

EXPLANATION: This Ordinance amends the Township's Land Development Ordinances to establish the affordable housing provisions governing the development and administration of affordable housing within the Township.

**ORDINANCE #2117**

An Ordinance of the Township of Bernards, County of Somerset, State of New Jersey, Amending, Revising and Supplementing the Code of the Township of Bernards, Chapter 21, "Land Development" to Add and Create new Article XIII, "Affordable Housing" Establishing Provisions Governing the Development and Administration of Affordable Housing within the Township

**WHEREAS**, to address the requirements of the New Jersey Council on Affordable Housing ("COAH") regarding the compliance with the Township's prior round and Third Round affordable housing obligations, the Township Committee of the Township of Bernards finds it to be in the best interest of the Township to establish provisions governing the development administration of affordable housing units within the Township.

**NOW THEREFORE, BE IT ORDAINED** by the Township Committee of the Township of Bernards, in the County of Somerset and State of New Jersey as follows:

**Section 1.** Chapter 21 entitled "Land Development" of *The Revised General and Land Ordinances of the Township of Bernards*, is hereby supplemented and amended to create new Article XIII entitled "Affordable Housing" to read as follows:

**ARTICLE XIII AFFORDABLE HOUSING.**

**SECTION 21-85 Affordable Housing Obligation.**

**§ 21-85.1 Purpose.**

- (a) This Ordinance is intended to assure that low- and moderate-income units ("affordable units") are created with controls on affordability over time and that low- and moderate-income individuals and households shall occupy these units.
- (b) The Township of Bernards Planning Board has adopted a Housing Element and Fair Share Plan pursuant to the Municipal Land Use Law at N.J.S.A. 40:55D-1, et seq. The Fair Share Plan has been endorsed by the Township Committee. The Fair Share Plan describes the ways the Township of Bernards shall address its fair share for low- and moderate-income housing as determined by the Council on Affordable Housing (COAH) and documented in the Housing Element.
- (c) This Ordinance implements and incorporates the Fair Share Plan and addresses the requirements of N.J.A.C. 5:97, as may be amended and supplemented.
- (d) The Township of Bernards shall file monitoring reports with COAH in accordance with N.J.A.C. 5:96, tracking the status of the implementation of the Housing Element and Fair Share Plan. Any plan evaluation report of the Housing Element and Fair Share Plan and monitoring prepared by COAH in accordance with N.J.A.C. 5:96 shall be available to the public at the Township of Bernards Municipal Building, Municipal Clerk's Office, One Collyer Lane, Basking

Ridge, New Jersey, or from COAH at 101 South Broad Street, Trenton, New Jersey and on COAH's website, [www.nj.gov/dca/affiliates/coah](http://www.nj.gov/dca/affiliates/coah).

**§ 21-85.2 Definitions.** The following terms when used in this Ordinance shall have the meanings given in this Section:

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

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

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

“Administrative agent” means the entity responsible for the administration of affordable units in accordance with this ordinance, N.J.A.C. 5:96, N.J.A.C. 5:97 and N.J.A.C. 5:80-26.1 et seq.

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

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

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

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

“Affordable housing development” means a development included in the Housing Element and Fair Share Plan, and includes, but is not limited to, an inclusionary development, a municipal construction project or a 100 percent affordable development.

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

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

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

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

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

“Certified household” means a household that has been certified by an Administrative Agent as a low-income household or moderate-income household.

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

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

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

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

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

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

“Low-income household” means a household with a total gross annual household income equal to 50 percent or less of the median household income.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**§ 21-85.3** Affordable Housing Programs. The Township of Bernards has determined that it will use the following mechanisms to satisfy its affordable housing obligations: Permanent Supportive Housing; Group Homes; 100% Affordable New Development; Extension of Expiring Controls; Market to Affordable programs; and Rehabilitation programs.

(a) A Rehabilitation program.

1. The Township of Bernards’ rehabilitation program shall be designed to renovate deficient housing units occupied by low- and moderate-income households such that, after rehabilitation, these units will comply with the New Jersey State Housing Code pursuant to N.J.A.C. 5:28.

