

Township of South Orange Village

Housing Element + Fair Share Plan



Prepared By:



Adopted: January 6, 2020
Amended: November 7, 2022

ACKNOWLEDGEMENTS

Village President

Sheena C. Collum

Administrator

Julie Doran, Acting Administrator

Board of Trustees

Bobby Brown

Donna Coallier

Karen Hartshorn Hilton

Bill Haskins

Summer Jones

Stephen Schnall

Planning Board

Harold Colton-Max, Chairman

Michael Lerman, Vice Chairman

Sheena Collum, Village President

Stephen Schnall, Village Trustee

Julie Doran, Acting Village Administrator

Jon Busch-Vogel

Cecil House

David Kraiker

Michael Miller

Carolyn Morin

Christine Mason, Alternate

Lillian Harris, Alternate

Planning Board Planner

Greer Patras, AICP/PP

Planning Board Counsel

William Sullivan, Esq.

Planning Board Engineer

Eric Keller, P.E

Planning Board Secretary

Ojetti Davis

Prepared By:



Philip A. Abramson, PP, AICP
NJ Planner License No. 609600



Golda Speyer, AICP/PP
NJ Planner License No. 639400

The original of this report was signed and sealed in accordance with N.J.S.A. 45:14A-12.

TABLE OF CONTENTS

| | |
|--|-----------|
| PART 1: Introduction | 3 |
| 1.1 NJ Affordable Housing Policy: A Brief History | 3 |
| 1.2 Housing Plan Requirements | 6 |
| 1.3 Applicable Methodology | 7 |
| PART 2: Municipal Summary | 8 |
| 2.1 A Note on the Data | 8 |
| 2.2 Demographic Characteristics | 9 |
| 2.3 Existing Housing Conditions | 15 |
| 2.4 Employment Data | 20 |
| 2.5 Land Use Info | 25 |
| 2.6 Master Plan..... | 31 |
| 2.7 Regional Planning Regulations..... | 31 |
| PART 3: Compliance with Fair Share Obligation | 32 |
| 3.1 Fair Share Obligation | 32 |
| 3.2 Rehab Obligation (Indigenous Need) | 33 |
| 3.3 Prior Round (1987-1999) | 34 |
| 3.4 Gap and Prospective Rounds (1999-2025) also known as “Third Round” | 35 |
| 3.5 Future Round (Unmet Need) | 40 |
| 3.6 Conclusion..... | 41 |

APPENDIX A: Settlement Agreement

APPENDIX B: Housing Liaison Resolution

APPENDIX C: Set-Aside Ordinance

APPENDIX D: Spending Plan

APPENDIX E: HEFSP Planning Board + Governing Body Resolution

PART 1: Introduction

This Housing Element and Fair Share Plan (“HEFSP”) will exhibit the Village of South Orange’s (herein the “Village” or “South Orange”) commitment to providing opportunities for the development of affordable housing within the Village. This document seeks to frame South Orange’s efforts based on the current best knowledge of the framework given by the Courts, applicable past rules established by the Council on Affordable Housing (COAH), and past practices.

As of August 2019, there exist 103 completed affordable housing units in South Orange. Approvals are in place, or are pending, for an additional 13 affordable units to be constructed or deed restricted. The Village has adopted an inclusionary zoning ordinance, requiring new development to include affordable housing units or to contribute significant payments in lieu to the Affordable Housing Trust Fund.

This Plan follows the requirements of N.J.S.A. 52:27D-310, et seq., N.J.A.C. 5:93, and certain portions of the Third Round Rules (N.J.A.C. 5:97) that have been expressly invalidated by the Appellate and/or Supreme Courts. Following this introduction is a brief history of New Jersey housing policy. In accordance with Municipal Land Use Law, this Plan also includes a Demographic Analysis, Housing Inventory, Employment Analysis, and review of land uses and policies. This Plan will summarize the Village’s obligations, which include a “Prior Round Need” (new construction obligation from 1987-1999), the rehabilitation obligation (known as the traditional “Present Need or Indigenous Need”) and the Third Round new construction obligation, which for purposes of this HEFSP shall include the “Gap Period Present Need,” which is a measure of households formed from 1999 to 2015 that need affordable housing, recognized by the Supreme Court in *In re Declaratory Judgment Actions* filed by Various Municipalities, 227 N.J. 508 (2017) as well as the traditional Round 3 “Prospective Need.” Finally, the document incorporates a Spending Plan, which outlines how the Village intends to expend funds in the Affordable Housing Trust Fund.

Originally adopted in January 2020, this Housing Element and Fair Share Plan has been amended to reflect changes to the Village’s Third Round affordable housing Fair Share Plan which were not contemplated at the time of the original adoption. These changes are reflected herein, along with updated figures on the Village’s overall affordable housing stock. Overall, this amendment demonstrates that the Village remains in full compliance with its Third Round affordable housing plan. Amendment to this Housing Element and Fair Share Plan shall be approved by the Special Master and Superior Court.

1.1 NJ Affordable Housing Policy: A Brief History (1975-1985 | Mount Laurel Doctrine & the Fair Housing Act)

In 1975, the New Jersey Supreme Court decided *Southern Burlington County NAACP v. the Township of Mount Laurel*, more commonly referred to as (“Mount Laurel I”), wherein it interpreted the New Jersey Constitution to create an affirmative obligation for municipalities to provide a “realistic opportunity for the construction of low- and moderate-income housing in their communities.” In 1983, the New Jersey Supreme Court expanded the obligation from only developing municipalities to all municipalities in a decision commonly referred to as “Mount Laurel II”. In addition, the Supreme Court required the establishment of each municipality’s fair share obligation and required each municipality, through its zoning, to provide a realistic opportunity for the construction of that established fair share obligation. Subject to several prerequisites, conditions and requirements, Mount Laurel II also created the “builder’s remedy” as a mechanism to enforce the doctrine in instances where a developer successfully demonstrated that a municipalities’ zoning failed to create the requisite realistic opportunity. Under such circumstances, a plaintiff may be entitled to have its site rezoned for

an inclusionary development with an affordable set aside if the site is available, developable, approvable, and suitable for the proposed project and all other requirements for a successful builder's remedy are met and all defenses defeated.

In 1985, in response to Mount Laurel II and the flood of litigation stemming from it, the Legislature adopted the Fair Housing Act ("FHA") to discourage litigation and incentivize voluntary compliance. N.J.S.A. 52-27D-303. The FHA established, among other things, the Council on Affordable Housing ("COAH") as an administrative alternative to litigation and judicial intervention. COAH was charged with establishing various housing regions in the state, estimating regional and municipal affordable housing obligations, and adopting criteria and guidelines for the municipal determination of housing need as well as guidelines for satisfying those obligations. The FHA also linked municipal planning and zoning powers to the satisfaction of affordable housing obligations. Under the Act, a municipal zoning ordinance is presumptively invalid if a municipality fails to adopt a housing element as part of its master plan or enacts zoning regulations that are inconsistent with their housing plan.

1987 – 1999 | Establishment of COAH Rules

Subsequent to the adoption of the Fair Housing Act, COAH adopted procedural and substantive rules to effectuate the FHA's legislative intent in both Round 1 (1987-1993) (N.J.A.C 5:91 and 5:92) and Round 2 (1993-1999) (N.J.A.C. 5:93). The Round 2 substantive regulations (Chapter 93) superseded the Round 1 substantive regulations (Chapter 92) and recalculated the Round 1 obligations. Thus, the Round 2 regulations effectively created a "cumulative" obligation between Rounds 1 and 2 for the years 1987-1999, which are commonly now referred to as the "Prior Round." Under COAH's regulations, low-income households are defined as those with incomes no greater than 50 percent of the area median income (AMI), adjusted for household size, and moderate-income households are those with incomes no greater than 80 percent and no less than 50 percent of the median household income.

AMI limits are calculated based upon housing regions as established by COAH; South Orange is located within Region 2, comprised of Morris, Essex, Union and Warren Counties.

In December 2004, COAH promulgated its Third Round "Growth Share" methodology (N.J.A.C. 5:95), which adjusted prior round obligations and devised a new system for projecting future municipal housing obligations. Growth Share obligations were based upon municipal growth, and the then-Third Round was defined as the period of 1999-2014. The initial Growth Share methodology required municipalities to provide one affordable housing unit for every eight market rate units and one affordable unit for every 25 jobs created and one affordable unit for every eight market rate housing units developed.

2004 – 2010 | Third Round Litigation & Revisions

In January 2007, the Appellate Division invalidated the Growth Share Methodology (In re Adoption of N.J.A.C. 5:94 and 5:95, 390 N.J. Super. 1 (2007)), and required COAH to revise its rules, which it did in May 2008 in the Third Round substantive regulations of Chapter 97 (N.J.A.C. 5-97). Chapter 97 increased municipal housing obligations to one unit for every five market-rate units (20%) and one unit for every 16 jobs. The May 2008 amendments also provided:

- Bonus credits for supportive and special needs housing, new credit for affordable housing in redevelopment areas, and optional plan phasing based on economic feasibility.

- Density bonuses for developers of residential projects where development provides for either on-site affordable housing or payment-in-lieu contributions.
- Payment in lieu standards (cost of constructing an affordable unit) averaging \$161,000 per affordable unit.
- Increased development fees to 1.5% EAV for residential projects and 3% EAV for nonresidential.

The Third Round rules were further amended in September 2008 to include:

- Various changes to comport with NJDEP rules and policies including Water Quality Management, Stream Encroachment, and Highland Regional Plan programs.
- One-third bonus for units within redevelopment areas and those constructed in proximity to mass transit nodes.
- Established presumptive densities and affordable housing set-asides for inclusionary developments based on the State Development and Redevelopment Plan.

In July 2008, the FHA was amended by A-500. This round of amendments included, A-500, eliminated Regional Contribution Agreements (“RCA”), and reduced non-residential development fees to 2.5%. Executive Order #114, signed in September 2008, amended the COAH rules to ensure consistency with the Highlands Regional Master Plan.

2010 – Present | COAH’s Noncompliance and Resumption of Court Responsibility

The last twelve years have seen continued inaction and increased uncertainty in the realm of affordable housing. COAH has faced a political and administrative deadlock, and has therefore not responded to the various judicial orders and failed to discharge its statutory duties.

Just after taking office, Governor Chris Christie signed Executive Order No. 12, establishing the five-member Housing Opportunity Task Force and charging them with a full review of the Fair Housing Act, COAH, and COAH’s regulatory structure. The Task Force framed its recommendations by characterizing the track record of housing production under COAH as a “poor return” on investment. In addition, the Task Force cited an evolution of New Jersey’s socioeconomic landscape, transportation infrastructure development, and changes in settlement patterns that had occurred since development of the Mount Laurel doctrine and had not been considered in the formulation and promulgation of COAH rules and methodologies. The Task Force recommended a “new model,” which included adjusted definitions of present and prospective need, a benchmark of 10 percent growth predicted by the State Planning Commission to guide obligations, and transferring of procedural responsibility from COAH to the Home Mortgage Finance Agency (HMFA).

In October 2010, the Appellate Division invalidated a substantial portion of COAH’s rules (N.J.A.C. 5:96 and N.J.A.C. 5:97) in response to 22 consolidated appeals. Most notably, the Court invalidated the Third Round Growth Share methodology and ordered COAH to revise its rules in accordance with the decision. In addition, the Court prohibited certification of housing plans that rely upon municipally sponsored affordable housing projects without specified funding and required COAH to create an incentive structure for inclusionary developments. Several provisions within COAH’s rules that provided “bonuses” were also invalidated, including rental bonuses for prior round obligations for developments that were not constructed within a reasonable timeframe and “compliance bonuses.” However, the Court upheld the “Smart Growth” and “Redevelopment” bonuses. In addition, the Appellate Division also upheld the methodologies used to determine municipalities’ “rehabilitation share” and “prior round obligation” components of their overall present need. The New Jersey

Supreme Court agreed in March 2011 to hear the appeal of this decision that invalidated much of COAH's existing rules.

Governor Christie sought to work with the legislature to reform affordable housing law, but a compromise was not reached. Both houses of the legislature passed S1/A3447 in January 2011, but Governor Christie conditionally vetoed the legislation, disagreeing with the affordable housing obligations required by the legislation. The respective sponsors of S1/A3447 subsequently withdrew both bills.

On June 29, 2011, Governor Christie issued Reorganization Plan No. 001-2011, which transferred the administration of the State's affordable housing program from COAH to the New Jersey Department of Community Affairs. The Reorganization Plan was to take effect on August 29, 2011 and would effectively abolish COAH.

Upon challenge by the Fair Share Housing Center, the Appellate Court invalidated Governor Christie's Reorganization Plan in March 2012. The Supreme Court, in a 5-2 decision, upheld this decision in July 2013, confirming the ruling that the Governor could not reorganize an independent agency "in but not of" the executive branch. In September 2013, the Supreme Court confirmed the invalidation of the previously adopted Third Round regulations (N.J.A.C. 5:96-97), upholding that the methodology used for projecting housing needs in these rules was unconstitutional. In that ruling, the court established a February 2014 deadline for development and adoption of new COAH rules, which was eventually extended to November 2014. COAH proposed new rules (N.J.A.C. 5:98-99) in June 2014 and heard public comments on them, but its Board failed to adopt them in October 2014 in a 3-3 deadlocked vote. The Board did not meet again after this vote.

In March 2015, in the case entitled *In re Adoption of N.J.A.C. 5:96 & 5:97*, 221 N.J. 1 (2015), more commonly referred to as "Mount Laurel IV," the State Supreme Court determined that COAH was "moribund" and unable to carry out its duties as intended by the Fair Housing Act. The Court further held "that the courts may resume their role as the forum of first instance for evaluating municipal compliance with Mount Laurel obligations."

Thus, the Court designed a transitional process whereby municipalities could seek judicial approval of their HEFSPs. *Mount Laurel IV* at 35-36. Those transitional procedures gave municipalities the choice whether to seek compliance voluntarily via a DJ Action or to not file a DJ Action and risk being sued. As part of these procedures, the Supreme Court authorized "a court to provide a town whose plan is under review immunity from subsequently filed challenges during the Court's review proceedings, even if supplementation of the plan is required during the proceedings." *Id.* at 24. Proactive municipalities were entitled "like treatment" to towns that petitioned COAH for review of their plans in the wake of the FHA and received broad protections from site-specific relief. *Id.* at 28. Municipalities who filed DJ Actions seek the Court's approval of their affordable housing plans in the form of a Judgment of Compliance and Repose ("JOR"), which grants the municipality immunity from all Mount Laurel related lawsuits until July of 2025.

1.2 Housing Plan Requirements

Municipal Land Use Law & Fair Housing Act

The Municipal Land Use Law (MLUL), through incorporation of the New Jersey Fair Housing Act (FHA), requires municipalities to include a housing element in their master plans as a prerequisite to the zoning power. The principal purpose of the housing element is to enumerate and provide the data, policies, and methods by which

municipalities will meet present and prospective housing need, with particular attention to low and moderate income households. Under the FHA, as amended, the required contents of the housing element are:

- A. An inventory of the municipality's housing stock by age, condition, purchase or rental value, occupancy characteristics, and type, including the number of units affordable to low- and moderate-income households and substandard housing capable of being rehabilitated;
- B. A projection of the municipality's housing stock, including the probable future construction of low- and moderate-income housing, for the upcoming 10 years, taking into account, but not necessarily limited to, construction permits issued, approvals of applications for development and probable residential development of lands;
- C. An analysis of the municipality's demographic characteristics, including but not necessarily limited to, household size, income level and age;
- D. An analysis of the existing and probable future employment characteristics of the municipality;
- E. A determination of the municipality's present and prospective fair share for low- and moderate-income housing and its capacity to accommodate its present and prospective housing needs, including its fair share for low- and moderate-income housing; and
- F. A consideration of the lands that are most appropriate for construction of low- and moderate-income housing and of the existing structures most appropriate for rehabilitation or for conversion to, low- and moderate-income housing, including a consideration of lands of developers who have expressed a commitment to provide low and moderate income housing.

1.3 Applicable Methodology

It is impossible to specify the constitutional fair share housing obligation for the period 1987 to 2025 for any municipality. However, there is guidance on determining housing obligations for each municipality based on affordable housing need, as follows:

- Prior Round Obligation: The Prior Round obligation is the amount of the municipality's "new construction" obligation as calculated by COAH in June 1994 when its Round Two regulations were adopted – These numbers remain unchanged. This Housing Element will address South Orange's Prior Round obligation to provide the full picture of the Village's commitment to affordable housing.
- Present Need: The present need, or rehabilitation obligation, is an estimate of the number of substandard units occupied by low- and moderate-income households existing within the municipality as determined by Census data.
- Prospective Need: Various experts have calculated South Orange's prospective need obligation and reached disparate results. Kinsey & Hand in collaboration with the Fair Share Housing Center (FSHC), presented a fair share methodology and calculations of low- and moderate-income housing obligations for each municipality (May 2016). FSHC submitted that report in Mount Laurel IV declaratory judgment proceedings throughout New Jersey. Subsequently, Econsult Services generated a report on "gap" and prospective need for each municipality (April 2017). On March 8, 2018, Judge Jacobson issued a comprehensive opinion on the correct fair share formula. **(Pursuant to the Jacobson opinion, the gap and prospective need obligation for South Orange is 192.)**

PART 2: Municipal Summary

The Village of South Orange is 2.86 square miles in size and is a built-out community with a walkable downtown. Open space, recreation, and other public facilities are located throughout South Orange. The Village is bordered by West Orange, Orange, and East Orange on the north; East Orange and Newark to the east; and Maplewood and Newark to the south. The South Mountain, a nature reservation managed by Essex County and technically located in Maplewood, is on the Village's western boundary. Two train stations (South Orange and Mountain), part of New Jersey Transit's Morris and Essex Line, are located in the Village and provide service to New York Penn Station.

The population of South Orange increased from 16,198 residents in 2010 to 16,521 people in 2019, or an increase of 231 people, or 1.99 percent. The median age in South Orange was 34.3 years in the five years between 2014 and 2019.

Single-family detached dwelling units comprise 63.8% of the Village's housing stock while multi-family structures with 20 units or more account for 18.5%. Additionally, 80% of the housing stock was built prior to 1970. According to the guidelines established by COAH and adopted by the Courts, South Orange is located in Housing Region 2, a region that consists of Essex, Morris, Union and Warren counties.

2.1 A Note on the Data

The following statistics and demographic data are derived from one of the following sources.

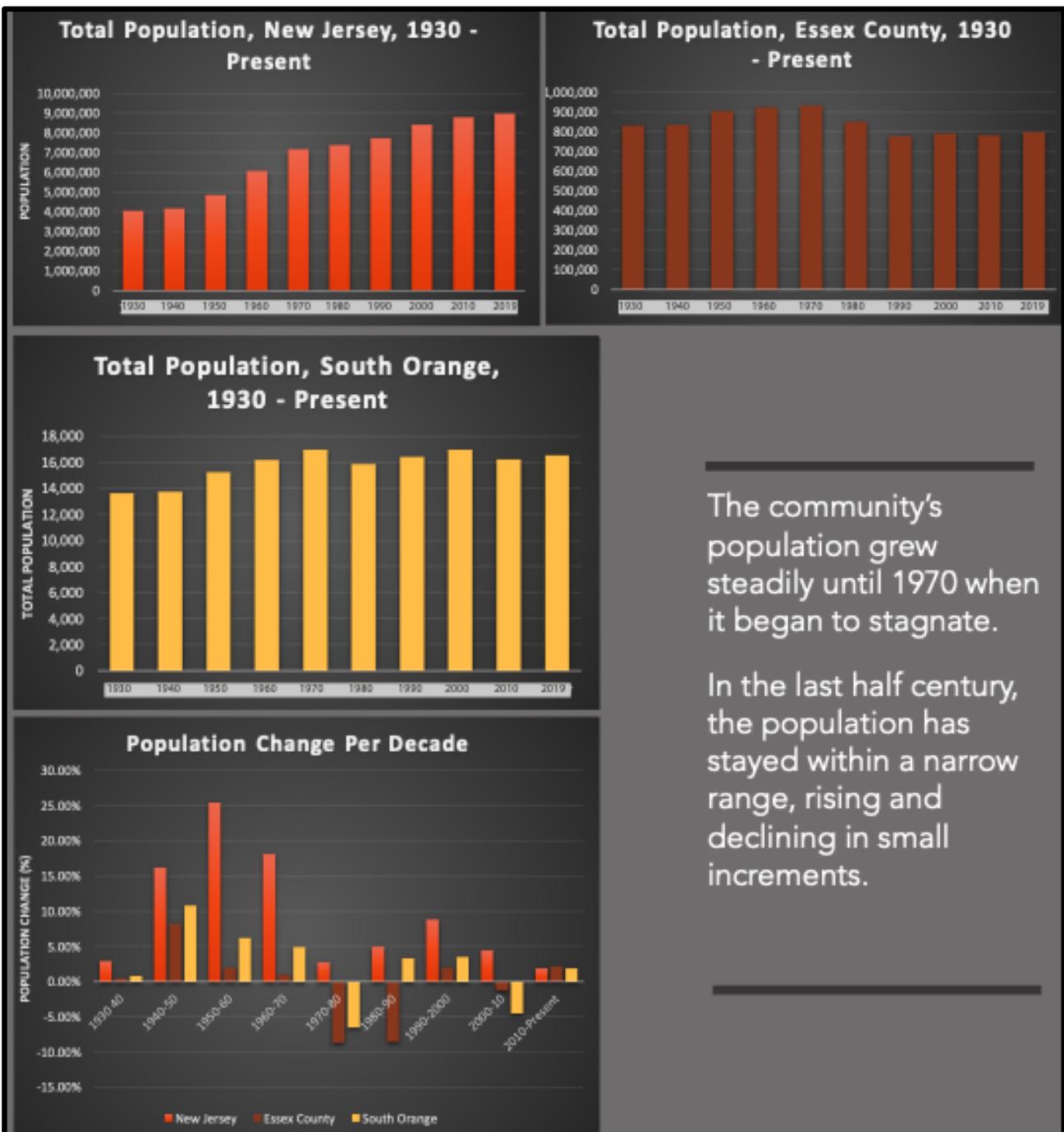
- 2015-2019 American Community Survey: The American Community Survey (ACS) estimates were used as data sources, which are generated between the decennial censuses. ACS figures are based on data collected over a five-year time period. The estimates represent the average characteristics of population and housing between a five-year period and DO NOT represent a single point in time. Comparisons will be made with the 2005-2009 ACS to show change over time. In the instances where 2014-2019 Census data could not be located, 2010-2014 is shown.
- 2020, 2010 and 2000 Census: The 2020 Census is the most recent decennial census but does not include the more recent information available in the American Community Survey. 2010 information is used when ACS information is unavailable, and sometimes for comparison. Census data from 2000 is also used for comparison.
- New Jersey Department of Labor: The NJ Department of Labor collects data on several aspects of employment, including wages, commuting patterns, and workforce participation.



