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- Ordinance

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September 10, 1984

ORDINANCE

Affordable Housing Ordinance of the Borough of South
Plainfield

An Ordinance to Amend the Code of The Borough of South Plainfield, New Jersey creating an Affordable Housing Agency and fixing procedures for providing low and moderate income housing in the Borough of South Plainfield.

Be It Ordained by the Governing Body of the Borough of South Plainfield, in the County of Middlesex and the State of New Jersey as follows:

ARTICLE I-TITLE

100 Short Title

This Ordinance shall be known and may be cited as: The Affordable Housing Ordinance of the Borough of South Plainfield.

, ARTICLE II - PURPOSE

200 Purpose

The purpose of this Section is to:

- (a) Promote the general welfare by providing for a variety of housing choices within the Borough;
- (b) Satisfy the Borough's constitutional obligation under Mount Laurel II to provide a realistic opportunity for the development of its fair share of the regional need for low and moderate income housing; and
- (c) Comply with the May 22, 1984 Judgement of the Superior Court of New Jersey in Urban League of Greater New Brunswick, et. al. v. Mayor and Council of the Borough of Carteret, et.al., by establishing a mechanism for assuring that housing units designated for occupancy by low and moderate income households remain affordable to, and occupied by, low and moderate income households.

ARTICLE III - DEFINITIONS

300 Definitions

The following terms wherever used or referred to in this section shall have the following meanings unless a different meaning clearly appears from the context:

- (a) "Affordable Housing Agency" shall mean the Agency referred to in Article X of this Ordinance or its designee.
- (b) "Income Ceiling" shall mean 80% of the regional median income for moderate income households and 50% of the regional median income for low income households.
- (c) "Low Income Household" shall mean a household whose income does not exceed 50% of the regional median income, with adjustments for household size as determined by the Affordable Housing Agency.
- (d) "Low Income Unit" shall mean a dwelling unit which is subject to the price and occupancy requirements of this section and whose sales price or rental charge does not exceed the maximum price or charge that is affordable by low income households.
- (e) "Moderate Income Household" shall mean a household whose income is greater than 50%, but does not exceed 80%, of the regional median income, with adjustments for household size, as determined by the Affordable Housing Agency.
- (f) "Moderate Income Unit" shall mean a dwelling unit which is subject to the price and occupancy requirements of this section and whose sales price or rental charge does not exceed the maximum price or charge that is affordable by moderate income households.
- (g) "Regional Median Income" shall mean the median income for the present housing need region identified in the opinion of the Superior Court in AMG Realty Company v. Township of Warren, dated July 16, 1984. For ease of calculation, regional median income shall be deemed to mean 94% of the median income of the Primary Metropolitan Statistical Area (PMSA) in which Middlesex County is located.

ARTICLE IV - GENERAL PROVISIONS

400 General Provisions

- 401 Wherever reference is made to low or moderate income units in the Zoning Ordinance, the standards, qualifications, definitions, and procedures set forth in this section shall apply.

- 402 Except as otherwise expressly provided herein, no low or moderate income unit shall be offered for sale or rental except at prices that are affordable to low or moderate income households.
- 403 Except as otherwise expressly provided herein, no low or moderate income unit shall be sold, resold, rented or, re-rented except to a household that has been qualified as a low or moderate income household.
- 404 A covenant embodying these restrictions shall be recorded with the deed for all sales of property subject to the provisions of this section.

ARTICLE V - QUALIFIED HOUSEHOLDS

500 Qualification of Low and Moderate Income Households.

A prospective purchaser or renter of a low or moderate income unit must be qualified as a low or moderate income household by the Affordable Housing Agency prior to the purchase or sale of such unit. In making this determination, the Affordable Housing Agency shall apply the standards contained in the definitions of low and moderate income households set forth in Section 300 of this Ordinance. The Affordable Housing Agency shall periodically recalculate the regional median income and determine adjustments for household size based on changes in the official estimates of the median income for the Primary Metropolitan Statistical Area (PMSA) in which the Borough is located.

ARTICLE VI - MAXIMUM SALES PRICES AND RENTALS

600 Determination of Maximum Sales Prices and Rental Charges.

Prior to the sale, resale, rental, or re-rental of a low or moderate income unit, the Affordable Housing Agency shall determine the maximum sales price or rental charge that may be charged for that size unit in each income category.

