

ORDINANCE AMENDING ORDINANCE 86-38, CHAPTER 425, OF THE CITY OF VINELAND TO REVISE ARTICLE VII, AFFORDABLE HOUSING AND ARTICLE XV, ZONING CONSISTENT WITH RESOLUTION 6051 OF THE PLANNING BOARD OF THE CITY OF VINELAND.

WHEREAS, the City Council of the City of Vineland, a municipal corporation in the County of Cumberland, State of New Jersey, finds that the public health, safety, morals, and general welfare of the community shall be promoted by the revision and amendment of the Land Use Ordinance of the City pertaining to Article VIII entitled, Affordable Housing and Article XV, Zoning; and

WHEREAS, the Planning Board of the City of Vineland has adopted a Master Plan that comprehensively provides for the appropriate use, regulation and development of lands in the City in a manner which will promote the public health, safety, morals, and general welfare; and

WHEREAS, the Municipal Land Use Law at *N.J.S.A. 40:55D-62a* requires substantial consistency of the provisions regulating zoning and land use with the adopted Master Plan; and

WHEREAS, the Planning Board has determined that the revisions and amendments to the Land Use Ordinance are consistent with said Master Plan, represent sound land use regulation and therefore favorably recommends to the City Council that the regulations pertaining to Article VIII and Article XV be so amended; and

WHEREAS, this Ordinance does not involve a classification and boundary change recommended in a periodic reexamination of the Master Plan pursuant to *N.J.S.A. 40:55D-89*.

NOW, THEREFORE, BE IT ORDAINED, by the City Council of the City of Vineland that the Land Use Ordinance be hereby amended as follows:

Section 1. Article VIII, entitled, Affordable Housing, constituting §425-87 through §425-99 of the Land Use Ordinance of the City of Vineland, shall be revised to read as follows:

Article VIII. Affordable Housing

§ 425-87. Purpose.

The purpose of these regulations is to provide affordable housing to meet the City's obligation to provide for affordable housing. The intent is to establish a program to bring about affordable housing consistent with the current rules and regulations of the New Jersey Council on Affordable Housing (COAH), the Uniform Housing Affordability Controls (UHAC) and in conformity with the principles espoused by the New Jersey Supreme Court in *So. Burl. Co. NAACP v. Mount Laurel*, 92 N.J. 158 (1983) (Mount Laurel II) and in the Fair Housing Act, *N.J.S.A. 52:27D-301 et seq.* This article is intended to assure that low- and moderate-income units ("affordable units") are created or preserved with controls on affordability over time and that very low-, low- and moderate-income households shall occupy these units. This article shall apply throughout the City of Vineland except where inconsistent with applicable law.

§ 425-88. Affordable housing obligation.

- A. The City of Vineland 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-28.b(3)* and *N.J.S.A. 52:27D-310*. The Fair Share Plan has been endorsed by the governing body. The Fair Share Plan describes the ways the City of Vineland

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shall address its fair share of low- and moderate-income housing as determined by COAH or successor agency and documented in the Housing Element.

- B. This article implements and incorporates the Housing Element and Fair Share Plan and addresses the requirements of *N.J.A.C. 5:97* and *5:80*, as they may be amended and supplemented. Should new or revised COAH or UHAC rules change any provisions that the City of Vineland is imposing upon developers, the COAH or UHAC rules shall prevail.
- C. The City of Vineland shall file monitoring reports with COAH in accordance with *N.J.A.C. 5:96* to track 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 Vineland City Hall, City Clerk's Office, 640 E. Wood Street, Vineland, New Jersey 08360 or from COAH at 101 South Broad Street, Trenton, New Jersey 08625.

§ 425-89. Definitions.