2.2 Demographic Characteristics

Population

The 2015-2019 Census estimate of South Orange's population was 16,521 which was an increase of 323 residents, or 1.99 percent, from the 2010 Census. The population trends experienced in South Orange and the State of New Jersey from 1930 through 2010 are shown in the graphs below. The community's population grew steadily until 1970 at which point it began to stagnate. In the last half century, the population has stayed within a narrow range, rising and declining in small increments. The current Village population represents a three percent decline from the Village's 1970 peak of 16,971. Essex County's population fell by over 14% over the same period.



Population Composition by Age

The median age in South Orange for 2014-2019 is 34.3 compared to 37.9 for Essex County. South Orange has a higher percentage of 18- to 34-year-olds (31.4%) than in Essex County as a whole (22.6%). At the other end of the spectrum, persons over the age of 45 comprise a lower percentage of the population in South Orange than they do in the county as a whole.

| Age Group | Essex County | South Orange |
|---------------------|--------------|--------------|
| Under 5 years | 6.6% | 5.5% |
| 5 to 9 years | 6.5% | 5.6% |
| 10 to 14 years | 6.8% | 4.7% |
| 15 to 17 years | 3.9% | 3.5% |
| 18 to 24 years | 9.0% | 20.3% |
| 25 to 34 years | 13.6% | 11.1% |
| 35 to 44 years | 13.9% | 12.8% |
| 45 to 54 years | 14.1% | 13.3% |
| 55 to 64 years | 12.1% | 10.8% |
| 50 to 54 years | 7.1% | 7.3% |
| 55 to 59 years | 6.4% | 5.0% |
| 60 to 64 years | 5.5% | 6.5% |
| 65 to 74 years | 7.7% | 6.8% |
| 75 to 84 years | 3.9% | 3.7% |
| 85 years and over | 1.9% | 1.7% |
| Source: 2015-19 ACS | | |

Households

According to the classification system used by the Census Bureau, people either live in a household, a housing unit, or in "group quarters." Two types of "households" exist: family and non-family. A "household" is classified as one or more persons living and eating together separately from other persons who may be in the same building. A "family" is a household with two or more related persons living together. While most South Orange residents live in houses, townhouses, and apartments, a large share of the population, (1,903 residents or 11.7%) lives in what the Census Bureau calls "group quarters," which includes, prisons, and nursing homes. The population living in group quarters has increased slightly since 2000, when it was 1,897 residents, according to the Census.

Average household size is smaller than average family size, due to one-person households; 26.6% of South Orange households in 2010-2014 consisted of one person living alone. South Orange has a lower percentage of one-person households than in Essex County as a whole, where 30.1% of the population lives in one-person households. Family households account for a decreasing share of households in South Orange, with a decline of 8.7 percent since 2000.

| Household Size by Household Type | | | |
|--|------------|--------------|--------------|
| | New Jersey | Essex County | South Orange |
| Family Households, All Sizes | 69.25% | 64.86% | 68.16% |
| 2-person | 26.28% | 22.60% | 24.94% |
| 3-person | 17.11% | 17.06% | 17.41% |
| 4-person | 15.49% | 14.86% | 18.61% |
| 5-person | 6.65% | 6.67% | 4.26% |
| 6-person | 2.31% | 2.29% | 1.38% |
| 7-person or larger | 1.42% | 1.37% | 1.57% |
| Nonfamily Households, All Sizes | 30.75% | 35.14% | 31.84% |
| 1-person | 25.81% | 30.10% | 26.64% |
| 2-person | 4.07% | 4.05% | 3.11% |
| 3-person | 0.53% | 0.67% | 0.52% |
| 4-person | 0.22% | 0.21% | 1.11% |
| 5-person | 0.08% | 0.08% | 0.46% |
| 6-person | 0.02% | 0.02% | 0.00% |
| 7-person or larger | 0.01% | 0.01% | 0.00% |

Source: 2010-14 ACS

Immigration

Foreign-born residents make up 14.6% of South Orange’s population, less than the comparable figures for Essex County (27.2%) and the State of New Jersey (22.4%). According to a 2019 ACS one-year estimate, New Jersey ranks third among states in percentage of foreign born residents.

| Native- and Foreign-Born Population | | | |
|-------------------------------------|------------|--------------|--------------|
| Geography | New Jersey | Essex County | South Orange |
| Total Population | 8,878,503 | 795,404 | 16,521 |
| Total, Native-Born | 6,886,476 | 579,252 | 14,109 |
| Total, Foreign-Born | 1,992,027 | 216,152 | 2,412 |
| %, Native-Born | 77.6% | 72.8% | 85.4% |
| %, Foreign-Born, | 22.4% | 27.2% | 14.6% |

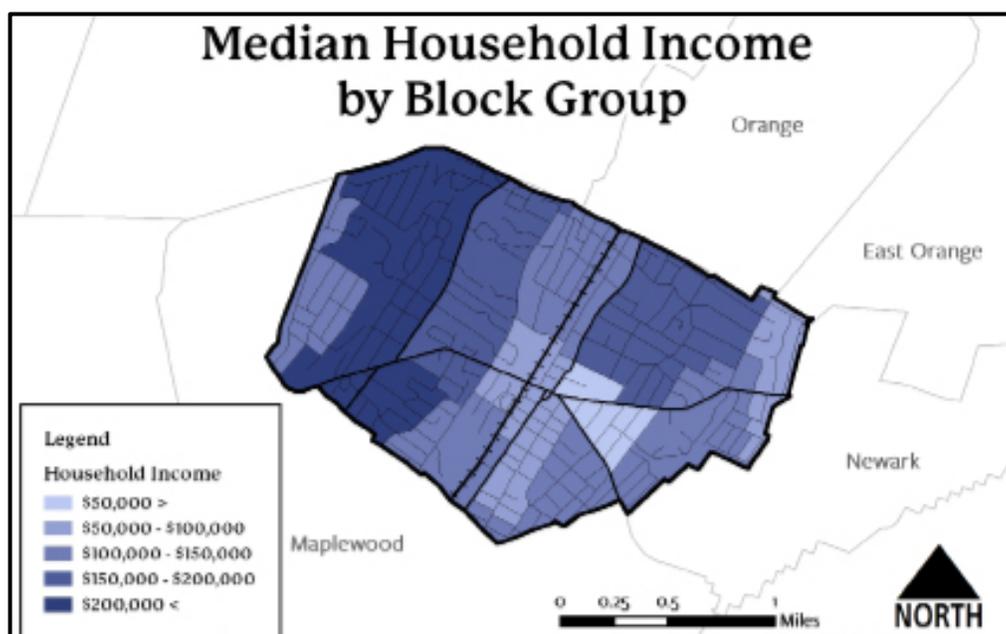
Source: 2015-19 ACS

Of the population of Village residents five years of age and older, approximately 88% speak English at home while the remainder, or 12% of the population, speak a different language at home. Other than English, the most common languages spoken at home are Spanish, French, and Chinese. Efforts to reach all South Orange residents regarding housing and other issues will require communicating in languages other than English, especially in Spanish.

Income

The household median and per capita incomes in South Orange grew at faster rates than in Essex County or New Jersey as a whole. Adjusted for inflation, median household income increased by 2.8 percent in South Orange, compared with .5 percent for Essex County. The Village's 2014 median household income, \$119,888, was well above the State's median household income of \$72,062.

The map below shows 2010-2014 median household income in South Orange Census block groups. The lowest median household income within these block groups is \$53,625 while the highest is \$206,875.



| Median Household Income, (2019 Inflation Adjusted) | | |
|--|--------------|--------------|
| New Jersey | Essex County | South Orange |
| \$82,545 | \$61,510 | \$139,037 |
| Source: 2015-19 ACS | | |

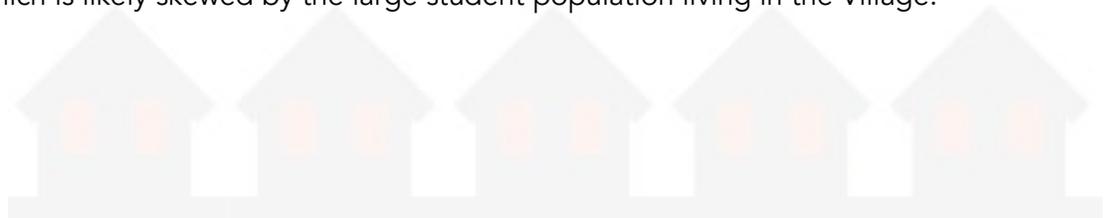
| Per Capita Income, (2019 Inflation Adjusted) | | |
|--|--------------|--------------|
| New Jersey | Essex County | South Orange |
| \$42,745 | \$38,722 | \$63,050 |
| Source: 2015-19 ACS | | |

Poverty Status

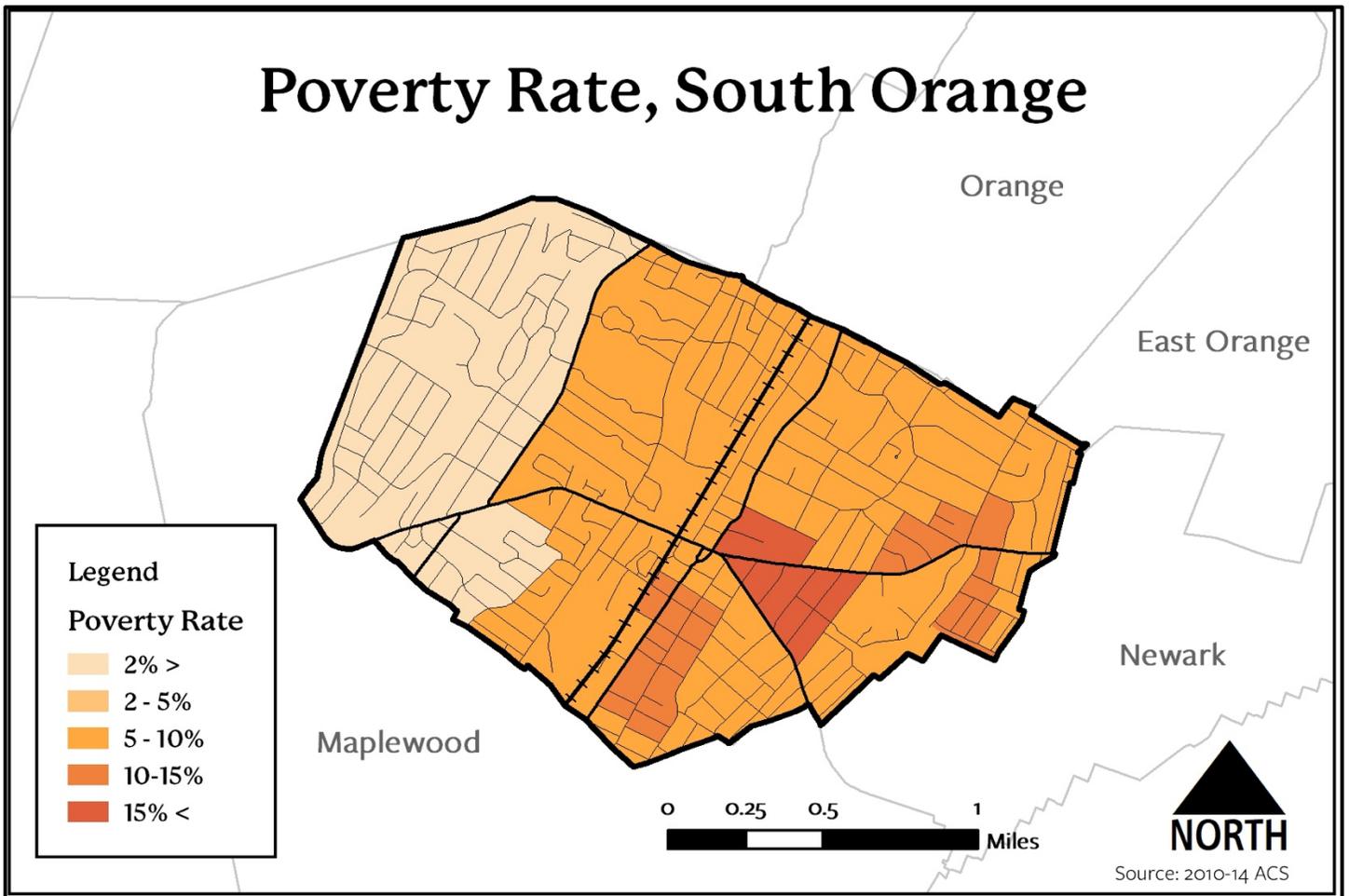
In South Orange, 1,429 residents, or 9.85 percent of the population, lived below the poverty line. The poverty rate shows a slight increase since 2009, when the Census estimated it to be 8.47 percent. The Essex County poverty rate also increased during the same period, rising from 14.5% to 15.8%.

| Population Below Poverty Level, 2015-19 | | |
|---|--------------|--------------|
| Geography | Essex County | South Orange |
| Total, below poverty level | 122,569 | 1,429 |
| %, below poverty level | 15.8% | 9.85% |
| Source: 2015-19 ACS | | |

The below map shows that the highest concentrations of poverty in South Orange are located in the southern and eastern portions of the Village. Three Census block groups, two of which abut Valley Street, have a poverty rate in excess of 10%, which is likely skewed by the large student population living in the Village.



Poverty Rate, South Orange



Household Costs

The tables below show the housing expenditures for those who own and rent in South Orange. Planners often use the percentage of households that are cost-burdened to evaluate how affordable its housing stock is. A household is cost-burdened when 30 or more percent of its gross income is spent on housing. In South Orange, approximately 51.5% of renters spend more than 30% of their household income on housing, while about 33.1% of homeowners spend more than 30% of their household income on housing costs.

| Monthly Owner Costs as Percentage of Income | | | |
|---|------------|--------------|--------------|
| | New Jersey | Essex County | South Orange |
| Less than 30 percent | 66.9% | 59.0% | 32.09% |
| 30 percent or more | 35.2% | 40.7% | 33.1% |
| 50 percent or more | 14.2% | 18.6% | 12.6% |
| Not computed | 0.4% | 0.3% | 0.0% |

Source: 2015-19 ACS

| Monthly Renter Costs as Percentage of Income | | | |
|--|------------|--------------|--------------|
| | New Jersey | Essex County | South Orange |
| Less than 10.0 percent | 3.6% | 3.7% | 5.1% |
| 10 to 29 percent | 42.4% | 39.3% | 36.3% |
| 30 to 49 percent | 23.4% | 23.7% | 21.4% |
| 50 percent or more | 25.3% | 28.9% | 30.1% |
| Not computed | 5.2% | 4.4% | 7.0% |

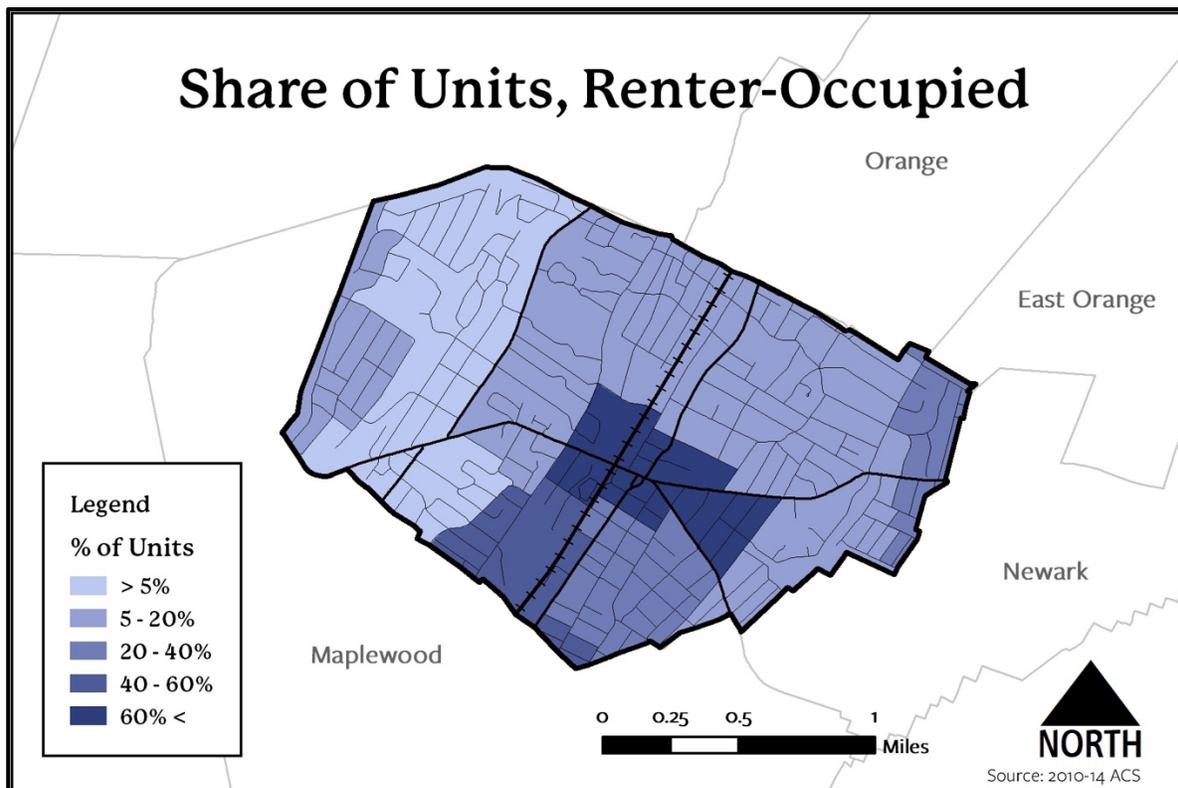
Source: 2015-19 ACS

2.3 Existing Housing Conditions

Housing Unit Data

South Orange had a five-year average of 5,608 housing units between 2015 and 2019. Of the housing units, 3,522 or approximately 63% were owner occupied while 1,615 or approximately 29% were renter occupied. Renter occupied units have decreased by 2.5% between 2010 and 2015-2019, while owner occupied units have decreased by 2.1 percent. During this time, the number of vacant units increased by 41.9 percent, from 332 to 471, according to the Census.