601 Maximum Sales Price

The following procedure shall apply to determine maximum sales price:

- (a) A base price shall be calculated such that the sum of the monthly payments for principal, interest, taxes, fire, theft and liability insurance, and homeowner association fees, if any, shall not exceed 28% of the low or moderate income ceiling determined in accordance with section 500. A ten percent (10%) down payment requirement and a thirty (30) year mortgage term shall be assumed in making this calculation.

In calculating the monthly interest payment, the interest rate provided by the developer as being available to the subject development shall be utilized if the Affordable Housing Agency determines that it is in fact reasonably available to low or moderate income households. If the developer or any other entity offers to buy down the prevailing interest rate for a minimum of three years commencing at the time of purchase, and the terms of the buydown provide that the increase in interest rate charged does not exceed one half of one percent (0.5%) per year during the period of the buydown, the interest rate for the first year of the buydown period shall be used in the above calculation to determine monthly interest payment. If the increase in the interest rate exceeds one half of one percent (0.5%) per year, the average interest rate for the period of the buydown shall be used.

If the developer proposes that an adjustable rate Mortgage (ARM) be used to calculate the monthly interest rate payment, the initial interest rate of that mortgage shall be used only if the maximum annual average increase does not exceed one half of one percent (0.5%). Otherwise, a rate which is the average of the initial interest rate and the highest possible rate in effect after three years shall be used.

- (b) In order to assure that low and moderate income units are affordable by households whose income is less than the low or moderate income ceiling, the maximum sales price that may be offered for each such unit shall not exceed ninety percent (90%) of the base price for that size unit in each category of low or moderate income housing.
- (c) Prior to final approval of any development subject to these provisions, the Affordable Housing Agency shall determine the maximum sales prices by unit size for the low and moderate income units in the development and shall so notify the developer. These prices shall remain in effect for a period of one year or until all of the low and moderate income units have been sold, whichever occurs first. The developer may request a modification of the maximum sales prices at any time by applying to the Affordable Housing Agency for recalculation of these prices based on changes in any of the factors used to calculate these prices.
- (d) Prior to the resale of any low or moderate income unit, the Affordable Housing Agency shall determine the maximum sales price for that unit in accordance with a formula developed by the Agency which takes into account increases in a generally accepted price or income index, reasonable improvements to the property as determined by the Agency, and reasonable out-of-pocket costs of the sale as determined by the Agency, and which, to the extent feasible, ensures that the sales price will be

consistent with the affordability standards set forth in subsections (a) and (b) above.

602 Maximum Rental Charges.

The following procedure shall apply to determine maximum rental charges.

- (a) A base rent shall be calculated such that the sum of the monthly rental payment, including utilities, does not exceed thirty percent (30%) of the low or moderate income ceiling, determined in accordance with subsection 601(d) above.
- (b) In order to assure that low and moderate income units are affordable by households whose income is less than the low or moderate income ceiling, the maximum gross rent that may be charged for any such unit shall not exceed ninety percent (90%) of the base rent for that size unit in each category of low or moderate income housing.
- (c) If the cost of all utilities, including heat, hot water, cooking fuel, and electricity, is not included in the monthly rental charge, an estimated monthly charge for those utilities not included in the rent shall be calculated for each unit size. This estimated charge shall be subtracted from the maximum gross rent to determine the maximum rental charge that may be imposed for each low and moderate income unit.
- (d) Once the maximum rental charges have been determined for a development subject to the provisions of this section, such charges shall not be increased without the prior written approval of the Affordable Housing Agency. The Agency shall establish appropriate criteria and procedures for allowing periodic rental charge increases consistent with the affordability standards set forth in subsections (a) and (b) above. No more than one rental charge increase shall be allowed for any unit or group of units within any twelve (12) month period.

603 Relationship Between Household Size and Unit Size.

For the purpose of determining maximum sales prices and rental charges pursuant to Subsections 601 and 602 of this Ordinance, the ceiling incomes of the following household sizes shall be used to determine the maximum prices for each of the following unit sizes:

efficiency	1 person
1 bedroom	2 persons
2 bedrooms	3 persons
3 bedrooms	5 persons
4 bedrooms	6 persons

604 Affordable Price Tables.

The Affordable Housing Agency shall prepare and maintain tables of maximum affordable prices for low and moderate income households by unit size as a guide for determining maximum sales prices and rental charges for low and moderate income units.