- A. Words and phrases used in this article shall have the meanings set forth in this section. Words and phrases not defined in this section, but defined elsewhere in this chapter, shall be given the meanings set forth in said chapter. Words and phrases not defined in this chapter, but defined in the New Jersey Administrative Code or the New Jersey Statutes Annotated, shall be given the meanings set forth in said code or statutes. For words and phrases for which no definition is available in this Article or the New Jersey Administrative Code or the New Jersey Statutes Annotated, "The Latest Illustrated Book of Development Definitions", authored by Harvey S. Moskowitz and Carl G. Lindbloom and published by Rutgers University (2003), may be used as a guide. All other words and phrases shall be given their common, ordinary meanings, unless the context clearly requires otherwise.
- B. The following definitions shall be applicable to this Article:
 - ACT - The Fair Housing Act of 1985, P.L. 1985, c. 222 (*N.J.S.A. 52:27D-301 et seq.*).
 - ADAPTABLE - Constructed in compliance with the technical design standards of the Barrier Free Subcode, *N.J.A.C. 5:23-7*.
 - ADMINISTRATIVE AGENT - Any entity responsible for the administration of affordable units in accordance with this article, *N.J.A.C. 5:96* and *5:80-26.1 et seq.*
 - AFFIRMATIVE MARKETING - Any 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 - The average percentage of median income at which restricted units in an affordable housing development is affordable to low- and moderate-income households.
 - AFFORDABLE - Any 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 - Any housing development all or a portion of which consists of restricted units.
 - AFFORDABLE HOUSING DEVELOPMENT - Any 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% affordable development.

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AFFORDABLE HOUSING PROGRAM(S) - Any mechanism in a municipal Fair Share Plan prepared or implemented to address a municipality's fair share obligation.

AFFORDABLE UNIT - Any 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.

AGE-RESTRICTED UNIT - Any 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% 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 - Any 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 - Any household that has been certified by an administrative agent as a low-income household or moderate-income household.

COAH or COUNCIL - 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.*), or successor agency.

DCA - The State of New Jersey Department of Community Affairs.

DEFICIENT HOUSING UNIT - Any 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 - 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 - Any 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.*

DEVELOPMENT FEE - Any money paid by a developer for the improvement of property as permitted in *N.J.A.C. 5:97-8.3*.

EQUALIZED ASSESSED VALUE - The assessed value of a property divided by the current average ratio of assessed to true value for the municipality in which the property is situated, as determined in accordance with Sections 1, 5, and 6 of P.L. 1973, c. 123 (*N.J.S.A. 54:1-35a through 54:1-35c*).

GREEN BUILDING STRATEGIES - Any strategies that minimize the impact of development on the environment, and enhance the health, safety and well-being

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of residents by producing durable, low-maintenance, resource-efficient housing while making optimum use of existing infrastructure and community services.

INCLUSIONARY DEVELOPMENT - Any development containing both affordable units and market rate units. This term includes, but is not necessarily limited to, new construction, the conversion of a nonresidential structure to residential and the creation of new affordable units through the reconstruction of a vacant residential structure.

LOW-INCOME HOUSEHOLD - Any household with a total gross annual household income equal to 50% or less of the median household income.

LOW-INCOME UNIT - Any restricted unit that is affordable to a low-income household.

MAJOR SYSTEM - 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 UNIT - Any housing not restricted to low- and moderate-income households that may sell or rent at any price.

MEDIAN INCOME - The median income of a household, by household size, for Cumberland County and as adopted annually by COAH.

MODERATE-INCOME HOUSEHOLD - Any household with a total gross annual household income in excess of 50% but less than 80% of the median household income.

MODERATE-INCOME UNIT - Any restricted unit that is affordable to a moderate-income household.

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

NONEXEMPT SALE - 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 - Any 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 - The maximum housing value in each housing region affordable to a four-person household with an income at 80% of the regional median as defined by COAH's adopted Regional Income Limits published annually by COAH.

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

RENT - 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 - Any 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.

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SUPPORTIVE AND SPECIAL NEEDS HOUSING - A structure or structures in which individuals or households reside, as listed in *N.J.A.C. 5:97-6.10(a)*; previously defined by COAH as “alternative living arrangements”.

SUPPORTIVE SHARED LIVING HOUSING - Permanent lease-based supportive housing that provides access to supportive services to individuals with special needs who maintain separate leases for bedrooms and share common living space.

UHAC - The Uniform Housing Affordability Controls set forth in *N.J.A.C. 5:80-26.1 et seq.*

UNIT – Any dwelling unit, as defined in §425-270. For purposes of this chapter, bedrooms shall also be considered units in those limited instances where State affordable housing regulations allow bedrooms to be counted as units (e.g., group homes).

