

DRAFT ORDINANCES #832 – #837- INTRODUCED 6/26/24

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**BOROUGH OF ALPINE
ORDINANCE NO. 832**

**AN ORDINANCE TO AMEND CHAPTER 220 ENTITLED “ZONING”
OF THE CODE OF THE BOROUGH OF ALPINE TO ESTABLISH A
NEW “COAH-3” ZONE DISTRICT**

NOW, THEREFORE, BE IT ORDAINED by the Borough Council of the Borough of Alpine, County of Bergen, State of New Jersey, that amendments set forth below are made to the Code of the Borough of Alpine, Chapter 220 entitled “Zoning.”

Section 1. Section 220-2, “Definitions,” shall be amended to include the following new terms and definitions:

DWELLING, MULTIFAMILY

A building designed for or intended to contain three or more dwelling units located above, below or to the side of each other, and which may share common facilities, such as entryways, hallways, and utility systems.

DWELLING, TOWNHOUSE

A one-family dwelling in a row of at least two such units in which each unit has its own front and rear access to the outside, no unit is located over another unit, and each unit is separated from any other unit by one or more common fire-resistant walls.

Section 2. Section 220-3, “Zone Districts,” Subsection A, “Districts Established,” shall be amended to add the following new zone district to the list of zone districts:

COAH-3

Section 3. Section 220-3, “Zone Districts,” Subsection B, “Boundaries,” shall be amended to read as follows:

B. Boundaries. The boundaries of the above created districts are hereby established as shown on the Zoning Map dated April 23, 1979, as amended or supplemented, which Map is hereby made a part of this chapter.

Section 4. The Zoning Map referenced at Section 220-3, “Zone Districts,” Subsection B, “Boundaries,” shall be amended to rezone Block 55 Lots 25.01, 26, 27, 28, 29 and 30 from the R-1 Residential District to a new COAH-3 Residential District.

Section 5. Section 220-3, “Zone Districts,” Subsection D, “Limitation of Coverage on Land,” Paragraph (1), shall be amended to include a new ‘COAH-3’ row, within which the phrase ‘See § 220-23’ shall be inserted.

Section 6. Chapter 220 shall be amended and supplemented by the insertion of a new Section §220-23 entitled “COAH-3 Residential Zone.” This new section shall read as follows:

§ 220-23. COAH-3 Residential Zone.

- A. Purpose. The purpose of the COAH-3 Residential Zone is to allow for inclusionary development on Block 55 Lots 25.01, 26, 27, 28, 29 and 30, and thereby assist in the Borough’s efforts to address the fair share housing obligation of the Borough of Alpine under the New Jersey Fair Housing Act (“FHA”), applicable Council on Affordable Housing (“COAH”) regulations, and the Borough’s Housing Element and Fair Share Plan. The district contemplates that the property, consisting of 22.636 gross acres, will contain up to thirty-two (32) market-rate townhouse dwelling units and up to eight (8) multifamily affordable dwelling units that are affordable to low- and moderate-income households as established by COAH regulations.
- B. Principal Uses. The following principal uses are permitted in the COAH-3 Zone:
- (1) Townhouse dwellings.
 - (2) Multifamily dwellings.
- C. Accessory uses. The following accessory uses are permitted in the COAH-3 Zone:
- (1) Private amenities and facilities intended for use by residents of the premises and their guests, including, but not limited to, clubhouses, lounges, game rooms, pool rooms, business centers, fitness centers, swimming pools, tennis courts, paddle courts, tot lots/children’s play areas, dog runs, gazebos, multi-use recreation fields, walking trails, benches/seating, and passive recreation areas.
 - (2) Balconies, decks, and terraces for individual units, along with rooftop decks and amenities.
 - (3) Private garages and driveways.
 - (4) Off-street parking lots.
 - (5) Fences, walls, gates, and guard houses.

- (6) Signage.
- (7) Storage sheds.
- (8) Emergency standby generators.
- (9) Any other use which is subordinate and customarily incidental to the permitted principal use(s), including, but not limited to, leasing/sales/management offices, maintenance areas, trash/recycling facilities, solar energy devices, security cameras and related devices, and electric vehicle charging stations.

D. Affordable housing requirements. The following affordable housing requirements shall apply to development in the COAH-3 Zone:

- (1) All residential development constructed in the COAH-3 Zone shall be required to set aside a minimum percentage of units for affordable housing. The minimum set aside shall be twenty percent (20%). When calculating the required number of affordable units, any computation resulting in a fraction of a unit shall be rounded upwards to the next whole number.
- (2) All affordable units to be produced pursuant to this section shall comply with the required bedroom distribution, be governed by controls on affordability, and affirmatively marketed in conformance with the Uniform Housing Affordability Controls (“UHAC”) (N.J.A.C. 5:80-26.1 et seq.), or any successor regulation, with the exception that in lieu of 10% of the affordable units being required to be affordable to households earning 35% or less of regional median income by household size, at least 13% of affordable units shall be required to be affordable to households earning 30% or less of regional median income by household size.
- (3) Each affordable unit shall remain subject to these affordability controls, covenants, conditions, deed restrictions, and the applicable affordable housing regulations for a minimum period of at least thirty (30) years. At the conclusion of the thirty (30) year term, the affordability controls, covenants, conditions, and deed restrictions shall automatically be extended unless the Borough takes formal action to release the affordable unit from such requirements by formal adoption of an ordinance taken in compliance with N.J.A.C. 5:80-26.11(c) or any other applicable statute, regulation or law that may be in effect at that time. The Borough shall also maintain the right to exercise any other option(s) available to the Borough to preserve the affordability controls as set forth in UHAC or other applicable statute, regulation or law that may be in effect at that time.
- (4) All affordable units shall be administered by a qualified administrative agent paid for by the developer. The developer shall be responsible for all costs associated with the initial sale/rental of the affordable units, for the continuing

administration of the affordable units, and for the preservation of the creditworthiness of the units.

- (5) All of the affordable units shall be rental units and may be permitted as multifamily dwellings. Affordable townhouse dwellings shall not be required but are permitted at the election of the Developer.
- (6) All amenities and site services which are made available to the market-rate units shall also be made available to the affordable units on the same terms as the market-rate units.

E. Area, bulk, and density standards. The following area, bulk and density standards shall apply to development in the COAH-3 Zone:

Requirement	COAH-3 Zone
Minimum Lot Area	20 acres
Maximum Number of Dwelling Units	40 units
Minimum Yard Setbacks <small>(See Note 1 Below):</small>	
From Closter Dock Road	30 feet
From Frick Drive	90 feet
From Any Other Lot Line	40 feet <small>(See Note 2 Below)</small>
Maximum Building Height	3 stories/40 feet <small>(See Note 3 Below)</small>
Maximum Building Coverage	15 percent
Maximum Impervious Coverage	30 percent

NOTES:

- 1 In the COAH-3 district, all setbacks measured from a roadway shall be measured from the existing right-of-way line of that road as it existed as of August 1, 2022.
- 2 Decks, balconies, covered entrances and like constructions attached to a building shall be permitted within this minimum yard setback, provided that they shall be located no closer than 35 feet from the lot line.
- 3 Irrespective of any other provisions regarding building height measurement, the following shall apply with respect to measurement of building height in the COAH-3 Zone:
 - a. The maximum height shall be calculated individually for each townhouse or section of a building containing multi family dwelling units.
 - b. The maximum building height shall be the vertical distance measured from

the finished first floor to the highest point of the roof if the roof is a flat roof, or to the mean level between the roof eaves and the highest ridge point in the case of a pitched roof.

- c. A roof extending to the side of a townhouse shall be permitted to overhang up to four feet above the adjacent townhouse and shall not affect the adjoining townhouse unit's maximum height calculation.
- d. Excluded from the calculation of building height shall be chimneys, steeples, handrails for 'widow's walks and other architectural features that are no greater than four feet in height and which occupy no more than five percent of the total roof area.

F. Supplemental standards. The following supplemental standards shall apply to development in the COAH-3 Zone:

- (1) Access. Except for maintenance vehicles, landscaping vehicles and equipment, no vehicular access to the site shall be permitted from Appletree Lane.
- (2) Setback from internal roadways. No building shall be located within 15 feet of a private street or internal roadway, provided that 20 feet shall be provided where there is a driveway serving a dwelling unit.
- (3) Distance between buildings. There shall be a minimum distance between buildings containing townhouses and/or multifamily dwellings with separations as set forth below:

Buildings with Their Sides Facing Another Building Side: 25 feet
All Other Building Sides Facing Another Building: 35 feet

- (4) Units per building. No building shall contain more than six (6) townhouses and/or eight (8) multifamily dwelling units.
- (5) Building offsets. For buildings with more than three (3) attached multifamily or townhouse units, no more than three (3) side-by-side, contiguous units shall have the same front façade plane. A minimum three (3)-foot offset variation in front façade plane shall be provided between groupings within the same structure.
- (6) Fire separation walls. Fire separation walls shall be constructed between adjoining townhouse and/or multifamily units as required by the requirements of the NJ Uniform Construction Code, N.J.A.C. 5:23 and the NJ Uniform Fire Code N.J.A.C. 5:71 as amended and supplemented.

G. Accessory buildings and structures. §220-13 related to accessory buildings and structures shall not apply to accessory buildings and structures in the COAH-3 Zone. Instead, the following requirements shall apply to all accessory buildings in the

COAH-3 Zone¹:

- (1) The maximum height of accessory buildings and structures shall be 20 feet.
- (2) Accessory buildings shall meet the minimum street and property line setback requirements of principal buildings and shall be set back at least 35 feet from a principal building.
- (3) Architectural design and materials used in the construction of accessory buildings shall be consistent with those used in the construction of principal buildings.
- (4) The provisions of this section shall not apply to signs, off-street parking, fences, and walls, which are regulated elsewhere in this section.
- (5) Emergency standby generators shall be subject to the measured sound pressure levels of §153-3 (Noise Ordinance) and shall be set back at least 35 feet from a lot line or public right-of-way. All such equipment shall be suitably buffered and screened to minimize views from adjacent properties and the public right-of-way.

buffered and screened to minimize views from adjacent properties and the public right-of-way.

- (6) Refuse and recycling collection areas shall be either fully contained within a building or adequately screened from public view through a combination of solid fencing and plantings.
- H. Off-street parking requirements. §220-17 related to off-street parking shall not apply to off-street parking in the COAH-3 Zone. Instead, the following off-street parking requirements shall apply to development in the COAH-3 Zone:
- (1) The minimum number of off-street parking spaces shall be as set forth in the Residential Site improvement Standards (NJ.AC. 5:21).
 - (2) Parking spaces shall measure nine (9) feet in width by eighteen (18) feet in length.
 - (3) All off-street parking spaces shall be located a minimum of 10 feet from buildings, except for garages within or under a building and driveways serving such garages.
 - (4) All off-street parking and internal roadways/drive aisles shall be prohibited within the required yards along Closter Dock Road and Frick Drive and shall

¹ In the COAH-3 district, all setbacks measured from a roadway shall be measured from existing right-of-way line of that road as it existed as of August 1, 2022.

be set back a minimum of 30 feet from all other lot lines.

- (5) All off-street parking and internal roadways/drive aisles shall be suitably buffered and screened to minimize views from adjacent properties and the public right-of-way.
- (6) Electric vehicle supply/service equipment and make-ready parking spaces shall be provided in accordance with the Model Statewide Municipal Electric Vehicle (EV) Ordinance pursuant to P.L. 2021, c. 171.

I. Signage. In addition to any other signs that may be permitted pursuant to Chapter 177, "Signs," the following signage shall be permitted in the COAH-3 Zone:

- (1) Two (2) identification signs shall be permitted at the main driveway entrance to the site on Closter Dock Road, which identification sign may be either a freestanding ground sign or affixed to an entry wall.
- (2) For identification signs located on Closter Dock Road, the maximum sign area shall be 24 square feet, **the maximum heights of signage letters shall be 10 inches**, and the maximum height of signage shall be 42 inches. **The maximum wall height on which the signage shall be placed, inclusive of any ornamental features on the wall structure, shall be 6 feet.**
- (3) All signs shall be setback at least five (5) feet from the lot line and at least ten (10) feet from the curb line of the abutting street.²
- (4) Internal sign illumination shall be prohibited.
- (5) Base plantings shall be incorporated into the design of the signage.

J. Fences and walls. Fences, walls, gates, pillars, piers, posts and like constructions in the COAH-3 Zone shall be subject to Chapter 111, "Fences." In addition, the following supplemental standards shall apply to retaining walls in the COAH-3 Zone:

- (1) The maximum height of a retaining wall shall be six (6) feet. Tiered retaining walls shall be measured separately, and each tier may be up to six (6) feet in height, provided that there is minimally a five (5)-foot separation between retaining walls and that same is suitably landscaped.