2. Both owner occupied and renter occupied units shall be eligible for rehabilitation funds.
3. All rehabilitated units shall remain affordable to low- and moderate-income households for a minimum period of 10 years (the control period). For owner occupied units the control period will be enforced with a lien and for renter occupied units the control period will be enforced with a deed restriction.
4. The Township of Bernards shall dedicate a minimum of \$10,000 for each unit to be rehabilitated through this program, reflecting the minimum hard cost of rehabilitation for each unit.
5. The Township of Bernards shall adopt a resolution committing to fund any shortfall in the rehabilitation programs for the Township of Bernards.
6. The Township of Bernards shall designate, subject to the approval of COAH, one or more Administrative Agents to administer the rehabilitation program in accordance with N.J.A.C. 5:96 and N.J.A.C. 5:97. The Administrative Agent(s) shall provide a rehabilitation manual for the owner occupancy rehabilitation program and a rehabilitation manual for the rental occupancy rehabilitation program to be adopted by resolution of the governing body and subject to approval of COAH. Both rehabilitation manuals shall be available for public inspection in the Office of the Municipal Clerk and in the office(s) of the Administrative Agent(s).
7. Units in a rehabilitation program shall be exempt from N.J.A.C. 5:97-9 and Uniform Housing Affordability Controls (UHAC), but shall be administered in accordance with the following:
  - i. If a unit is vacant, upon initial rental subsequent to rehabilitation, or if a renter-occupied unit is re-rented prior to the end of controls on affordability, the deed restriction shall require the unit to be rented to a low- or moderate-income household at an affordable rent and affirmatively marketed pursuant to N.J.A.C. 5:97-9 and UHAC.
  - ii. If a unit is renter-occupied, upon completion of the rehabilitation, the maximum rate of rent shall be the lesser of the current rent or the maximum permitted rent pursuant to N.J.A.C. 5:97-9 and UHAC.
  - iii. Rents in rehabilitated units may increase annually based on the standards in N.J.A.C. 5:97-9.
  - iv. Applicant and/or tenant households shall be certified as income-eligible in accordance with N.J.A.C. 5:97-9 and UHAC, except that households in owner occupied units shall be exempt from the regional asset limit.

(b) A Market to Affordable program.

1. A market to affordable program is established to permit the purchase or subsidization of units through a written agreement with the property owner and sold or rented to low- and moderate-income households. Subject to the provisions of 2iii below, the market to affordable programs may produce both low- and moderate-income units (the program may be limited to only low- or only moderate-income units as per the Fair Share Plan).
2. The following provisions shall apply to market to affordable programs:

- i. At the time they are offered for sale or rental, eligible units may be new, pre-owned or vacant.
  - ii. The units shall be certified to be in sound condition as a result of an inspection performed by a licensed building inspector.
  - iii. The municipality will provide a minimum of \$25,000 per unit to subsidize each moderate-income unit and/or \$30,000 per unit to subsidize the each low-income unit, with additional subsidy depending on the market prices or rents in a municipality.
  - iv. The maximum number of creditable market to affordable units shall be equal to no more than 10 for sale units and 10 rental units or a combined total of 10 percent of the fair share obligation, whichever is greater. (Additional units may be approved by COAH if the municipality demonstrates the successful completion of its initial market to affordable program.)
3. The units shall comply with N.J.A.C. 5:97-9 and UHAC with the following exceptions:
- i. Bedroom distribution (N.J.A.C. 5:80-26.3(b) and (c));
  - ii. Low/moderate income split (N.J.A.C. 5:80-26.3(a)); and
  - iii. Affordability average (N.J.A.C. 5:80-26.3(d) and (e)); however:
    - A. The maximum rent for a moderate-income unit shall be affordable to households earning no more than 60 percent of median income and the maximum rent for a low-income unit shall be affordable to households earning no more than 44 percent of median income; and
    - B. The maximum sales price for a moderate-income unit shall be affordable to households earning no more than 70 percent of median income and the maximum sales price for a low-income unit shall be affordable to households earning no more than 40 percent of median income.

(c) Extension of Controls.

- 1. NJAC 5:97-6.14(a) permits a municipality to address a portion of its growth share obligation through the extension of affordability controls in accordance with N.J.A.C. 5:97-9 and UHAC, subject to the following:
  - i. The unit meets the criteria for prior-cycle or post-1986 credits set forth in N.J.A.C. 5:97-4.2 or 4.3;
  - ii. The affordability controls for the unit are scheduled to expire during the 1999 through 2018 period;
  - iii. The municipality shall obtain a continuing certificate of occupancy or a certified statement from the municipal building inspector stating that the restricted unit meets all code standards; and
  - iv. If a unit requires repair and/or rehabilitation work in order to receive a continuing certificate of occupancy or certified statement from the municipal building inspector, the municipality shall fund and complete the work. A municipality may utilize its affordable housing trust fund to purchase the unit and/or complete the necessary repair and/or rehabilitation work.