VERY-LOW-INCOME HOUSEHOLD - Any household with a total gross annual household income equal to 30% or less of the median household income.

VERY-LOW-INCOME UNIT - Any restricted unit that is affordable to a very-low-income household.

WEATHERIZATION - Any 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.

§ 425-90. Affordable housing programs.

The City of Vineland has determined that it will use the following mechanisms to satisfy its affordable housing obligations:

A. A rehabilitation program.

- (1) The City of Vineland's rehabilitation program shall be designed to renovate deficient housing units occupied by low- and moderate-income households such that, after rehabilitation, these units will comply with the New Jersey State Housing Code 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 period of 10 years (the control period), **unless COAH accepts a different means of affordability control.** 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. Any money provided to a property owner, shall be repaid to the City when the property is sold. The funds shall remain in the City's rehabilitation program and shall be made available for the rehabilitation of additional units.
- (4) The City of Vineland shall dedicate an average of \$10,000 for each unit to be rehabilitated through this program, reflecting the minimum hard cost of rehabilitation for each unit.
- (5) The City of Vineland shall adopt a resolution committing to fund any shortfall in the rehabilitation programs for the City of Vineland if required by COAH.
- (6) The City of Vineland 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 *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

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manuals shall be available for public inspection in the Office of the City 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:
- (a) 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.
 - (b) 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.
 - (c) Rents in rehabilitated units may increase annually based on the standards in *N.J.A.C. 5:97-9*.
 - (d) 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. 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 Subsection B(2)(c) 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:
 - (a) At the time they are offered for sale or rental, eligible units may be new, pre-owned or vacant.
 - (b) The units shall be certified to be in sound condition as a result of an inspection performed by a licensed building inspector.
 - (c) 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 each low-income unit, with additional subsidy depending on the market prices or rents in a municipality.
 - (d) 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% 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:
 - (a) Bedroom distribution pursuant to *N.J.A.C. 5:80-26.3(b)* and *-(c)*;
 - (b) Low to moderate income household ratios pursuant to *N.J.A.C. 5:80-26.3(a)*; and
 - (c) Affordability average pursuant to *N.J.A.C. 5:80-26.3(d)* and *-(e)*; however:
 - [1] The maximum rent for a moderate-income unit shall be affordable to households earning no more than 60% of median income, and the maximum rent for a low-income

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unit shall be affordable to households earning no more than 44% of median income; and

- [2] The maximum sales price for a moderate-income unit shall be affordable to households earning no more than 70% of median income, and the maximum sales price for a low-income unit shall be affordable to households earning no more than 40% of median income.

C. Payments-in-lieu of construction.

- (1) The standards for the collection of payments-in-lieu of constructing affordable units shall be in accordance with *N.J.A.C. 5:97-6.4*.
- (2) The amount of the payments-in-lieu shall be as established by COAH for Region 6.

D. Construction of affordable units off-site.

- (1) The standards for constructing affordable units off-site shall be in accordance with *N.J.A.C. 5:97-6.4*.
- (2) Affordable units constructed off-site shall be scattered.

E. Inclusionary zoning. Where inclusionary affordable units are proposed or required, the following shall apply:

- (1) Presumed densities. Where the densities in *N.J.A.C. 5:97-6.4(b)(2)* are reached in any residential development within the City of Vineland corresponding to the geographic limitations of Planning Areas 1 and 2 of the State Development and Redevelopment Plan, or substantially similar land use designations, the threshold for providing adequate incentive to developers to construct an inclusionary affordable housing component shall be presumed to be met when the underlying density of the zoning district is half or less of the COAH density.
- (2) Affordable housing set-asides. The minimum percentage of affordable housing units as a total of all housing units within an inclusionary development shall be 15% when the developer proposes a rental project and 20% when the developer proposes a for-sale project, whether fee simple, condominium or co-operative form of ownership.
- (3) Phasing. In inclusionary developments the following ratios for the issuance of certificates of occupancy shall be followed:

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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%