The map below shows the distribution of renters within South Orange, which has rentals distributed throughout the Village.



| Change in Total Housing Units, 2010 to 2019 | | | |
|---|-------|-------|---------------------|
| | 2010 | 2019 | % Change, 2015-2019 |
| Owner-Occupied | 3,596 | 3,522 | -2.1% |
| Renter-Occupied | 1,657 | 1,615 | -2.5% |
| Vacant | 332 | 471 | 41.9% |
| Housing Units, Total | 5,585 | 5,608 | 0.4% |

Source: 2015-19 ACS

A significant percentage of housing structures (47.3%) were built prior to 1939, and 80% were built before 1970. This indicates an aging housing stock. While older buildings provide a sense of continuity, identity, and community to South Orange neighborhoods, the buildings must be maintained and updated to fully serve their inhabitants.

| Year Structure Built | | | |
|----------------------|------------|--------------|--------------|
| | New Jersey | Essex County | South Orange |
| 2014 or later | 1.6% | 1.3% | 3.5% |
| 2010 to 2013 | 1.7% | 1.3% | 2.6% |
| 2000 to 2009 | 9.0% | 7.0% | 5.2% |
| 1990 to 1999 | 9.6% | 6.4% | 3.1% |
| 1980 to 1989 | 11.7% | 6.0% | 5.5% |
| 1970 to 1979 | 12.7% | 8.4% | 4.5% |
| 1960 to 1969 | 13.4% | 12.1% | 11.1% |
| 1950 to 1959 | 14.8% | 15.8% | 11.2% |
| 1940 to 1949 | 7.2% | 10.3% | 5.9% |
| 1939 or earlier | 18.3% | 31.4% | 47.3% |

Source: 2015-19 ACS

One bedroom detached units (63.8%) and buildings with 20 to 49 units (9.7%) are the most common type of housing structure in South Orange. Buildings with 20 or more apartments are the most common type of housing structure in South Orange, with a 39% increase between the last two 5-year averages.

Approximately half (50.1%) of housing units in South Orange have eight or more rooms, of which the owner-occupied housing stock accounts for most of these units. In all, 68.4% of owner-occupied units in South Orange have eight rooms or more.

Housing Values and Gross Rents

Housing values for owner-occupied housing units are listed in the table below.

| Value of Owner-Occupied Units, 2015 and 2019 | | | | | |
|--|-------|------------------|-------|------------------|------------------------|
| Home Value | 2015 | % of Units, 2015 | 2019 | % of Units, 2019 | % Change, 2015 to 2019 |
| Less than \$20,000 | 37 | 1.0% | 9 | 0.3% | -75.7% |
| \$20,000 to \$49,999 | 0 | 0.0% | 0 | 25.06% | 6.81% |
| \$50,000 to \$99,999 | 18 | 0.5% | 10 | 0.3% | -44.4% |
| \$100,000 to \$149,999 | 36 | 1.0% | 30 | 0.9% | -16.7% |
| \$150,000 to \$299,999 | 278 | 7.7% | 228 | 6.5% | -18.0% |
| \$300,000 to \$499,999 | 1,420 | 39.5% | 1,002 | 28.4% | -29.4% |
| \$500,000 to \$749,999 | 1,128 | 31.4% | 1,155 | 32.8% | 2.4% |
| \$750,000 to \$999,999 | 571 | 15.9% | 907 | 25.8% | 58.8% |
| \$1,000,000 or more | 108 | 3.0% | 181 | 5.1% | 67.6% |

Source: 2015-19 ACS

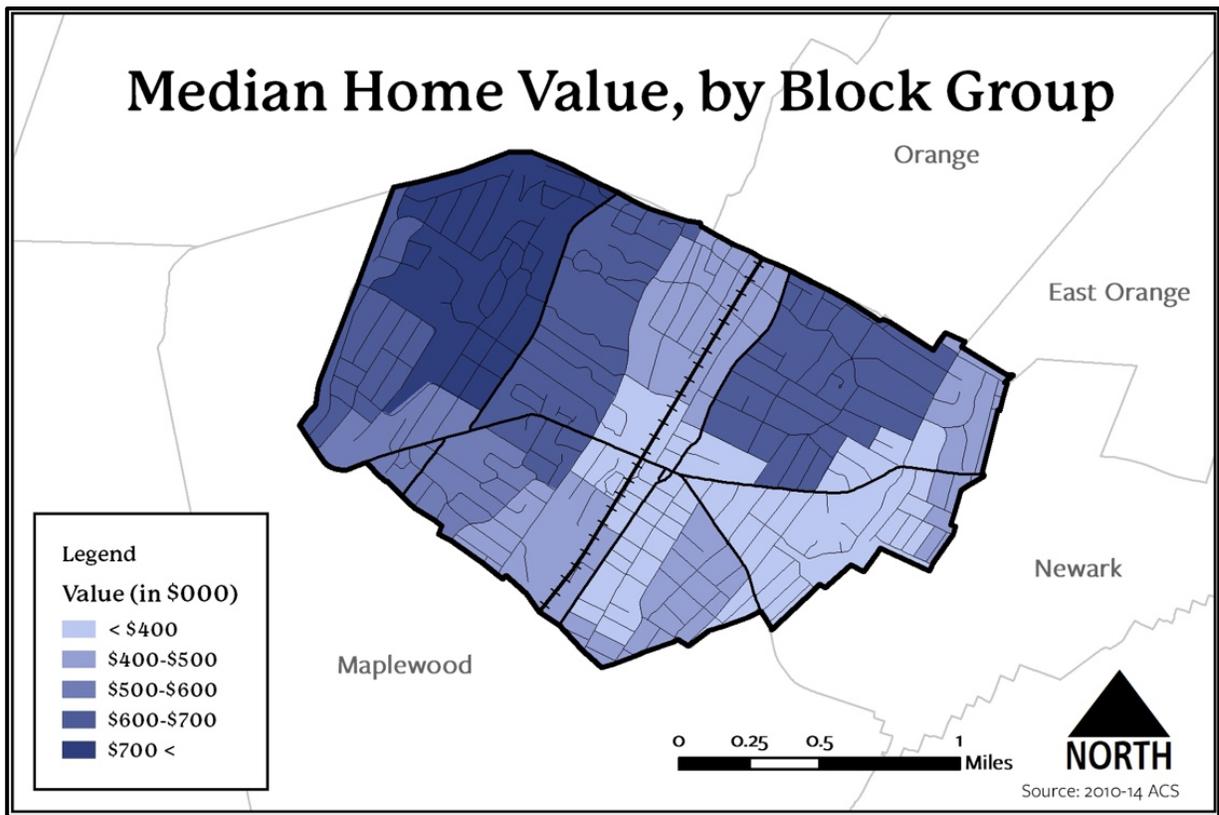
A majority of owner-occupied homes (63.7%) were valued above \$500,000 with a median home value for 2015-2019 in South Orange of \$553,100.

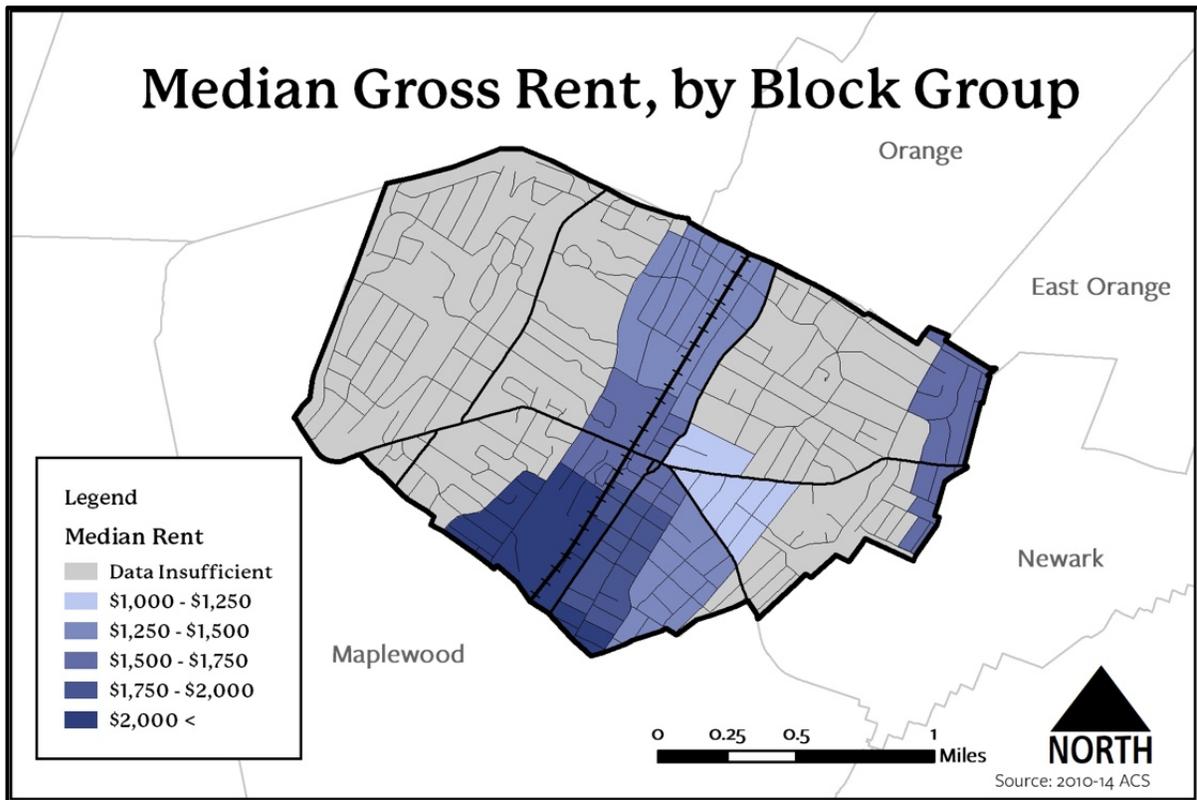
| Mortgage Status, 2015 to 2019 | | | |
|-------------------------------|-------|-------|---------------------------------|
| Mortgage Status | 2015 | 2019 | % Change in Units, 2015 to 2019 |
| Units with a mortgage | 2,657 | 2,613 | -1.7% |
| Units without a mortgage | 939 | 909 | -3.2% |

Source: 2015-19 ACS

The maps below illustrate the spatial distribution of housing costs in the Village. Home values are especially high in the neighborhoods located in the north and west portions of the Village. These neighborhoods, located west of Scotland and South Ridgewood Roads, include Newstead, Upper and Lower Wyoming, South Mountain, and West Montrose. The median home value exceeds \$500,000 in almost every block group west of Scotland and South Ridgewood Roads.

Rental units in South Orange are much more expensive than elsewhere in Essex County. As of 2014, the median gross rent in the Village was \$1,579, far higher than the \$1,069 estimated for Essex County as a whole. Rents tended to be highest in Montrose and in the neighborhoods in the Village's western portion. If the American Community Survey is to be believed, every rental west of Ridgewood Road has a gross rent that exceeds \$1,500 per month.





Housing Conditions

The table below details the condition of housing within South Orange. These factors were part of the determination of the number of inadequate housing units in South Orange, which performs favorably as compared to the State and Essex County. According to the 2015-2019 ACS, the number of units in the Village heated by utility gas (78.7%) greatly exceeded other heating types.

| Units Lacking Complete Facilities | | | |
|-----------------------------------|------------|--------------|--------------|
| | New Jersey | Essex County | South Orange |
| Complete plumbing facilities | 0.3% | 0.4% | 0.0% |
| Complete kitchen facilities | 0.8% | 1.0% | 0.0% |
| Telephone service | 1.6% | 2.6% | 1.7% |

| Type of Heating Fuel | | | |
|--------------------------|------------|--------------|--------------|
| | New Jersey | Essex County | South Orange |
| Utility gas | 75.1% | 76.4% | 78.7% |
| Bottled, tank, or LP gas | 2.0% | 1.6% | 2.0% |
| Electricity | 13.0% | 14.5% | 9.8% |
| Fuel oil, kerosene, etc. | 8.4% | 6.2% | 9.0% |

| Type of Heating Fuel | | | |
|----------------------|------------|--------------|--------------|
| | New Jersey | Essex County | South Orange |
| Coal or coke | 0.00% | 0.00% | 0.00% |
| Wood | 0.4% | 0.0% | 0.0% |
| Solar energy | 0.1% | 0.1% | 0.0% |
| Other fuel | 0.4% | 0.5% | 0.0% |
| No fuel used | 0.5% | 0.8% | 0.5% |

Source: 2015 - 2019 ACS

The 2015-19 American Community Survey estimated that 1.4% of housing units had more than one occupant per room, showing that while overcrowding occurs in South Orange, it is not widespread.

| Occupants Per Room, Occupied Units | | | |
|------------------------------------|------------|--------------|--------------|
| | New Jersey | Essex County | South Orange |
| 1.0 or fewer occupants per room | 96.8% | 95.4% | 98.6% |
| 1.01 to 1.50 occupants per room | 2.1% | 2.7% | 0.3% |
| 1.51 or more occupants per room | 1.1% | 1.9% | 1.1% |
| Total | 100.00% | 100.00% | 100.00% |

Source: 2015 - 2019 ACS

2.4 Employment Data

Employment Trends

The following tables detail changes in employment from 2010 to 2020 for South Orange, Essex County and New Jersey. The New Jersey Department of Labor estimated the unemployment rate in South Orange at 6.6 percent, as of 2020, up from 6.3 percent in 2010. Given the impact of the Covid-19 pandemic on the labor market, this should not be surprising. Over the last decade South Orange has consistently reported unemployment rates lower than comparable figures for the county and state.

Employment Statistics, New Jersey

| Year | Labor Force | Employment | Unemployment | Unemployment Rate |
|------|-------------|------------|--------------|-------------------|
| 2020 | 4,495,200 | 4,055,300 | 439,900 | 9.8% |
| 2019 | 4,522,200 | 4,367,300 | 154,900 | 3.4% |
| 2018 | 4,455,500 | 4,278,300 | 177,200 | 4.0% |
| 2017 | 4,476,100 | 4,274,100 | 202,000 | 4.5% |
| 2016 | 4,492,800 | 4,271,200 | 221,600 | 4.9% |
| 2015 | 4,494,600 | 4,237,900 | 256,700 | 5.7% |
| 2014 | 4,493,900 | 4,191,300 | 302,600 | 6.7% |
| 2013 | 4,528,000 | 4,147,700 | 380,400 | 8.4% |
| 2012 | 4,576,300 | 4,147,200 | 429,100 | 9.4% |
| 2011 | 4,561,800 | 4,134,700 | 427,100 | 9.4% |
| 2010 | 4,559,800 | 4,119,000 | 440,800 | 9.7% |

Source: NJ Department of Labor

Employment Statistics, Essex County

| Year | Labor Force | Employment | Unemployment | Unemployment Rate |
|------|-------------|------------|--------------|-------------------|
| 2020 | 373,900 | 330,300 | 43,700 | 11.7% |
| 2019 | 372,100 | 356,100 | 15,900 | 4.3% |
| 2018 | 367,100 | 348,800 | 18,200 | 5.0% |
| 2017 | 369,600 | 349,200 | 20,400 | 5.5% |
| 2016 | 369,900 | 347,900 | 22,000 | 6.0% |
| 2015 | 370,200 | 346,600 | 25,400 | 6.8% |
| 2014 | 374,400 | 344,500 | 29,900 | 9.9% |
| 2013 | 378,800 | 341,400 | 37,400 | 9.9% |
| 2012 | 383,600 | 342,200 | 41,400 | 10.8% |
| 2011 | 383,000 | 341,600 | 41,500 | 10.8% |
| 2010 | 382,900 | 340,700 | 42,100 | 11% |

Source: NJ Department of Labor

| Employment Characteristics, South Orange | | | | |
|--|-------------|------------|--------------|-------------------|
| Year | Labor Force | Employment | Unemployment | Unemployment Rate |
| 2020 | 7,925 | 7,404 | 521 | 6.6% |
| 2019 | 8,190 | 7,983 | 207 | 2.5% |
| 2018 | 8,065 | 7,836 | 229 | 2.8% |
| 2017 | 8,144 | 7,883 | 261 | 3.2% |
| 2016 | 7,942 | 7,649 | 293 | 3.7% |
| 2015 | 7,995 | 7,644 | 351 | 4.4% |
| 2014 | 8,004 | 7,606 | 398 | 5.0% |
| 2013 | 8,070 | 7,557 | 513 | 6.4% |
| 2012 | 8,162 | 7,591 | 571 | 7.0% |
| 2011 | 8,033 | 7,565 | 467 | 5.8% |
| 2010 | 8,231 | 7,710 | 521 | 6.3% |

Source: NJ Department of Labor

Class of Worker and Occupation

According to the New Jersey Department of Labor, a majority of workers (62%) were employed in management, business, science, and arts occupations, while those employed in management, business and financial occupations accounted for the next largest share of the workforce, or 28% of workers.

| Percentage of Labor Force by Occupation | | | |
|---|------------|--------------|--------------|
| Occupation Type | New Jersey | Essex County | South Orange |
| Management, business, science, and arts occupations | 43% | 39% | 62% |
| Management, business, and financial occupations | 18% | 16% | 28% |
| Management occupations | 11% | 10% | 18% |
| Business and financial operations occupations | 7% | 6% | 10% |
| Computer, engineering, and science occupations | 7% | 5% | 6% |
| Computer and mathematical occupations | 4% | 3% | 4% |
| Architecture and engineering occupations | 2% | 1% | 1% |
| Life, physical, and social science occupations | 1% | 1% | 1% |

Percentage of Labor Force by Occupation

| Occupation Type | New Jersey | Essex County | South Orange |
|---|------------|--------------|--------------|
| Education, legal, community service, arts, and media occupations | 12% | 13% | 24% |
| Community and social service occupations | 2% | 2% | 3% |
| Legal occupations | 1% | 2% | 5% |
| Educational instruction, and library occupations | 7% | 6% | 8% |
| Arts, design, entertainment, sports, and media occupations | 2% | 3% | 7% |
| Healthcare practitioners and technical occupations | 6% | 5% | 5% |
| Health diagnosing and treating practitioners and other technical occupations | 4% | 4% | 4% |
| Health technologists and technicians | 2% | 2% | 1% |
| Service occupations | 16% | 20% | 13% |
| Healthcare support occupations | 3% | 5% | 2% |
| Protective service occupations | 2% | 3% | 2% |
| Firefighting and prevention, and other protective service workers including supervisors | 1% | 2% | 2% |
| Law enforcement workers including supervisors | 1% | 1% | 0% |
| Food preparation and serving related occupations | 5% | 4% | 3% |
| Building and grounds cleaning and maintenance occupations | 3% | 4% | 2% |
| Personal care and service occupations | 3% | 3% | 4% |
| Sales and office occupations | 22% | 21% | 17% |
| Sales and related occupations | 10% | 9% | 10% |
| Office and administrative support occupations | 12% | 12% | 7% |
| Natural resources, construction, and maintenance occupations | 7% | 7% | 2% |
| Farming, fishing, and forestry occupations | 0% | 0% | 0% |
| Construction and extraction occupations | 4% | 5% | 2% |
| Installation, maintenance, and repair occupations | 3% | 2% | 0% |
| Production, transportation, and material moving occupations | 11% | 13% | 5% |

| Percentage of Labor Force by Occupation | | | |
|---|------------|--------------|--------------|
| Occupation Type | New Jersey | Essex County | South Orange |
| Production occupations | 4% | 4% | 2% |
| Transportation occupations | 4% | 5% | 2% |
| Material moving occupations | 4% | 4% | 2% |

Source: NJ Department of Labor

Commuting to Work

According to the New Jersey Department of Labor, more than a quarter of South Orange workers, (27.5%), had a commute of an hour or longer while more than one in two (52.8%) had a commute of 30 minutes or longer.

| Percentage of Workers by Commute Time | | | |
|---------------------------------------|------------|--------------|--------------|
| Commute Time | New Jersey | Essex County | South Orange |
| Less than 10 minutes | 9.1% | 6.4% | 6.7% |
| 10 to 19 minutes | 22.7% | 19.2% | 15.7% |
| 20 to 29 minutes | 18.3% | 18.4% | 16.8% |
| 30 to 39 minutes | 15.8% | 19% | 11.6% |
| 40 to 59 minutes | 14.2% | 13.8% | 13.7% |
| 60 to 89 minutes | 10.2% | 13.1% | 20.3% |
| 90 or more minutes | 5.2% | 5.9% | 7.2% |
| Worked at home | 4.5% | 4.1% | 8.0% |

Source: NJ Department of Labor

A majority of South Orange workers, (51.1%), drove to work alone although a large percentage of workers, (30.3%), took public transit. An estimated 8 percent of those employed worked from home, while 5.5 percent and 0.1 percent of workers walked or bicycled to work, respectively.

| Percentage of Means of Transportation | | | |
|---------------------------------------|------------|--------------|--------------|
| Means of Transportation | New Jersey | Essex County | South Orange |
| Car, Truck, or Van | 79.2% | 68% | 55.8% |
| Drove Alone | 71.2% | 60.7% | 51.1% |

| Percentage of Means of Transportation | | | |
|---------------------------------------|------------|--------------|--------------|
| Means of Transportation | New Jersey | Essex County | South Orange |
| Carpooled | 8% | 7.3% | 4.7% |
| Public Transportation | 12% | 22.2% | 30.3% |
| Motorcycle | 0% | 0% | 0% |
| Bicycle | 0.3% | 0.1% | 0.1% |
| Walked | 2.8% | 3.9% | 5.5% |
| Other means | 1.1% | 1.7% | 0.5% |
| Worked at home | 4.5% | 4.1% | 8% |

Source: NJ Department of Labor

2.5 Land Use Info

A zoning analysis is utilized to help determine where growth is expected and where housing units are likely to be developed in the future. This analysis covers how existing and planned zoning regulations as well as capital infrastructure provide adequate capacity to accommodate residential and nonresidential growth projections. The section includes the following:

- An analysis of the available existing and planned infrastructure;
- The anticipated demand for types of uses permitted by zoning based on present and anticipated future demographic characteristics of the Village and anticipated land use patterns; and
- The Village’s economic development policies and constraints on development with existing or planned measures to address constraints.

