and able to perform such services. In addition, it shall be the responsibility of the Administrative Agent to inform owners of affordable units and prospective occupants of affordable units of the Borough's affordability assistance programs and to assist with the implementation of such programs.

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

N. The implementation of the Affirmative Marketing Plan for a development that includes affordable housing shall commence at least 120 days before the issuance of either a temporary or permanent certificate of occupancy. The implementation of the Affirmative Marketing Plan shall continue until all very low-, low- and moderate-income housing units are initially occupied and thereafter upon the re-sale or re-rental of an affordable unit for as long as an affordable unit remains deed restricted.

O. The Administrative Agent shall provide the Affordable Housing Liaison with the information required to comply with monitoring and reporting requirements pursuant to the Borough's adopted Affordable Housing Ordinance.

SECTION 2. All ordinances or parts of ordinances inconsistent herewith are hereby repealed as to such inconsistencies.

SECTION 3. If any article, section, subsection, paragraph, phrase, or sentence is for any reason held to be unconstitutional or invalid, said article, section, subsection, paragraph, phrase or sentence shall be deemed separable.

SECTION 4. This Ordinance shall take effect upon final publication as provided by law.

I HEREBY CERTIFY this to be a true and correct Ordinance of the Mayor and Borough Council of the Borough of Mount Arlington, adopted on November 7, 2018 and will be further considered after a Public Hearing held on December 4, 2018 at the Municipal Building at 7:00 P.M.

INTRODUCED:
PUBLISHED:
ATTEST:

Linda DeSantis, RMC, Borough Clerk

BOROUGH OF MOUNT ARLINGTON
COUNTY OF MORRIS
STATE OF NEW JERSEY

Michael Stanzilis, Mayor

ORDINANCE 22 - 18

AN ORDINANCE OF THE MAYOR AND BOROUGH COUNCIL OF THE BOROUGH OF MOUNT ARLINGTON, IN THE COUNTY OF MORRIS, STATE OF NEW JERSEY, AMENDING AND SUPPLEMENTING THE CODE OF THE BOROUGH OF MOUNT ARLINGTON CHAPTER 161 TREES TO AMEND §161-2, §161-5 AND §161-7; AND ADD NEW SECTIONS §161-13, §161-14 AND §161-15 TO ESTABLISH A TREE BANK

WHEREAS, the Planning Board, Borough Planner and Borough Engineer reviewed the Borough Code Chapter 161 Trees and determined a Borough Tree Bank should be established to regulate and control indiscriminate and excessive removal, cutting and destruction of trees to prevent conditions which cause increased surface drainage with commensurate loss of groundwater infiltration to replenish subsurface water supplies; siltation, sedimentation, soil erosion and decreased soil fertility; dust conditions and mosquito breeding places; and impairment of the stability and value of real estate; all of which conditions are now and will be in the future a detriment to the public safety, health and general welfare; and

WHEREAS, the Mayor and Council for the Borough of Mount Arlington reviewed the Borough Planner's suggestions and desires to amend and supplement the current code section Chapter 161 Trees, to amend Section §161-2 Definitions to re-define "Tree"; and

WHEREAS, the Mayor and Council for the Borough of Mount Arlington reviewed the Planning Board, Borough Planner and Borough Engineer's suggestions and desires to amend and supplement the current code section Chapter 161 Trees, Section §161-5 Fees, to include a new item G. Tree Bank Fee to set forth a three hundred dollar ($300.00) fee for each tree proposed for removal that are not replaced on site; and

WHEREAS, the Mayor and Council for the Borough of Mount Arlington reviewed the Borough Engineer's suggestions and desires to amend and supplement the current code section Chapter 161 Trees, Section §161-7 Standards for considering application, to amend Item D. Protection of trees to remove subsections 1 through 4 and replace with language that the New Jersey Standards for Soil Erosion and Sediment Control, as promulgated by the N.J. State Soil Conservation Committee, are the Borough standards; and

WHEREAS, the Mayor and Council for the Borough of Mount Arlington reviewed the Borough Planner's suggestions and desires to amend and supplement the current code section Chapter 161 Trees, Section §161-7 Standards for considering application, to revise Item E. Replacement and planting of trees; and also to include a new number (4) Standards for Considering Application in Item E to set forth a three hundred dollar ($300.00) fee for each tree proposed for removal that are not replaced on site; and