2. The effect of expiring controls on the affordable housing stock is a serious concern for Bernards Township, and Bernards plans to make every effort to extend these controls and retain this affordability within the existing housing stock.
3. Bernards Township intends to expend funds from its Housing Trust program to secure a written commitment form the owner to extend controls.

§ 21-85.4     Reserved.

§ 21-85.5     Reserved.

§ 21-85.6     Reserved.

§ 21-85.7     New Construction. The following general guidelines apply to all newly constructed developments that contain low-and moderate-income housing units, including any currently unanticipated future developments that will provide low- and moderate-income housing units.

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

1.     The fair share obligation shall be divided equally between low- and moderate-income units, except that where there is an odd number of affordable housing units, the extra unit shall be a low income unit.
2.     In each affordable development, at least 50 percent of the restricted units within each bedroom distribution shall be low-income units.
3.     Affordable developments that are not age-restricted shall be structured in conjunction with realistic market demands such that:
  - i.     The combined number of efficiency and one-bedroom units shall be no greater than 20 percent of the total low- and moderate-income units;
  - ii.    At least 30 percent of all low- and moderate-income units shall be two bedroom units;
  - iii.   At least 20 percent of all low- and moderate-income units shall be three bedroom units; and
  - iv.    The remaining units may be allocated among two and three bedroom units at the discretion of the developer.
4.     Affordable developments that are age-restricted shall be structured such that the number of bedrooms shall equal the number of age-restricted low- and moderate-income units within the inclusionary development. The standard may be met by having all one-bedroom units or by having a two-bedroom unit for each efficiency unit.

(b)     Accessibility Requirements:

1.     The first floor of all restricted townhouse dwelling units and all restricted units in all other multistory buildings shall be subject to the technical design standards of the Barrier Free Subcode, N.J.A.C. 5:23-7 and N.J.A.C. 5:97-3.14.
2.     All restricted townhouse dwelling units and all restricted units in other multistory buildings in which a restricted dwelling unit is attached to at least one other dwelling unit shall have the following features:
  - i.     An adaptable toilet and bathing facility on the first floor;

- ii. An adaptable kitchen on the first floor;
- iii. An interior accessible route of travel on the first floor;
- iv. An interior accessible route of travel shall not be required between stories within an individual unit;
- v. An adaptable room that can be used as a bedroom, with a door or the casing for the installation of a door, on the first floor; and
- vi. An accessible entranceway as set forth at P.L. 2005, c. 350 (N.J.S.A. 52:27D-311a et seq.) and the Barrier Free Subcode, N.J.A.C. 5:23-7 and N.J.A.C. 5:97-3.14, or evidence that the Township of Bernards 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 Township of Bernards' affordable housing trust fund sufficient to install accessible entrances in 10 percent of the affordable units that have been constructed with adaptable entrances.
  - C. The funds deposited under paragraph B. above shall be used by the Township of Bernards for the sole purpose of making the adaptable entrance of any affordable unit accessible when requested to do so by a person with a disability who occupies or intends to occupy the unit and requires an accessible entrance.
  - D. The developer of the restricted units shall submit a design plan and cost estimate for the conversion from adaptable to accessible entrances to the Construction Official of the Township of Bernards.
  - E. Once the Construction Official has determined that the design plan to convert the unit entrances from adaptable to accessible meet the requirements of the Barrier Free Subcode, N.J.A.C. 5:23-7 and N.J.A.C. 5:97-3.14, and that the cost estimate of such conversion is reasonable, payment shall be made to the Township of Bernards' affordable housing trust fund in care of the Municipal Treasurer who shall ensure that the funds are deposited into the affordable housing trust fund and appropriately earmarked.
  - F. Full compliance with the foregoing provisions shall not be required where an entity can demonstrate that it is site impracticable to meet the requirements. Determinations of site impracticability shall be in compliance with the Barrier Free Subcode, N.J.A.C. 5:23-7 and N.J.A.C. 5:97-3.14.