² In the COAH-3 district, all setbacks measured from a roadway shall be measured from existing right-of-way line of that road as it existed as of August 1, 2022.

- (1) Site retaining walls may be constructed of finished concrete, stone, modular block, "big block" or soldier-pile with façade treatment.

(2) The maximum height of walls along any property line shall be four feet, irrespective of any other regulation to the contrary.

K. Landscaping. The following landscaping requirements shall apply to development in the COAH-3 Zone:

(1) A landscape plan shall be required, which shall be designed to incorporate a variety of plant material to enhance the character of the site and shall include foundation plantings and perimeter trees and shrubs.

(2) A substantive planting plan for the site's Closter Dock Road, Frick Drive and Appletree Lane street frontages shall also be provided and shall consist of a variety of deciduous and evergreen trees, plants, and shrubs.

(3) Shade trees shall be minimally 2 1/2-inch to three-inch caliper. Evergreen trees shall vary between seven to eight feet and eight to 10 feet in height. Shrubs shall be at least 24 inches in height.

L. Lighting. The following lighting requirements shall apply to development in the COAH-3 Zone:

(1) All exterior lights shall be designed so as to reduce glare, lower energy usage and direct lights only to where they are needed.

(2) All exterior lights shall be light-emitting diode (LED) light of the soft white category and shall be Dark Sky compliant.

(3) All exterior lights shall be focused downward so that the direct source of light is not visible from adjoining streets or properties.

(4) The maximum permitted height of light fixtures shall be 14 feet and shall include sharp cut-off fixtures.

(5) The illumination of tennis courts and other paddle court games shall be consistent with the provisions set forth at §220-5.D.

M. General design standards. Building plans and elevations shall show a variation in design to be achieved by the types of roofs, heights of eaves and peaks, building materials and architectural treatment of the building facade that is utilized. The following design standards shall be utilized in the COAH-3 Zone:

(1) Architectural elements such as varied roof forms, articulation of the facade, breaks in the roof, and walls with texture materials and ornamental details shall be incorporated to add visual interest.

- (2) Roof height, pitch, ridgelines, and roof materials shall be varied to create visual interest and avoid repetition.
 - (3) Architectural elements such as fenestrations and recessed planes shall be incorporated into facade design. Architectural treatments and visual interest shall be applied to all visibly exposed facades of a building. All facades of a building shall be architecturally designed to be consistent with regard to style, materials, colors, and details.
 - (4) A variety of building colors, materials and textures are encouraged.
 - (5) Architectural features that enhance the facade or building form, such as decorative moldings, windows, shutters, dormers, chimneys, balconies, and railings, are encouraged.
 - (6) All entrances to a building shall be defined and articulated by architectural elements such as lintels, pediments, pilasters, columns, porticoes, porches, overhangs, railings, etc.
 - (7) Heating, ventilating and air-conditioning systems, utility meters and regulators, exhaust pipes and stacks, satellite dishes and other telecommunications receiving devices shall be screened or otherwise specially treated to be, as much as possible, inconspicuous as viewed from the public right-of-way and adjacent properties.
- N. Soil moving permit. Section 185-3.D(2)(d) is determined to be inapplicable to development in the COAH-3 Zone. Section 185-3.D(2) (f), only insofar as the proposed slopes and lateral supports not exceeding one foot vertical to four feet horizontal, is determined to be inapplicable to development in the COAH-3 Zone. The balance of Section 185-3.D(2) (f) is determined to be applicable to development in the COAH-3 Zone. Section 185-3.D(2) (m) is determined to be inapplicable to development in the COAH-3 Zone, provided, however, that the Developer shall be required to obtain a Tree Removal Permit at the appropriate time and comply with all requirements of said ordinance.
- O. Steep slopes. In recognition of the existing previously disturbed (manmade) steep slope area and the not natural occurring developed nature of this zone district, the steep slope regulations in Section 220-3.E of the Zoning Ordinance are determined to be inapplicable to multifamily or townhouse development in the COAH-3 Zone.
- P. All other applicable requirements of this chapter, and of other chapters of the Borough of Alpine Code, shall apply to development within the COAH-3 Zone unless specifically superseded by the regulations of this section.

Section 7. The Schedule Limiting Height and Bulk of Buildings, which is included in Chapter 220 as Attachment 1, shall be amended to include a new ‘COAH-3’ row, within which

the phrase 'See § 220-23' shall be inserted.

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 Borough of Alpine, the provisions hereof shall be determined to govern. All other parts, portions and provisions of the Code of the Borough of Alpine are hereby ratified and confirmed, except where inconsistent with the terms hereof.

Section 10. The Borough Clerk is directed to give notice at least ten (10) days prior to a hearing on the adoption of this ordinance to the Bergen County Planning Board and to all other persons entitled thereto pursuant to N.J.S.A. 40:55D-15, and N.J.S.A. 40:55D-63 (if required).

Section 11. After introduction, the Borough Clerk is hereby directed to submit a copy of the within Ordinance to the Planning Board of the Borough of Alpine for its review in accordance with N.J.S.A. 40:55D-64 and N.J.S.A. 40:55D-26. The Planning Board is directed to make and transmit to the Borough Council, 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 be presented to the Mayor for his approval and signature, which approval shall be granted or denied within ten (10) days of receipt of same, pursuant to N.J.S.A. 40:69A-149.7. If the Mayor fails to return this Ordinance with either his approval or objection to same within ten (10) days after it has been presented to him, then this Ordinance shall be deemed approved.

Section 13. This Ordinance shall take effect immediately upon (1) adoption; (2) approval by the Mayor pursuant to N.J.S.A. 40:69A-149.7; (3) publication in accordance with the laws of the State of New Jersey; and (4) filing of the final form of adopted ordinance by the Clerk with (a) the Bergen County Planning Board pursuant to N.J.S.A. 40:55D-16, and (b) the Borough Tax Assessor as required by N.J.S.A. 40:49-2.1.

**BOROUGH OF ALPINE
ORDINANCE NO. 833**

ACCESSORY APARTMENT ORDINANCE

AN ORDINANCE AMENDING, SUPPLEMENTING AND REVISING CHAPTER 220, "ZONING", OF THE CODE OF THE BOROUGH OF ALPINE, COUNTY OF BERGEN, STATE OF NEW JERSEY, TO ESTABLISH ACCESSORY APARTMENT REQUIREMENTS

BE IT ORDAINED, by the Mayor and Council of the Borough of Alpine, in the County of Bergen, and State of New Jersey, that:

SECTION 1. Section 220-11 of the Code of the Borough of Alpine, entitled "Fair Housing," is hereby deleted in its entirety and replaced with the following:

§220-11 Accessory Apartments.

- A.** Purpose. This section is intended to provide opportunities for the creation of at least four (4) subsidized affordable accessory apartments within the Borough of Alpine to fulfill the Borough's affordable housing obligation.
- B.** Definition. The term "accessory apartment," as used in this section, shall mean a self-contained residential dwelling unit with a kitchen, sanitary facilities, sleeping quarters and a private entrance, which is created within an existing home, or through the conversion of an existing accessory structure on the same site, or by an addition to an existing home or accessory building, or by the construction of a new accessory structure on the same site.
- C.** Where permitted. Accessory apartments shall be permitted in principal or accessory buildings in all zones on lots developed with a detached single-family dwelling according to the area, yard, and bulk requirements set forth at subsection G. below.
- D.** Affordability. Each new accessory apartment created under the terms of this section shall be an affordable rental unit in accordance with the terms of Chapter 60, Affordable Housing, of the Code of the Borough of Alpine.
- E.** Applicability. While this section shall apply to the development and continued operation of all affordable accessory apartments created in the Borough following the adoption of this section, the Borough's accessory apartment program shall remain in effect only until July 1, 2025. Any units that are in progress or for which discussions have been initiated prior to July 1, 2025 shall be permitted to continue after this date.
- F.** Number of dwelling units. No lot shall contain more than two (2) dwelling units. A lot shall contain a principal dwelling unit and not more than one affordable accessory apartment which may be located in the principal residence or in an accessory structure. The accessory apartment shall be exempt from the density requirements of the zone district in which the unit is located; however, this density exemption shall only apply to one unit above the maximum density.

- G.** Area and bulk standards. An affordable accessory apartment shall only be permitted if it complies with the following lot and bulk standards:
- (1)** The lot to be used for the accessory apartment shall comply with the minimum area, width and depth requirements applicable to single family detached dwellings in the zone district.
 - (2)** For accessory apartments created within an existing dwelling or created by an addition to an existing dwelling, the building shall comply with all requirements applicable to principal buildings used as detached single-family dwellings in the zone district, except for requirements that limit the lot to only one dwelling or dwelling structure.
 - (3)** For accessory apartments created through the conversion of an existing accessory structure, by an addition to an existing accessory building, or by the construction of a new accessory structure, the building shall comply with all requirements applicable to accessory buildings and structures in §220-13.
- H.** Design standards. An affordable accessory apartment shall be subject to the following design standards:
- (1)** Minimum unit floor area. Each accessory apartment unit shall contain a minimum habitable gross floor area of 450 square feet, plus 150 square feet for each bedroom in the unit.
 - (2)** Maximum unit floor area. The habitable gross floor area of any accessory apartment shall not exceed the lesser of: a) the habitable gross floor of the primary dwelling unit on the lot, or b) 1,000 square feet.
 - (3)** Access to any affordable accessory apartment shall be provided with an exterior entrance separate from the principal dwelling entrance.
 - (4)** The exterior design of any accessory apartment shall be consistent with the design of the existing dwelling structure, utilizing the same or similar materials, colors, and architectural style. In applying this standard, the intent shall be to maintain the appearance of the property as a single-family dwelling and related structures.
 - (5)** Off-street parking shall be provided for any vehicles used by the occupants of the affordable accessory apartment. The requirements of the New Jersey Residential Site Improvement Standards at N.J.A.C. 5:21-4.14 shall apply. All parking and driveways serving accessory apartments shall comply with the standards for parking and driveways for detached single-family dwellings in the district, provided that one off-street parking space shall be provided for any efficiency or one-bedroom accessory apartment.
- I.** Water and sewer. The appropriate utility authority must certify that there is water and sewer infrastructure with sufficient capacity to serve the proposed accessory apartment. Where the proposed location is served by an individual well and/or septic system, the additional capacity necessitated by the new unit must meet the appropriate NJDEP standards.

SECTION 2. All Ordinances of the Borough of Alpine, which are inconsistent with the provisions

of this Ordinance, are hereby repealed to the extent of such inconsistency.

SECTION 3. If any 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.

SECTION 4. This Ordinance shall take effect immediately upon final passage, approval, and publication as required by law.

**BOROUGH OF ALPINE
ORDINANCE NO. 834**

AFFORDABLE HOUSING ORDINANCE

AN ORDINANCE CREATING A NEW CHAPTER 60, "AFFORDABLE HOUSING," OF THE CODE OF THE BOROUGH OF ALPINE, COUNTY OF BERGEN, STATE OF NEW JERSEY, TO ADDRESS THE BOROUGH'S AFFORDABLE HOUSING OBLIGATIONS UNDER THE FAIR HOUSING ACT AND THE UNIFORM HOUSING AFFORDABILITY CONTROLS (UHAC)

BE IT ORDAINED, by the Mayor and Council of the Borough of Alpine, in the County of Bergen, and State of New Jersey, that a new chapter 60, "Affordable Housing," of the Code of the Borough of Alpine, is hereby created with this Ordinance, to address the Borough's constitutional obligation to provide for its fair share of affordable housing, as directed by the Superior Court and consistent with N.J.A.C. 5:93-1, et seq., as amended and supplemented, N.J.A.C. 5:80-26.1, et seq., as amended and supplemented, and the New Jersey Fair Housing Act of 1985, as amended.

SECTION 1. A new chapter, Chapter 60: Affordable Housing, shall be added to the General Legislation section of the Borough Code, which shall read as follows:

§60-1 Affordable housing obligation.

- A.** This chapter is intended to assure that affordable housing units are created with controls on affordability over time and that low- and moderate-income households shall occupy these units. This chapter shall apply except where inconsistent with applicable law.
- B.** The Alpine 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 Housing Element and Fair Share Plan has been endorsed by the governing body. The Fair Share Plan describes the ways the Borough of Alpine shall address its fair share for affordable housing as directed by the Superior Court and documented in the Housing Element.
- C.** This chapter implements and incorporates the adopted and endorsed Housing Element and Fair Share Plan and addresses the requirements of N.J.A.C. 5:93-1, et seq., as amended and supplemented, N.J.A.C.5:80-26.1, et seq. as amended and supplemented, and the New Jersey Fair Housing Act of 1985, as amended.