- (4) Design. In inclusionary developments to the extent feasible, low- and moderate-income units shall be integrated with the market units. The developer is encouraged to disburse the affordable units being provided within the inclusionary development throughout the development. The developer shall place the affordable units within buildings designed to be architecturally indistinguishable from the market rate units otherwise being constructed with the development. To that end, the scale, massing, roof pitch and architectural detailing (e.g., selection of exterior materials, doors, windows, etc.) of the buildings containing the affordable housing units shall be similar to and compatible with that of the market rate units, except that an affordable unit(s) may have a lower roof height than the market units.
 - (5) Utilities. Affordable units shall utilize the same type of heating source as market units within the affordable development.
- F. Redevelopment. Where redevelopment is proposed that creates affordable housing under *N.J.S.A. 40:12A-1 et seq.*, the following provisions shall apply:
- (1) All sites shall meet the site suitability criteria set forth in *N.J.A.C. 5:97-3.13*.
 - (2) The municipality shall designate the site as an area in need of redevelopment or rehabilitation.
 - (3) The municipality shall adopt a redevelopment plan.
 - (4) The redevelopment agreement shall comply with *N.J.A.C. 5:97-6.4(b)* through (h).
 - (5) The municipality shall issue a request for proposals for a designated redeveloper, if applicable.
 - (6) The units shall comply with *N.J.A.C. 5:97-9* and UHAC.
 - (7) Documentation shall be submitted comporting with COAH’s requirements under *N.J.A.C. 5:97-6.6(d)* and - (e).
 - (8) Documentation shall be submitted prior to marketing the completed units comporting with COAH’s requirements under *N.J.A.C. 5:97-6.6(f)*.
- G. Municipally sponsored and 100 percent affordable developments. When the City proposes a municipally sponsored project or supports a 100 percent affordable development by another entity, the following provisions shall apply:
- (1) All sites shall meet the site suitability criteria set forth in *N.J.A.C. 5:97-3.13*.
 - (2) The municipality or developer/sponsor shall have control or the ability to control the site(s).
 - (3) The construction schedule shall provide for construction to begin within two years of substantive certification from COAH or in accordance with the City’s implementation schedule pursuant to *N.J.A.C. 5:97-3.2(a)4*.

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- (4) The first floor of all townhouse dwelling units and of all other multi-story dwellings shall comply with *N.J.A.C. 5:97-3.14*, *5:97-9* and UHAC.
 - (5) Documentation shall be submitted comporting with COAH's requirements under *N.J.A.C. 5:97-6.7(d)*.
 - (6) Documentation shall be submitted prior to marketing the completed units comporting with COAH's requirements under *N.J.A.C. 5:97-6.7(e)*.
- H. Supportive and special needs housing. Where special needs housing, including but not limited to residential health care facilities as licensed and/or regulated by the NJ Department of Community Affairs or Department of Health and Senior Services (if the facility is located with, and operated by, a licensed health care facility); group homes for people with developmental disabilities and mental illness as licensed and/or regulated by the New Jersey Department of Human Services; permanent supportive housing; and supportive shared living housing are proposed, the following provisions shall apply:
- (1) The following provisions shall apply to group homes, residential health care facilities, and supportive shared living housing:
 - (a) The unit of credit shall be the bedroom.
 - (b) Housing that is age-restricted shall be included with the maximum number of units that may be age-restricted pursuant to *N.J.A.C. 5:97-3.8*.
 - (c) Occupancy shall not be restricted to youth under 18 years of age.
 - (d) All sites shall meet the site suitability criteria set forth in *N.J.A.C. 5:97-3.13*.
 - (e) The municipality or developer/sponsor shall have site control or the ability to control the site(s).
 - (2) The following provisions shall apply to permanent supportive housing:
 - (a) The unit of credit shall be the unit.
 - (b) Housing that is age-restricted shall be included with the maximum number of units that may be age-restricted pursuant to *N.J.A.C. 5:97-3.8*.
 - (c) Units shall not be restricted to youth under 18 years of age.
 - (d) All sites shall meet the site suitability criteria set forth in *N.J.A.C. 5:97-3.13*.
 - (e) The municipality or developer/sponsor shall have site control or the ability to control the site(s).
 - (3) The bedrooms and/or units pursuant to -(1) and -(2) hereinabove shall comply with *N.J.A.C. 5:97-9* and UHAC with the following exceptions:
 - (a) Affirmative marketing (*N.J.A.C. 5:80-26.15*); however, group homes, residential health care facilities, permanent supportive housing and supportive shared living housing shall be affirmatively marketed to individuals with special needs in accordance with a plan approved by the COAH's Executive Director;
 - (b) Affordability average and bedroom distribution (*N.J.A.C. 5:80-26.3*); and
 - (c) 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, group homes, residential health care facilities, supportive shared living housing and permanent supportive housing shall have appropriate controls on affordability in accordance with *N.J.A.C. 5:97-9*.
 - (4) Documentation shall be submitted comporting with COAH's requirements under *N.J.A.C. 5:97-6.10(e)*.