(c) Maximum Rents and Sales Prices

1. In establishing rents and sales prices of affordable housing units, the administrative agent shall follow the procedures set forth in UHAC and in COAH, utilizing the regional income limits established by COAH.
2. The maximum rent for restricted rental units within each affordable development shall be affordable to households earning no more than 60 percent of median income, and the average rent for restricted low- and moderate-income units shall be affordable to households earning no more than 52 percent of median income.
3. The developers and/or municipal sponsors of restricted rental units shall establish at least one rent for each bedroom type for both low-income and moderate-income units.
  - i. At least 10 percent of the Township's low- and moderate-income rental units shall be affordable to households earning no more than 30 percent of median income.
4. The maximum sales price of restricted ownership units within each affordable development shall be affordable to households earning no more than 70 percent of median income, and each affordable development must achieve an affordability average of 55 percent for restricted ownership units; in achieving this affordability average, moderate-income ownership units must be available for at least three different prices for each bedroom type, and low-income ownership units must be available for at least two different prices for each bedroom type.
5. In determining the initial sales prices and rents for compliance with the affordability average requirements for restricted units other than assisted living facilities, the following standards shall be used:
  - i. A studio shall be affordable to a one-person household;
  - ii. A one-bedroom unit shall be affordable to a one and one-half person household;
  - iii. A two-bedroom unit shall be affordable to a three-person household;
  - iv. A three-bedroom unit shall be affordable to a four and one-half person household; and
  - v. A four-bedroom unit shall be affordable to a six-person household.
6. In determining the initial rents for compliance with the affordability average requirements for restricted units in assisted living facilities, the following standards shall be used:
  - i. A studio shall be affordable to a one-person household;
  - ii. A one-bedroom unit shall be affordable to a one and one-half person household; and
  - iii. A two-bedroom unit shall be affordable to a two-person household or to two one-person households.
7. The initial purchase price for all restricted ownership units shall be calculated so that the monthly carrying cost of the unit, including principal and interest (based on a mortgage loan equal to 95 percent of the purchase price and the Federal Reserve H.15 rate of interest), taxes, homeowner and private mortgage insurance

and condominium or homeowner association fees do not exceed 28 percent of the eligible monthly income of the appropriate size household as determined under N.J.A.C. 5:80-26.4, as may be amended and supplemented; provided, however, that the price shall be subject to the affordability average requirement of N.J.A.C. 5:80-26.3, as may be amended and supplemented.

8. The initial rent for a restricted rental unit shall be calculated so as not to exceed 30 percent of the eligible monthly income of the appropriate household size as determined under N.J.A.C. 5:80-26.4, as may be amended and supplemented; provided, however, that the rent shall be subject to the affordability average requirement of N.J.A.C. 5:80-26.3, as may be amended and supplemented.
9. The price of owner-occupied low- and moderate-income units may increase annually based on the percentage increase in the regional median income limit for each housing region. In no event shall the maximum resale price established by the administrative agent be lower than the last recorded purchase price.
10. The rent of low- and moderate-income units may be increased annually based on the percentage increase in the Housing Consumer Price Index for the United States. This increase shall not exceed nine percent in any one year. Rents for units constructed pursuant to low- income housing tax credit regulations shall be indexed pursuant to the regulations governing low- income housing tax credits.
11. Utilities. Tenant-paid utilities that are included in the utility allowance shall be so stated in the lease and shall be consistent with the utility allowance approved by DCA for its Section 8 program.

**§ 21-85.8 Affirmative Marketing Requirements.** The following general guidelines apply to all developments that contain low- and moderate-income housing units, including any currently unanticipated future developments that will provide low- and moderate-income housing units.

- (a) The Township of Bernards shall adopt by resolution an Affirmative Marketing Plan, subject to approval of COAH, compliant with N.J.A.C. 5:80-26.15, as may be amended and supplemented.
- (b) The affirmative marketing plan is a regional marketing strategy designed to attract buyers and/or renters of all majority and minority groups, regardless of race, creed, color, national origin, ancestry, marital or familial status, gender, affection or sexual orientation, disability, age or number of children to housing units which are being marketed by a developer, sponsor or owner of affordable housing. The affirmative marketing plan is also intended to target those potentially eligible persons who are least likely to apply for affordable units in that region. It is a continuing program that directs all marketing activities toward COAH Housing Region 3 and covers the period of deed restriction.
- (c) The affirmative marketing plan shall provide a regional preference for all households that live and/or work in COAH Housing Region 3 comprised of Somerset, Middlesex and Hunterdon counties.
- (d) The Administrative Agent designated by the Township of Bernards shall assure the affirmative marketing of all affordable units consistent with the Affirmative Marketing Plan for the municipality.