Table I of this Ordinance contains the maximum affordable sales prices for condominium ownership, Table II contains the maximum affordable sales prices for fee simple ownership, and Table III contains the maximum affordable rental charges for low and moderate income households, calculated using the median income data available as of April 30, 1984. The following assumptions were made in preparing the sales tables:

- (a) A ten percent (10%) downpayment and a mortgage with a thirty (30) year term.
- (b) The property tax rate in effect in South Plainfield as of April 30, 1984.
- (c) Fire, theft and liability insurance was estimated to be \$40 per \$10,000 house value.
- (d) Homeowners' association fees were estimated to be \$150 annually per \$10,000 house value.

ARTICLE VII - RESTRICTIONS

700 Expiration of restrictions.

- 701 Restrictions on the resale of low or moderate income sales units shall expire thirty (30) years from the date of the initial sale of the property.
- 702 Low or moderate income rental units shall remain subject to the requirements of this section indefinitely, except that the limitations set forth in Sections 701 and 800 shall apply if such rental units are converted into condominiums, co-operatives, or some other form of ownership property.

ARTICLE VIII - FORECLOSURE

800 Limitations on Restrictions in Event of Foreclosure.

- 801 Notwithstanding the restriction on resale of low or moderate income units set forth in section 701, there shall be no such restriction in the event of foreclosure and resale by a lender after foreclosure.

802 In the event of foreclosure, the Affordable Housing Agency shall attempt to identify qualified low and moderate income purchasers and shall give notice to the lender of their identity. The Affordable Housing Agency shall undertake other efforts to ensure that low and moderate income units will not be made unavailable to low and moderate income households by virtue of foreclosure. Toward this end, the Affordable Housing Agency shall work with developers of low or moderate income housing to incorporate into deeds or covenants appropriate language providing the Agency with limited rights to intervene prior to foreclosure in order to maintain the property as a low or moderate income unit.

ARTICLE IX - MARKETING

900 Affirmative Marketing

Developers of low or moderate income units shall affirmatively market those units to all segments of the lower income population within the Mount Laurel housing region in which the Borough is located and to all qualified low or moderate income households irrespective of race, color, religion, sex or national origin. Toward that end, the developer shall formulate and submit an affirmative marketing plan acceptable to the Affordable Housing Agency, which plan shall be incorporated into any approval of the development application. At a minimum, the plan shall provide for advertisement in newspapers with general circulation in the following urban areas: Jersey City, Newark, Elizabeth, Patterson, New Brunswick and Perth Amboy. The plan shall also require the developer to notify the following agencies on a regular basis of the availability of any low or moderate income units: The Civic League of Greater New Brunswick, the Housing Coalition of Middlesex County, the Middlesex County Office of Community Development, and other fair housing centers, housing referral organizations, and government social service and public welfare departments located in the eleven-county present housing need region identified in the opinion of the Superior Court in AMG Realty Company v. Township of Warren, dated July 16, 1984.

ARTICLE X - AGENCY

1000 Affordable Housing Agency

1001 Creation and Purpose.

There is hereby created an Affordable Housing Agency ("Agency") whose purpose and responsibilities shall be as follows:

- (a) To create a body of rules and regulations to implement the policies and goals of this section, specifically; to ensure that housing units designated as low or moderate income units, once constructed, shall remain

affordable to, and be occupied by, low or moderate income households;

- (b) To ensure the continued availability of low or moderate income units by: (1) reviewing the qualifications of prospective purchasers and tenants to ensure that they qualify as low or moderate income households; (2) determining the maximum sale, resale, and rental charges for low and moderate income units to ensure that the units are affordable to low or moderate income households; (3) requiring that a covenant be recorded with each deed restricting the resale of low or moderate income units to low or moderate income households; and (4) where appropriate, maintaining a waiting list of persons who have been qualified as low or moderate income households and are eligible to rent or purchase a low or moderate income unit;
- (c) To restrict the installation of improvements or amenities within or as a part of low or moderate income units which would unduly increase the resale price or rental charge of such units above the amounts considered by the Agency to be affordable by low or moderate income households, and to control the low or moderate income unit resale price adjustments for homeowner installed improvements;
- (d) To undertake efforts to ensure that units designated as low or moderate income units do not thereafter become unavailable to low or moderate income households by virtue of foreclosure; and
- (e) To monitor the marketing practices of developers of low and moderate income units to ensure that they comply with the affirmative marketing requirements set forth in Section 900 above.