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- (5) Documentation shall be submitted prior to marketing the completed units comporting with COAH's requirements under *N.J.A.C. 5:97-6.10(f)*.
- I. Extension of expiring controls. Where the City of Vineland proposes to extend affordability controls where such restrictions will expire during the extant COAH time period, the following provisions shall be followed:
 - (1) 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;
 - (2) 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
 - (3) Documentation shall be submitted comporting with COAH's requirements under *N.J.A.C. 5:97-6.14(b)* and –(c).

[§ 425-91 through § 425-98.5 shall remain unchanged.]

§ 425-99. Affordable housing development fees.

- A. Purpose. In *Holmdel Builder's Association v. Holmdel Township*, 121 N.J. 550 (1990), the New Jersey Supreme Court determined that mandatory development fees are authorized by the Fair Housing Act of 1985 (the Act), *N.J.S.A. 52:27d-301 et seq.*, and the State Constitution, subject to the Council on Affordable Housing's (COAH's) adoption of rules. This section establishes standards for the collection, maintenance, and expenditure of development fees pursuant to the COAH regulations and in accordance with P.L. 2008, c.46, Sections 8 and 32-38. Fees collected pursuant to this ordinance shall be used for the sole purpose of providing affordable housing. This ordinance shall be interpreted within the framework of COAH's rules on development fees, codified at *N.J.A.C. 5:97-8*.
- B. Pursuant to P.L.2008, c.46 section 8 (*N.J.S.A. 52:27D-329.2*) and the Statewide Non-Residential Development Fee Act (*N.J.S.A. 40:55D-8.1* through -8.7), COAH is authorized to adopt and promulgate regulations necessary for the establishment, implementation, review, monitoring and enforcement of municipal affordable housing trust funds and corresponding spending plans. Municipalities that are under the jurisdiction of COAH or court of competent jurisdiction and have a COAH-approved spending plan may retain fees collected from non-residential development.
- C. Basic requirements.
 - (1) This section shall not be effective until approved by COAH pursuant to *N.J.A.C. 5:96-5.1*. Should new or revised COAH rules change any provisions that the City of Vineland is imposing upon developers, the COAH rules shall prevail.
 - (2) The City of Vineland shall not spend development fees until COAH has approved a plan for spending such fees in conformance with *N.J.A.C. 5:97-8.10* and 5:96-5.3.
- D. Residential development fee schedule.
 - (1) Imposed fees.
 - (a) Within all zoning districts, developers who construct one or more new dwellings, except for developers of the types of development specifically exempted below, shall pay a fee of 1.5% of the equalized assessed value for residential development, provided no increased density is permitted.
 - (b) When an increase in residential density pursuant to *N.J.S.A. 40:55D-70d(5)* (known as a "d" variance) has been permitted, developers may be required to pay a development fee of a maximum of 6% of the equalized assessed value for each additional unit that may be realized. However, if the zoning on a

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site has changed during the two-year period preceding the filing of such a variance application, the base density for the purposes of calculating the bonus development fee shall be the highest density permitted by right during the two-year period preceding the filing of the variance application.

Example: If an approval allows three units to be constructed on a site that was zoned for one unit, the fees could equal 1.5% of the equalized assessed value on the one unit; and the specified higher percentage up to 6% of the equalized assessed value for the two additional units, provided zoning on the site has not changed during the two-year period preceding the filing of such a variance application.