Infrastructure

Sewer

The Village is part of the Joint Meeting System, a sewage authority serving 12 municipalities in Essex and Union Counties, and with a sewage treatment plant in Elizabeth. Every parcel in the Village is located within the Joint Meeting System’s service area except for five parcels next to East Orange that are part of the Passaic Valley Sewerage Commission. In all, the Joint Meeting System is responsible for 51 miles of sanitary sewers. If there is any substandard service in South Orange, it is the result of aging infrastructure. These problem areas are being addressed as needed and, therefore, do not present a constraint on future development in the Village, despite existing infiltration and inflow problems. Moreover, additional capacity exists to establish new connections to the system.

Water

The South Orange Village Water Utility contracts American Water to operate the municipality's water system and to supply the Village with water. American Water provides service through its Short Hills Division, a system that includes 25 wells and four surface water sources. The Division also purchases water from sources outside its system, the City of Newark, among them. At present, the Village's water comes mainly from Well 17, a municipally owned well located in Grove Park. The Village decided recently to close the well and obtain water from other sources within the American Water System. In any event, the Short Hills Division operates at sufficient capacity to provide water to South Orange in the short term.

Land Use Patterns

Residential

As shown on the Land Use map, the largest proportion of South Orange's land use is comprised of one-to-four family residential development, which accounts for approximately 87% of total parcels in South Orange and 65% of total acreage. Single-family housing is the leading type of housing outside of the Village's commercial core. Two-, three-, and four-family housing, though limited, can be found in the transitional residential neighborhoods close to downtown and along the South Orange, Valley Street, and Irvington Avenue Corridors. Numerous multi-family developments are also located in these corridors. There are also several multi-family properties along Vose Avenue and a large multi-family complex located in the Upper Wyoming neighborhood.

Commercial

The Village's commercial uses account for roughly 3.5 percent of its parcels and 2 percent of its acreage. Most of the commercial uses are located in the Village's downtown, but sizable clusters of retail are also located along Valley Street and Irvington Avenue. Some of these uses have businesses on the ground floor and either apartments or offices on the floors above. Office uses are mostly confined to the central business district.

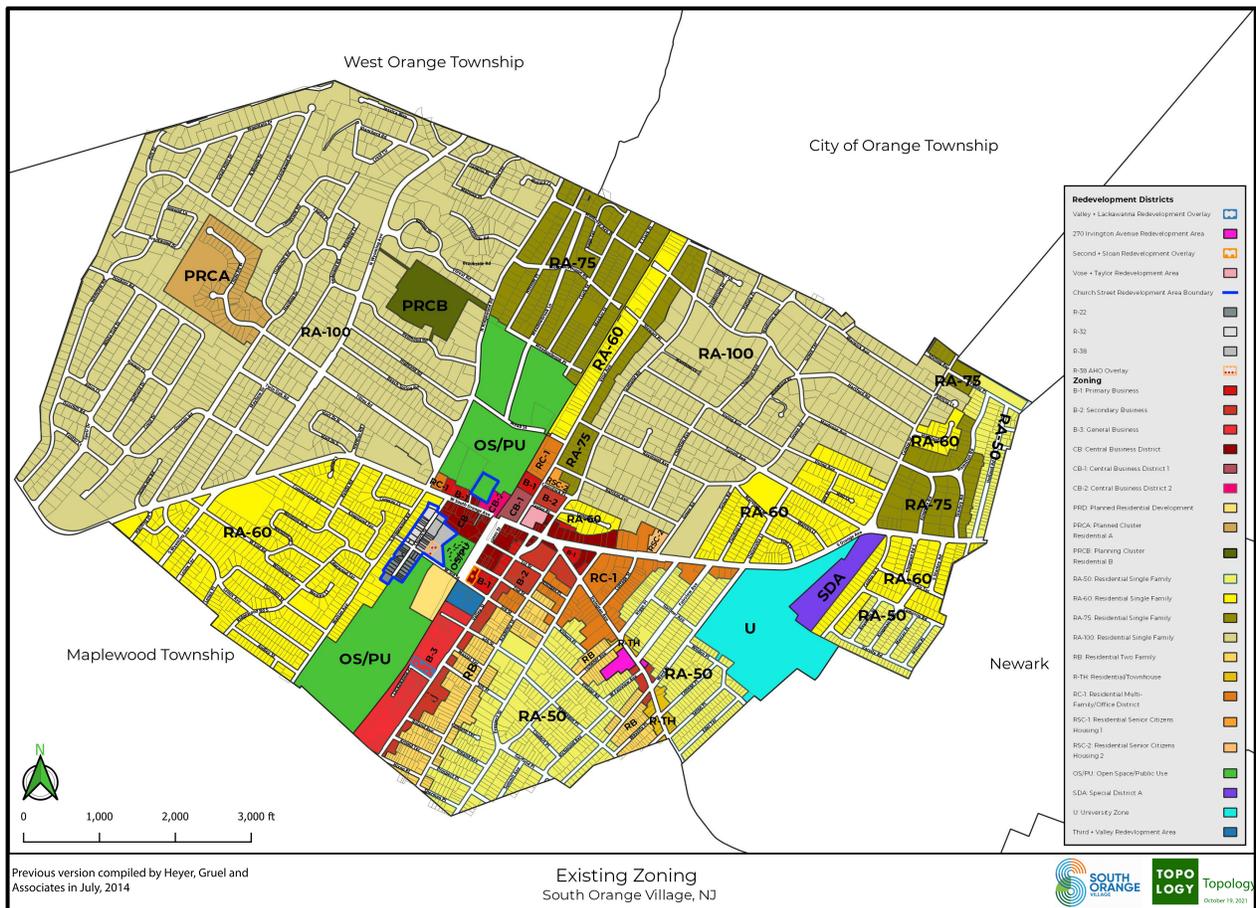
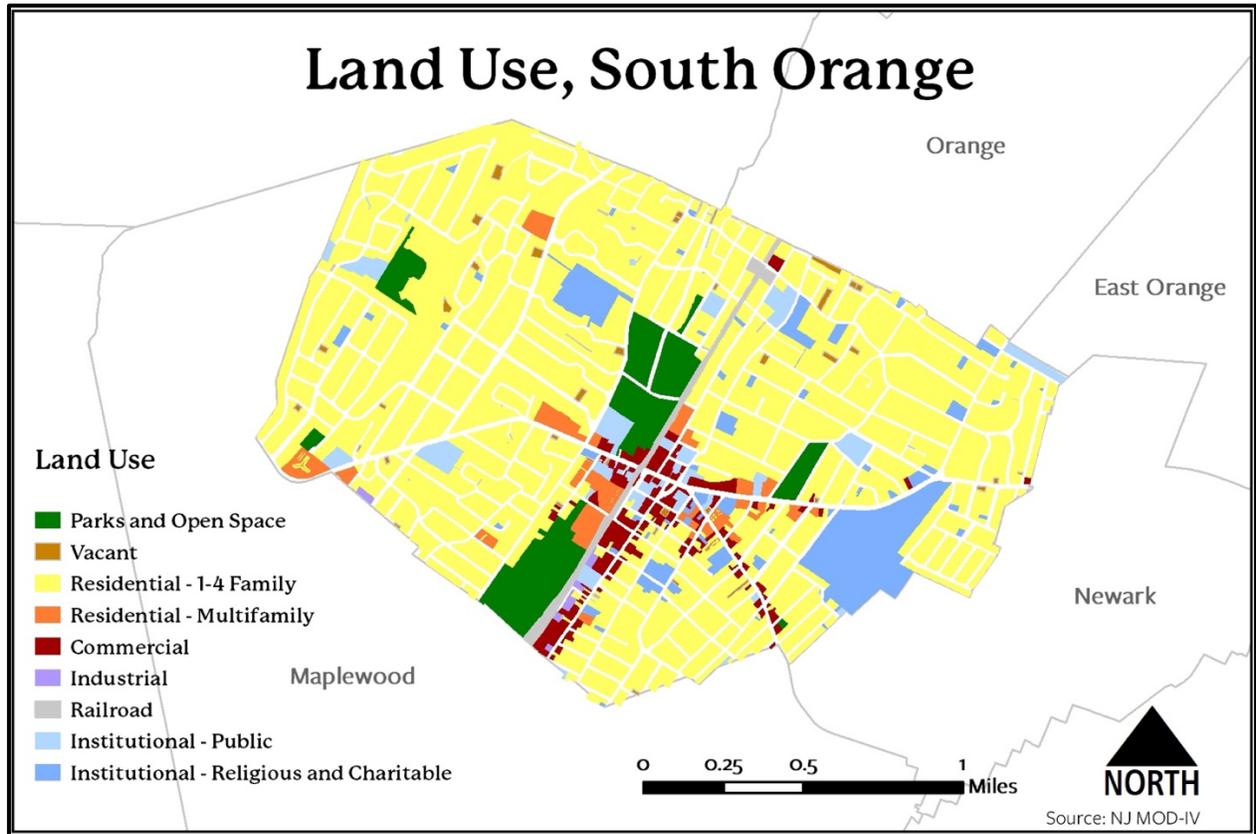
Industrial

Few parcels have industrial uses. According to MOD-IV tax assessor records, industrial uses are located on only six South Orange parcels, and all of which could be categorized as light industrial. These uses are primarily located near the railroad that runs parallel to Valley Street.

Other

Institutional uses that are exempt from property tax occupy a sizable share of the Village's land. Seton Hall University, whose main campus is located in South Orange, is by far the most significant of these institutions. Other institutional uses include churches, fraternal and charitable organizations, as well as South Orange municipal parks and facilities. Though tax-exempt uses occupy only 4 percent of parcels in South Orange, they occupy 25.4% of acreage.

Land Use, South Orange



Previous version compiled by Heyer, Gruel and Associates in July, 2014

Existing Zoning
South Orange Village, NJ



Economic Policies

In addition to being a place to live, South Orange is also home to more than 8,000 workers.

The New Jersey Department of Transportation designates South Orange as one of the state's Transit Villages. The designation reflects the ability to support development served by multiple modes of transportation. These modes include travel by bus, train, bicycling, or walking. A sizable number of South Orange workers commute to work via these methods.

South Orange has undertaken several major redevelopment projects over the years. For the most part, these projects have been located in places previously zoned for commercial or industrial uses but redevelopment has opened these areas to residential development. The redevelopment areas in the Village include the Central Business Redevelopment Area, the Church Street Redevelopment Area, the Third and Valley Redevelopment Area, the Vose and Taylor Redevelopment Area, the Fourth and Valley Redevelopment Area, the 270 Irvington Redevelopment Area, the Second and Sloan Redevelopment Area, and the Lackawanna and Valley Redevelopment Area. These are located within walking distance of the downtown train station. Additionally, the Village is looking at properties along Valley Street and adjacent to the railroad for future redevelopment.

Environmental Constraints

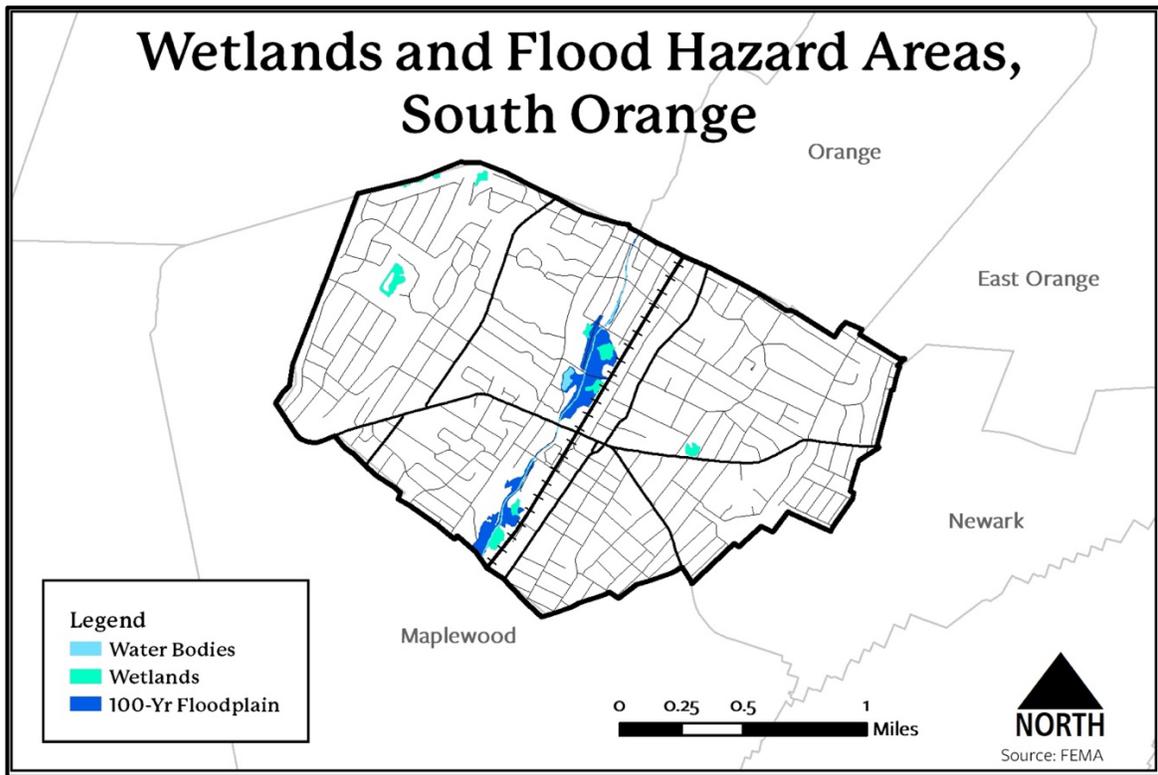
The following section summarizes the environmental constraints within the Village. The constraints are detailed on the Wetlands and Floodplains and Steep Slopes maps below.

Wetlands

Wetlands cover about 0.8 percent of South Orange's land area. In addition to supporting plant and animal life, wetlands act as a retention basin, protecting nearby development from floods. Because of this, regulations to preserve wetlands are perhaps the most understandable development constraint. The places defined as wetlands are located on some of the Village's most notable open spaces and, therefore, are already protected. These places include Meadowland Park, Cameron Park, and Waterlands Park. There is also a small cluster of wetlands in the Village's Upper Wyoming neighborhood, which are preserved as the common open space of a planned residential development.

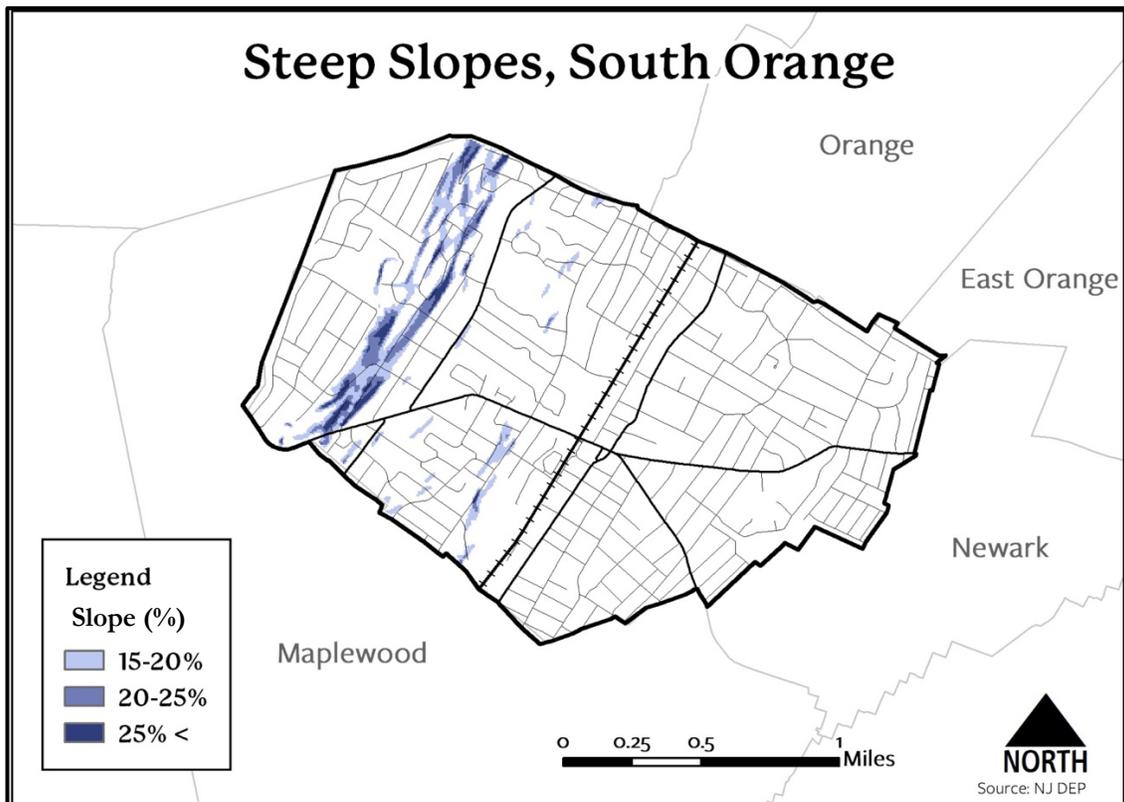
Floodplains

Floodplains are areas adjacent to streams, rivers, ponds and lakes. In order to avoid destruction of property and habitat, development within the floodplains is restricted. Approximately 2.3 percent of the Village's land area is within the 100-year floodplain. The floodplain covers land adjacent to the Rahway River, including the core of South Orange's park system. As such, these areas are meant to be free from future development.



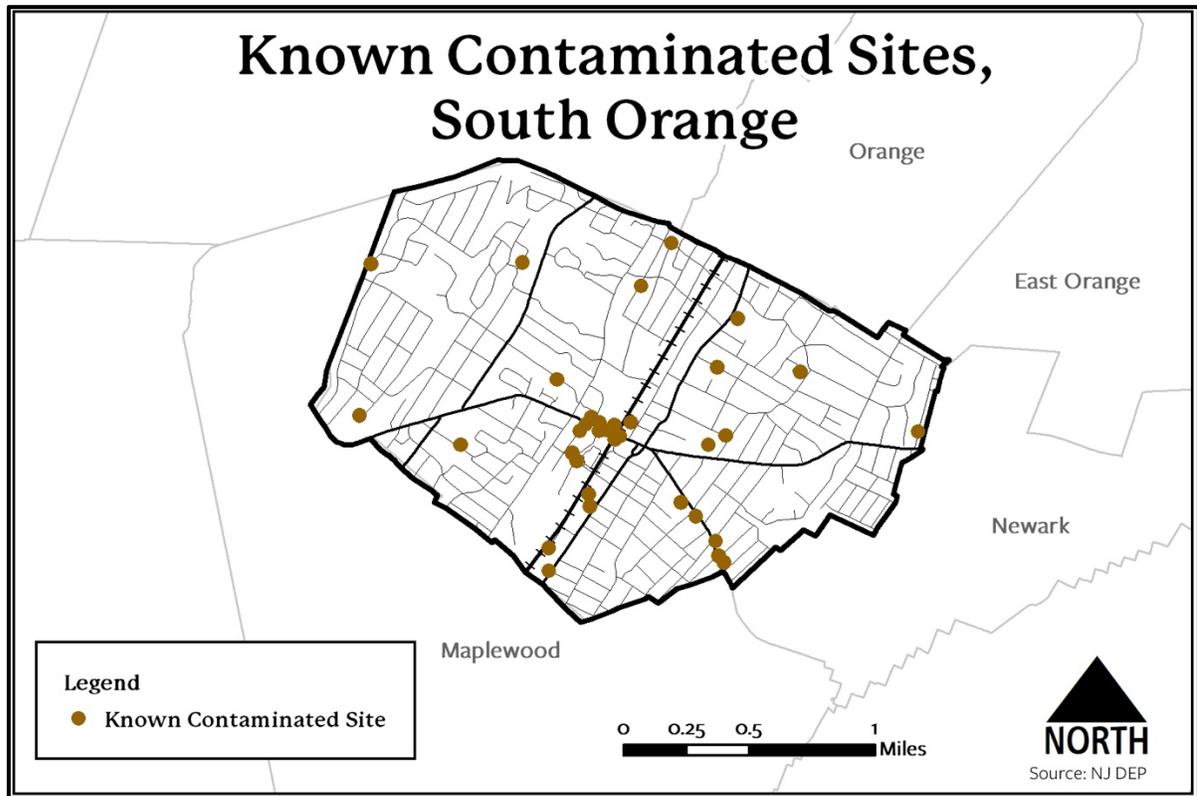
Steep Slopes

Steep slopes inhibit development in the neighborhoods that comprise South Orange’s hilly west. These neighborhoods, which include Newstead, Upper and Lower Wyoming, and South Mountain, have slopes that in some places that exceed 15%. Slopes are especially severe in Upper Wyoming, where many properties have slopes that surpass 25%.