§60-2 Definitions.

The following terms, as used in this chapter, shall have the following meanings:

ACCESSORY APARTMENT

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

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

ADAPTABLE

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

ADMINISTRATIVE AGENT

The entity responsible for administering the affordability controls with respect to specific restricted units in accordance with this chapter, the applicable regulations of the Council on Affordable Housing, and the Uniform Housing Affordability Controls set forth at N.J.A.C. 5:80-26 et seq.

AFFIRMATIVE MARKETING

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

The average percentage of median income at which restricted units in an affordable housing development are affordable to low- and moderate-income households.

AFFORDABLE

A sales price or rent within the means of a low- or moderate-income household as defined by COAH in its applicable regulations or an equivalent controlling New Jersey state agency; in the case of an ownership unit, that the sales price for the unit conforms to the standards set forth in N.J.A.C. 5:80-26.6, as may be amended and supplemented, and, in the case of a rental unit, that the rent for the unit conforms to the standards set forth in N.J.A.C. 5:80-26.12, as may be amended and supplemented.

AFFORDABLE HOUSING DEVELOPMENT

A housing development all or a portion of which consists of restricted units.

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

A housing unit proposed or created pursuant to the Act and, in the case of an ownership unit, that the sales price for the unit conforms to the standards set forth in N.J.A.C. 5:80-26.6 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.

AGENCY

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

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.

ALTERNATIVE LIVING ARRANGEMENT

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

ASSISTED LIVING RESIDENCE

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

A household that has been certified by an Administrative Agent as a low-income household or moderate-income household.

COAH

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

DCA

The State of New Jersey Department of Community Affairs.

DEFICIENT HOUSING UNIT

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

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

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

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 use and the creation of new affordable units through the gut rehabilitation or reconstruction of a vacant residential structure.

LOW-INCOME HOUSEHOLD

A household with a total gross annual household income equal to 50 percent or less of the median household income.

LOW-INCOME UNIT

A 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 UNITS

Housing not restricted to low- and moderate-income households that may sell or rent at any price.

MEDIAN INCOME

The median income by household size for the applicable housing region, as adopted annually by DCA.

MODERATE-INCOME HOUSEHOLD

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

A restricted unit that is affordable to a moderate-income household.

MUNICIPAL HOUSING LIAISON

The employee charged by the governing body with the responsibility for oversight and administration of the affordable housing program for the Borough of Alpine.

NON-EXEMPT SALE

Any sale or transfer of ownership other than the transfer of ownership between spouses; 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

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

The maximum housing value in each housing region affordable to a four-person household with an income at 80 percent of the regional median as defined by duly adopted Regional Income Limits published annually by DCA.

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

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 the New Jersey Housing and Mortgage Finance Agency's Urban Homeownership Recovery Program (UHORP) or the Agency's Market Oriented Neighborhood Investment Program (MONI).

UHAC

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

VERY LOW-INCOME HOUSEHOLD

A household with a total gross annual household income equal to 30 percent or less of the median household income for the applicable housing region.

VERY LOW-INCOME UNIT

A restricted unit that is affordable to a very low-income household.

WEATHERIZATION

Building insulation (for attic, exterior walls and crawl space), siding to improve energy efficiency, replacement storm windows, replacement storm doors,

replacement windows and replacement doors, and is considered a major system for purposes of a rehabilitation program.

§60-3 Applicability.

- A. The provisions of this chapter shall apply to all developments that contain low-and/or moderate-income housing units, including any affordable housing developments that currently exist, any affordable housing developments that are proposed to be created within the Borough of Alpine pursuant to the Borough's most recently adopted Housing Element and Fair Share Plan, as well as any currently unanticipated future developments that will provide low- and/or moderate-income housing units.
- B. All affordable housing developments, including those intended to be funded through federal Low Income Housing Tax Credit programs, shall be deed restricted to comply with the applicable COAH and/or UHAC Rules pertaining to the income and bedroom distributions of the units.

§60-4 Rehabilitation program.

- A. The Borough will work with the Bergen County Home Improvement Program to address the Borough's Rehabilitation Obligation. Any such rehabilitation programs 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.
- B. All rehabilitated rental and owner-occupied units shall remain affordable to low- and moderate-income households for a 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.
- C. The Borough of Alpine shall dedicate \$10,000 for each unit to be rehabilitated through this program, up to the Rehabilitation Obligation.
- D. The Borough shall adopt a resolution committing to fund any shortfall in the Borough's Rehabilitation Program.
- E. Units in a rehabilitation program shall be exempt from Uniform Housing Affordability Controls (UHAC), but shall be administered in accordance with the following:
 - (1) 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 §60-8.C, §60-9, and UHAC.
 - (2) 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 §60-8.C and UHAC.

- (3) Rents in rehabilitated units may increase annually based on the standards in §60-8.C.
- (4) Applicant and/or tenant households shall be certified as income-eligible in accordance with §60-8.C and UHAC, except that households in owner occupied units shall be exempt from the regional asset limit.

§60-5 Accessory apartment program.

- A. It is the purpose of this program to help meet the Borough of Alpine's fair share housing obligation through the subsidization of at least 4 accessory apartments in the Borough for occupancy by very low-, low- or moderate-income households.
- B. This program shall remain in effect until July 1, 2025. Any units that are in progress or for which discussions have been initiated prior to July 1, 2025 shall be permitted to continue after this date.
- C. All accessory apartments shall meet the following conditions:
 - (1) Accessory apartments shall be permitted in principal or accessory buildings in all zones on lots developed with a detached single-family dwelling according to the applicable area, yard, and bulk requirements, provided the accessory apartment is affordable to low- or moderate-income households.
 - (2) Accessory apartments shall comply with all applicable statutes and regulations of the State of New Jersey in addition to all building codes.
 - (3) At the time of initial occupancy of the unit and for at least 10 years thereafter, the accessory apartment shall be rented only to a household which is either a very-low, low- or moderate-income household.
 - (4) Rents of accessory apartments shall be affordable to very-low, low- or moderate-income households as per this chapter and UHAC regulations.
 - (5) There shall be a recorded deed or declaration of covenants and restrictions applied to the property upon which the accessory apartment is located running with the land and limiting its subsequent rental or sale of the unit and the accessory apartment. The deed or declarations shall be reviewed and approved by the Borough Attorney prior to recording; and such document must be recorded prior to the issuance of a building permit or, if no building permit needs to be issued, prior to the issuance of the Certificate of Occupancy.
 - (6) The appropriate utility authority must certify that there is water and sewer infrastructure with sufficient capacity to serve the proposed accessory apartment. Where the proposed location is served by an individual well and/or septic system, the additional capacity necessitated by the new unit must meet the appropriate NJDEP standards.
 - (7) Accessory apartments shall be exempt from the bedroom mix requirements set forth in this chapter. The Borough of Alpine accessory apartment program shall not restrict the number of bedrooms in any accessory apartment.

D. The Borough of Alpine shall designate an administrative entity to administer the accessory apartment program that shall have the following responsibilities:

- (1)** The Administrative Agent shall administer the accessory apartment program, including advertising, income qualifying prospective renters, setting rents and annual rent increases, maintaining a waiting list, distributing the subsidy, securing certificates of occupancy, qualifying properties, handling application forms, filing deed restrictions and monitoring reports and affirmatively marketing the affordable accessory apartment program in accordance with this chapter and UHAC.
- (2)** The administrative entity shall only deny an application for an accessory apartment if the project is not in conformance with COAH's rules and/or the provisions of this chapter. All denials shall be in writing with the reasons clearly stated.
- (3)** The program shall require that, of the 4 subsidized accessory apartments, at least one shall be very-low income, no more than one may be moderate-income, and the remainder may be low-income.
- (4)** The Borough of Alpine shall provide \$70,000 to subsidize the creation of each accessory apartment. Subsidy may be used to fund actual construction costs and/or to provide compensation for reduced rental rates.
- (5)** Property owners wishing to apply to create an accessory apartment shall submit to the administrative entity:
 - (a)** A sketch of floor plan(s) showing the location, size and relationship of both the accessory apartment and the primary dwelling within the building or in another structure;
 - (b)** Rough elevations showing the modifications of any exterior building façade to which changes are proposed; and
 - (c)** A site development sketch showing the location of the existing dwelling and other existing buildings; all property lines; proposed addition, if any, along with the minimum building setback lines; the required parking spaces for both dwelling units; and any man-made conditions which might affect construction.

§60-6 Alternative living arrangements.

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

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

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

- B. With the exception of units established with capital funding through a 20-year operating contract with the Department of Human Services, Division of Developmental Disabilities, alternative living arrangements shall have at least 30-year controls on affordability in accordance with UHAC.
- C. The service provider for the alternative living arrangement shall act as the Administrative Agent for the purposes of administering the affirmative marketing and affordability requirements for the alternative living arrangement.

§60-7 Inclusionary zoning.

- A. Maximum densities and minimum set-asides: The maximum permitted densities and minimum required affordable housing set-asides for inclusionary development shall be as set forth for each individual inclusionary zone district in Chapter 220, "Zoning," of the Borough Code.
- B. Phasing: In inclusionary developments, the following schedule shall be followed:

Maximum Percentage of Market-Rate Units Completed	Minimum Percentage of affordable Units Completed
25	0
25+1	10
50	50
75	75
90	100

- C. Design:
 - (1) In inclusionary developments, to the extent possible, affordable units shall be integrated with the market units.
 - (2) In inclusionary developments, affordable units shall have access to all of the same common elements and facilities as the market units.

§60-8 New construction.

- 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. At least thirteen percent (13%) of all

restricted rental units within each bedroom distribution shall be very low income units (affordable to a household earning thirty percent (30%) or less of regional median income by household size). The very low income units shall be counted as part of the required number of low income units within a development. At least fifty percent (50%) of the very low income units must be available to families.

- (2)** At least twenty-five percent (25%) of the obligation shall be met through rental units, including at least half in rental units available to families.
- (3)** A maximum of twenty-five percent (25%) of the Borough's obligation may be met with age restricted units. At least half of all affordable units in the Borough's plan shall be available to families.
- (4)** In each affordable development, at least fifty percent (50%) of the restricted units within each bedroom distribution shall be low-income units.
- (5)** Affordable developments that are not age-restricted shall be structured in conjunction with realistic market demands such that:
 - (a)** The combined number of efficiency and one-bedroom units shall be no greater than twenty percent (20%) of the total affordable units;
 - (b)** At least thirty percent (30%) of all affordable units shall be two bedroom units;
 - (c)** At least twenty percent (20%) of all affordable units shall be three bedroom units; and
 - (d)** The remaining units may be allocated among two and three bedroom units at the discretion of the developer and the Borough.
- (6)** Affordable developments that are age-restricted shall be structured such that the number of bedrooms shall equal the number of age-restricted affordable 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.
- (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:

- (a)** An adaptable toilet and bathing facility on the first floor;
- (b)** An adaptable kitchen on the first floor;
- (c)** An interior accessible route of travel on the first floor;
- (d)** An interior accessible route of travel shall not be required between stories within an individual unit;
- (e)** 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
- (f)** An accessible entranceway as set forth at P.L. 2005, c. 350 (N.J.S.A. 52:27D-311a et seq.) and the Barrier Free Subcode, N.J.A.C. 5:23-7, or evidence that the Borough of Alpine has collected funds from the developer sufficient to make ten percent (10%) of the adaptable entrances in the development accessible:
 - [1]** 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.
 - [2]** To this end, the builder of restricted units shall deposit funds within the Borough's affordable housing trust fund sufficient to install accessible entrances in ten percent (10%) of the affordable units that have been constructed with adaptable entrances.
 - [3]** The funds deposited under paragraph [2] above shall be used by the Borough of Alpine 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.
 - [4]** The developer of the restricted units shall submit a design plan and cost estimate for the conversion from adaptable to accessible entrances to the Construction Official of the Borough of Alpine.
 - [5]** Once the Construction Official has determined that the design plan to convert the unit entrances from adaptable to accessible meet the requirements of the Barrier Free Subcode, N.J.A.C. 5:23-7, and that the cost estimate of such conversion is reasonable, payment shall be made to the Borough's affordable housing trust fund in care of the Borough's Chief Financial Officer who shall ensure that the funds are deposited into the affordable housing trust fund and appropriately earmarked.