- (2) Eligible exactions, ineligible exactions and exemptions for residential development.
 - (a) Affordable housing developments, developments where the developer is providing for the construction of affordable units elsewhere in the municipality, and developments where the developer has made a payment in lieu of on-site construction of affordable units shall be exempt from development fees.
 - (b) Developments that have received preliminary or final site plan prior to the adoption of the municipal development fee ordinance on January 10, 2006, shall be exempt from development fees, unless the developer seeks a substantial change in the approval. Where a site plan or subdivision approval does not apply, a zoning and/or building permit shall be synonymous with preliminary or final site plan approval for this purpose. The fee percentage shall be vested on the date that the building permit is issued.
 - (c) Development fees shall be imposed and collected when an existing structure undergoes a change to add an additional dwelling (for example, from a single family dwelling to a two-family dwelling), is demolished and replaced, or if the expansion is not otherwise exempt from the development fee requirement, but shall not apply to additions or changes that do not result in the creation of a new dwelling. The development fee shall be calculated on the increase in the equalized assessed value of the improved structure.
 - (d) Developers of residential structures demolished and replaced as a result of a natural disaster or catastrophic event (e.g., fire) shall be exempt from paying a development fee.

E. Nonresidential development fees.

- (1) Applicability. Pursuant to P.L. 2009, c. 90 and P.L. 2011, c. 122, the collection of a development fee on non-residential construction is suspended for all non-residential projects that received preliminary or final site plan approval after July 17, 2008 and until July 1, 2013, provided that a permit for the construction of the building has been issued prior to January 1, 2015. All other non-residential development not meeting this exemption criterion or an exemption under –(3) hereinbelow shall pay a development fee in accordance with these provisions.
- (2) Imposed fees.
 - (a) Within all zoning districts, nonresidential developers, except for developers of the types of development specifically exempted, shall pay a fee equal to 2.5% of the equalized assessed value of the land and improvements, for all new nonresidential construction on an unimproved lot or lots.
 - (b) Nonresidential developers, except for developers of the types of development specifically exempted, shall also pay a fee equal to 2.5% of the increase in equalized assessed value resulting from any

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additions to existing structures or construction of additional structures to be used for nonresidential purposes.

- (c) Development fees shall be imposed and collected when an existing structure is demolished and replaced. The development fee of 2.5% shall be calculated on the difference between the equalized assessed value of the preexisting land and improvement and the equalized assessed value of the newly improved structure (i.e., land and improvement, at the time final certificate of occupancy is issued). If the calculation required under this section results in a negative number, the nonresidential development fee shall be zero.
- (3) Eligible exactions, ineligible exactions and exemptions for nonresidential development.
- (a) The nonresidential portion of a mixed-use inclusionary or market rate development shall be subject to the 2.5% development fee, unless otherwise exempted below.
 - (b) The 2.5% fee shall not apply to an increase in equalized assessed value resulting from alterations, change in use within existing footprint, reconstruction, renovations and repairs.
 - (c) Nonresidential developments shall be exempt from the payment of nonresidential development fees in accordance with the exemptions required pursuant to P.L. 2008, c. 46, as specified in the Form N-RDF "State of New Jersey Nonresidential Development Certification/ Exemption" Form. Any exemption claimed by a developer shall be substantiated by that developer.
 - (d) A developer of a nonresidential development exempted from the nonresidential development fee pursuant to P.L. 2008, c. 46, shall be subject to it at such time as the basis for the exemption no longer applies, and shall make the payment of the nonresidential development fee, in that event, within three years after that event or after the issuance of the final certificate of occupancy of the nonresidential development, whichever is later.
 - (e) If a property which was exempted from the collection of a nonresidential development fee thereafter ceases to be exempt from property taxation, the owner of the property shall remit the fees required pursuant to this section within 45 days of the termination of the property tax exemption. Unpaid nonresidential development fees under these circumstances may be enforceable by the City of Vineland as a lien against the real property of the owner.