Known Contaminated Sites

There are 32 active known contaminated sites in South Orange. An active status means they are assigned to a remedial program and measures such as preliminary assessment, remedial investigation or cleanup work are underway. Of the 32 sites identified for remediation, 10 are located in South Orange's central business district. In addition, five sites are along Irvington Avenue while another four are along or adjacent to Valley Street. The remainder are scattered throughout South Orange.



Affordable Housing Developments

Affordable housing is located in several places throughout South Orange, though the Village does not have a public housing authority. These developments, comprised predominantly of age-restricted or special needs housing, represent 125 units in all, or 2.2 percent of South Orange's estimated housing stock. These developments include the B'Nai B'Rith Residence, a 65-unit age-restricted complex financed by HUD's Section 202 Supportive Housing for the Elderly program.

The list of affordable housing developments in South Orange include:

- Al Gomer Residence/B'Nai B'Rith (1992): An age-restricted complex, with 65 units and comprised of one 5 ½-story building located at 219 South Orange Avenue.

- Community Action for Independent Living (1988): A group home for special needs residents, with 5 units and located at 34 South Center Street.
- Community Options (1998): Special needs housing, with 3 units in all and located at White Oak Drive.
- Partnership for People (1996): Special needs housing, located at 219 Vose Avenue and comprised of 5 units.
- Project Live VII (1997): Special needs housing, located at 255 Gardner Street and comprised of 5 units.
- Scattered site development: In collaboration with Essex County, located on several sites and comprised of 42 units.

2.6 Master Plan

The Village adopted its most recent Comprehensive Master Plan in 1979 and adopted an updated Land Use Plan in 1991. The Village Master Plan was re-examined in 2000 and 2006, and in the intervening years, the Village undertook planning efforts for various elements of the Master Plan including a new Open Space and Recreation Element in 2004, a Bicycle and Pedestrian Circulation Plan in 2005, and the Village’s previous Housing Element and Fair Share Plan in 2005. In the 2006 Re-Examination Report, the Village reaffirmed its commitment to preserving and expanding a range of housing options for various income levels in a way that respects and maintains the Village’s historic character. In 2018, the Village commenced planning for a new Comprehensive Master Plan, which was adopted in December 2021.

2.7 Regional Planning Regulations

According to the State Development and Redevelopment Plan, the Village is within the Metropolitan Planning Area (PA1). The intent of the PA1 Metropolitan Area is to create and maintain a high quality of life in the region through cooperative regional programs and processes that empower municipalities to act jointly. Communities in this Planning Area have mature settlement patterns with little vacant land for new development and redevelopment will be the predominant form of growth in the future



PART 3: Compliance with Fair Share Obligation

The foregoing analysis was prepared for submission to the Superior Court on behalf of the Township of South Orange Village (“the Village”) in connection with the New Jersey Supreme Court’s March 10, 2015 decision in re Adoption of N.J.A.C. 5:96 & 5:97 by N.J. Council on Affordable Housing, 221 N.J. 1 (2015) (“Mount Laurel IV”). This action was in response to a failure on the part of the Council on Affordable Housing (COAH) to adopt new rules consistent with the New Jersey Fair Housing Act to establish a methodology to determine statewide municipal housing obligations.

The Court’s ruling created a judicial review process through which municipalities with COAH approval of their Third Round plans, as well as municipalities that were “participating” in the COAH process, could secure approval of their Third Round plans by trial judges. The Court appointed judges to review declaratory judgment actions filed on the part of municipalities seeking a declaration that their Fair Share Plans, as may be supplemented, satisfy their constitutional obligation to plan and provide for their obligated fair share of affordable housing units.

The April 2017 report by Kinsey & Hand prepared for and in collaboration with the Fair Share Housing Center (FSHC), presented a fair share methodology and calculations of low- and moderate-income housing obligations for each municipality. FSHC submitted that report in Mount Laurel IV declaratory judgment proceedings throughout New Jersey. In the May 2016 report Kinsey & Hand established a gap and prospective need obligation of 404 for South Orange. The April 2017 reports of Econsult Services generated a “gap” and prospective need obligation of 464 for South Orange. On March 8, 2018, Judge Jacobson issued a comprehensive opinion on the correct fair share formula. **Pursuant to the Jacobson opinion, the gap and prospective need obligation for South Orange is 192.**

The Village received COAH approval of its Third Round Housing Element and Fair Share Plan adopted December 3, 2008. Under the new ruling, this report will be the second time that the Village will be getting their Third Round plan approved. On February 26, 2020, the Court entered a conditional JOR for the Village. The Village has been working with the Master and Fair Share Housing Center on satisfying the conditions of the JOR. This Fair Share Plan demonstrates how the Village intends to satisfy this obligation as well as its “rehabilitation” and “new construction” obligations from prior rounds, and satisfies conditions set forth in the Village’s JOR.

3.1 Fair Share Obligation

This analysis supplements the Township’s current 2008 Housing Element and Fair Share Plan, and subsequently received substantive certification from COAH. The current Housing Element and Fair Share Plan was approved

by COAH pursuant to the now invalid Third Round rules. COAH defines housing need in terms of three separate components:

- Rehab Obligation (Indigenous Need) – 20 Units
- Prior Round Obligation (1987-1999) – 63 Units
- Gap Present Need (1999-2015) – 99 Units
- Prospective Need (2015-2025) – 93 Units

Satisfying the “Gap” and “Prospective” need obligation (i.e. the “Round 3 obligation”) will require a combination of actual affordable units and rental bonus credits in order to achieve the required 192 credits (pursuant to the Jacobson opinion). Additionally, compliance parameters are identified to satisfy the “Prior Round,” “Gap,” and “Prospective” need that includes:

1. The provision of rental housing, in the Prior Round; and
2. The provision of rental affordable housing, family-unit affordable housing, family rental-unit affordable housing, very low-income affordable housing and may include age-restricted housing.

3.2 Rehab Obligation (Indigenous Need) – 20 Units

COAH defines “indigenous need” as “deficient housing units occupied by low- and moderate-income households within a municipality and is a component of present need” N.J.A.C. 5:93-1.3. All rehabilitated units shall remain affordable to low- and moderate-income households for a period of at least 10 years (the control period), enforced through a recorded lien and/or deed restriction. The Village of South Orange Township, intends to meet 20-unit rehabilitation obligation through two approaches:

Local Improvement Program (primary approach)

The Village intends to release a Request for Proposal (“RFP”) to secure an Administrative Agent that will run, operate, and enforce compliance for a local affordable housing rehabilitation program. The Administrative Agent will also operate a rental rehabilitation program. The Village intends to program funding for its rehabilitation program through its Affordable Housing Trust Fund towards repairing deficient units. Once secured, the Administrative Agent shall prepare an operating manual in compliance with N.J.A.C. 5:93.

Essex County Home Improvement Program (secondary approach)

The Essex County Home Improvement Program provides deferred payment loans to low- and moderate-income homeowners occupying a one- to three-family home in the Essex County Consortium, which includes South Orange. A 10-year zero interest loan in the amount of assistance required for the rehabilitation work will be made to the homeowner by the County Division of Housing and Community Development. The program provides rehab services for homeowners with lack of heat, lack of hot water, roof leaks, dangerous electrical problems, broken pipes, problems with sanitary facilities, and other housing conditions that threaten the health, safety, or well-being of the household members.

3.3 Prior Round (1987-1999) – 63 Units

The Village of South Orange complied with the Supreme Court’s requirement to address its 63-unit Prior Round obligation, as demonstrated in the table below.

| Prior Round Obligation | | | | |
|--|-----------------|-------|-------|-------------------|
| Prior Round Projects | Tenure | Units | Bonus | Total |
| Partnership for People, Inc. (1986) | S/SN (pre-1986) | 3 | 0 | 3 |
| Vose Ave Development, Inc (1996) | S/SN Rental | 3 | 3 | 6 |
| Project Live VII (1997) | S/SN Rental | 5 | 5 | 10 |
| Community Action for Independent Living (1988) | S/SN Rental | 3 | 3 | 6 |
| Community Options, Inc. (1998) | S/SN Rental | 3 | 3 | 6 |
| B’nai B’rith Senior Housing (1992) | Senior Rental | 2 | 0 | 2 |
| RCA | Family Sale | 30 | 0 | 30 |
| | | | | 63 Credits |

Compliance with the Prior Round is evidenced by the fact that COAH granted the Village substantive certification for the Prior Round on January 5, 2000, and for Round 3 on January 13, 2010.



3.4 Gap and Prospective Rounds (1999-2025) also known as “Third Round” – 192 Units

Pursuant to N.J.A.C. 5:93-4.1(b), a municipality may secure a downward adjustment of its “new construction” obligation by demonstrating that it lacks sufficient vacant, suitable land for the development of affordable housing. Pursuant to N.J.A.C. 5:93-4.2., municipalities calculate their “realistic development potential” or “RDP” by tallying its vacant, suitable acreage, multiplying that by at least six units per acre, and dividing that figure by five (which assumes a 20% set-aside). However, the Village shall not seek a downward adjustment and shall instead satisfy its 192-unit Third Round obligation as set forth in the Table below.

| Project | Tenure | Affordable Units | Built | Family Units | Rental Bonus | Senior Units | Non-Family Units |
|---|--------------------|--------------------|-----------------------|--------------|-----------------|-----------------|------------------|
| B’nai B’rith | Rental, Senior | 63 | 1992 ¹ | 0 | 0 | 63 | - |
| Third + Valley | Rental, Family | 21 | 2016 | 21 | 21 | - | - |
| 320 Valley Street | Rental, Family | 2 | 2019 | 2 | 2 | - | - |
| Fourth + Valley | Rental, Family | 10 | Under Construction | 10 | 10 | - | - |
| 14 Second Street | Rental, Family | 1 | Under Construction | 1 | 1 | - | - |
| 41-45 Third Street | Rental, Family | 10 | Preliminary Approved | 10 | 10 | - | - |
| | Rental, Non-Family | 19 (Supportive) | Preliminary Approved | - | - | - | 19 |
| Vose + Taylor | Rental, Family | 11 | Approved | 11 | 11 | - | - |
| 270 Irvington Ave | Rental, Family | 12 | Approved | 12 | 12 | - | - |
| Second + Sloan | Rental, Family | 8 | Planning | 8 | 8 | - | - |
| 6-8 S. Orange Ave | Rental, Family | 1 | Planning | 1 | 1 | - | - |
| JESPY Unit | Rental, Non-Family | 1 (Supportive) | To Be Deed Restricted | 0 | 0 | - | 1 |
| ¹ Only 2 of 65 credits applied in prior round. ² Rental bonus capped at 25% (i.e. 48) per N.J.A.C. 5:93-5.15.d ³ Senior units maxed at 25% (i.e. 48) per N.J.A.C. 5:93-5.14 ⁴ Non-Family units capped at 25% (i.e. 48) | | | | 76 | 48 ² | 48 ³ | 20 ⁴ |
| 192 Credits | | | | | | | |

All parameters of the Third Round stratification and caps are in compliance as demonstrated below:

| Affordability Average Stratification (Per NJAC 5:80-26.3) | | | | |
|--|--------------|------------------------|-------------------|------------------------|
| Project | Units | Very-Low Income | Low Income | Moderate Income |
| B'nai B'rith | 48 | _* | 24 | 24 |
| Third + Valley | 21 | 2 | 11 | 10 |
| 320 Valley Street | 2 | 0 | 1 | 1 |
| Fourth + Valley | 10 | 1 | 5 | 5 |
| 14 Second Street | 1 | 0 | 0 | 1 |
| 41-45 Third Street | 29 | 7** | 24 | 5 |
| Vose + Taylor | 11 | 1 | 6 | 5 |
| 270 Irvington Ave | 12 | 1 | 6 | 6 |
| Second + Sloan | 8 | 1 | 4 | 4 |
| 6-8 S. Orange Ave | 1 | 0 | 0 | 1 |
| JESPY Unit | 1 | _* | 1 | 0 |
| Threshold | - | At least 13% | At least 50% | NTE 50% |
| Total | 144*** | 13 (13.7%)* | 82 (57%) | 62 (43%) |

*Pre-2008 construction units are exempt from VLI requirement. Denominator excludes B'nai B'rith and JESPY Unit.
 **At least 1/2 of VLI requirement must be family units (i.e. 5 units).
 ***Excludes 48 rental "bonus" credits. B'Nai B'rith capped at 48 senior units.

| Unit Type Stratification | | | |
|---------------------------------|-----------------------|-------------------|---------------|
| Project | Age-Restricted | Non-Family | Family |
| B'nai B'rith | 48 | 48 | - |
| Third + Valley | - | - | 21 |
| 320 Valley Street | - | - | 2 |
| Fourth + Valley | - | - | 10 |
| 14 Second Street | - | - | 1 |
| 41-45 Third Street | - | 19 | 10 |
| Vose + Taylor | - | - | 11 |

Unit Type Stratification

| Project | Age-Restricted | Non-Family | Family |
|-------------------|----------------|------------|----------------|
| 270 Irvington Ave | - | - | 12 |
| Second + Sloan | - | - | 8 |
| 6-8 S. Orange Ave | - | - | 1 |
| JESPY Unit | - | 1 | - |
| Threshold | NTE 25%* | NTE 50%** | At Least 50%** |
| Total | 48 (25%) | 68 (47%) | 76 (52%) |

*Senior cap not to exceed 25% of total third round obligation.

**Family and Non-Family unit thresholds exclude 48 rental "bonus" credits (i.e. calculation on 144 physical units without bonus credits).

UHAC Bedroom Breakdown

| Project | Family Units | 1-Bedroom | 2-Bedroom | 3-Bedroom |
|------------------------------------|--------------|-----------|--------------|--------------|
| Third + Valley | 21 | 5 | 14 | 2 |
| 320 Valley Street | 2 | 1 | 1 | 0 |
| Fourth + Valley | 10 | 2 | 6 | 2 |
| 14 Second Street | 1 | 0 | 1 | 0 |
| Vose + Taylor | 11 | 3 | 5 | 3 |
| 270 Irvington Ave | 12 | 3 | 6 | 3 |
| Second + Sloan | 8 | 0 | 6 | 2 |
| 6-8 S. Orange Ave | 1 | 0 | 1 | 0 |
| Third St. Village Project (Family) | 10 | 4 | 4 | 2 |
| Future Land Use Units* | 14 | 0 | 10 | 4 |
| Threshold | - | NTE 20% | At Least 30% | At Least 20% |
| Total | 90 | 18 (20%) | 54 (60%) | 18 (20%) |

Note: Senior project (B'nai B'rith) and projects with HMFA-funding (Third St. Village Project) are exempt from bedroom breakdown requirement.

*It is encouraged that future units seeking density variance from the Zoning Board provide additional 2- and 3-bedroom affordable housing units (and not 1-bedroom) to satisfy "positive criteria" of variance relief.

Site Description and Suitability Analysis

Municipalities shall designate sites that are available, suitable, developable and approvable, as defined in N.J.A.C. 5:93-1. As such, the criteria for crediting units must meet the following:

- “Available site” – a site with clear title, free of encumbrances which preclude development for low- and moderate-income housing.
- “Suitable site” – a site that is adjacent to compatible land uses, has access to appropriate streets and is consistent with the environmental policies delineated in N.J.A.C. 5:93-4.
- “Developable site” – a site that has access to appropriate water and sewer infrastructure, and is consistent with the applicable areawide water quality management plan (including the wastewater management plan) or is included in an amendment to the areawide water quality management plan submitted to and under review by DEP.
- “Approvable site” – a site that may be developed for low- and moderate-income housing in a manner consistent with the rules or regulations of all agencies with jurisdiction over the site. A site may be approvable although not currently zoned for low- and moderate-income housing.

219 South Orange Avenue – B’nai B’Rith (Block 1007, Lot 12)

This senior rental property was constructed in 1992 and is located across the street from Grove Park. B’nai B’Rith consists of sixty-five (65) affordable housing units to seniors. However, only two of the 65 units were counted in the prior round under the Substantive Certification process. Therefore, 63 units will carry over to the current round. Since the project is completed with existing deed-restricted affordable units, it meets the requirements of N.J.A.C. 5:93 and is available, suitable, developable, and approvable.

Third and Valley (Block 2304, Lot 5)

This mixed-use, rental property consists of a five-story building with 215 residential units, of which twenty-one (21) are on-site affordable units. The building is located at the intersection of Third Street and Valley Street in the downtown near the train station, is comprised of mixed-use retail and residential, and has connections to sewer and water infrastructure. The project is part of the Third and Valley Redevelopment Plan adopted January 2013 with construction completed in October 2016. Since the project is completed with existing deed-restricted affordable units, it meets the requirements of N.J.A.C. 5:93 and is available, suitable, developable, and approvable.

320 Valley Street (Block 2201, Lot 35)

This mixed-use, rental property consists of a three-story building with 22 residential apartments, of which two (2) are on-site affordable units. The project was approved by the Planning Board in 2016 and completed construction in 2019. The project is deed-restricted for its affordable units, located near the train station, comprised of mixed-use of residential and retail, and has connections to sewer and water infrastructure. As such, it meets the requirements of N.J.A.C. 5:93 and is available, suitable, developable, and approvable.

Fourth and Valley (Block 2303, Lots 7-11)

This mixed-use, rental property was approved by the Planning Board and will consist of a five-story building with 106 residential units, of which 10 are on-site affordable units. The site is located at the intersection of Fourth Street and Valley Street in the downtown near the train station. The project is part of the Fourth and Valley Redevelopment Plan adopted March 2017. Since the project is located in a redevelopment area permitting residential use, has connections to sewer and water infrastructure, and has obtained land use approvals with conditions to deed-restrict the affordable units, it meets the requirements of N.J.A.C. 5:93 and is available, suitable, developable, and approvable.

14 Second Street (Block 1905, Lot 2)

This mixed-use, rental property was approved by the Planning Board and will consist of a 4-story building with 8 residential apartments with one on-site affordable unit. The property received planning board approval in 2018 and construction has commenced. When the project is complete, it will be deed-restricted for its affordable units prior to occupancy. The project is near transportation, has compatible land uses nearby, and has connection to sewer and water infrastructure. As such, it meets the requirements of N.J.A.C. 5:93 and is available, suitable, developable, and approvable.

41-45 Third Street (Block 1902, Lots 39-40)

This property consists of two parcels that contain existing structures to be redeveloped by a non-profit for the construction of twenty-nine (29) residential units. This project is part of the Church Street Redevelopment Plan Amendment adopted June 2021. Of the 29 units, 10 units will be affordable rental units and the other 19 units will be special need affordable rental units. The project received preliminary and final site plan approval, and all affordable units will be deed-restricted. The property will have connection to water and sewer infrastructure, as well as a downtown location compatible with existing land uses and transportation. As such, it meets the requirements of N.J.A.C. 5:93 and is available, suitable, developable, and approvable.

Vose + Taylor (Block 1006, Lots 1-3, 9-11, 13-14)

This mixed-use, rental property was approved by the Planning Board and will consist of a 5-story building with 110 residential units, of which 11 are on-site affordable units. This property consists of eight parcels and is located in the downtown near the train station. The project is part of the Vose and Taylor Redevelopment Plan most recently adopted April 2020. The affordable units will be deed-restricted, and the property is located on a site with access to water and sewer infrastructure, transportation, and compatible land uses. As such, it meets the requirements of N.J.A.C. 5:93 and is available, suitable, developable, and approvable.

270 Irvington Avenue (Block 2102, Lots 14-20 & Block 2107, Lot 1)

This mixed-use development was approved by the Planning Board and will consist of a total of three structures containing a total of 61 residential units, of which 12 are on-site affordable units. This project is part of the 270 Irvington Avenue Redevelopment plan adopted December 2020. The affordable units will be deed-restricted, and the property is located on a site with access to water and sewer infrastructure, transportation, and compatible land uses. As such, it meets the requirements of N.J.A.C. 5:93 and is available, suitable, developable, and approvable.