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

**§ 21-85.9 Occupancy Standards.**

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

**§ 21-85.10 Control Periods for Restricted Ownership Units and Enforcement Mechanisms.**

- (a) Control periods for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.5, as may be amended and supplemented, and each restricted ownership unit shall remain subject to the requirements of this Section until the Township of Bernards elects to release the unit from such requirements however, and prior to such an election, a restricted ownership unit must remain subject to the requirements of N.J.A.C. 5:80-26.1, as may be amended and supplemented, for at least 30 years.
- (b) The affordability control period for a restricted ownership unit shall commence on the date the initial certified household takes title to the unit.
- (c) Prior to the issuance of the initial certificate of occupancy for a restricted ownership unit and upon each successive sale during the period of restricted ownership, the administrative agent shall determine the restricted price for the unit and shall also determine the non-restricted, fair market value of the unit based on either an appraisal or the unit's equalized assessed value.
- (d) At the time of the first sale of the unit, the purchaser shall execute and deliver to the Administrative Agent a recapture note obligating the purchaser (as well as the purchaser's heirs, successors and assigns) to repay, upon the first non-exempt sale after the unit's release from the requirements of this Section, an amount equal to the difference between the unit's non-restricted fair market value and its restricted price, and the recapture note shall be secured by a recapture lien evidenced by a duly recorded mortgage on the unit.

- (e) The affordability controls set forth in this Section shall remain in effect despite the entry and enforcement of any judgment of foreclosure with respect to restricted ownership units.
- (f) A restricted ownership unit shall be required to obtain a Continuing Certificate of Occupancy or a certified statement from the Construction Official stating that the unit meets all code standards upon the first transfer of title that follows the expiration of the applicable minimum control period provided under N.J.A.C. 5:80-26.5(a), as may be amended and supplemented.

**§ 21-85.11 Price Restrictions for Restricted Ownership Units, Homeowner Association Fees and Resale Prices.** Price restrictions for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.1, as may be amended and supplemented, including:

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

**§ 21-85.12 Buyer Income Eligibility.**

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

**§ 21-85.13 Limitations on indebtedness secured by ownership unit; subordination.**

- (a) Prior to incurring any indebtedness to be secured by a restricted ownership unit, the administrative agent shall determine in writing that the proposed indebtedness complies with the provisions of this section.
- (b) With the exception of original purchase money mortgages, during a control period neither an owner nor a lender shall at any time cause or permit the total indebtedness secured by

a restricted ownership unit to exceed eighty (80%) percent of the maximum allowable resale price of that unit, as such price is determined by the administrative agent in accordance with N.J.A.C.5:80-26.6(b).

**§ 21-85.14 Control Periods for Restricted Rental Units.**

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

**§ 21-85.15 Price Restrictions for Rental Units; Leases.**

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

**§ 21-85.16 Tenant Income Eligibility.**

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

- (b) The Administrative Agent shall certify a household as eligible for a restricted rental unit when the household is a very low-income, low-income household or a moderate-income household, as applicable to the unit, and the rent proposed for the unit does not exceed 35 percent of the household's eligible monthly income as determined pursuant to N.J.A.C. 5:80-26.16, as may be amended and supplemented; provided, however, that this limit may be exceeded if one or more of the following circumstances exists:
1. The household currently pays more than 35 percent of its gross household income for rent, and the proposed rent will reduce its housing costs;
  2. The household has consistently paid more than 35 percent of eligible monthly income for rent in the past and has proven its ability to pay;
  3. The household is currently in substandard or overcrowded living conditions;
  4. The household documents the existence of assets with which the household proposes to supplement the rent payments; or
  5. The household documents proposed third-party assistance from an outside source such as a family member in a form acceptable to the Administrative Agent and the owner of the unit.
- (c) The applicant shall file documentation sufficient to establish the existence of the circumstances in (b) 1 through 5 above with the Administrative Agent, who shall counsel the household on budgeting.