[§ 425-99.F through -99.J shall remain unchanged]

Section 2. § 425-302.F, entitled, Multifamily residential cluster in the MF Zone, of the MF Multifamily Zone, of the Land Use Ordinance of the City of Vineland, shall be revised to read as follows:

- F. Multifamily residential cluster in the MF Zone. A residential cluster of townhouses may be permitted in the MF Zone on a contiguous area that is to be developed as a single entity according to a plan in accordance with the requirements below. The Planning Board may approve a residential cluster of townhouses where it determines that the intent and purpose of the City Master Plan is better served by the cluster design and that the development meets the requisite standards and criteria for the residential cluster option.
- (1) The maximum permitted number of townhouse dwelling units in the residential cluster shall not exceed the number of single-family dwelling units permitted for a fully conforming subdivision of residential lots in the

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zone, unless modified by subparagraph -2, hereinbelow. For purposes of determining the maximum number of dwellings permitted, the applicant shall submit a yield map of a conforming conventional subdivision layout. The conforming lot yield map shall be in sufficient detail to permit the Planning Board to make an informed decision that the subdivision would satisfy the ordinance requirements in every respect and would be approvable as a conventional subdivision without the need for any variances, waivers or design exceptions from the City development regulations.

- (2) If the townhouse development provides affordable housing on-site, then the maximum density of the development shall be in accordance with the densities as indicated below:
 - (a) For development within Planning Area 1 of the State Development and Redevelopment Plan, or substantially similar land use designation, the maximum density shall be eight dwellings to the gross acre.
 - (b) For development within Planning Area 2 of the State Development and Redevelopment Plan, or substantially similar land use designation, the maximum density shall be six dwellings to the gross acre.
- (3) The affordable housing units may be constructed as townhouse units or as dwelling units located one over another.
- (4) The first floor of all townhouse dwelling units and of all other multi-story dwellings shall comply with the Barrier Free Subcode, *N.J.A.C. 5:23-7* and the following requirements:
 - (a) An adaptable toilet and bathing facility on the first floor;
 - (b) An adaptable kitchen on the first floor;
 - (c) An accessible route of travel, however an interior accessible route of travel shall not be required between stories;
 - (d) 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
 - (e) An accessible entranceway.
- (5) The Planning Board may reduce the minimum common or public open space requirement of the cluster to 25% of the gross land area of the cluster in order to accommodate an increased number of dwellings to provide affordable housing.
- (6) If the zoning on a site has changed subsequent to December 17, 2007, the number of units permitted for the purpose of calculating the additional number of units shall be the higher of the current number of units permitted or the number of units permitted on December 17, 2007.
- (7) Minimum total land area required. The minimum total land area required for development of a multifamily residential cluster of townhouses is five developable acres.
- (8) Sewer and water. The dwelling units of a residential cluster shall be served by public sewer and water.
- (9) Open space design requirements. The cluster design for open space should be arranged to preserve land as public or common open space in accordance with the following criteria.
 - (a) A minimum of 40% of the gross land area of the cluster shall be preserved as common open space.
 - (b) All areas to be preserved as common open space shall be clearly identified and reserved on the plans submitted for approval. The existing and planned use of the open space shall be indicated on the plans.

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- (c) The minimum land area required to be preserved as common open space shall be land that is not already preserved as open space or preserved as farmland.
 - (d) The area proposed as public or private open space shall be suitable for enjoyment and use as open space. The Planning Board may withhold approval of any area that it deems unsuitable as open space.
 - (e) At least 65% of the minimum land area required to be preserved as common open space shall be land unencumbered by any of the following: wetlands or wetlands transition areas; areas of special flood hazard; existing easement areas for utilities or drainage; rights-of-way; and surface waters.
 - (f) Stormwater management basins are structures and do not qualify as open space for the purpose of meeting the common open space requirements.
 - (g) Any common open space area shall be at least two acres in area and have a minimum width of 200 feet and a minimum depth of 200 feet. The Planning Board may approve a smaller area where it determines that such action would be beneficial to the open space design of the cluster.
 - (h) An open space lot shall have a minimum road frontage of at least 100 feet.
- (10) Common open space ownership. The developer shall provide a plan for the use, ownership and maintenance of any common open space in a residential cluster. The plan is subject to Planning Board review and approval. The ownership plan shall be submitted with the preliminary application for development and shall identify the existing and proposed ownership of all proposed open space areas. The City, at its option and in its sole discretion, or other governmental agency approved by the City, at any time and from time to time, may accept the dedication of land or any interest therein for public use and maintenance, but the City shall not require as a condition of the approval of a residential cluster that land proposed to be set aside for common open space be dedicated or made available to public use. The developer shall provide for an organization for the ownership and maintenance of any open space for the benefit of owners or residents of a residential cluster if the open space is not dedicated to the municipality or other governmental agency. The type of ownership of land dedicated for common open space purposes shall be selected by the applicant, subject to the approval of the Planning Board. Type of ownership may include, but is not necessarily limited to, the following:
- (a) The City of Vineland, subject to acceptance by the City Council.
 - (b) Homeowners', condominium or cooperative associations or organizations.
 - (c) Shared, undivided interest by all property owners in the subdivision.
- (11) Homeowners' association. If the common open space is owned and maintained by a homeowners' or condominium association, the developer shall file homeowners' organization or condominium documents, to be submitted with the application for final approval. The provisions shall include, but are not necessarily limited to, the following:
- (a) The homeowners' association shall be established before the release for building permits.
 - (b) Membership shall be mandatory for each buyer and any successive buyer.
 - (c) The open space restrictions shall be permanent.