Second + Sloan (Block 1905, Lot 1)

This development was approved by the Planning Board for the construction of a 5-story residential building containing 42 residential units, of which 8 will be on-site affordable units. This project is part of the Second and Sloan Redevelopment Plan adopted April 2021. The affordable units will be deed restricted prior to occupancy,

and the property will have connection to water and sewer infrastructure, as well as a downtown location with convenient access to compatible land uses and transportation. As such, it means the requirements of N.J.A.C. 5:93 and is available, suitable, developable, and approvable.

6-8 South Orange Avenue (Block 1908, Lot 5)

This mixed-use building was approved by the Planning Board and will consist of a 3-story building containing 9 residential units, of which 1 will be an on-site affordable unit. The affordable unit will be deed-restricted, and the property is located on a site with access to water and sewer infrastructure, transportation, and compatible land uses. As such, it meets the requirements of N.J.A.C. 5:93 and is available, suitable, developable, and approvable.

JESPY Unit

JESPY House is a nonprofit organization that enables adults with Intellectual and Developmental Disabilities (I/DD) since 1978. JESPY House offers housing options within the Village for individualized supportive housing. The Village and JESPY House have a long-standing partnership, and as a compliance mechanism of meeting the Village’s affordable housing obligation, one (1) existing special needs unit will be deed-restricted in compliance with UHAC. The existing unit already has connection to water and sewer infrastructure, and provide special services to meet the resident’s needs. As such, it meets the requirements of N.J.A.C. 5:93 and is available, suitable, developable, and approvable.

3.5 Future Round (Unmet Need)

The Village of South Orange has implemented and will continue to utilize regulatory tools to provide affordable housing. These tools include redevelopment with set-aside requirements and development fees to expand the supply of affordable housing in the Village.

The Village of South Orange established a development fee ordinance (#10-2), creating a dedicated revenue source for affordable housing. This ordinance was adopted by the municipality on February 24, 2010. The source of revenue establishes the South Orange’s Affordable Housing Trust Fund for the creation of affordable housing. Within all zoning districts, eligible non-residential developers shall pay 2.5 percent of the equalized assessed value of the land and improvements, for all new non-residential construction on an unimproved lot or lots. Eligible developers of all new development of principal and accessory residential buildings shall pay 1.5 percent of the equalized assessed value for residential development. When a variance is granted for an increase in residential density pursuant to N.J.S.A. 40:55D-70d(5), developers may be required to pay a development fee of 6 percent (6%) of the equalized assessed value for each additional unit that may be realized.

Other mechanisms the Village has implemented under Ordinance #10-1 is an inclusionary zoning element. The zoning of the RC-1, B-1, B-2, B-3, CS-R22, CS-R32 and CS-R38 zones provide for a 20% set-aside for restricted sale and rental units and a density of the following:

| | |
|------|-------------------|
| RC-1 | 43 Units per acre |
| B-1 | 43 Units per acre |

| | |
|---------|-------------------|
| B-2 | 43 Units per acre |
| B-3 | 43 Units per acre |
| CS R-22 | 22 units per acre |
| CS R-32 | 32 units per acre |
| CS R-38 | 38 units per acre |

Furthermore, the Village of South Orange has identified seven redevelopment areas that will provide upcoming inclusionary housing: Central Business District Redevelopment Area, Church Street Redevelopment Area, Third and Valley Redevelopment Area, Vose and Taylor Redevelopment Area, Fourth and Valley Redevelopment Area, 270 Irvington Redevelopment Area, and Second and Sloan Redevelopment Area.

It is anticipated that future parcels to be redeveloped will have a mandatory set-aside of inclusionary units. The Village also has implemented a Village-wide mandatory set-aside ordinance. The Village will concentrate on construction of two- and three-bedroom affordable units over one-bedroom affordable units to satisfy the affordable housing set aside for the remainder of the Third Round. The Village, as part of its monitoring requirements, will update the Master and FSHC with regard to the number of affordable units and the bedroom count from those units yielded from the mandatory set-aside ordinance.

3.6 Conclusion

Pursuant to the Court’s ruling for their obligated fair share of affordable housing units, this “Fair Share Plan” serves as the Village’s proposal to satisfy its obligation to create a realistic opportunity to meet its fair share of low- and moderate-income housing needs within its region and which details the affirmative measures the municipality proposes to achieve its fair share of low- and moderate-income housing.

APPENDIX A:

Settlement Agreement

AGREEMENT TO RESOLVE ISSUES BETWEEN THE TOWNSHIP OF SOUTH ORANGE VILLAGE AND FAIR SHARE HOUSING CENTER CONCERNING THE TOWNSHIP'S MOUNT LAUREL FAIR SHARE OBLIGATIONS AND THE MEANS BY WHICH THE TOWNSHIP SHALL SATISFY SAME.

In the Matter of the Application of the Township of South Orange Village, County of Essex, Docket No. ESX-L-4173-15

THIS SETTLEMENT AGREEMENT ("Agreement") made this _____ day of May, 2019, by and between:

TOWNSHIP OF SOUTH ORANGE VILLAGE, a municipal corporation of the State of New Jersey, County of Essex, having an address at 33 North Central Avenue, South Orange, New Jersey 07446 (hereinafter the "Township of South Orange Village" or "South Orange");

And

FAIR SHARE HOUSING CENTER, having an address at 510 Park Boulevard, Cherry Hill, New Jersey 08002, (hereinafter "FSHC");

WHEREAS, pursuant to in re N.J.A.C. 5:96 and 5:97, 221 N.J. 1 (2015) (Mount Laurel IV), the Township filed the above-captioned matter on July 2, 2015 seeking, among other things, a judicial declaration that its Housing Element and Fair Share Plan (hereinafter "Fair Share Plan"), as may be further amended in accordance with the terms of this settlement, satisfies its "fair share" of the regional need for low and moderate income housing pursuant to the Mount Laurel doctrine; and

WHEREAS, the Township simultaneously sought and ultimately secured an Order protecting South Orange from all exclusionary zoning lawsuits while it pursues approval of its Fair Share Plan; and

WHEREAS, the immunity secured by South Orange remains in force as of the date of this Agreement; and

WHEREAS, the trial court appointed Elizabeth K. McManus, P.P., A.I.C.P., as the "Special Master" in this case as is customary in Mount Laurel matters; and

WHEREAS, with Ms. McManus's assistance, South Orange and FSHC have engaged in good faith negotiations and have reached an amicable accord on the various substantive provisions, terms and conditions delineated herein; and

WHEREAS, through that process, the Township and FSHC agreed to settle the litigation and to present that settlement to the trial court, recognizing that the settlement of Mount Laurel litigation is favored because it avoids delays and the expense of trial and results more quickly in the construction of homes for lower-income households; and

WHEREAS, at this time and at this particular point in the process resulting from the Mount Laurel IV decision, when fair share obligations have yet to be definitively determined, it is appropriate for the parties to arrive at a settlement regarding a municipality's Third Round present and prospective need, instead of doing so through plenary adjudication of the present and prospective need.

NOW, THEREFORE, in consideration of the promises, the mutual obligations contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the parties, the parties hereto, each binding itself, do hereby covenant and agree, each with the other, as follows:

Settlement Terms

The Township and FSHC hereby agree to the following general terms, subject to any relevant conditions set forth in more detail below:

South Orange's "Rehabilitation" obligation is 20.

South Orange's "Prior Round" obligation is 63.

South Orange's allocation of the Round 3 regional need is 192.

FSHC and the Township agree that South Orange does not accept the basis of the methodology or calculations proffered by FSHC's consultant, David N. Kinsey, PhD, P.P., F.A.I.C.P. The Parties agree to the terms in this agreement solely for purposes of settlement of this action. Although the Township does not accept the basis of the methodology or calculations proffered by FSHC's consultant, FSHC contends, and is free to take the position before the court, that the 192-unit obligation should be accepted by the Court because it is based on the Prior Round methodology and reflects a reduction of Dr. Kinsey's April 2017 calculation of the Township's Gap (1999-2015) and Third Round (2015-2025) fair share obligations.

As an essential term of this agreement, the parties agree that the reduction offered is based in significant part on the commitment of the Township to adopt or maintain the additional zoning mechanisms referenced in paragraph 10 of this Agreement and maintain those additional zoning mechanisms as part of its zoning code through at least July 2, 2025.

For the purposes of this agreement, the "Third Round Prospective Need" (also known as the "Round 3 regional need") shall be deemed to include the Gap Period Present Need, which is a measure of households formed from 1999 to 2015 that need affordable housing, that was recognized by the Supreme Court in In re Declaratory Judgment Actions filed by Various Municipalities, 227 N.J. 508 (2017).

Satisfaction of Rehabilitation Obligation: The Township has a 20-unit rehabilitation obligation, and will work with Essex County and/or hire a separate entity to rehabilitate units in the Township to address the Township's rehabilitation obligation in a way that allows for rehabilitation of both rental and for-sale units. Prior to the final compliance hearing in this matter, the Township will with the review of the FSHC and the Special Master identify how it will satisfy this obligation in accordance with applicable regulations.

Satisfaction of Prior Round Obligation: The Township has a 63-unit Prior Round obligation, and has satisfied that obligation as follows:

| | | | | |
|--|-----------------|----|---|-------------------|
| Partnership for People, Inc. (1986) | S/SN (pre-1986) | 3 | 0 | 3 |
| Vose Ave Development, Inc (1996) | S/SN Rental | 3 | 3 | 6 |
| Project Live VII (1997) | S/SN Rental | 5 | 5 | 6 |
| Community Action for Independent Living (1988) | S/SN Rental | 3 | 3 | 10 |
| Community Options, Inc. (1998) | S/SN Rental | 3 | 3 | 6 |
| B'nai B'rith Senior Housing (1992) | Senior Rental | 2 | 0 | 2 |
| RCA | Family Sale | 30 | 0 | 30 |
| | | | | 63 Credits |

Satisfaction of Township's Third Round Obligation: The parties have agreed that the Township has a combined Gap + Prospective Need (1999-2025) Third Round Obligation of 192, which it will satisfy as follows:

| Project | Tenure | Affordable Units | Built | Family Units | Rental Bonus | Senior Cap | Non-Family Units |
|--------------------------------|---|------------------|-------------------------|--------------------|-----------------|-----------------|------------------|
| B'nai B'rith | Rental, Senior | 63 | Built 1992 ¹ | 0 | 0 | 63 | - |
| Third + Valley | Rental, Family | 21 | Built 2016 | 21 | 21 | - | - |
| 320 Valley Street | Rental, Family | 2 | CO Expected 2019 | 2 | 2 | - | - |
| 4 th + Valley | Rental, Family | 10 | Under Construction | 10 | 10 | - | - |
| Y Group/2 nd Street | Rental, Family | 1 | Under Construction | 1 | 1 | - | - |
| Third Street (Village Project) | Rental, Family (50%) Rental, Non-Fam (50%) | 40 | Proposed | 20 | 20 | - | 20 |
| Lustbator | Rental, Family | 11 | Proposed | 11 | 11 | - | - |
| 270 Irvington | Rental, Family | 11 | Proposed | 11 | 11 | - | - |
| | | | | 76 | 48 ² | 48 ³ | 20 |
| | | | | 192 Credits | | | |

¹Only 2 of 63 credits applied in prior round.

²Rental bonus capped at 25% (i.e. 48) per N.J.A.C. 5:93-5.15.d

³Senior units capped at 25% (i.e. 48) per N.J.A.C. 5:93-5.14

Prior to the final compliance hearing in this matter, the Village will provide the information required by N.J.A.C. 5:93-5.5 for the Third Street project. The Village will also prior to the final compliance hearing in this matter adopt redevelopment plans on the Lustbator and 270 Irvington sites that provide a realistic opportunity for the number of affordable units referenced in this chart. The redevelopment plan for the Lustbator site will provide for a total of 110 units on the site with a 20 percent set-aside with 11 units to be provided as family rental units in accordance with the terms of this agreement on site and 11 units to be provided through a payment in lieu of \$75,000 per affordable unit or \$825,000 which will be deposited in the Township's municipal housing trust fund. The redevelopment plan for the 270 Irvington site will provide for a total of at least 44 units on

the site with 11 affordable units required, which may be provided off-site as family rental units in accordance with the terms of this agreement.

Additional zoning provisions. For the purposes of settlement, the Township agrees to adopt or maintain the following additional zoning provisions in addition to the credits shown above:

Township Ordinance #10-1 provided for densities and set-asides of various zones outside of the CBD to accommodate inclusionary development. The zoning of the RC-1, B-1, B-2, B-3, CS-R22, CS-R32 and CS-R38 zones provide for a twenty percent (20%) set-aside for restricted sale and rental units (including a payment in lieu option for up to half of the units) and a density of the following:

| | |
|---------|-------------------|
| RC-1 | 43 Units per acre |
| B-1 | 43 Units per acre |
| B-2 | 43 Units per acre |
| B-3 | 43 Units per acre |
| CS R-22 | 22 units per acre |
| CS R-32 | 32 units per acre |
| CS R-38 | 38 units per acre |

This Ordinance shall be maintained through at least July 1, 2025. The Village agrees to work with FSHC and the Special Master to identify and make any updates to the affordable housing aspects of this Ordinance that may need to be made during the compliance phase of this litigation.

The Central Business District (CBD), Church Street and Valley Redevelopment Plans as adopted provide for affordable housing requirements, some of which are captured in specific projects in the charts above, but some of which present additional redevelopment opportunities. These plans and requirements shall be maintained through at least July 1, 2025. The Village agrees to work with FSHC and the Special Master to identify and make any updates to the affordable housing aspects of these Redevelopment Plans that may need to be made during the compliance phase of this litigation.

The Orange Lawn Redevelopment Plan adopted by the Township on May 23, 2016 permits up to 20 townhomes to be developed on the site with an on-site set-aside of 4 affordable dwelling units or a payment in lieu requirement of \$100,000 per unit. While no development of Orange Lawn is anticipated at this time, if such development occurs the Township will enforce these standards. If the Township in its sole discretion allows more than 20 units to be developed on the site, which this agreement creates no obligation to allow, then the required units will be increased accordingly to 20 percent of the actual units developed.

The Township will adopt a Township-wide Mandatory Set-Aside Ordinance ("MSO"), which will require that any site that benefits from a rezoning, variance or redevelopment plan approved by the Township that results in multi-family residential development of five (5) dwelling units or more to produce affordable housing at a set-aside rate of 20% for affordable units. The adoption of the MSO does not give any developer the right to any

such rezoning, variance, redevelopment designation or other relief, or establish any obligation on the part of South Orange to grant such rezoning, variance, redevelopment designation or other relief. The form of this ordinance, which may include a payment in lieu option for up to half the units, will be determined in collaboration with the Special Master and FSHC prior to the final compliance hearing in this matter.

The Township agrees to require no less than 13% of all the affordable units referenced in this plan, with the exception of units constructed prior to July 1, 2008, and units subject to preliminary or final site plan approval prior to July 1, 2008, to be very low income units (defined as units affordable to households earning 30 percent or less of the regional median income by household size), with half of the very low income units being available to families.

South Orange will apply "rental bonus credits" in accordance with N.J.A.C. 5:93-5.15(d).

At least 50 percent of the units addressing the Township's Third Round Prospective Need shall be affordable to a combination of very-low-income and low-income households, while the remaining affordable units shall be affordable to moderate-income households.

At least twenty-five percent of the Township's Third Round Prospective Need shall be met through rental units, including at least half in rental units available to families.

At least half of the units addressing the Township's Third Round Prospective Need in total must be available to families.

The Township agrees to comply with COAH's Round 2 age-restricted cap of 25 percent, and to not request a waiver of that requirement. This shall be understood to mean that in no circumstance may the Township claim credit toward its fair share obligation for age-restricted units that exceed 25 percent of all units developed or planned to meet its Prior Round and Third Round fair share obligations.

The Township and/or its administrative agent shall add the following entities to the list of community and regional organizations in its affirmative marketing plan, pursuant to N.J.A.C. 5:80-26.15(f)(5): Fair Share Housing Center (510 Park Boulevard, Cherry Hill, NJ 08002), the New Jersey State Conference of the NAACP, the Latino Action Network (P.O. Box 943, Freehold, NJ 07728), Oranges and Maplewood NAACP (P.O. Box 1127, East Orange, NJ 07019), Newark NAACP (P.O. Box 1262, Newark, NJ 07101, Morris County NAACP (P.O. Box 2256, Morristown, NJ 07962, Elizabeth NAACP (P.O. Box 6732, Elizabeth, NJ 07206), and the Supportive Housing Association. As part of its regional affirmative marketing strategies during implementation of its fair share plan, the Township and/or its administrative agent shall also provide notice of all available affordable housing units to the above-referenced organizations.

All affordable housing units created pursuant to the measures set forth in this Agreement shall comply 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 percent of affordable units in rental projects being required to be affordable to households earning at or below 35 percent of the regional median household income by household size, 13 percent of affordable units in such projects shall be required to be affordable to

households earning at or below 30 percent of the regional median household income by household size subject to paragraph 11 herein, and all other applicable law. All new construction units shall be adaptable in conformance with P.L.2005, c.350/N.J.S.A. 52:27D-311a and -311b and all other applicable law. The Township, as part of the Housing Element and Fair Share Plan that will be prepared, adopted and endorsed as a result of this Agreement, shall adopt and/or update appropriate implementing ordinances in conformance with standard ordinances and guidelines developed by COAH to ensure that this provision is satisfied.

Subsequent to the signing of this Agreement, if a binding legal determination by the Judiciary, the Legislature, or any administrative subdivision of the Executive Branch determines that South Orange's Gap (1999-2015) + Prospective Need (2015-2025) obligation is decreased to 154 or less, with any relevant appeal periods having passed, the Township may file a proposed form of Order, on notice to FSHC and the Township's Service List, seeking to reduce its Gap (1999-2015) + Prospective Need (2015-2025) obligation accordingly. Such relief shall be presumptively granted. Notwithstanding any such reduction, the Township shall be obligated to implement the Fair Share Plan prepared, adopted and endorsed as a result of this Agreement, including by leaving in place any site specific zoning adopted or relied upon in connection with the Plan approved pursuant to this settlement agreement, maintaining the additional zoning provisions referenced in paragraph 10, and otherwise fulfilling fully the fair share obligations as established herein. The reduction of the Township's obligation below that established in this Agreement does not provide a basis for seeking leave to amend this Agreement or the Fair Share Plan adopted pursuant to this Agreement or seeking leave to amend an order or judgment pursuant to R. 4:50-1. If the Township prevails in reducing its Gap + Prospective Need for Round 3, the Township may carry over any resulting surplus credits to Round 4.

The Township shall adopt the Housing Element and Fair Share Plan, along with a Spending Plan, and propose and adopt all ordinances required to be adopted as part of this Agreement, and adopt those plans and ordinances and submit them to the Court and the Special Master within 120 days of the entry of an order by the Court at a Fairness Hearing approving this Agreement.

Upon full execution of this Agreement, South Orange shall notify the Court so that a Fairness Hearing can be scheduled to approve the Agreement. South Orange will place this Agreement on file in the Township's municipal building and file a copy with the Court 30 days prior to the Fairness Hearing, at which the Township will seek judicial approval the terms of this Agreement pursuant to the legal standard set forth in Morris Cty. Fair Hous. Council v. Boonton Twp., 197 N.J. Super. 359, 367-69 (Law Div. 1984), *aff'd o.b.*, 209 N.J. Super. 108 (App. Div. 1986); East/West Venture v. City of Fort Lee, 286 N.J. Super. 311, 328-29 (App. Div. 1996). Notice of the Fairness Hearing shall be published at least 30 days in advance of the Hearing. After this Agreement is approved at the Fairness Hearing, South Orange will apply to the Court for the scheduling of a "Compliance Hearing" seeking judicial approval of South Orange's adopted Housing Element and Fair Share Plan and other required documents. Although it is expected that the Special Master will provide the majority of the required testimony at both the Fairness Hearing and the Compliance Hearing, South Orange shall also make its consulting planner and any other relevant witnesses available for testimony at the Hearings. FSHC shall not challenge the validity of any of the documents attached hereto, or the validity of the Township's Fair Share Plan. If the Fairness and Compliance

Hearings result in approval of this Agreement and the Township's Fair Share Plan, the parties agree that the Township will be entitled to either a "Judgment of Compliance and Repose" ("JOR") or the "judicial equivalent of substantive certification and accompanying protection as provided under the FHA," 221 N.J. at 6, which shall be determined by the trial judge. Each party may advocate regarding whether substantive certification or repose should be provided by the Court, with each party agreeing to accept either form of relief and to not appeal an order granting either repose or substantive certification. Among other things, the entry of such an Order shall maintain South Orange's immunity from all Mount Laurel lawsuits through July 2, 2025.