**§ 21-85.17 Administration.**

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

- vi. Coordinating meetings with affordable housing providers and Administrative Agents, as applicable; and
  - vii. Attending continuing education opportunities on affordability controls, compliance monitoring and affirmative marketing as offered or approved by COAH.
- (b) The Township of Bernards shall designate by resolution of the Township Committee, subject to the approval of COAH, to administer newly constructed affordable units in accordance with N.J.A.C. 5:96, N.J.A.C. 5:97 and UHAC. The Township reserves the right to contract, from time to time, subject to the approval of COAH, with an Administrative Agent, other than the Administrative Agent named herein. Any such contract shall be authorized by Resolution of the Township Committee, and shall not require amendment of this Section.
- (c) An Operating Manual shall be provided by the Administrative Agent(s) to be adopted by resolution of the Township Committee and subject to approval of COAH. The Operating Manuals shall be available for public inspection in the Office of the Municipal Clerk and in the office(s) of the Administrative Agent(s).
- (d) The Administrative Agent shall perform the duties and responsibilities of an administrative agent as are set forth in UHAC and which are described in full detail in the Operating Manual, including those set forth in N.J.A.C. 5:80-26.14, 16 and 18 thereof, which includes:
- 1. Attending continuing education opportunities on affordability controls, compliance monitoring, and affirmative marketing as offered or approved by COAH;
  - 2. Affirmative Marketing;
  - 3. Household Certification;
  - 4. Affordability Controls;
  - 5. Records retention;
  - 6. Resale and re-rental;
  - 7. Processing requests from unit owners; and
  - 8. Enforcement, though the ultimate responsibility for retaining controls on the units rests with the municipality.
  - 9. The Administrative Agent shall have authority to take all actions necessary and appropriate to carry out its responsibilities, hereunder.

**§ 21-85.18 Enforcement of Affordable Housing Regulations.**

- (a) Upon the occurrence of a breach of any of the regulations governing the affordable unit by an Owner, Developer or Tenant the municipality shall have all remedies provided at law or equity, including but not limited to foreclosure, tenant eviction, municipal fines, a requirement for household recertification, acceleration of all sums due under a mortgage, recoupment of any funds from a sale in the violation of the regulations, injunctive relief to prevent further violation of the regulations, entry on the premises, and specific performance.

- (b) After providing written notice of a violation to an Owner, Developer or Tenant of a low- or moderate-income unit and advising the Owner, Developer or Tenant of the penalties for such violations, the municipality may take the following action against the Owner, Developer or Tenant for any violation that remains uncured for a period of 60 days after service of the written notice:
1. The municipality may file a court action pursuant to N.J.S.A. 2A:58-11 alleging a violation, or violations, of the regulations governing the affordable housing unit. If the Owner, Developer or Tenant is found by the court to have violated any provision of the regulations governing affordable housing units the Owner, Developer or Tenant shall be subject to one or more of the following penalties, at the discretion of the court:
    - i. A fine of not more than \$2,000 or imprisonment for a period not to exceed 90 days, or both. Each and every day that the violation continues or exists shall be considered a separate and specific violation of these provisions and not as a continuing offense;
    - ii. In the case of an Owner who has rented his or her low- or moderate-income unit in violation of the regulations governing affordable housing units, payment into the Township of Bernards' Affordable Housing Trust Fund of the gross amount of rent illegally collected;
    - iii. In the case of an Owner who has rented his or her low- or moderate-income unit in violation of the regulations governing affordable housing units, payment of an innocent tenant's reasonable relocation costs, as determined by the court.
  2. The municipality may file a court action in the Superior Court seeking a judgment, which would result in the termination of the Owner's equity or other interest in the unit, in the nature of a mortgage foreclosure. Any judgment shall be enforceable as if the same were a judgment of default of the First Purchase Money Mortgage and shall constitute a lien against the low- and moderate-income unit.
- (c) Such judgment shall be enforceable, at the option of the municipality, by means of an execution sale by the Sheriff, at which time the low- and moderate-income unit of the violating Owner shall be sold at a sale price which is not less than the amount necessary to fully satisfy and pay off any First Purchase Money Mortgage and prior liens and the costs of the enforcement proceedings incurred by the municipality, including attorney's fees. The violating Owner shall have the right to possession terminated as well as the title conveyed pursuant to the Sheriff's sale.
- (d) The proceeds of the Sheriff's sale shall first be applied to satisfy the First Purchase Money Mortgage lien and any prior liens upon the low- and moderate-income unit. The excess, if any, shall be applied to reimburse the municipality for any and all costs and expenses incurred in connection with either the court action resulting in the judgment of violation or the Sheriff's sale. In the event that the proceeds from the Sheriff's sale are insufficient to reimburse the municipality in full as aforesaid, the violating Owner shall be personally responsible for and to the extent of such deficiency, in addition to any and all costs incurred by the municipality in connection with collecting such deficiency. In the event that a surplus remains after satisfying all of the above, such surplus, if any, shall be placed in escrow by the municipality for the Owner and shall be held in such escrow for a maximum period of two years or until such earlier time as the Owner shall