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

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, utilizing the most recently published regional weighted average of the uncapped Section 8 income limits published by HUD and by the Court, COAH, or a successor entity.
- (2)** The maximum rent for restricted rental units within each affordable development shall be affordable to households earning no more than sixty percent (60%) of median income, and the average rent for restricted units shall be affordable to households earning no more than fifty-two percent (52%) 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, provided that at least thirteen percent (13%) of all restricted rental units shall be affordable to very low income households.
- (4)** The maximum sales price of restricted ownership units within each affordable development shall be affordable to households earning no more than seventy percent (70%) of median income, and each affordable development must achieve an affordability average of fifty-five percent (55%) 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 and age-restricted developments, the following standards shall be used:
 - (a)** A studio shall be affordable to a one-person household;
 - (b)** A one-bedroom unit shall be affordable to a one and one-half person household;
 - (c)** A two-bedroom unit shall be affordable to a three-person household;

median income for COAH Region 1 for a family of four. The income limit for a very low income unit for a household of four shall be thirty percent (30%) of the HUD determination of the median income for COAH Region 1 for a family of four. These income limits shall be adjusted by household size based on multipliers used by HUD to adjust median income by household size. In no event shall the income limits be less than the previous year.

- (b) The income limits are based on carrying out the process in Paragraph (a) based on HUD determination of median income for the current Fiscal Year, and shall be utilized by the Borough until new income limits are available.
- (10) In establishing sale prices and rents of affordable housing units, the Administrative Agent shall follow the procedures set forth in UHAC, utilizing the regional income limits established by the Council:

 - (a) The price of owner-occupied affordable units may increase annually based on the percentage increase in the regional median income limit for each housing region determined pursuant to Paragraph (9). In no event shall the maximum resale price established by the Administrative Agent be lower than the last recorded purchase price.
 - (b) The rent of affordable units may be increased annually based on the permitted percentage increase in the Housing Consumer Price Index for the Northern New Jersey Area, upon its publication for the prior calendar year. 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.

D. Utilities:

- (1) Affordable units shall utilize the same type of heating source as market units within an inclusionary development.
- (2) 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.

§60-9 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 sexes with separate bedrooms;
 - (3) Provide separate bedrooms for parents and children; and
 - (4) Prevent more than two persons from occupying a single bedroom.
- B. Additional provisions related to occupancy standards (if any) shall be provided in the municipal Operating Manual.

§60-10 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 chapter until the Borough of Alpine 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 chapter, 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 chapter 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.

§60-11 Price restrictions for restricted ownership units, homeowner association fees and resale prices.

- A. Price restrictions for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.1, as may be amended and supplemented, including:
 - (1) The initial purchase price for a restricted ownership unit shall be approved by the Administrative Agent.
 - (2) The Administrative Agent shall approve all resale prices, in writing and in advance of the resale, to assure compliance with the foregoing standards.
 - (3) The method used to determine the condominium association fee amounts and special assessments shall be indistinguishable between the affordable unit owners and the market unit owners.
 - (4) The owners of restricted ownership units may apply to the Administrative Agent to increase the maximum sales price for the unit on the basis of capital improvements. Eligible capital improvements shall be those that render the unit suitable for a larger household or the addition of a bathroom.

§60-12 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 fifty percent (50%) of median income and moderate-income ownership units shall be reserved for households with a gross household income less than eighty percent (80%) 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 thirty-three percent (33%) of the household's certified monthly income.

§60-13 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 ninety-five percent (95%) 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).

§60-14 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 chapter until the Borough of Alpine 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. For new projects receiving nine percent (9%) low income housing tax credits, a control period of not less than a 30-year compliance period plus a 15-year extended use period shall be required.
- 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 Bergen County. 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 chapter, 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.

§60-15 Rent 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 chapter.

§60-16 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 thirty percent (30%) of median income.
 - (2) Low-income rental units shall be reserved for households with a gross household income less than or equal to fifty percent (50%) of median income.
 - (3) Moderate-income rental units shall be reserved for households with a gross household income less than eighty percent (80%) of median income.
- B. The Administrative Agent shall certify a household as eligible for a restricted rental unit when the household is a very low-income, low-income household or a moderate-income household, as applicable to the unit, and the rent proposed for the unit does not exceed 35 percent (40 percent for age-restricted units) of the household's eligible monthly income as determined pursuant to N.J.A.C. 5:80-26.16, as may be amended and supplemented; provided, however, that this limit may be exceeded if one or more of the following circumstances exists:
 - (1) The household currently pays more than 35 percent (40 percent for households eligible for age-restricted units) of its gross household income for rent, and the proposed rent will reduce its housing costs;
 - (2) The household has consistently paid more than 35 percent (40 percent for households eligible for age-restricted units) of eligible monthly income for rent in the past and has proven its ability to pay;
 - (3) The household is currently in substandard or overcrowded living conditions;

- (4) The household documents the existence of assets with which the household proposes to supplement the rent payments; or
 - (5) The household documents proposed third-party assistance from an outside source such as a family member in a form acceptable to the Administrative Agent and the owner of the unit.
- C. The applicant shall file documentation sufficient to establish the existence of the circumstances in B(1) through B(5) above with the Administrative Agent, who shall counsel the household on budgeting.

§60-17 Municipal housing liaison.

- A. The position of Municipal Housing Liaison for the Borough of Alpine is hereby established by this chapter.
- B. The Borough shall appoint a specific municipal employee to serve as the Municipal Housing Liaison by resolution. The Municipal Housing Liaison shall be appointed by the governing body and may be a full- or part-time municipal employee. The Municipal Housing Liaison shall be approved by the court and shall be duly qualified through a training program sponsored by Affordable Housing Professionals of New Jersey before assuming the duties of Municipal Housing Liaison.
- C. The Municipal Housing Liaison shall be responsible for oversight and administration of the affordable housing program for the Borough, including the following responsibilities which may not be contracted out to the administrative agent:
 - (1) Serving as the Borough's primary point of contact for all inquiries from the state, affordable housing providers, administrative agents and interested households;
 - (2) Monitoring the status of all restricted units in the Borough's Fair Share Plan;
 - (3) Compiling, verifying and submitting annual monitoring reports as may be required by the court;
 - (4) Coordinating meetings with affordable housing providers and administrative agents, as needed; and
 - (5) Attending continuing education opportunities on affordability controls, compliance monitoring and affirmative marketing at least annually and more often as needed.

§60-18 Administrative agent.

- A.** Subject to the approval of the court, the Borough shall designate one or more administrative agent(s) to administer newly constructed affordable units in accordance with UHAC. An operating manual for each affordable housing program shall be provided by the administrative agent(s) to be adopted by resolution of the governing body and subject to approval of the court. The operating manual(s) shall be available for public inspection in the office of the Borough Clerk, in the office of the Municipal Housing Liaison, and in the office(s) of the administrative agent(s). The Municipal Housing Liaison shall supervise the contracting administrative agent(s).

- B.** The administrative agent shall be an independent entity serving under contract to and reporting to the Borough. For new sale and rental developments, all of the fees of the administrative agent shall be paid by the owners of the affordable units for which the services of the administrative agent are required. For resales, homeowners shall be required to pay three percent (3%) of the sales price for services provided by the administrative agent related to the resale of their homes. That fee shall be collected at closing and paid directly to the administrative agent.

- C.** The administrative agent shall perform the duties and responsibilities of an administrative agent as set forth in UHAC, including those set forth in Sections 5:80-26.14, 16 and 18 thereof, which include:
 - (1)** Affirmative marketing:
 - (a)** Conducting an outreach process to affirmatively market affordable housing units in accordance with the Borough's affirmative marketing plan and the provisions of N.J.A.C. 5:80-26.15; and
 - (b)** Providing counseling or contracting to provide counseling services to low- and moderate-income applicants on subjects such as budgeting, credit issues, mortgage qualification, rental lease requirements, and landlord/tenant law.

 - (2)** Household certification:
 - (a)** Soliciting, scheduling, conducting and following up on interviews with interested households;

- (b)** Conducting interviews and obtaining sufficient documentation of gross income and assets upon which to base a determination of income eligibility for a low- or moderate-income unit;
- (c)** Providing written notification to each applicant as to the determination of eligibility or noneligibility;
- (d)** Requiring that all certified applicants for restricted units execute a certificate substantially in the form, as applicable, of either the ownership or rental certificates set forth in Appendices J and K of N.J.A.C. 5:80-26.1 et seq.;
- (e)** Creating and maintaining a referral list of eligible applicant households living in the housing region and eligible applicant households with members working in the housing region where the units are located; and
- (f)** Employing the random selection process as provided in the affirmative marketing plan of the Borough when referring households for certification to affordable units.

(3) Affordability controls:

- (a)** Furnishing to attorneys or closing agents forms of deed restrictions and mortgages for recording at the time of conveyance of title of each restricted unit;
- (b)** Creating and maintaining a file on each restricted unit for its control period, including the recorded deed with restrictions, recorded mortgage and note, as appropriate;
- (c)** Ensuring that the removal of the deed restrictions and cancellation of the mortgage note are effectuated and properly filed with Bergen County's Register of Deeds or County Clerk's office after the termination of the affordability controls for each restricted unit;
- (d)** Communicating with lenders regarding foreclosures; and
- (e)** Ensuring the issuance of continuing certificates of occupancy or certifications pursuant to N.J.A.C. 5:80-26.10.

(4) Resales and rentals:

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

(5) Processing requests from unit owners:

- (a) Reviewing and approving requests from owners of restricted units who wish to take out home equity loans or refinance during the term of their ownership;
- (b) Reviewing and approving requests to increase sales prices from owners of restricted units who wish to make capital improvements to the units that would affect the selling price, such authorizations to be limited to those improvements resulting in additional bedrooms or bathrooms and the depreciated cost of central air-conditioning systems;
- (c) Notifying the Borough of an owner's intent to sell a restricted unit; and
- (d) Making determinations on requests by owners of restricted units for hardship waivers.

(6) Enforcement:

- (a) Securing annually lists of all affordable housing units for which tax bills are mailed to absentee owners, and notifying all such owners that they must either move back to their unit or sell it;
- (b) Securing from all developers and sponsors of restricted units, at the earliest point of contact in the processing of the project or development, written acknowledgement of the requirement that no restricted unit can be offered, or in any other way committed, to any person, other than a household duly certified to the unit by the administrative agent;
- (c) Posting annually in all rental properties, including two-family homes, of a notice as to the maximum permitted rent together with the telephone number of the administrative agent where complaints of excess rent or other charges can be made;

- (d) Sending annual mailings to all owners of affordable dwelling units, reminding them of the notices and requirements outlined in N.J.A.C. 5:80-26.18(d)4;
- (e) Establishing a program for diverting unlawful rent payments to the Borough's affordable housing trust fund; and
- (f) Creating and publishing a written operating manual for each affordable housing program administered by the administrative agent, to be approved by the Borough Mayor and Council and the court, setting forth procedures for administering the affordability controls.

(7) Additional responsibilities:

- (a) The administrative agent shall have the authority to take all actions necessary and appropriate to carry out its responsibilities hereunder.
- (b) The administrative agent shall prepare monitoring reports for submission to the municipal housing liaison in time to meet any monitoring requirements and deadlines imposed by the court.
- (c) The administrative agent shall attend continuing education sessions on affordability controls, compliance monitoring, and affirmative marketing at least annually and more often as needed.

§60-19 Affirmative marketing requirements.

- A. The Borough shall adopt by resolution an affirmative marketing plan, subject to approval of the court, that is 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, affectional or sexual orientation, disability, age or number of children to housing units which are being marketed by a developer, sponsor or owner of affordable housing. The affirmative marketing plan is intended to target those potentially eligible persons who are least likely to apply for affordable units in that region. In addition, the affirmative marketing plan shall maintain certain notification requirements. It is a continuing program that directs marketing activities toward Housing Region 1 and is required to be followed throughout the period of restriction.