Subsequent to the signing of this Agreement, if a binding legal determination by the Judiciary, the Legislature, or any administrative subdivision of the Executive Branch determines that South Orange's Round 3 obligation is decreased to 588 or less, with any relevant appeal periods having passed, the Township may file a proposed form of Order, on notice to FSHC and the Township's Service List, seeking to reduce its Round 3 obligation accordingly. Such relief shall be presumptively granted. Notwithstanding any such reduction, the Township shall be obligated to implement the Fair Share Plan prepared, adopted and endorsed as a result of this Agreement, including by leaving in place any site specific zoning adopted or relied upon in connection with the Plan approved pursuant to this settlement agreement, maintaining all mechanisms to continue to address the remaining portion of the Township's allocation of the Round 3 regional need, and otherwise fulfilling fully the fair share obligations as established herein. The reduction of the Township's obligation below that established in this Agreement does not provide a basis for seeking leave to amend this Agreement or the Fair Share Plan adopted pursuant to this Agreement or seeking leave to amend an order or judgment pursuant to R. 4:50-1. If the Township prevails in reducing its prospective need for Round 3, the Township may carry over any resulting surplus credits to Round 4.

The Township shall prepare a Spending Plan for approval by the Court during, or prior to, the duly-noticed Compliance Hearing. FSHC reserves its right to provide any comments or objections on the Spending Plan to the Court upon review. Upon approval by the Court, the Township and Fair Share Housing Center agree that the expenditures of funds contemplated in the Township's Spending Plan shall constitute the "commitment" for expenditure required pursuant to N.J.S.A. 52:27D-329.2 and -329.3, with the four-year time period contemplated therein commencing 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). Upon approval of its Spending Plan, the Township shall also provide an annual Mount Laurel Trust Fund accounting report to the New Jersey Department of Community Affairs, Council on Affordable Housing, 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.

On the first anniversary of the execution of this Agreement, and every anniversary thereafter through the end of this Agreement, the Township agrees to provide annual reporting of the status of all affordable housing activity within the municipality through posting on the municipal website with a copy of such posting provided to FSHC, using forms previously developed for this purpose by the Council on Affordable Housing or any other forms endorsed by the Special Master and FSHC. In addition to the foregoing, the

Township may also post such activity on the CTM system and/or file a copy of its report with the Council on Affordable Housing or its successor agency at the State level.

The Fair Housing Act includes two provisions regarding actions to be taken by the Township during the ten-year period of protection provided in this agreement. The Township agrees to comply with those provisions as follows:

For the midpoint realistic opportunity review due on July 1, 2020, as required pursuant to N.J.S.A. 52:27D-313, the Township will post on its municipal website, with a copy provided to Fair Share Housing Center, a status report as to its implementation of its Plan and an analysis of whether any unbuild sites or unfulfilled mechanisms continue to present a realistic opportunity and whether the mechanisms to meet unmet need should be revised or supplemented. Such posting shall invite any interested party to submit comments to the municipality, with a copy to Fair Share Housing Center, regarding whether any sites no longer present a realistic opportunity and should be replaced and whether the mechanisms to meet unmet need should be revised or supplemented. Any interested party may by motion request a hearing before the Court regarding these issues.

For the review of very low income housing requirements required by N.J.S.A. 52:27D-329.1, within 30 days of the third anniversary of this agreement, and every third year thereafter, the Township will post on its municipal website, with a copy 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 municipality and Fair Share Housing Center on the issue of whether the municipality has complied with its very low income housing obligation under the terms of this settlement.

In addition to the foregoing postings, the Township may also elect to file copies of its reports with the Council on Affordable Housing or its successor agency at the State level.

This Agreement may be enforced by the Township or FSHC through a motion to enforce litigant's rights or a separate action filed in Superior Court, Essex County. If FSHC determines that such action is necessary, the Township consents to the entry of an order providing FSHC party status as an intervenor solely for purposes of its motion to enforce litigant's rights.

The Township agrees to pay FSHC's attorneys fees and costs in the amount of \$15,000 within ten business (10) days of the court's approval of this agreement pursuant to a duly-noticed fairness hearing.

All Parties shall have an obligation to fulfill the intent and purpose of this Agreement. However, if an appeal of the Court's approval or rejection of the Settlement Agreement is filed by a third party, the Parties agree to defend the Agreement on appeal, including in proceedings before the Superior Court, Appellate Division, and New Jersey Supreme Court, and to continue to implement the terms of the Settlement Agreement if the Agreement is approved by the Trial Court unless and until an appeal of the Trial Court's approval is successful, at which point the Parties reserve their right to return to the *status quo ante*. In this regard, the Township and FSHC acknowledge that the parties

have entered into this Agreement to settle the litigation and that each is free to take such position as it deems appropriate should the matter return to the *status quo ante*.

Unless otherwise specified, it is intended that the provisions of this Agreement are to be severable. The validity of any article, section, clause or provision of this Agreement shall not affect the validity of the remaining articles, sections, clauses or provisions hereof. If any section of this Agreement shall be adjudged by a court to be invalid, illegal, or unenforceable in any respect, such determination shall not affect the remaining sections.

This Agreement shall be governed by and construed by the laws of the State of New Jersey.

This Agreement may not be modified, amended or altered in any way except by a writing signed by both the Township and FSHC.

This Agreement may be executed in any number of counterparts, each of which shall be an original and all of which together shall constitute but one and the same Agreement.

The Township and FSHC acknowledge that each has entered into this Agreement on its own volition without coercion or duress after consulting with its counsel, that each person to sign this Agreement is the proper person and possesses the authority to sign the Agreement, that this Agreement contains the entire understanding of the Township and FSHC and that there are no representations, warranties, covenants or undertakings other than those expressly set forth herein.

The Township and FSHC acknowledge that this Agreement was not drafted by the Township and FSHC, but was drafted, negotiated and reviewed by representatives of the Township and FSHC and, therefore, the presumption of resolving ambiguities against the drafter shall not apply. The Township and FSHC expressly represent that: (a) it has been represented by counsel in connection with negotiating the terms of this Agreement; and (b) it has conferred due authority for execution of this Agreement upon the persons executing it.

Any and all Exhibits and Schedules annexed to this Agreement are hereby made a part of this Agreement by this reference thereto. Any and all Exhibits and Schedules now and/or in the future are hereby made or will be made a part of this Agreement with prior written approval of both the Township and FSHC.

This Agreement constitutes the entire Agreement between the Township and FSHC hereto and supersedes all prior oral and written agreements between the Township and FSHC with respect to the subject matter hereof except as otherwise provided herein.

No member, official or employee of the Township shall have any direct or indirect interest in this Settlement Agreement, nor participate in any decision relating to the Agreement which is prohibited by law, absent the need to invoke the rule of necessity.

Anything herein contained to the contrary notwithstanding, the effective date of this Agreement shall be the date upon which representatives of the Township and FSHC have executed and delivered this Agreement.

All notices required under this Agreement ("Notice[s]") shall be written and shall be served upon the Township and FSHC by certified mail, return receipt requested, or by a recognized overnight or by a personal carrier. In addition, where feasible (for example, transmittals of less than fifty pages) shall be served by facsimile or e-mail. All Notices shall be deemed received upon the date of delivery. Delivery shall be affected as follows, subject to change as to the person(s) to be notified and/or their respective addresses upon ten (10) days' notice as provided herein:

TO FSHC: Adam M. Gordon, Esq.
Fair Share Housing Center
510 Park Boulevard
Cherry Hill, NJ 08002
Phone: (856) 665-5444
Telecopier: (856) 663-8182
E-mail: adamgordon@fairsharehousing.org

TO THE TOWNSHIP: Michael A. Jedziniak, Esq.
Jeffrey R. Surenian & Associates, LLC
707 Union Avenue, Suite 301
Brielle, NJ 08730
Phone: (732) 612-3100
Telecopier: (732) 612-3101
Email: maj@surenian.com

**WITH A COPY TO THE
TOWNSHIP ADMINISTRATOR:**

Adam Loehner
Township of South Orange Village
76 South Orange Avenue
Suite 302
South Orange, NJ 07079
Phone: (973) 378-7715
Telecopier: (973) 762-9367
Email: aloehner@southorange.org

In the event any of the individuals identified above has a successor, the individual identified shall name the successor and notify all others identified of their successor.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be properly executed, their corporate seals affixed and attested and this Agreement to be effective as of the Effective Date.

Witness/Attest:

FAIR SHARE HOUSING CENTER:



By: 

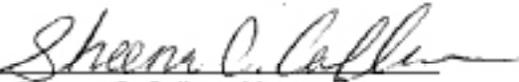
Adam M. Gordon, Esq.
On Behalf of Fair Share Housing Center

Witness/Attest:

Township of South Orange Village:



Kevin D. Harris, Village Clerk

By: 

Sheena C. Collum, Mayor
On Behalf of the Township of South Orange

Village

Dated: 05/17/2019

THE TOWNSHIP OF SOUTH ORANGE VILLAGE

RESOLUTION AUTHORIZING THE EXECUTION OF A SETTLEMENT AGREEMENT
WITH FAIR SHARE HOUSING CENTER

WHEREAS, pursuant to In re N.J.A.C. 5:96 and 5:97, 221 N.J. 1 (2015)(Mount Laurel IV), on July 2, 2015, the Township of South Orange Village (the "Village") filed a Declaratory Judgment Complaint in Superior Court, Law Division seeking, among other things, a judicial declaration that its Housing Element and Fair Share Plan (hereinafter "Fair Share Plan"), to be amended as necessary, satisfies its "fair share" of the regional need for low and moderate income housing pursuant to the "Mount Laurel doctrine;" and

WHEREAS, the Village simultaneously sought, and ultimately secured, a protective order providing Village immunity from all exclusionary zoning lawsuits while it pursues approval of its Fair Share Plan; and

WHEREAS, the trial judge also appointed Elizabeth K. McManus, P.P., A.I.C.P. as the "Special Master," as is customary in Mount Laurel matters adjudicated in the courts; and

WHEREAS, the Village and FSHC engaged in good faith negotiations which resulted in an amicable accord on the various substantive terms and conditions as set forth in the Settlement Agreement attached hereto as Exhibit A; and

WHEREAS, through this process, the Village and FSHC agreed upon the Village's affordable housing obligations and the compliance techniques necessary for the Village to satisfy its "fair share" of the regional need for low- and moderate-income housing; and

WHEREAS, the Village and FSHC also agreed to present the Settlement Agreement to the Trial Judge for approval via duly-noticed Mount Laurel "Fairness Hearing;" and

WHEREAS, although there is a well-established policy favoring the settlement of all forms of litigation, the settlement of Mount Laurel litigation is particularly favored because (1) it avoids the expenditure of infinite public resources; and (2) expedites the construction of safe, decent housing for the region's low- and moderate-income households; and

WHEREAS, in light of the above, and on the recommendation of the Village's Special Mount Laurel Counsel, the Village Council finds that it is in the best interests of the Village to execute the attached Settlement Agreement with FSHC and to take various other actions delineated below which will ultimately result in approval of the Village's Fair Share Plan which, in turn, will maintain the Village's immunity from all Mount Laurel lawsuits for the ten-year period set forth in the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301 to 329.

NOW, THEREFORE, BE IT RESOLVED by the Board of Trustees of the Township of South Orange Village, County of Essex, State of New Jersey, as follows:

1. The Board of Trustees hereby authorizes and directs the Village President to execute the attached Settlement Agreement and to provide a copy of same to the Village's Special Mount Laurel Counsel as soon as practicable thereafter.
2. The Board of Trustees hereby directs its Special Mount Laurel Counsel to file the fully-executed Settlement Agreement with the Court and take all actions reasonable and necessary to secure an Order approving the Settlement Agreement and ultimately to secure judicial approval of the Village's Fair Share Plan, as may be amended by the Village pursuant to the Agreement and subject to the public hearing process set forth in the New Jersey Municipal Land Use Law, N.J.S.A. 40:55D-1 et. seq.

#

| Trustee Member | Motion | Second | Ayes | Nays | Abstain | Absent |
|------------------|--------|--------|------|------|---------|--------|
| Clarke | | X | X | | | |
| Davis Ford | | | | | | X |
| Hartshorn-Hilton | | | X | | | |
| Rosner | X | | X | | | |
| Schnall | | | X | | | |
| | | | | | | |

CERTIFICATION

I, Kevin D. Harris, Village Clerk of the Township of South Orange Village, County of Essex, State of New Jersey, do hereby certify that this is a true and correct copy of the Resolution adopted by the Board of Trustees at their meeting held on Monday, May 13, 2019.


 Kevin D. Harris
 Village Clerk

APPENDIX B:

Housing Liaison Resolution

TOWNSHIP OF SOUTH ORANGE VILLAGE

RESOLUTION APPOINTING VILLAGE ADMINISTRATOR ADAM D. LOEHNER AS
MUNICIPAL HOUSING LIAISON FOR THE TOWNSHIP OF SOUTH ORANGE VILLAGE

WHEREAS, pursuant to N.J.A.C. 5:94-7 and N.J.A.C. 5:80-26.1 et. seq., the Township of South Orange Village is required to appoint a Municipal Housing Liaison for the administration of the Village's affordable housing program to enforce the requirements of N.J.A.C. 5:94-7 and N.J.A.C. 5:80-26.1 et. seq.; and

WHEREAS, the Village's Affordable Housing Ordinance sets forth the duties of the Municipal Housing Liaison in which the Municipal Housing Liaison is required to oversee the Village's affordable housing programs; and

WHEREAS, pursuant to N.J.A.C. 5:93-1 et seq. and N.J.A.C. 5:80-26.1 et seq., the Township of South Orange Village is required to appoint a Municipal Housing Liaison for administration of the Village's affordable housing programs to enforce the requirements of N.J.A.C. 5:93-1 et seq. and N.J.A.C. 5:80-26.1 et seq.

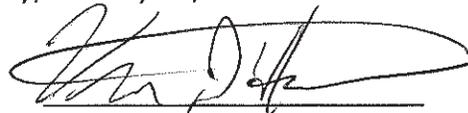
NOW THEREFORE BE IT RESOLVED, by the Board of Trustees of the Township of South Orange Village, County of Essex, State of New Jersey, that Village Administrator Adam D. Loehner is hereby appointed as the Municipal Housing Liaison for the administration of the affordable housing program, pursuant to and in accordance with Article 185-XXXIII of the Code of the Township of South Orange Village.

#

| Trustee Member | Motion | Second | Ayes | Nays | Abstain | Absent |
|------------------|--------|--------|------|------|---------|--------|
| Clarke | | | X | | | |
| Coallier | | | X | | | |
| Hartshorn Hilton | X | | X | | | |
| Jones | | X | X | | | |
| Schnall | | | X | | | |
| Zuckerman | | | X | | | |

CERTIFICATION

I, Kevin D. Harris, Village Clerk of the Township of South Orange Village, County of Essex, State of New Jersey, do hereby certify that this is a true and correct copy of the Resolution adopted by the Board of Trustees at their meeting held on Monday, January 27, 2020.



Kevin D. Harris
Village Clerk

APPENDIX C:

Set-Aside Ordinance

THE TOWNSHIP OF SOUTH ORANGE VILLAGE

ORDINANCE #2019-28

AN ORDINANCE TO AMEND THE CODE OF THE TOWNSHIP OF SOUTH ORANGE VILLAGE, TO REVISE CHAPTER 185, LAND DEVELOPMENT, TO REPEAL ARTICLES 185-XXXIII AND 185-XXXIV IN THEIR ENTIRETY AND CREATE A NEW PART 15, "AFFORDABLE HOUSING" WITH THE ADDITION OF NEW ARTICLES XXXVI, XXXVII, XXXVIII AND XXXIV, TO REVISE "AFFORDABLE HOUSING" PROVISIONS OF THE CODE OF THE TOWNSHIP OF SOUTH ORANGE VILLAGE TO ADDRESS THE REQUIREMENTS OF THE NJ SUPERIOR COURT

BE IT ORDAINED by the Board of Trustees of the Township of South Orange Village, a municipal corporation of New Jersey located in Essex County thereof, as follows:

Section 1. Article 185-XXXIII, Sections 185-193 to 185-209, "Affordable Housing" and Article 185-XXXIV, Section 185-210 to 185-219, "Development Fees" are repealed in their entirety.

Section 2. Chapter 185 is amended by the addition of a new Part 15 "Affordable Housing", Articles XXXVI through XXXIV in the code of the Township of South Orange as follows:

Chapter 185- Land Development

PART 15- AFFORDABLE HOUSING

ARTICLE XXXVI

General Program Purposes, Procedures

§185-222. Affordable Housing Obligation.

A. This section of the Village Code sets forth regulations regarding the low and moderate income housing units in the Village consistent with the provisions known as the "Substantive Rules of the New Jersey Council on Affordable Housing", N.J.A.C. 5:93 et seq., the Uniform Housing Affordability Controls ("UHAC"), N.J.A.C. 5:80-26.1 et seq., except where modified by the requirements for very-low income housing as established in P.L. 2008, c.46 (the "Roberts Bill", codified at N.J.S.A. 52:27D-329.1) as reflected in the terms of a Settlement Agreement between the Village and Fair Share Housing Center ("FSHC") such that the statutory requirement to provide very-low income units equal to 13% of affordable units approved and constructed after July 17, 2008, to be affordable to households at 30% of the regional median income, overrides the UHAC requirement that 10% of all low- and moderate-income units must be affordable at 35% of the regional median income, and the Village's constitutional obligation to provide a fair share of affordable housing for low and moderate income households.

B. This Ordinance is intended to assure that very-low, low- and moderate-income units ("affordable units") are created with controls on affordability over time and that very-low, low- and moderate-income households shall occupy these units. This Ordinance shall apply to all inclusionary developments and 100% affordable developments (including those funded with low-income housing tax credit financing) except where inconsistent with applicable law.

C. The South Orange Village Joint Land Use 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 Plan has also been endorsed by the Village Council of the Village of South Orange. The Fair Share Plan describes the ways the Village shall address its fair share for low- and moderate-income housing as determined by the Superior Court and documented in the Housing Element.

D. This Ordinance implements and incorporates the Fair Share Plan and addresses the requirements of N.J.A.C. 5:93, as may be amended and supplemented.

E. The Village shall file monitoring and status reports with Fair Share Housing Center ("FSHC") and place the reports on its municipal website. Any plan evaluation report of the Housing Element and Fair Share Plan and monitoring evaluation report prepared by the Special Master in accordance with N.J.A.C. 5:91 shall be available to the public at the South Orange Municipal Building, 500 West Crescent Avenue, South Orange, New Jersey 07401.

F. On or about September 15 of each year through the end of the period of Third Round Judgment of Repose, the Village will provide annual reporting of the status of all affordable housing activity within the municipality through posting on the municipal website with a copy of such posting provided to all parties to the Village's Court-approved Settlement Agreements, using forms previously developed for this purpose by the Council on Affordable Housing or any other forms endorsed by the Special Master and FSHC.

G. The Fair Housing Act includes two provisions regarding action to be taken by the Village during the ten-year period of protection provided in the Village's Court-approved agreement with FSHC. The Village agrees to comply with those provisions as follows:

1. By July 1, 2020, the Village must prepare a midpoint realistic opportunity review, as required pursuant to N.J.S.A. 52:27D-313, which the Village will post on its municipal website, with a copy provided to FSHC, a status report as to its implementation of its Plan and an analysis of whether any unbuilt sites or unfulfilled mechanisms continue to present a realistic opportunity. Such posting shall invite any interested party to submit comments to the municipality, with a copy to FSHC, regarding whether any sites no longer present a realistic opportunity and should be replaced and whether any mechanisms to meet unmet need should be revised or supplemented. Any interested party may by motion request a hearing before the Court regarding these issues. In the event the Court determines that a site or mechanism no longer presents a realistic opportunity and should be replaced or supplemented, then the municipality shall have the opportunity to supplement or revise its plan to correct any deficiency.

2. Within 30 days of September 15, 2020 and September 15, 2024 the Village shall prepare a review of compliance with the very-low income housing requirements required by N.J.S.A. 52:27D-329.1 and its Court-approved Settlement Agreement with FSHC. The Village will post on its municipal website, with a copy provided to FSHC, a status report as to its satisfaction of its very-low income requirements, including the family very-low income requirements referenced herein and in the Village's Settlement Agreement with FSHC. Such posting shall invite any interested party to submit comments to the municipality and FSHC on the issue of whether the municipality has complied with its very-low income housing obligation.

§185-223. Definitions. As used herein the following terms shall have the following meanings:

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

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

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

"Administrative agent" means the entity responsible for the administration of affordable units in accordance with this ordinance, N.J.A.C. 5:91, N.J.A.C. 5:93 and N.J.A.C. 5:80-26.1 et seq.