1002 Composition

- (a) The Agency shall consist of seven (7) regular members and two (2) alternate members. Five (5) members shall constitute a quorum.
- (b) The Mayor shall appoint two (2) regular members of the Agency and one (1) alternate. The Municipal Council shall appoint five (5) members of the Agency and one (1) alternate.
- (c) Alternate members shall be designated at the time of appointment and the Mayor shall designate his/her alternate as "Alternate No. 1" and the Council shall designate their alternate as "Alternate No. 2".
- (d) The initial terms of the Mayor's appointments shall be one (1) year and four (4) years for the regular members and two (2) years for the alternate member. The terms of the Council's appointments shall be one (1) year,

two (2) years, two (2) three (3) year terms and one (1) four (4) year term and two (2) years for the alternate member. Thereafter, the term of each regular member shall be four (4) years; and the term of each alternate member shall be two (2) years.

- (e) No member may hold any elective office or position under the municipality. No member of the Agency shall be permitted to act on any matter in which he has, either directly or indirectly, any personal or financial interest. A member may, after public hearing if he requests it, be removed by the governing body for cause. A vacancy occurring otherwise than by expiration of term shall be filled for the unexpired term only.
- (f) The Agency shall elect a chairman and vice-chairman from its members and select a secretary who may or may not be a member of the Agency.
- (g) Alternate members may participate in discussions of the proceedings but may not vote except in the absence or disqualification of a regular member. A vote shall not be delayed in order that a regular member may vote instead of an alternate member. In the event that a choice must be made as to which alternate member is to vote, Alternate No. 1 shall vote.

1003 Powers

1003.1 The Agency is hereby granted and shall have and exercise, in addition to other powers herein granted, all the powers necessary and appropriate to carry out and execute the purposes of this Ordinance, including but not limited to the following:

- (a) To prepare and forward to the Borough Council such rules and regulations as it deems necessary or appropriate to implement the purposes of this Ordinance. Said rules and regulations shall be filed with the Clerk and shall be subject to review and modification by the Borough Council;
- (b) To supply information to developers and low or moderate income households to help them comply with the provisions of this Ordinance; and
- (c) To hold hearings upon due notice and adjudicate applications of individuals or families who believe themselves to be low or moderate income households.

1003.2 The Affordable Housing Agency shall give ten (10) days written notice of any hearing to all parties involved, and shall give all interested persons an opportunity to be heard.

ARTICLE XI - TABLES

1100 Table I

PRICING OF SALES UNITS AFFORDABLE TO LOW AND MODERATE INCOME
HOUSEHOLDS IN SOUTH PLAINFIELD

	EFFICIENCY	ONE BR	TWO BR	THREE BR
<u>LOW INCOME</u>				
Household Size	1	2	3	5
Ceiling Income	\$10,750	\$12,300	\$13,850	\$16,600
28% of Income	\$ 3,010	\$ 3,444	\$ 3,878	\$ 4,648
INTEREST RATE:	MAXIMUM AFFORDABLE PRICE - CONDOMINIUM UNITS (See Note 1)			
9%	\$20,900	\$23,900	\$26,900	\$32,200
10	19,700	22,500	25,300	30,400
11	18,600	21,300	23,900	28,700
12	17,600	20,100	22,600	27,100
13	16,700	19,100	21,500	25,700
14	15,800	18,100	20,400	24,500
	MAXIMUM AFFORDABLE PRICE - FEE SIMPLE UNITS (See Note 2)			
9%	\$23,600	\$27,000	\$30,400	\$36,400
10	22,100	25,200	28,400	34,100
11	20,700	23,700	26,700	32,000
12	19,500	22,300	25,100	30,100
13	18,400	21,000	23,700	28,400
14	17,400	19,900	22,400	26,800