- C. The affirmative marketing plan shall provide a regional preference for all households that live and/or work in Housing Region 1, comprised of Bergen, Hudson, Passaic and Sussex Counties.
- D. The Borough has the ultimate responsibility for adopting the affirmative marketing plan and for the proper administration of the affirmative marketing program, including initial sales and rentals and resales and re-rentals. The administrative agent designated by the Borough shall implement the affirmative marketing plan to assure the affirmative marketing of all affordable units.
- 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 plan shall describe the media to be used in advertising and publicizing the availability of housing. In implementing the affirmative marketing plan, the administrative agent shall consider the use of language translations where appropriate.
- G. The affirmative marketing process for available affordable units shall begin at least four months (120 days) prior to the expected date of occupancy.
- H. Applications for affordable housing shall be available in several locations, including, at a minimum, the County Administration Building and/or the County Library for each county within the housing region; the municipal administration building and the municipal library in the Borough in which the units are located; and the developer's rental office. Pre-applications shall be emailed or mailed to prospective applicants upon request.
- I. The costs of advertising and affirmative marketing of the affordable units shall be the responsibility of the developer, sponsor or owner.
- J. In addition to other affirmative marketing strategies, the administrative agent shall provide specific notice of the availability of affordable housing units in Alpine to the following entities: Fair Share Housing Center, the New Jersey State Conference of the NAACP, Bergen County NAACP, Jersey City NAACP, Paterson NAACP, Passaic NAACP, Hoboken NAACP, the Latino Action Network, Bergen County Housing Authority, Northeast New Jersey Legal Services, Bergen Urban League, Garden State Episcopal CDC, Mount Olive Baptist Church, Urban League Affordable Housing & CDC, Bergen County Housing Coalition, Fair Housing Council of Northern NJ, New Jersey Community Development, Advance Housing, Paterson Habitat for Humanity, Family Promise of Bergen County, Saint Paul's Community Development Corp., Supportive Housing Association of New Jersey, Islamic Center of New Jersey, Monarch Housing Associates, and the New Jersey Housing Resource Center.

§60-20 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 an affordable 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:
 - (a)** A fine of not more than \$500.00 per day or imprisonment for a period not to exceed 90 days, or both. Each and every day that the violation continues or exists shall be considered a separate and specific violation of these provisions and not as a continuing offense;
 - (b)** In the case of an Owner who has rented his or her affordable unit in violation of the regulations governing affordable housing units, payment into the Borough's affordable housing trust fund of the gross amount of rent illegally collected;
 - (c)** In the case of an Owner who has rented his or her affordable 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 Borough 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 affordable unit.
 - (a)** Such judgment shall be enforceable, at the option of the municipality, by means of an execution sale by the Sheriff, at which time the affordable 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.

- (b)** 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 affordable unit. The excess, if any, shall be applied to reimburse the municipality for any and all costs and expenses incurred in connection with either the court action resulting in the judgment of violation or the Sheriff's sale.

In the event that the proceeds from the Sheriff's sale are insufficient to reimburse the municipality in full as aforesaid, the violating Owner shall be personally responsible for and to the extent of such deficiency, in addition to any and all costs incurred by the municipality in connection with collecting such deficiency. In the event that a surplus remains after satisfying all of the above, such surplus, if any, shall be placed in escrow by the municipality for the Owner and shall be held in such escrow for a maximum period of two years or until such earlier time as the Owner shall make a claim with the municipality for such. Failure of the Owner to claim such balance within the two-year period shall automatically result in a forfeiture of such balance to the municipality. Any interest accrued or earned on such balance while being held in escrow shall belong to and shall be paid to the municipality, whether such balance shall be paid to the Owner or forfeited to the municipality.

- (c)** 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 affordable 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.

- (d)** 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 affordable 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 affordable 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.

- (e) Failure of the affordable 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 affordable unit as permitted by the regulations governing affordable housing units.
- (f) 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.

§60-21 Appeals.

Appeals from all decisions of an Administrative Agent designated pursuant to this chapter shall be filed in writing with the Court, COAH, or a successor entity.

§60-22 Reporting and monitoring requirements.

- A. On the first anniversary of the execution of the Court's approval of the Borough Spending Plan, and every anniversary thereafter through July 1, 2025, the Borough shall provide annual reporting of its Affordable Housing Trust Fund activity to the New Jersey Department of Community Affairs, Council on Affordable Housing or Division of Local Government Services, or other entity designated by the State of New Jersey, with a copy provided to Fair Share Housing Center and posted on the municipal website, using forms developed for this purpose by the New Jersey Department of Community Affairs, Council on Affordable Housing or Division of Local Government Services. The reporting shall include an accounting of all Affordable Housing Trust Fund activity, including the source and amount of funds collected and the amount and purpose for which any funds have been expended.
- B. On the first anniversary of the execution of the Borough's settlement agreement with Fair Share Housing Center Re: In the Matter of the Borough of Alpine, County of Bergen, Docket No. BER-L-6286-15, which was executed by the Borough on November 1, 2023, and every anniversary thereafter through July 1, 2025, the Borough shall provide annual reporting of the status of all affordable housing activity within the Borough through posting on the municipal website, with copies provided to Fair Share Housing Center, using forms previously developed for this purpose by the Council on Affordable Housing or any other forms endorsed by the court-appointed special adjudicator and Fair Share Housing Center.
- C. For the midpoint realistic opportunity review due on July 1, 2024, as required pursuant to

N.J.S.A. 52:27D-313, the Borough shall post on its municipal website, with copies provided to Fair Share Housing Center, a status report as to its implementation of its affordable housing plan and an analysis of whether any unbuilt sites or unfulfilled mechanisms continue to present a realistic opportunity. Such posting shall invite any interested party to submit comments to the Borough, with copies provided to Fair Share Housing Center, regarding whether any sites no longer present a realistic opportunity and should be replaced. Any interested party may, by motion, request a hearing before the Court regarding these issues.

- D.** For the review of very low income housing requirements required by N.J.S.A. 52:27D-329.1, on July 1, 2024 and every third year thereafter, the Borough shall post on its municipal website, with copies provided to Fair Share Housing Center, a status report as to its satisfaction of its very low income requirements, including the family very low income requirements referenced herein. Such posting shall invite any interested party to submit comments to the Borough, with copies provided to Fair Share Housing Center, on the issue of whether the municipality has complied with its very low income housing obligation.

SECTION 2. Chapter 220, Sections § 220-11, “Fair Housing,” and § 220-21, “Affordable Housing Administration,” of the Borough Code are hereby repealed.

SECTION 3. All other Ordinances of the Borough of Alpine, which are inconsistent with the provisions of this Ordinance, are hereby repealed to the extent of such inconsistency.

SECTION 4. If any 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.

SECTION 5. This Ordinance shall take effect immediately upon final passage, approval, and publication as required by law.

**BOROUGH OF ALPINE
ORDINANCE No. 835**

DEVELOPMENT FEE ORDINANCE

AN ORDINANCE AMENDING, SUPPLEMENTING AND REVISING CHAPTER 220, “ZONING,” OF THE CODE OF THE BOROUGH OF ALPINE, COUNTY OF BERGEN, STATE OF NEW JERSEY, AS IT RELATES TO

DEVELOPMENT FEE REQUIREMENTS

WHEREAS, the New Jersey Supreme Court issued its decision In re: Adoption of N.J.A.C. 5:96 & 5:97, 221 N.J. 1 (2015) on March 10, 2015 stripping COAH of its administrative duties relating to the affordable housing certification process and thereby created a judicial process by which a municipality can file a declaratory judgment action with the court seeking a judicial determination that their housing element and fair share plan satisfied their third round affordable housing obligation; and

WHEREAS, pursuant to the New Jersey Supreme Court's March 10, 2015 decision and to preserve immunity from developer remedy lawsuits, the Borough filed a declaratory judgment action (DJ Action) entitled In the Matter of the Borough of Alpine, County of Bergen, Docket No. BER-L-6286-15 with the Superior Court; and

WHEREAS, by way of negotiations with the Fair Share Housing Center in the DJ Action the Borough has arrived at a Settlement Agreement (Settlement) with Fair Share Housing Center concerning the Borough's obligation which was approved by the Superior Court after a fairness hearing held on January 26, 2024; and

WHEREAS, the Borough is required to now take certain actions including the adoption of ordinances to implement the settlement agreement with Fair Share Housing Center;

BE IT ORDAINED by the Governing Body of the Borough of Alpine, Bergen County, New Jersey that it does hereby amend and supplement Chapter 220, Zoning, as follows:

SECTION 1. §220-14 entitled Developer's Fees is hereby repealed in its entirety.

SECTION 2. Chapter 220 is hereby amended to add the following new section §220-14, to be entitled "Affordable Housing Development Fees." This new section shall read as follows:

§220-14 AFFORDABLE HOUSING DEVELOPMENT FEES.

A. Purpose.

- (1) In Holmdel Builder's Ass'n v. Holmdel Borough, 121 N.J. 550 (1990), the New Jersey Supreme Court determined that mandatory development fees are authorized by the Fair Housing Act of 1985, *N.J.S.A. 52:27D-301 et seq.*, and the State Constitution, subject to the Council On Affordable Housing's (COAH) adoption of rules.
- (2) Pursuant to P.L.2008, c.46 section 8 (C. 52:27D-329.2) and the Statewide Non-Residential Development Fee Act (C. 40:55D-8.1 through 8.7), COAH was 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 were under the jurisdiction of COAH or court of competent jurisdiction and that are now before a court of competent jurisdiction and have a Court-approved spending plan may retain fees collected from non-residential development.
- (3) The purpose of this section is to establish standards for the collection, maintenance and expenditure of development fees pursuant to COAH's rules developed in response to P.L.2008,

c.46, Sections 8 and 32-38 (C. 52:27D-329.2) and the Statewide Non-Residential Development Fee Act (C. 40:55D-8.1 through 8.7). Fees collected pursuant to this section shall be used for the sole purpose of providing "very-low," "low" and "moderate" income housing. This section shall be interpreted within the framework of COAH's rules on development fees, codified at *N.J.A.C. 5:97-8*.

B. Basic Requirements.

- (1) The ability to impose, collect and spend development fees is consistent with the settlement terms and conditions entered into between the Borough of Alpine and FSHC and the judgement of compliance and repose granted by the Court.
- (2) The Borough of Alpine shall not spend development fees until the Court has approved a plan for spending such fees in conformance with *N.J.A.C. 5:97-8.10*.
- (3) This section shall not be effective until the Court has approved, and the Borough has adopted, the section.

C. Definitions.

The following terms, as used in this section, shall have the following meanings:

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

COAH or the *Council* shall mean the New Jersey Council on Affordable Housing.

Court or *Court approved entity* shall mean the entity that has primary jurisdiction for the administration of housing obligations in accordance with sound regional planning consideration in the State pursuant to the Supreme Court decision issued in Mount Laurel IV on March 10, 2015.

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

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

Equalized assessed value shall mean the assessed value of a property divided by the current average ratio of assessed to true value for the municipality in which the property is situated, as determined in accordance with sections 1, 5, and 6 of P.L.1973, c.123 (C.54:1-35a through C.54:1-35c).

Green building strategies shall mean those strategies that minimize the impact of development on the

environment, and enhance the health, safety and well-being of residents by producing durable, low-maintenance, resource-efficient housing while making optimum use of existing infrastructure and community services.

D. Residential Development.

(1) Within the Borough of Alpine, all residential developers, except for developers of the types of developments specifically exempted below and developers of developments that include affordable housing, shall pay a fee of one and on-half (1.5%) percent of the equalized assessed value for all new residential development, provided that no increased density is permitted. Development fees shall also be imposed and collected when an additional dwelling unit is added to an existing residential structure; in such cases, the fee shall be calculated based on the increase in the equalized assessed value of the property due to the additional dwelling unit.

(2) When an increase in residential density is permitted pursuant to a "d" variance granted under N.J.S.A. 40:55D-70d(5), developers shall be required to pay a "bonus" development fee of six (6%) percent of the equalized assessed value for each additional unit that may be realized, except that this provision shall not be applicable to a development that will include affordable housing.

(a) However, if the zoning of a site has changed during the immediate two (2) years prior to the filing of the "d" variance application, then the base density for the purposes of calculating the bonus development fee shall be the highest density permitted by right during the two (2) year time period preceding the filing of the variance application.

Example: If an approval allows four units to be constructed on a site that was zones for two units, the fees will equal 1.5% of the equalized assessed value on the first two units, and 6% of the equalized assessed value for the two additional units, provided that zoning on the site has not changed during the two-year period preceding the filing of such a variance application.

(b) In any case, these fees shall not apply to developments exempt from the collection of development fees in accordance with the provisions specified in subsection §220-14.D(3) of this section, hereinbelow.

(3) Eligible Exactions, Ineligible Exactions and Exemptions for Residential Development.

(a) All affordable housing developments and/or developments that produce affordable units shall be exempt from the payment of development fees.