make a claim with the municipality for such. Failure of the Owner to claim such balance within the two-year period shall automatically result in a forfeiture of such balance to the municipality. Any interest accrued or earned on such balance while being held in escrow shall belong to and shall be paid to the municipality, whether such balance shall be paid to the Owner or forfeited to the Township.

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

**§ 21-85.19 Appeals.** Appeals from all decisions of an Administrative Agent designated pursuant to this Ordinance shall be filed in writing with the Executive Director of COAH.

**Section 2.** Section 21-68 entitled "Regulations Applicable to the R-5 Zone as Part of the PRD-2 Option" of Article XI entitled "Regulations Applicable to the R-5 Zoning District to Provide Low and Moderate Income Housing" of Chapter 21 entitled "Land Development" of *The Revised General and Land Ordinances of the Township of Bernards*, is hereby supplemented and amended to add new Subsection 21-68.2 entitled "Other Regulations" to read as follows:

**§21-68.2 Other Regulations.** The provisions of Article XIII entitled "Affordable Housing" shall apply to any development under this Article XI.

**Section 3.** Subsection 21-76.16 entitled "Affordable Housing Development Fees" of Section 21-76 entitled "Lower Income Housing Requirements" of Article XI entitled "Regulations Applicable to the R-5 Zoning District to Provide Low and Moderate Income Housing" of Chapter 21 entitled "Land Development" of *The Revised General and Land Ordinances of the*

*Township of Bernards*, as further amended by Ordinance #2056, adopted on March 10, 2009, is hereby relocated and renumbered in its entirety to new **Section 21-86** entitled “Affordable Housing Development Fees”.

**Section 4.** Section 21-75, Subsection 21-76.1 entitled “Number of Lower Income Dwelling Units Required,” Subsection 21-76.2 entitled “Affordability and Controls on Affordability,” Subsection 21-76.3 entitled “Phasing of Lower Income Housing,” Subsection 21-76.4 entitled “Municipal Housing Liaison,” Subsection 21-76.5 entitled “Selection of Occupants for Initial Occupancy,” Subsection 21-76.6 entitled “Procedures of Resale,” Subsection 21-76.7 entitled “Procedures for Leasing,” Subsection 21-76.8 entitled “Reporting Requirements for Rental Units,” Subsection 21-76.9 entitled “Violation of Rules,” Subsection 21-76.10 entitled “Affirmative Marketing,” Subsection 21-76.11 entitled “Conversion of Rental Units,” Subsection 21-76.12 entitled “Compliance with COAH Regulations,” Subsection 21-76.13 entitled “Housing Fees,” Subsection 21-76.14 entitled “Certificate of Occupancy,” and Subsection 21-76.15 entitled “Deposits by Purchasers” of Section 21-76 entitled “Lower Income Housing Requirements” of Article XI entitled “Regulations Applicable to the R-5 Zoning District to Provide Low and Moderate Income Housing” of Chapter 21 entitled “Land Development” of *The Revised General and Land Ordinances of the Township of Bernards*, are all hereby deleted in its entirety and replaced as follows:

**Sections 21-76.4 and 21-76.5** remain valid and in full force and effect.

**Section 5.** Section 21-81 entitled “Applicability of Other Regulations” of Article XII entitled “Regulations Applicable to PUD-Mt. Laurel Option” of Chapter 21 entitled “Land Development” of *The Revised General and Land Ordinances of the Township of Bernards*, is hereby supplemented and amended to read as follows: [New text in underlined, deleted text in ~~strikethrough~~]

**21-81 Applicability of Other Regulations.**

The provisions of Code Section 21-31, 21-32, 21-33, 21-54.2 and 16.3.1 through 16.5 shall not apply to a PUD-Mt. Laurel Option development. This article XII supersedes Article XI with respect to a PUD-Mt. Laurel Option development. The provisions of Article XIII entitled “Affordable Housing” shall apply to developments under this Article XII. The provisions of any other ordinance or article which conflicts with this article XII shall not be applicable.