WHEREAS, the Mayor and Council for the Borough of Mount Arlington reviewed the Borough Planner's suggestions and desires to amend and supplement the current code section Chapter 161 Trees, to add a

new Section §161-13, Tree Bank to provide a fund for the planting of trees within the Borough of Mount Arlington; and

WHEREAS, the Mayor and Council for the Borough of Mount Arlington reviewed the Borough Planner's suggestions and desires to amend and supplement the current code section Chapter 161 Trees, to add a new Section §161-14 Applicability to provide that the Tree Bank applies to all Tree Removal Permits where an applicant may be required to replace trees; and

WHEREAS, the Mayor and Council for the Borough of Mount Arlington reviewed the Borough Planner's suggestions and desires to amend and supplement the current code section Chapter 161 Trees, to add a new Section §161-15 Borough Tree Bank.

BE IT ORDAINED, by the Mayor and Borough Council of the Borough of Mount Arlington, County of Morris and State of New Jersey that the current code section Chapter 161 Trees be amended and supplemented as follows:

SECTION 1. Chapter 161 Trees, of the Code of the Borough of Mount Arlington is hereby amended, supplemented and added to read in relevant parts as follows:

§161-2. Definitions.
"Tree" shall mean any woody perennial plant, having a diameter greater than eight (8) inches, measured from a point four and one-half (4 1/2) feet above ground (dbh forestry method).

§161-5. Fees.
G. Tree Bank Fee: the fee for trees proposed for removal that are not replaced on site per tree as three hundred dollars ($300.00) per tree.

§161-7. Standards for considering application.
D. Protection of trees. Whenever an application for tree removal is granted under the terms and conditions of this chapter, the tree protection standards as set forth in the New Jersey Standards for Soil Erosion and Sediment Control, as promulgated by the N.J. State Soil Conservation Committee, shall be observed and govern.

E. Replacement and planting of trees. When trees are proposed for removal, at least one (1) for every five (5) trees removed shall be replaced on the site. A planting plan shall be presented to the appropriate approving agency, which agency shall have the right to have said plan reviewed by an appropriate professional consultant. The applicant shall reimburse the borough for any fees paid to such consultant for review and preparation of opinion and/or report. The plan shall follow standards and recommendations set forth as follows:

(4) Standards for Considering Application: In the event an applicant has demonstrated an inability to replace trees on the site as may be required by a Borough ordinance, the applicant shall pay an amount per tree as specified under 151-5G, herein.

§161-13. Tree Bank.
The purpose of this ordinance is to provide a fund for the planting of trees within the Borough of Mount Arlington. More specifically, when an applicant for a Tree Removal Permit has demonstrated an inability to comply with the tree replacement requirements of the ordinance, then the applicant shall pay a per tree fee to the Tree Bank. Public or private entities that wish to donate to the Borough of Mount Arlington to provide for trees to be planted may donate to the Tree Bank for said purpose.

§161-14. Applicability.
The Tree Bank applies to all Tree Removal Permits, where an applicant may be required to replace trees.

§161-15. Borough Tree Bank.

A. The Borough shall establish and maintain a Tree Bank where fees collected from applicant contribution pursuant to Section §161-7 E (4) shall be kept. The fund shall be utilized by the Borough Administrator, or designee, for tree planting in the Borough of Mount Arlington.
B. Funds within the Tree Bank shall be allocated to at least one tree planting event per year subject to fund availability.
C. Trees planted by Tree Bank funds should be located as closely as possible to the areas where tree removal occurred that generated payments to the Tree Bank.
D. The Borough Tree Bank Fund may also accept donations and/or funds from other sources for the express purpose of planting trees at locations selected by the Borough Administrator or designee.

SECTION 2. All ordinances or parts of ordinances inconsistent herewith are hereby repealed as to such inconsistencies.

SECTION 3. If any article, section, subsection, paragraph, phrase, or sentence is for any reason held to be unconstitutional or invalid, said article, section, subsection, paragraph, phrase or sentence shall be deemed separable.

SECTION 4. This Ordinance shall take effect upon final publication as provided by law.

I HEREBY CERTIFY this to be a true and correct Ordinance of the Mayor and Borough Council of the Borough of Mount Arlington, adopted on November 7, 2018 and will be further considered after a Public Hearing held on December 4, 2018 at the Municipal Building at 7:00 P.M.

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