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

- (c) Any repair, reconstruction, or improvement of a structure, the cost of which is less than fifty (50%) percent of the market value of the structure before the improvement or repair is started shall be exempt from the payment of development fees. For purposes of this section, "market value" shall mean the equalized assessed value of the existing improvement as established by the Borough Tax Assessor. The cost of the repair, reconstruction, or improvements shall be determined by an itemized construction cost estimate prepared and submitted to the Construction Official. The estimate shall be signed and sealed by an architect or professional engineer licensed by the State of New Jersey, or where no such professionals are retained, signed by the contractor or the homeowner. Where prepared by the homeowner or contractor, the Borough Engineer may review such estimates for accuracy. "Substantial improvement" is considered to commence when the first alteration of any wall, floor, or other structural part of the building commences, whether or not the alternation affects the external dimensions of the structure. The term does not, however, include either:
1. Any project for improvement of a structure to comply with existing state or local building, fire, health, sanitary or safety code specifications which are solely necessary to assure safe living conditions; or
 2. Any alteration of a structure listed on the National Register of Historic Places or a state inventory of historic places, but a development fee shall be charged for any new dwelling constructed as a replacement for a previously existing dwelling on the same lot that was or will be demolished, unless the owner resided in the previous dwelling for a period of one year or more prior to obtaining a demolition permit. Where a development fee is charged for a replacement dwelling, the development fee shall be calculated on the increase in the equalized assessed value of the new structure as compared to the previous structure.
- (d) Structural alterations that do not increase gross floor area of a building or structure or increase the equalized assessed value of a property shall be exempted from paying a development fee.
- (e) Nonprofit organizations constructing residential projects which have received tax-exempt status pursuant to Section 501(c)(3) of the Internal Revenue Code, providing current evidence of that status is submitted to the Municipal Clerk, together with a certification that services of the organization are provided at reduced rates to those who establish an inability to pay existing charges, shall be exempted from paying a development fee.
- (f) Federal, state, county, and local governments shall be exempted from paying a development fee.
- (g) Homes replaced as a result of a natural disaster such as a fire or a flood shall be exempt from the payment of a development fee. (This exemption applies only for the owner of record at the time of the fire, flood, or natural disaster.)
- (h) In addition to the construction of new principal and/or accessory buildings, development fees shall be imposed and collected for the construction of additions or expansions to existing buildings, for the change or conversion of an existing building to accommodate a more intense use, and/or for the demolition and replacement of an existing building, provided that:
1. The development fee shall be calculated on the increase in the equalized assessed value of the improved building.

2. No development fee shall be collected for a demolition and replacement of a residential building resulting from a natural disaster.
3. No development fee shall be collected for the construction of an "accessory structure" which is not a "building" as these terms are defined in the Alpine Borough "Zoning" Ordinance.

E. Nonresidential Development.

- (1) Within all zoning districts, nonresidential developers, except for developers of the types of developments specially exempted below, shall pay a fee equal to two and one-half (2.5%) percent of the equalized assessed value of the land and improvements, for all new nonresidential construction on an unimproved lot or lots.
- (2) Within all zoning districts, nonresidential developers, except for developers of the types of development specifically exempted below, shall also pay a fee equal to two and one-half (2.5%) percent of the increase in equalized assessed value resulting from any additions to existing structures to be used for nonresidential purposes.
- (3) Development fees also shall be imposed and collected when an existing structure is demolished and replaced. The development fee of two and a half (2.5%) percent shall be calculated on the difference between the equalized assessed value of the pre-existing land and improvements and the equalized assessed value of the newly improved structure, i.e., land and improvements, and such calculation shall be made at the time 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 (0).
- (4) 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 two and one-half (2.5%) percent development fee, unless otherwise exempted below.
 - (b) The two and one-half (2.5%) percent fee shall not apply to an increase in equalized assessed value resulting from alterations, change in use within existing building footprint, reconstruction, renovations, and repairs.
 - (c) Nonresidential projects that have received a Certificate of Occupancy or general development plan approval or have entered into a developer's agreement or a redevelopment agreement, all prior to July 17, 2008 (the effective date of P.L. 2008, c.46), shall be exempt from the payment of non-residential development fees, provided that an affordable housing fee of at least one (1%) percent of the equalized assessed value of the improvements is included in the development plan, developer's agreement or redevelopment agreement.
 - (d) Nonresidential developments shall be exempt from the payment of nonresidential development fees in accordance with the exemptions required pursuant to the Statewide Non-Residential Development Fee Act (N.J.S.A. 40:55D-81 through 8.7), as specified in the

Form N-RDF "State of New Jersey Non-Residential Development Certification/Exemption". Any exemption claimed by a developer shall be substantiated by that developer.

- (e) All nonresidential construction of buildings or structures on property used by houses of worship, and property used for educational purposes which is tax-exempt pursuant to R.S.54:4-3.6, provided that the property continues to maintain its tax-exempt status under that statute for a period of at least three (3) years from the date of the Certificate of Occupancy.
- (f) In addition, the following shall be exempt from the imposition of a nonresidential fee:
 - 1. Parking lots and parking structures, regardless of whether the parking lot or parking structure is constructed in conjunction with a nonresidential development or as a stand-alone non-residential development;
 - 2. Any nonresidential development which is an amenity to be made available to the public, including, but not limited to, recreational facilities, community centers and senior centers as defined in section 35 of P.L.2008, c.46 (C.40:55D-8.4), which are developed in conjunction with or funded by a non-residential developer;
 - 3. Nonresidential construction resulting from a relocation of or an on-site improvement to a nonprofit hospital or a nursing home facility;
 - 4. Projects that are located within a specifically delineated urban transit hub, as defined pursuant to section 2 of P.L.2007, c.346 (C.34: 1 B-208);
 - 5. Projects that are located within an eligible municipality, as defined under section 2 of P.L.2007, c.346 (C.34:1B-208), when a majority of the project is located within a one-half (1/2) mile radius of the midpoint of a platform area for a light rail system;
 - 6. Projects determined by the New Jersey Transit Corporation to be consistent with a transit village plan developed by a transit village designated by the New Jersey State Department of Transportation; and
 - 7. Commercial farms and Use Group "U" buildings and structures.
- (g) A developer of a nonresidential development exempted from the nonresidential development fee pursuant to the Statewide Non-Residential Development Fee Act shall be subject to the fee at such time as the basis for the exemption set forth in this subsection no longer applies, and shall make the payment of the nonresidential development fee, in that event, within three (3) years after that event or after the issuance of the final Certificate of Occupancy of the nonresidential development, whichever is later.
- (h) 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 forty-five (45) days of the termination of the property tax exemption. Unpaid nonresidential development fees under these circumstances

may be enforceable by the Borough of Alpine as a lien against the real property of the owner.

- (i) Federal, state, county, and local governments of nonresidential development shall be exempted from paying a development fee.

F. Collection of Fees.

- (1) Alpine Borough shall collect development fees for affordable housing in accordance with the following:
 - (a) The Planning Board Secretary of Alpine Borough shall notify the Alpine Borough Construction Code Official whenever either a preliminary, final or other applicable approval is granted to any development which is subject to the collection of a development fee.
 - (b) For nonresidential developments only, the developer shall also be provided with a copy of Form N-RDF "State of New Jersey Non-Residential Development Certification/Exemption," which is to be completed by the developer as per the instructions provided.
 - 1. The Borough Construction Official shall verify the information submitted by the nonresidential developer as per the instructions provided in the Form N-RDF.
 - 2. The Borough Tax Assessor shall verify exemptions and prepare estimated and final assessments as per the instructions provided in Form N-RDF.
 - (c) Borough Construction Official responsible for the issuance of a building permit shall notify the Borough Tax Assessor of the issuance of the first building permit for a development which is subject to a development fee.
 - (d) Within ninety (90) days of receipt of that notice, the Borough Tax Assessor, based on the plans filed, shall provide an estimate of the equalized assessed value of the development. The equalized assessed value and the required development fee shall be estimated by the Borough Tax Assessor prior to the issuance of the construction permit, with the understanding that the estimate of the equalized assessed value is not intended to establish the equalized assessed value for tax purposes.
- (2) Except as provided in Section E.3. above, fifty (50%) percent of the initially calculated development fee shall be collected at the time of issuance of the Construction Permit. The remaining portion shall be collected at the time of issuance of the Certificate of Occupancy. The developer shall be responsible for paying the difference between the fee calculated at the time of issuance of the Construction Permit and that determined at the time of issuance of the Certificate of Occupancy.
- (3) The Borough Construction Official responsible for the issuance of a final Certificate of Occupancy shall notify the Borough Tax Assessor of any and all requests for the scheduling of a final inspection on property which is subject to a development fee.

- (4) Within ten (10) business days of a request for the scheduling of a final inspection, the Borough Tax Assessor shall confirm or modify the previously estimated equalized assessed value of the improvements of the development; calculate the development fee; and thereafter notify the developer of the amount of the fee.
- (5) Should the Borough fail to determine or notify the developer of the amount of the development fee within ten (10) business days of the request for final inspection, the developer may estimate the amount due and pay that estimated amount consistent with the dispute process set forth in subsection b. of Section 37 of P.L.2008, c.46 (C.40:55D-8.6).
- (6) Upon tender of the remaining development fee, provided the developer is in full compliance with all other applicable laws, the Borough shall issue a final Certificate of Occupancy for the subject property.
 - (a) Regardless of the time of collection of the development fee, the fee shall be based upon the percentage that applies on the date that the construction permit is issued.
 - (b) The Construction Code Official shall forward all collected development fees to Alpine Borough's Chief Financial Officer who shall deposit such fees into the established Housing Trust Fund.
- (7) Appeal of development fees
 - (a) A developer may challenge residential development fees imposed by filing a challenge with the County Board of Taxation. Pending a review and determination by the Board, collected fees shall be placed in an interest-bearing escrow account by the Borough of Alpine. Appeals from a determination of the Board may be made to the tax court in accordance with the provisions of the State Tax Uniform Procedure Law, R.S. 54:48-1 *et seq.*, within ninety (90) days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.
 - (b) A developer may challenge non-residential development fees imposed by filing a challenge with the Director of the Division of Taxation. Pending a review and determination by the Director, which shall be made within forty-five (45) days of receipt of the challenge, collected fees shall be placed in an interest-bearing escrow account by the Borough of Alpine. Appeals from a determination of the Director may be made to the tax court in accordance with the provisions of the State Tax Uniform Procedure Law, R.S. 54:48-1 *et seq.*, within ninety (90) days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.

G. Affordable Housing Trust Fund.

- (1) A Development Fee Ordinance creating a dedicated revenue source for affordable housing was adopted by the Borough on March 22, 2000, by way of Ordinance No. 565. Said Development Fee Ordinance established the Borough's Affordable Housing Trust Fund that will continue to be maintained by the Chief Financial Officer of the Borough of Alpine for the purpose of depositing

development fees collected from residential and nonresidential developers and proceeds from the sale of units with extinguished controls. These funds shall be spent in accordance with N.J.A.C. 5:93-8.16 as described in the sections that follow.

- (2) The following additional funds shall be deposited in the Affordable Housing Trust Fund and shall at all times be identifiable by source and amount:
 - (a) Payments in lieu of on-site construction of a fraction of an affordable unit, where permitted by Ordinance or by Agreement with the Borough of Alpine;
 - (b) Developer contributed funds to make ten (10%) percent of the adaptable entrances in a townhouse or other multistory attached dwelling unit development accessible;
 - (c) Rental income from municipally operated units;
 - (d) Repayments from affordable housing program loans;
 - (e) Recapture funds;
 - (f) Affordable housing enforcement fines and application fees;
 - (g) Proceeds from the sale of affordable units; and
 - (h) Any other funds collected in connection with the Borough of Alpine's affordable housing program.
 - (i) The Borough of Alpine shall provide the Court with written authorization, in the form of a three-party escrow agreement between the municipality, the bank with which the affordable housing fees are deposited by the Borough and maintained by said bank, and a Court approved entity to permit the Court to direct the disbursement of the funds as provided for in N.J.A.C. 5:93-8.19 and 8.20.
 - (j) All interest accrued in the Affordable Housing Trust Fund shall only be used to fund eligible affordable housing activities approved by the Court or a successor agency to COAH.
 - (k) In the event of a failure by the Borough of Alpine to comply with trust fund monitoring and reporting requirements or to submit accurate monitoring reports; or a failure to comply with the conditions of the judgment of compliance or a revocation of the judgment of compliance; or a failure to implement the approved Spending Plan and to expend funds within the applicable required time period as set forth in In re Tp. of Monroe, 442 N.J. Super. 565 (Law Div. 2015) (aff'd 442 N.J. Super. 563); or for other good cause demonstrating the unapproved use(s) of funds, the Court may authorize the State of New Jersey, Department of Community Affairs, Division of Local Government Services (LGS), to direct the manner in which the funds in the Affordable Housing Trust Fund shall be expended, provided that all such funds shall, to the extent practicable, be utilized for affordable housing programs within the Borough of Alpine, or, if not practicable, then within the County or the Housing Region.