**Section 6.** Section 21-83A entitled “Development Fee” of Article XII entitled “Regulations Applicable to PUD-Mt. Laurel Option” of Chapter 21 entitled “Land Development” of *The Revised General and Land Ordinances of the Township of Bernards*, is hereby deleted in its entirety and replaced as follows:

**21-83A Development Fee.** Any and all development under this Article XII shall be subject to the Affordable Housing Development Fees as set forth in Section 21-86. Notwithstanding the foregoing, development pursuant to the terms of the Settlement Agreement and Supplemental Agreement within the zoning district and eligible for the PUD-Mt. Laurel Option under Article XII may pay a fee of twenty nine thousand, two hundred sixty nine (\$29,269.00) dollars per lower income unit, in lieu of construction the 205 affordable housing units which comprise the developer’s lower income housing requirement thereunder.

**Section 7.** Sections 21-84.8, 21-84.13, 21-84.14, and 21-84.15 are deleted in their entirety.

**Section 8.** If any article, section, subsection, sentence, clause or phrase of this Ordinance is, for any reason, held to be unconstitutional or invalid, such decision shall not affect the remaining portions of this Ordinance and they shall remain in full force and effect.

**Section 9.** In the event of any inconsistencies between the provisions of this Ordinance and any prior ordinance of the Township of Bernards, the provisions hereof shall be determined to govern. All other parts, portions and provisions of the Revised General and Land Use Ordinances of the Township of Bernards are hereby ratified and confirmed, except where inconsistent with the terms hereof.

**Section 10.** The Township Clerk is directed to give notice at least ten days prior to a hearing on the adoption of this ordinance to the Somerset County Planning Board and to all other persons entitled thereto pursuant to N.J.S.A. 40:55D-15.

**Section 11.** After introduction, the Township Clerk is hereby directed to submit a copy of the within Ordinance to the Planning Board of the Township of Bernards for its review in accordance with N.J.S.A. 40:55D-26 and N.J.S.A. 40:55D-64. The Planning Board is directed to make and transmit to the Township Committee, within 35 days after referral, a report including identification of any provisions in the proposed ordinance which are inconsistent with the master plan and recommendations concerning any inconsistencies and any other matter as the Board deems appropriate.

**Section 12.** This ordinance shall take effect immediately upon (1) adoption; (2) publication in accordance with the laws of the State of New Jersey; (3) filing of the final form of adopted ordinance by the Clerk with the Somerset County Planning Board pursuant to N.J.S.A. 40:55D-16; and (4) approval from COAH pursuant to N.J.A.C. 5:96-5.1.

TOWNSHIP OF BERNARDS  
PUBLIC NOTICE

Ordinance #2117 was introduced and passed on first reading by the Township Committee of the Township of Bernards in the County of Somerset on 06/15/2010 and then ordered to be published according to law. It will be further considered for final passage and adoption at a public hearing held at a meeting of the Township Committee at the Municipal Building, 1 Collyer Lane, Basking Ridge, NJ in said township on 07/13/2010, at 8 P.M., when and where, or at such time and place to which said meeting may be adjourned, all persons interested will be given an opportunity to be heard concerning said ordinance. A complete text of this ordinance is available in the Office of the Municipal Clerk, 1 Collyer Lane, Basking Ridge, NJ, from 8:30 A.M. to 4:30 P.M., Monday through Friday. Copies are also available via e-mail from dszabo@bernards.org.

By Order of the Township Committee  
Denise Szabo, Municipal Clerk

NOTE: DUE TO COAH REQUIREMENTS, PUBLIC HEARING RESCHEDULED TO 6/26/10, EMERGENCY MTG.

TOWNSHIP OF BERNARDS  
PUBLIC NOTICE

Notice is hereby given that Bernards Township Ordinance #2117 was introduced and passed on first reading at a meeting of the Township Committee, on 06/15/2010, and was passed on final reading and adopted following a public hearing thereon at a regular meeting of the Governing Body of the Township of Bernards on 06/26/10.

By Order of the Township Committee  
Denise Szabo, Municipal Clerk