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- (d) The association shall be responsible for liability insurance, local taxes, and the maintenance and replacement of recreational and other facilities.
 - (e) Homeowners shall pay their pro rata share of the cost; the assessment levied by the association may become a lien on the property.
 - (f) The association shall be able to adjust the assessment to meet changed needs.
- (12) Maintenance of open space areas. In the event that a non-municipal organization with the responsibility for the common open space fails to maintain it in reasonable order and condition, then the City Council, in accordance with *N.J.S.A. 40:55D-43*, may correct such deficiencies and assess the cost of maintenance against the properties within the development.
- (13) Use and improvement of common open space for active recreation. The Planning Board may require the installation of recreational facilities suitable to the development, such as playgrounds, play fields, parks or similar outdoor recreation facilities, on the common open space. Such facilities shall be conveniently located and accessible to all dwelling units and should adhere to the following guidelines:
- (a) One active recreation area should be provided for the first 125 dwelling units. Such areas should not be less than four acres.
 - (b) For developments of more than 125 dwellings, active recreation or park space should be provided at the rate of one acre per each 12 dwelling units or fraction thereof.
 - (c) Undeveloped common open space. Undeveloped common open space should be left in its natural state. A developer may, however, make limited improvements for the installation of utilities, necessary grading, and the provision of paths and trails. In addition, the Planning Board may require a developer to make other improvements, such as removal of dead or diseased trees; thinning of trees or other vegetation to encourage more desirable growth; reforestation of disturbed areas; and grading and seeding, subject to approval by all regulatory agencies.
- (14) Deed restrictions. Any lands dedicated for common open space purposes shall contain covenants and deed restrictions approved by the Board Attorney that ensure that:
- (a) The open space area will not be further subdivided in the future.
 - (b) The use of the open space will continue in perpetuity for the purpose specified.
 - (c) Appropriate provisions are made for the maintenance of the open space.
 - (d) The open space shall not be utilized for any commercial purpose. The Planning Board may, however, approve the use of open space as farmland or pastureland as part of the residential cluster design.
- (15) Prior to the approval of the residential cluster, the Planning Board shall make a finding of facts and conclusions as required by *N.J.S.A. 40:55D-45*.

Section 3. Continuation. In all other respects, the Land Use Ordinance of the City of Vineland shall remain unchanged.

Section 4. Severability. If any portion of this Ordinance is for any reason held to be unconstitutional or invalid by a court of competent jurisdiction, such decision

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shall not affect the validity of the Land Use Ordinance as a whole, or any other part thereof.

Section 5. Repealer. All ordinances or parts of ordinances which are inconsistent with the provisions of this Ordinance are hereby repealed to the extent of such inconsistency only.

Section 6. Enactment. This Ordinance shall take effect upon the filing thereof with the Cumberland County Planning Board after final passage, adoption, and publication by the City Clerk of the City of Vineland and the approval of the NJ Council on Affordable Housing, or successor agency, in the manner prescribed by law.

Passed first reading:

Passed final reading:

President of Council

Approved by the Mayor:

Mayor

ATTEST:

City Clerk