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

H. Use of Funds.

- (1) The expenditure of all funds shall conform to a spending plan approved by the Court. Funds deposited in the affordable housing trust fund may be used for any activity approved by the Court to address the Borough of Alpine's fair share obligation and may be set up as a grant or revolving loan program. Such activities include, but are not limited to: preservation or purchase of housing for the purpose of maintaining or implementing affordability controls, rehabilitation, new construction of affordable housing units and related costs, accessory apartments, market to affordable, conversion of existing non-residential buildings to create new affordable units, green building strategies designed to be cost saving, and in accordance with accepted national or state standards, purchase of land for affordable housing, improvement of land to be used for affordable housing, extensions or improvements of roads and infrastructure to affordable housing sites, financial assistance designed to increase affordability, administration necessary for implementation of the Housing Element and Fair Share Plan, and/or any other activity as permitted by the Court and specified in the approved spending plan.
- (2) Funds shall not be expended to reimburse the Borough of Alpine for past housing activities.
- (3) Payments in lieu of constructing affordable housing units when the affordable housing calculation results in fractional units on residential and mixed-use sites shall only be used to fund eligible affordable housing activities within the Borough.
- (4) At least thirty (30%) percent of all development fees collected and interest earned shall be used to provide affordability assistance to very low-, low- and moderate-income households in affordable units included in the Housing Element and Fair Share Plan, provided and in accordance with the following:
 - (a) One-third (1/3) of the affordability assistance portion of development fees collected shall be used to provide affordability assistance to very low-income households earning thirty (30%) percent or less of the regional median income by household size for Housing Region 1, in which the Borough of Alpine is located.
 - (b) Affordability assistance programs may include down payment assistance, security deposit assistance, low interest loans, rental assistance, assistance with homeowners association or condominium fees and special assessments, and assistance with emergency repairs. The specific programs to be used for affordability assistance shall be identified and described within the Spending Plan.

- (c) Affordability assistance for very low-income households earning thirty (30%) percent or less of the regional median income by household size may include buying down the cost of low- or moderate-income units in the Borough's Fair Share Plan to make them affordable to very low-income households (earning thirty (30%) percent or less of median income). The specific programs to be used for very low-income affordability assistance shall be identified and described within the Spending Plan.
 - (d) Payments in lieu of constructing affordable units on site, if permitted by Ordinance or by Agreement with the Borough of Alpine, and funds from the sale of units with extinguished controls shall be exempt from the affordability assistance requirement.
- (5) The Borough of Alpine may contract with a private or public entity to administer any part of its Housing Element and Fair Share Plan, including its programs for affordability assistance, in accordance with N.J.A.C. 5:96-18.
- (6) No more than twenty (20%) percent of all revenues collected from the development fees may be expended on administration, including, but not limited to, the salaries and benefits for Alpine Borough employees or consultant fees necessary to develop or implement a new affordable housing program, a Housing Element and Fair Share Plan, and/or an affirmative marketing program or a rehabilitation program.
- (a) In the case of a rehabilitation program, the administrative costs of the rehabilitation program shall be included as part of the twenty (20%) of collected development fees that may be expended on administration.
 - (b) Administrative funds may be used for income qualification of households, monitoring the turnover of sale and rental units, and compliance with the Court's monitoring requirements.
 - (c) Legal or other fees related to litigation opposing affordable housing sites or related to securing or appealing a judgment from the Court are not eligible uses of the Housing Trust Fund.
- (7) Court approval of Alpine's spending plan constitutes a "commitment" on the part of the Borough of Alpine for expenditure of funds pursuant to N.J.S.A. 52:27D-329.2 and -329.3. with the four-year time period for expenditure designated pursuant to those provisions to commence with the entry of a final Judgment of Repose in accordance with the provisions of *In re Tp. of Monroe*, 442 N.J. Super. 565 (Law Div. 2015) (Aff'd 442 N.J. Super. 563.)

I. Monitoring.

Beginning on May 31, 2024, the Borough of Alpine shall provide annual reporting of Affordable Housing Trust Fund activity to the State of New Jersey, Department of Community Affairs, Council on Affordable Housing or Local Government Services or other entity designated by the State of New Jersey, with a copy provided to Fair Share Housing Center and posted on the municipal website, using forms developed for this purpose by the New Jersey Department of Community Affairs, Council on Affordable Housing or Local Government Services. The reporting shall include an accounting of all Affordable Housing Trust Fund activity, including the sources and amounts of funds collected and the amounts and purposes for which

any funds have been expended. Such reporting shall include an accounting of development fees collected from residential and nonresidential developers, payments in lieu of constructing affordable units on site (if permitted by Ordinance or by Agreement with the Borough), funds from the sale of units with extinguished controls, barrier free escrow funds, rental income from Borough owned affordable housing units, repayments from affordable housing programs, as well as an accounting of the expenditures of revenues and implementation of the Spending Plan approved by the Court.

J. Ongoing Collection of Development Fees and Expiration of Section.

- (1) The ability for the Borough of Alpine to impose, collect and expend development fees shall expire with the expiration of the repose period covered by its judgment of compliance and repose unless Alpine Borough has first filed an adopted Housing Element and Fair Share Plan with the Court or with a designated State administrative agency, has petitioned for a judgment of compliance from the Court or for Substantive Certification or its equivalent from a State administrative agency authorized to approve and administer municipal affordable housing compliance, and has received approval of its Development Fee Ordinance from the entity that will be reviewing and approving the Housing Element and Fair Share Plan.
- (2) If the Borough of Alpine fails to renew its ability to impose and collect development fees prior to the date of expiration of judgment of compliance, it may be subject to forfeiture of any or all funds remaining within its municipal affordable housing trust fund.
 - (a) Any funds so forfeited shall be deposited into the "New Jersey Affordable Housing Trust Fund" established pursuant to section 20 of P.L. 1985, c.222 (C.52:27D-320).
 - (b) The Borough of Alpine shall not impose a residential development fee on a development that receives preliminary or final site plan approval after the expiration of its judgment of compliance, nor shall the Borough of Alpine retroactively impose a development fee on such a development.
 - (c) The Borough of Alpine shall not expend any of its collected development fees after the expiration of its Substantive Certification or judgment of compliance.

SECTION 3. The Borough Clerk is directed to give notice at least ten (10) days prior to a hearing on the adoption of this Ordinance to the Bergen County Planning Board and to all other persons or entities entitled thereto pursuant to N.J.S.A. 40:55D-15 and 40:55D-62.1. The Borough Clerk shall execute any necessary Proofs of Service of the notices required by this section, and shall keep any such proofs on file along with the Proof of Publication of the notice of the required public hearing on the proposed change.

SECTION 4. After introduction, the Borough Clerk is hereby directed to submit a copy of the within Ordinance to the Planning Board 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 Borough Council, within thirty-five (35) days after referral, a report including identification of any provision 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 5. If any paragraph, subdivision, clause or provision of this Ordinance shall be adjudged invalid, such adjudication shall apply only to the section, paragraph, subdivision, clause or provision so adjudged and the remainder of the Ordinance shall be deemed valid and effective.

SECTION 6. All ordinances or parts of ordinances inconsistent with or in conflict with this Ordinance are hereby repealed to the extent of such inconsistency.

SECTION 7. This ordinance shall take effect immediately upon: (i) adoption; and (ii) publication in accordance with the laws of the State of New Jersey.

**BOROUGH OF ALPINE
ORDINANCE NO. 836**

MANDATORY AFFORDABLE HOUSING SET-ASIDE ORDINANCE

AN ORDINANCE AMENDING, SUPPLEMENTING AND REVISING CHAPTER 220, "ZONING," OF THE CODE

OF THE BOROUGH OF ALPINE, COUNTY OF BERGEN, STATE OF NEW JERSEY, TO ESTABLISH MANDATORY AFFORDABLE HOUSING SET-ASIDE REQUIREMENTS

WHEREAS, the Governing Body of the Borough of Alpine seeks to ensure that new multi-family residential development in Alpine will provide its fair share of affordable units and assist with the Borough's continuous efforts to address its affordable housing obligation; and

WHEREAS, for the above reasons, and in order to provide a realistic opportunity for the development of affordable housing through means other than inclusionary zoning, it is in the best interest of the Borough to adopt mandatory affordable housing set-asides for all new multi-family residential developments of five (5) dwelling units or more that become permissible through either a use variance, a density variance increasing the permissible density at the site, a rezoning permitting multi-family residential housing where not previously permitted, or a new or amended redevelopment/rehabilitation plan;

NOW THEREFORE BE IT ORDAINED, by the Mayor and Council of the Borough of Alpine, in the County of Bergen, and State of New Jersey, that:

SECTION 1. Section 220-21 of the Code of the Borough of Alpine, entitled "Affordable Housing Administration," is hereby deleted in its entirety and replaced with the following:

§220-21 Mandatory Affordable Housing Set-Aside.

- A.** Purpose. This section is intended to ensure that all new multi-family residential developments of five (5) dwelling units or more that become permissible through either a use variance, a density variance increasing the permissible density at the site, a rezoning permitting multi-family residential housing where not previously permitted, or a new or amended redevelopment/rehabilitation plan produces affordable housing at a set-aside rate of twenty percent (20%). This section shall apply except where inconsistent with applicable law.
- B.** Mandatory Set-Aside Requirement.
 - (1)** Any multi-family residential development, including the residential portion of a mixed-use project, that is approved to contain five (5) or more new dwelling units as a result of either a use variance, a density variance increasing the permissible density at the site, a rezoning permitting multi-family residential housing where not previously permitted, or a new or amended redevelopment/rehabilitation plan shall be required to set aside a minimum percentage of units for affordable housing.
 - (2)** The minimum affordable housing set-aside percentage for all developments shall be twenty percent (20%). Where the set-aside percentage results in a fractional unit, the total set-aside requirement shall be rounded down to the next whole number if the fraction is less than one-half and shall be rounded up to the next whole number if the fraction is equal to or greater than one-half.

- (3) Nothing in this section precludes the Borough or the reviewing Borough land use board from imposing an affordable housing set-aside in a development not required to have a set-aside pursuant to this section consistent with N.J.S.A. 52:27D-311(h) and other applicable law.
- (4) This requirement does not create any entitlement for a use variance, a density variance increasing the permissible density at a site, a rezoning permitting multi-family residential housing where not previously permitted, a new or amended redevelopment/rehabilitation plan, or for approval of any particular proposed project.
- (5) This requirement does not apply to any sites or specific zones otherwise identified in the Borough's Housing Element and Fair Share Plan, for which density and set-aside standards shall be governed by the specific standards set forth therein.
- (6) Furthermore, the provisions of this section shall not apply to residential expansions, additions, renovations, replacement or any other type of residential development that does not result in a net increase in the number of dwellings of five (5) or more.
- (7) All subdivision and site plan approvals of qualifying residential developments shall be conditioned upon compliance with the provisions of this section.
- (8) All affordable units to be produced pursuant to this section shall comply with the Borough's Affordable Housing Regulations at Chapter 60 of the Borough Code and the Uniform Housing Affordability Controls rules (N.J.A.C. 5:80-26.1 et seq.), as may be amended from time to time.

SECTION 2. All Ordinances of the Borough of Alpine, which are inconsistent with the provisions of this Ordinance, are hereby repealed to the extent of such inconsistency.

SECTION 3. If any 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.

SECTION 4. This Ordinance shall take effect immediately upon final passage, approval, and publication as required by law.

**BOROUGH OF ALPINE
ORDINANCE NO. 837**

**AN ORDINANCE TO AMEND CHAPTER 220 ENTITLED "ZONING" OF THE CODE OF THE
BOROUGH OF ALPINE TO ESTABLISH A NEW "COAH-4 OVERLAY" ZONE DISTRICT**

NOW, THEREFORE, BE IT ORDAINED by the Borough Council of the Borough of Alpine, County of Bergen, State of New Jersey, that amendments set forth below are made to the Code of the Borough of Alpine, Chapter 220 entitled "Zoning."

Section 1. Section 220-3, "Zone Districts," **Subsection A, "Districts Established,"** shall be amended to add the following new zone district to the list of zone districts:

COAH-4 Overlay

Section 2. Section 220-3, "Zone Districts," **Subsection B, "Boundaries,"** shall be amended to read as follows:

- B. Boundaries. The boundaries of the above created districts are hereby established as shown on the Zoning Map dated April 23, 1979, as amended or supplemented, which Map is hereby made a part of this chapter.

Section 3. The Zoning Map referenced at Section 220-3, **Zone Districts," Subsection B, "Boundaries,"** shall be amended to rezone Block 80 Lots 10 and 11 into the COAH-4 Overlay Residential District.

Section 4. Section 220-3, "Zone Districts" **Subsection D, "Limitation of Coverage on Land,"** Paragraph (1), shall be amended to include a new 'COAH-4 Overlay' Residential row, within which the phrase 'See §220-24' shall be inserted.