Notes 1 & 2 - see notes on 'moderate income' pricing table

all numbers rounded to nearest \$100

1101 Table II

PRICING OF SALES UNITS AFFORDABLE TO LOW AND MODERATE INCOME HOUSEHOLDS IN SOUTH PLAINFIELD

PRICING SHOULD NOT EXCEED AFFORDABILITY TO HOUSEHOLD EARNING 90% OF CEILING INCOME FOR CATEGORY SPENDING 28% MORTGAGE, TAXES, INSURANCE, AND HOMEOWNERS ASSOCIATION FEES

	EFFICIENCY	ONE BR	TWO BR	THREE BR
<u>MODERATE INCOME</u>				
Household Size	1	2	3	5
Ceiling Income	\$17,200	\$19,650	\$22,150	\$26,100
28% of Income	\$ 4,816	\$ 5,502	\$ 6,202	\$ 7,308
INTEREST RATE: MAXIMUM AFFORDABLE PRICE - CONDOMINUM UNITS (See Note :				
9%	\$33,400	\$38,100	\$43,000	\$50,600
10	31,500	35,900	40,500	47,700
11	29,700	34,000	38,300	45,100
12	28,100	32,100	36,200	42,700
13	26,700	30,500	34,300	40,500
14	25,300	29,000	32,600	38,500
MAXIMUM AFFORDABLE PRICE - FEE SIMPLE UNITS (See Note :				
9%	\$37,700	\$43,100	\$48,600	\$57,200
10	35,300	40,300	45,500	53,600
11	33,100	37,900	42,700	50,300
12	31,200	35,600	40,100	47,300
13	29,400	33,400	37,800	44,600
14	27,800	31,700	35,600	42,200

Note 1 - shelter costs for condominium units include homeowners association fee @ estimated \$150 per \$10,000 house value; e.g., \$50/month for a \$40,000 unit. If fees are to be waived for a lower

income unit, affordability can be calculated on the basis of the 'fee simple' table, with further adjustment if hazard insurance is included within the (waived) homeowners association fee.

Note 2 - shelter costs include mortgage payment, taxes @ 2.4% market value, and insurance @ \$40 per \$10,000 house value.

1103 Table III

AFFORDABLE RENT LEVELS FOR LOW AND MODERATE INCOME HOUSEHOLDS IN MIDDLESEX COUNTY (BASED ON 1983 MEDIAN INCOMES FOR 11-COUNTY REGION)

UNIT TYPE	STUDIO	1 BR	2 BR	3 BR
HOUSEHOLD SIZE	1	2	3	5
<u>MODERATE INCOME HOUSEHOLDS</u>				
1. MEDIAN INCOME	\$17,200	\$19,650	\$22,150	\$26,100
2. x .30 (Note 1)	5,160	5,895	6,645	7,830
3. x .90 (Note 2)	4,644	5,305	5,981	7,047
4. MONTHLY GROSS RENT AFFORDABLE (Row 3 ÷ 12)	387	442	498	587
5. LESS ESTIMATED (See Note 3) UTILITIES	(40)	(50)	(70)	(90)
6. MONTHLY NET RENT AFFORDABLE	\$ 347	\$ 392	\$ 428	\$ 497
<u>LOW INCOME HOUSEHOLDS</u>				
1. MEDIAN INCOME	\$10,750	\$12,300	\$13,850	\$16,600
2. x .30 (See Note 1)	3,225	3,690	4,155	4,980
3. x .90 (See Note 2)	2,902	3,321	3,740	4,482
4. MONTHLY GROSS RENT	242	277	312	374
5. LESS UTILITIES (See Note 3)	(40)	(50)	(70)	(90)
6. MONTHLY NET RENT AFFORDABLE	\$ 202	\$ 227	\$ 242	\$ 284

NOTES:

- (1) 30% of gross income. This row represents the maximum that a household at the ceiling of the income category can afford to spend for rent including utilities.
- (2) Maximum rent should not exceed rent that a family earning 90% of the income ceiling can afford to pay.
- (3) Based on general estimates for utility costs for units of varying size; where more precise information is available, it should be applied rather than these estimates.

ARTICLE XII - EFFECTIVE DATE

1200 This Ordinance shall become effective upon passage according to law.