Section 5. Chapter 220 shall be amended and supplemented by the insertion of a new Section §220-24 entitled "COAH-4 Overlay Residential Zone." This new section shall read as follows:

§ 220-24 COAH-4 Overlay Residential Zone

- A. Purpose. The purpose of the COAH-4 Overlay Zone to allow for inclusionary development on Block 80 Lots 10 & 11, and thereby assist in the Borough's continuing efforts to address the fair share housing obligation of the Borough of Alpine under the New Jersey Fair Housing Act ("FHA"), applicable Council on Affordable Housing ("COAH") regulations, and the Borough's Housing Element and Fair Share Plan. The overlay district contemplates that the property, consisting of approximately 8 acres, could be developed as zoned historically, or in the alternative, the property could contain up to twenty-eight (28) market-rate dwellings and seven (7) multifamily affordable dwellings units that are affordable to low-and moderate-income households as establish by COAH regulations.
- B. Principal Use. The following principal uses are permitted in the COAH-4 Overlay Residential Zone:

(1) Multifamily dwellings.

C. Accessory Uses. The following accessory uses are permitted in the COAH-4 Overlay Residential Zone:

(1) Private amenities and facilities intended for use by residents of the premises and their guests, including but not limited to, clubhouses, lounges, game rooms, pool rooms, business centers, fitness centers, swimming pools (both indoors and outdoors), tennis courts, paddle courts, tot lots/children's play areas, dog runs, gazebos, multi-use recreation fields, walking trails, benches/seating, and passive recreation areas.

(2) Balconies, decks and terraces for individual units, along with rooftop decks and amenities.

(3) Private garages and driveways.

(4) Off-street parking lots.

(5) Fences, walls, gates and guard houses.

(6) Signage.

(7) Storage sheds.

(8) Emergency standby generators.

(9) Any other use which is subordinate and customarily incidental to the permitted principal use, including, but not limited to, leasing/sales/management offices, maintenance areas, trash/recycling facilities, solar energy devices, security cameras and related devices, and electric automobile charging stations.

D. Affordable housing requirements. The following affordable housing requirements shall apply to development in the COAH-4 Overlay Residential Zone:

(1) All residential development constructed in the COAH-4 Overlay Residential Zone shall be required to set aside a minimum percentage of units for affordable housing. The minimum set aside shall be twenty percent (20%). When calculating the required number of affordable units, any computation resulting in a fraction of a unit shall be rounded upwards to the next whole number if said fraction is equal to or greater than 0.5 unit, or downwards to the next whole number if said fraction is less than 0.5 unit.

(2) All affordable units to be produced pursuant to this section shall comply with the Borough's Affordable Housing Ordinance at Chapter 60 of the Borough Code, as may be amended and supplemented, the Uniform Housing Affordability Controls ("UHAC")(N.J.A.C. 5:80-26.1 et seq.), or any successor regulation, and any applicable order of the Court, including a judgement of compliance and repose order.

(3) Administrative agent. All affordable units shall be administered by a qualified administrative agent paid for by the developer. The developer shall be responsible for

all costs associated with the initial sale/rental of the affordable units, for the continuing administration of the affordable units, and for the preservation of the creditworthiness of the units.

(4) All amenities and site services which are made available to the market-rate units shall also be made available to the affordable units on the same terms as the market-rate units.

E. Area, bulk and density standards. The following area, bulk and density standards shall apply to development in the COAH-4 Overlay Residential Zone:

Requirement	COAH-4 Overlay Residential Zone
Minimum Lot Area	3 acres
Maximum Number of Dwelling Units	35 units
Minimum Yard Setbacks:	
Front Yard	125
North Side Yard	50
South Side Yard	100
Rear Yards	100
Maximum Building Height	3 stories/39 feet <small>(See Note 2 Below)</small>
Maximum Building Coverage	12 percent

NOTES:

- 1 Decks, balconies and like constructions attached to a building shall be permitted within this minimum yard setback, provided that they shall be located a minimum of 85 feet from the lot line.
- 2 Irrespective of any other provisions regarding building height measurement, the following shall apply with respect to measurement of building height in the COAH-4 Overlay Residential Zone:
 - a. The maximum height shall be calculated individually for each section of a building containing multi family dwelling units.

- b. The maximum building height shall be the vertical distance measured from the finished first floor to the highest point of the roof if the roof is a flat roof, or to the mean level between the roof eaves and the highest ridge point in the case of a pitched roof.
 - c. Excluded from the calculation of building height shall be chimneys, steeples, handrails for 'widow's walks and other architectural features that are no greater than four feet in height and which occupy no more than five percent of the total roof area.
- F. Supplemental standards. The following supplemental standards shall apply to development in the COAH-4 Overlay Residential Zone:
 - (1) Access. A single driveway shall provide access to Route 9W. This driveway may be shared with the tower facility to the west of the affordable housing site. If the tower facility does share the affordable housing site driveway, the existing tower driveway no longer necessary shall be removed and revegetated.
 - (2) Electric vehicle charging stations and Make Ready spaces shall be provided as required by the New Jersey Model Electric Vehicle Ordinance pursuant to P.L. 2021,c. 171.
 - (3) The applicant shall provide off-street parking consistent with the Residential Site Improvement Standards ("RSIS"). In addition, except for barrier-free parking, parking spaces shall measure nine (9) feet in width by eighteen (18) in depth. §220-17 related to off-street parking shall not apply to off-street parking facilities in the COAH-4 Overlay Residential Zone.
 - (4) No building intended and designed for human habitation shall be located within 425 feet of the base of the communication tower to the west and located on property N/F designated as Block 80 Lots 10 & 11.
 - (5) Parking setback from property lines. All portions of any parking facility shall be setback a minimum of 100 feet from the south side property line. No portion of any parking facility except for a single drive shall be closer than 50 feet to the front property line.
 - (6) All off-street parking and internal drives shall be suitably buffered and screened to minimize views from adjacent properties and the public right-of-way.
 - (7) Ground Mounted Signage. One (1) ground mounted sign shall be permitted in the front yard if setback ten (10) feet from the front lot line. Said sign shall not exceed eight (8) feet in height and the message board shall not exceed 10 square feet in size. Any illumination of said sign shall only be by ground mounted lamps which shall be aimed to only illuminate the sign and not interfere with drivers on Route 9W. A landscape plan shall accompany

all sign proposals so the Planning Board can ensure the sign does not distract from a desirable visual environment.

(8) Building offsets. For buildings with more than three (3) attached multifamily units, no more than three (3) side-by-side, contiguous units shall have the same front façade plane. A minimum three (3)-foot offset variation in front façade plane shall be provided between groupings within the same structure.

(9) Development of the subject parcel as an affordable housing site will qualify as a major development pursuant to New Jersey Department of Environmental Protection most recent stormwater regulations. The applicant shall manage both the quality and quantity of all stormwater flows consistent with requirements promulgated by the State of New Jersey. No detention basin or retention basin shall be located within 100 feet of the south side property line.

G. Accessory buildings and structures. §220-13 related to accessory buildings and structures shall not apply to accessory buildings and structures in the COAH-4 Overlay Residential Zone. Instead, the following requirements shall apply to all accessory buildings in the COAH-4 Overlay Residential Zone:

(1) The maximum height of accessory buildings and structures shall be 22 feet.

(2) Accessory buildings and pools shall meet the street and property line setback requirements applicable to principle buildings. All accessory buildings shall be set back at least 35 feet from a principal building.

(3) Architectural design and materials used in the construction of accessory buildings shall be consistent with those used in the construction of principal buildings.

(4) The provisions of this section shall not apply to signs, off-street parking, fences and walls, which are regulated elsewhere in this section.

(5) Emergency standby generators shall be subject to the measured sound pressure levels of §153-3 (Noise Ordinance) and shall be set back at least 35 feet from a lot line or public right-of-way. All such equipment shall be suitably buffered and screened to minimize views from adjacent properties and the public right-of-way.

H. Refuse and recycling collection areas shall be either fully contained within a building or adequately screened from public view through a combination of solid fencing and landscape plantings.

I. Fences and walls. Fences, walls, gates, pillars, piers, posts and like constructions in the COAH-4 Overlay Residential Zone shall be subject to Chapter 111, "Fences." In addition, the

following supplemental standards shall apply to retaining walls in the COAH-4 Overlay Residential Zone:

- (1) The maximum height of a retaining wall shall be six (6) feet. Tiered retaining walls shall be measured separately and each tier may be up to six (6) feet in height, provided that there is minimally a five (5)-foot separation between retaining walls and that same is landscaped.
- (2) Site retaining walls may be constructed of finished concrete, stone, modular block, "big block" or soldier-pile with façade treatment.
- (3) The maximum height of walls along any property line shall be four feet, irrespective of any other regulation to the contrary.

J. Landscaping. The following landscaping requirements shall apply to development in the COAH-4 Overlay Residential Zone:

- (1) A landscape plan shall be required, which shall be designed to incorporate a variety of plant material to enhance the character of the site and shall include foundation plantings and perimeter trees and shrubs.
- (2) Shade trees shall be minimally 2 1/2-inch to three-inch caliper. Evergreen trees shall vary between seven to eight feet and eight to 10 feet in height. Shrubs shall be at least 24 inches in height.

K. Lighting. The following landscaping requirements shall apply to development in the COAH-4 Overlay Residential Zone:

- (1) All exterior lights shall be designed so as to reduce glare, lower energy usage and direct lights only to where they are needed.
- (2) All exterior lights shall be light-emitting diode (LED) light of the soft white category and shall be Dark Sky compliant.
- (3) All exterior lights shall be focused downward so that the direct source of light is not visible from adjoining streets or properties.
- (4) The illumination of tennis courts and other paddle court games shall be consistent with the provisions set forth at §220-5.D.

L. General design standards. Building plans and elevations shall show a variation in design to be achieved by the types of roofs, heights of eaves and peaks, building materials and

architectural treatment of the building facade that is utilized. The following design standards shall be utilized in the COAH-3 Zone:

- (1) Architectural elements such as varied roof forms, articulation of the facade, breaks in the roof, and walls with texture materials and ornamental details shall be incorporated to add visual interest.
- (2) Roof height, pitch, ridgelines and roof materials shall be varied to create visual interest and avoid repetition.
- (3) Architectural elements such as fenestrations and recessed planes shall be incorporated into facade design. Architectural treatments and visual interest shall be applied to all visibly exposed facades of a building. All facades of a building shall be architecturally designed to be consistent with regard to style, materials, colors and details.
- (4) A variety of building colors, materials and textures are encouraged.
- (5) Architectural features that enhance the facade or building form, such as decorative moldings, windows, shutters, dormers, chimneys, balconies and railings, are encouraged.
- (6) All entrances to a building shall be defined and articulated by architectural elements such as lintels, pediments, pilasters, columns, porticoes, porches, overhangs, railings, etc.
- (7) Heating, ventilating and air-conditioning systems, utility meters and regulators, exhaust pipes and stacks, satellite dishes and other telecommunications receiving devices shall be screened or otherwise specially treated to be, as much as possible, inconspicuous as viewed from the public right-of-way and adjacent properties.
- (8) All other applicable requirements of this chapter, and of other chapters of the Borough of Alpine Code, shall apply to development within the COAH-4 Overlay Residential Zone unless specifically superseded by the regulations of this section.

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 Borough of Alpine, the provisions hereof shall be determined to govern. All other parts, portions and provisions of the Code of the Borough of Alpine are hereby ratified and confirmed, except where inconsistent with the terms hereof.

Section 10. The Borough Clerk is directed to give notice at least ten (10) days prior to a hearing on the adoption of this ordinance to the Bergen County Planning Board and to all other persons entitled thereto pursuant to N.J.S.A. 40:55D-15, and N.J.S.A. 40:55D-63 (if required).

Section 11. After introduction, the Borough Clerk is hereby directed to submit a copy of the within Ordinance to the Planning Board of the Borough of Alpine 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 Borough Council, 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 be presented to the Mayor for his approval and signature, which approval shall be granted or denied within ten (10) days of receipt of same, pursuant to N.J.S.A. 40:69A-149.7. If the Mayor fails to return this Ordinance with either his approval or objection to same within ten (10) days after it has been presented to him, then this Ordinance shall be deemed approved.

Section 13. This Ordinance shall take effect immediately upon (1) adoption; (2) approval by the Mayor pursuant to N.J.S.A. 40:69A-149.7; (3) publication in accordance with the laws of the State of New Jersey; and (4) filing of the final form of adopted ordinance by the Clerk with (a) the Bergen County Planning Board pursuant to N.J.S.A. 40:55D-16, and (b) the Borough Tax Assessor as required by N.J.S.A. 40:49-2.1.