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

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

"Affordable" means, a sales price or rent within the means of a low- or moderate-income household as defined in N.J.A.C. 5:93-7.4; in the case of an ownership unit, that the sales price for the unit conforms to the standards set forth in N.J.A.C. 5:80-26.6, as may be amended and supplemented, and, in the case of a rental unit, that the rent for the unit conforms to the standards set forth in N.J.A.C. 5:80-26.12, as may be amended and supplemented.

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

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

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

"Affordable unit" means a housing unit proposed or created pursuant to the Act, credited pursuant to N.J.A.C. 5:93, and/or funded through an affordable housing trust fund.

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

"Age-restricted unit" means a housing unit designed to meet the needs of, and exclusively for, the residents of an age-restricted segment of the population such that: 1) all the residents of the development where the unit is situated are 62 years or older; or 2) at least 80% 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" means a structure in which households live in distinct bedrooms, yet share kitchen and plumbing facilities, central heat and common areas. Alternative living arrangement includes, but is not limited to: transitional facilities for the homeless, Class A, B, C, D, and E boarding homes as regulated by the New Jersey Department of Community Affairs; residential health care facilities as regulated by the New Jersey Department of Health; group homes for the developmentally disabled and mentally ill as licensed and/or regulated by the New Jersey Department of Human Services; and congregate living arrangements.

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

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

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

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

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

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

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

“Development Fee” means money paid by a developer for the improvement of property as permitted in N.J.A.C. 5:93-8.

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

“Fair Share Plan” means the plan that describes the mechanisms, strategies and the funding sources, if any, by which the Village proposes to address its affordable housing obligation as established in the Housing Element, including the draft ordinances necessary to implement that plan, and addresses the requirements of N.J.A.C. 5:93-5.

“Green Building Strategies” means 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.

“Housing Element” means the portion of the Village’s Master Plan, required by the Municipal Land Use Law (“MLUL”), N.J.S.A. 40:55D-28b(3) and the Act, that includes the information required by N.J.A.C. 5:93-5.1 and establishes the Village’s fair share obligation.

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

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

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

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

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

“Median income” means the median income by household size for the applicable county, as adopted annually by COAH or approved by the NJ Superior Court.

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

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

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

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

“Regional asset limit” means the maximum housing value in each housing region affordable to a four-person household with an income at 80% of the regional median as defined by adopted/approved Regional Income Limits.

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

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

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

“Special master” means an expert appointed by a judge to make sure that judicial orders are followed. A master’s function is essentially investigative, compiling evidence or documents to inform some future action by the court.

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

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

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

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

§185-224. New Construction. The following requirements shall apply to all new or planned developments that contain low- and moderate- income housing units.

A. Quantification of Affordable Housing Obligation for Multifamily Developers. Any multi-family residential development providing a minimum of five (5) new housing units created through any municipal rezoning, planning board, or zoning board action, use or density variance, or redevelopment plan is required to include an affordable housing set-aside in accordance with the requirements of this section. This requirement does not give any developer the right to any such rezoning, variance or other relief, or establish any obligation on the part of the Village of South Orange or its Zoning Board to grant such rezoning, variance or other relief. No subdivision shall be permitted or approved for the purpose of avoiding compliance with this requirement. All zones or districts shall be subject to a mandatory set-aside of affordable dwelling units and shall provide affordable dwellings on site in accordance with the requirements of this section.

B. Any multifamily residential development of five (5) or more dwelling units, whether sold in fee simple or leased (“for sale” or “for-rent” units) shall provide a twenty percent (20%) affordable housing set-aside. For example, if five (5) units are proposed on a site, at least one (1) affordable unit must be constructed on site.

C. Where the set-aside requirement of twenty (20%) percent results in fractional unit obligation, the affordable housing set-aside requirement shall be rounded upwards to the next whole number, with no exceptions, for units to be constructed on or off site. In all other cases, the fractional obligation shall be converted to a monetary payment-in-lieu of constructing affordable housing based upon the payment in lieu provisions set forth in Section §185-225 (E) below. For example, a thirteen-unit (13 unit) development creates an affordable housing obligation of 2.6 units (13 times .20 = 2.60). In that case, the developer would owe a fractional obligation of 0.60 units. According to Section §185-225 (E) below, therefore, the fractional payment in lieu would be \$60,000.00.

§185-225. Permissible Manner of Satisfaction Of Affordable Housing Obligation Of Residential Developers

A. Unless otherwise exempt due to preceding and conflicting governmental approvals, executed agreements, or other vested rights, for all residential developments described above, an applicant shall presumptively satisfy its affordable housing production obligation through on-site housing production in connection with the residential project, which is one of the mechanisms permitted pursuant to COAH's regulations. Notwithstanding the aforementioned presumption, however, the applicant may request to satisfy a maximum of fifty percent (50%) of its non-fractional affordable housing obligation off-site, subject to consent by the Village in its sole discretion. For example, in the 13-unit development referenced above, the applicant would be presumptively required to satisfy its 2-unit affordable housing obligation on site; or may secure consent of the Village to construct one unit on site and one unit off-site. The fractional payment in lieu would be unaffected.

B. If the applicant secures permission from the Village to provide offsite construction of affordable housing as referenced in paragraph A above, it must satisfy its off-site obligation either through:

1. "Market to Affordable" buy-downs pursuant to N.J.A.C. 5:93-5.10 (for vacant or "never-occupied" units) and/or N.J.A.C. 5:93-5.11 (for the "write down/buy down" of previously occupied units); or
2. A \$100,000 per-unit Payment In Lieu of constructing the units pursuant to the provisions set forth in Section E below.

B. Full and complete satisfaction of the affordable housing requirements of this section shall be a specific, automatic, essential and non-severable condition of all land use approvals. Pursuant to this condition, the applicant must demonstrate that it has satisfied the affordable housing condition of approval prior to obtaining the first building permit and compliance with the affordable housing condition shall be a continuing condition of all Board approvals for development.

C. Phasing. Final site plan or subdivision approval shall be contingent upon the affordable housing development meeting the following phasing schedule for low and moderate income units whether developed in a single phase development, or in a multi-phase development:

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

D. Design. In inclusionary developments, low- and moderate- income units shall be integrated with the market units.

E. Payments-in-lieu and off-site construction. The standards for the collection of payments-in-lieu of constructing affordable units or standards for constructing affordable units off-site, shall be in accordance with the requirements below:

1. The base dollar amount of the payment-in-lieu of constructing an affordable unit ("payment-in-lieu") at the time of adoption of this Ordinance shall be \$100,000, unless the developer can demonstrate to the satisfaction the Governing Body that a payment-in-lieu of \$100,000 per affordable unit would render the proposed inclusionary development economically unfeasible. Developers seeking a lower per-unit

payment-in-lieu amount must present, at a minimum, verifiable information, such as pro formas, Phase 1 and 2 environmental studies, and any other relevant facts to aid the Village in applying its discretion regarding the Developer's request for an adjusted payment-in-lieu. In addition to the above-referenced information, the Developer must provide the Village with a proposed adjusted payment-in-lieu amount that, if accepted by the Village, would maintain the economic feasibility of the proposed inclusionary development. The Village shall not adjust the payment-in-lieu amount adjustment lower than \$75,000 per affordable unit.

2. The Village shall render decisions regarding an applicant's request for an adjusted payment-in-lieu amount on a case-by-case basis and based upon the unique facts of each case. The Village shall be under no obligation to provide an explanation, or otherwise justify its decisions, but may do so at its sole discretion. Decisions rendered by the Village in the past shall be irrelevant to, and therefore non-binding upon, subsequent applications.

3. At its sole discretion, the Village may periodically adjust the payment-in-lieu amount applicable to inclusionary developments to reflect the cost of constructing a new affordable unit at 52 percent of median income in the region, which shall include the sum of development hard costs, related soft costs and developer's fees pursuant to the cost-containment provisions of N.J.A.C. 5:43-2.4(a)1 through 6 and land costs equal to 25 percent of the first quartile of new construction costs as reported to the New Jersey Homeowner Warranty Program.

4. The payment-in-lieu, whether or not adjusted by the Village as set forth above, shall be imposed as a condition of development approval by the Joint Land Use Board.

5. Such payments shall be tendered as follows:

- i. Fifty percent (50%) prior to the first building permit; and
- ii. Fifty percent (50%) prior to issuance of a certificate of occupancy for each unit.

6. Specific Developments Exempted From/Limited In Making Payments in Lieu of Construction. the following development sites are specifically exempted from this section and must rely upon the applicable Redevelopment Plan:

- i. 270 Irvington: pursuant to the applicable Redevelopment Plan, 270 Irvington is prohibited from making payments in lieu of construction.
- ii. Lustbator: pursuant to the applicable Redevelopment Plan and Settlement Agreement with Fair Share Housing Center, Lustbator may make a payment in lieu of \$75,000.00 per unit, pursuant to the payment schedule set forth in subsection (G)5 of this section.

F. Utilities. Affordable units shall utilize the same type of heating source as market units within the affordable development.

G. Low/Moderate Split and Bedroom Distribution of Affordable Housing Units. All developments involving the construction of affordable housing shall conform, in all respects, with relevant COAH and UHAC regulations and relevant provisions of the New Jersey FHA, including but not limited to:

1. The fair share obligation shall be divided equally between low- and moderate- income units, except that where there is an odd number of affordable housing units, the extra unit shall be a low income unit.
2. In each affordable development, at least 50% of the restricted units within each bedroom distribution shall be low-income units.
3. At least 13 percent of all restricted rental units within each bedroom distribution shall be very low income units (affordable to a household earning 30 percent or less of regional median income by household size). The very low income units shall be counted as part of the required number of low income units within the development.
4. Affordable developments that are not age-restricted shall be structured in conjunction with realistic market demands such that:

- i. The combined number of efficiency and one-bedroom units shall be no greater than 20% of the total low- and moderate-income units;
 - ii. At least 30% of all low- and moderate-income units shall be two bedroom units;
 - iii. At least 20% of all low- and moderate-income units shall be three bedroom units; and
 - iv. The remaining units may be allocated among two and three bedroom units at the discretion of the developer.
5. Affordable developments that are age-restricted shall be structured such that the number of bedrooms shall equal the number of age-restricted low- and moderate-income units within the inclusionary development. The standard may be met by having all one-bedroom units or by having a two-bedroom unit for each efficiency unit.

H. Accessibility Requirements:

1. The first floor of all new restricted townhouse dwelling units and all restricted multistory dwelling units attached to at least one (1) other dwelling unit 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 multistory dwelling units attached to at least one (1) 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 Village has collected funds from the developer sufficient to make 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 Village of South Orange's affordable housing trust fund sufficient to install accessible entrances in 10% of the affordable units that have been constructed with adaptable entrances.
 - (3) The funds deposited under paragraph (2) herein, shall be used by the Village 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 Village of South Orange.
 - (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 Village of South Orange's affordable housing trust fund in care of the Municipal Treasurer who shall ensure that the funds are deposited into the affordable housing trust fund and appropriately earmarked.

(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.

I. 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 using calculation procedures approved by the Court.

2. The maximum rent for restricted rental units within each affordable development shall be affordable to households earning no more than 60% of median income, and the average rent for restricted low- and moderate-income units shall be affordable to households earning no more than 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.

(a) At least 13% of all low- and moderate-income rental units shall be affordable to households earning no more than 30% of median income.

4. The maximum sales price of restricted ownership units within each affordable development shall be affordable to households earning no more than 70% of median income, and each affordable development must achieve an affordability average of 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, the following standards shall be met:

- (a) A studio or efficiency unit 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;
- (d) A three-bedroom unit shall be affordable to a four and one-half person household; and
- (e) A four-bedroom unit shall be affordable to a six-person household.

6. In determining the initial rents for compliance with the affordability average requirements for restricted units in assisted living facilities, the following standards shall be met:

- (a) A studio or efficiency unit shall be affordable to a one-person household;
- (b) A one-bedroom unit shall be affordable to a one and one-half person household; and
- (c) A two-bedroom unit shall be affordable to a two-person household or to two and one-half person household.

7. The initial purchase price for all restricted ownership units shall be calculated so that the monthly carrying cost of the unit, including principal and interest (based on a mortgage loan equal to 95% of the purchase price and the Federal Reserve H.15 rate of interest), taxes, homeowner and private mortgage insurance and condominium or homeowner association fees do not exceed 28% of the eligible monthly income of the appropriate size household as determined under N.J.A.C. 5:80-26.4, as may be amended and supplemented; provided, however, that the price shall be subject to the affordability average requirement of N.J.A.C. 5:80-26.3, as may be amended and supplemented.

8. The initial rent for a restricted rental unit shall be calculated so as not to exceed 30% of the eligible monthly income of the appropriate household size as determined under N.J.A.C. 5:80-26.4, as may be

amended and supplemented; provided, however, that the rent shall be subject to the affordability average requirement of N.J.A.C. 5:80-26.3, as may be amended and supplemented.

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

Income limits for all units for which income limits are not already established through a federal program exempted from the Uniform Housing Affordability Controls pursuant to N.J.A.C. 5:80-26.1 shall be updated by the Village annually within 30 days of the publication of determinations of median income by HUD as follows:

(a) Regional income limits shall be established for the Region 2 based on the median income by household size, which shall be established by a regional weighted average of the uncapped Section 8 income limits published by HUD. To compute this regional income limit, the HUD determination of median county income for a family of four is multiplied by the estimated households within the county according to the most recent decennial Census. The resulting product for each county within the housing region is summed. The sum is divided by the estimated total households from the most recent decennial Census in Region 2. This quotient represents the regional weighted average of median income for a household of four. The income limit for a moderate-income unit for a household of four shall be 80 percent of the regional weighted average median income for a family of four. The income limit for a low-income unit for a household of four shall be 50 percent of the HUD determination of the regional weighted average medium income for a family of four. The income limit for a very-low income unit for a household of four shall be 30 percent of the regional weighted average median income 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 those for the previous year.

(b) The income limits calculated each year shall be the result of applying the percentages set forth in paragraph (a) above to HUD's determination of median income for the relevant fiscal year, and shall be utilized until the Village updates the income limits after HUD has published revised determinations of median income for the next fiscal year.

(c) The Regional Asset Limit used in determining an applicant's eligibility for affordable housing pursuant to N.J.A.C. 5:80-26.16(b)3 shall be calculated by the Village annually by taking the percentage increase of the income limits calculated pursuant to paragraph (a) above over the previous year's income limits, and applying the same percentage increase to the Regional Asset Limit from the prior year. In no event shall the Regional Asset Limit be less than that for the previous year.

10. The rent levels of very-low-, low- and moderate-income units may be increased annually based on the percentage increase in the Housing Consumer Price Index for the Northeast Urban 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.

11. 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.

§185-226. Condominium and Homeowners Association Fees.

For any affordable housing unit that is part of a condominium association and/or homeowner's association, the Master Deed shall reflect that the association fee assessed for each affordable housing unit shall be established at 100% of the market rate fee.

§185-227. Reserved.

§185-228. Reserved.

§185-229. Reserved.

§185-230. Reserved.

ARTICLE XXXVII

Affordable Unit Controls and Requirements

§185-231. Purpose.

The requirements of this section apply to all developments that contain affordable housing units, including any currently unanticipated future developments that will provide low- and moderate- income housing units.

§185-232. Affirmative Marketing.

A. The Village shall adopt by resolution an Affirmative Marketing Plan, subject to approval of the Superior Court, 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 also intended to target those potentially eligible persons who are least likely to apply for affordable units in that region. It is a continuing program that directs all marketing activities toward COAH Housing Region 2 and covers the period of deed restriction.

C. The affirmative marketing plan shall provide a regional preference for all households that live and/or work in COAH Housing Region 2, comprised of Essex, Morris, and Union Counties.

D. The Administrative Agent designated by the Village shall assure the affirmative marketing of all affordable units is consistent with the Affirmative Marketing Plan for the municipality.

E. The Village shall add to the list of community and regional organizations in its affirmative marketing plan, pursuant to N.J.A.C. 5:80-26.15(f)(5), Fair Share Housing Center, the New Jersey State Conference of the NAACP, the Latino Action Network, Oranges and Maplewood NAACP, Newark NAACP, Morris County NAACP, Elizabeth NAACP, and the Supportive Housing Association, and shall, as part of its regional affirmative marketing strategies during its implementation of this plan, provide notice to those organizations of all available affordable housing units. The Village also agrees to notice other entities, including developers or other companies retained to do affirmative marketing, to comply with this paragraph.

F. 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.

G. The affirmative marketing process for available affordable units shall begin at least four months prior to the expected date of occupancy.

H. The costs of advertising and affirmative marketing of the affordable units shall be the responsibility of the developer, sponsor or owner, unless otherwise determined or agreed to by the Village of South Orange.

§185-233. 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 separate bedrooms for parents and children;
 3. Provide children of different sexes with separate bedrooms; 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.

§185-234. Selection of Occupants of Affordable Housing Units.

- A. The administrative agent shall use a random selection process to select occupants of low- and moderate-income housing.
- B. A waiting list of all eligible candidates will be maintained in accordance with the provisions of N.J.A.C. 5:80-26 et seq.

§185-235. 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, and each restricted ownership unit shall remain subject to the controls on affordability for a period of at least 30 years, until the municipality takes action to release the controls on affordability.
- B. Rehabilitated owner-occupied housing units that are improved to code standards shall be subject to affordability controls for a period of 10 years.
- C. The affordability control period for a restricted ownership unit shall commence on the date the initial certified household takes title to the unit.
- D. The affordability controls set forth in this Ordinance shall remain in effect despite the entry and enforcement of any judgment of foreclosure with respect to restricted ownership units.
- E. 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.

§185-236. Price Restrictions for Restricted Ownership Units, Homeowner Association Fees and Resale Prices.

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

- A. The initial purchase price for a restricted ownership unit shall be approved by the Administrative Agent.
- B. The Administrative Agent shall approve all resale prices, in writing and in advance of the resale, to assure compliance with the foregoing standards.
- C. The method used to determine the condominium association fee amounts and special assessments

shall be indistinguishable between the low- and moderate- income unit owners and the market unit owners.

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

§185-237. Buyer Income Eligibility.

A. Buyer income eligibility for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.1, as may be amended and supplemented, such that low-income ownership units shall be reserved for households with a gross household income less than or equal to 50% of median income and moderate-income ownership unit shall be reserved for households with a gross household income less than 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 33% of the household's certified monthly income.

§185-238. 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 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).

§185-239. 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, and each restricted rental unit shall remain subject to the controls on affordability for a period of at least 30 years, until the municipality takes action to release the controls on affordability.

1. Restricted rental units created as part of developments receiving nine percent (9%) Low Income Housing Tax Credits must comply with a control period of not less than a 30-year compliance period plus a 15-year extended use period.

B. Rehabilitated renter-occupied housing units that are improved to code standards shall be subject to affordability controls for a period of 10 years.

C. Deeds of all real property that include restricted rental units shall contain deed restriction language. The deed restriction shall have priority over all mortgages on the property, and the deed restriction shall be filed by the developer or seller with the records office of the County of Essex. A copy of the filed document shall be provided to the Administrative Agent within 30 days of the receipt of a Certificate of Occupancy.

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

1. Sublease or assignment of the lease of the unit;
2. Sale or other voluntary transfer of the ownership of the unit; or
3. The entry and enforcement of any judgment of foreclosure.

§185-240. Price Restrictions for Rental Units; Leases.

- A. A written lease shall be required for all restricted rental units, except for units in an assisted living residence, and tenants shall be responsible for security deposits and the full amount of the rent as stated on the lease. A copy of the current lease for each restricted rental unit shall be provided to the Administrative Agent.
- B. No additional fees or charges shall be added to the approved rent (except, in the case of units in an assisted living residence, to cover the customary charges for food and services) without the express written approval of the Administrative Agent.
- C. Application fees (including the charge for any credit check) shall not exceed 5% of the monthly rent of the applicable restricted unit and shall be payable to the Administrative Agent to be applied to the costs of administering the controls applicable to the unit as set forth in this Ordinance.

§185-241. Tenant Income Eligibility.

1. Tenant income eligibility shall be in accordance with N.J.A.C. 5:80-26.13, as may be amended and supplemented, and shall be determined as follows:
2. Very-low-income rental units shall be reserved for households with a gross household income less than or equal to 30% of median income.
3. Low-income rental units shall be reserved for households with a gross household income less than or equal to 50% of median income.
4. Moderate-income rental units shall be reserved for households with a gross household income less than 80% of median income.
5. 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% (40% 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:
6. The household currently pays more than 35% (40% for households eligible for age-restricted units) of its gross household income for rent, and the proposed rent will reduce its housing costs;
7. The household has consistently paid more than 35% (40% for households eligible for age-restricted units) of eligible monthly income for rent in the past and has proven its ability to pay;
8. The household is currently in substandard or overcrowded living conditions;
9. The household documents the existence of assets with which the household proposes to supplement the rent payments; or
10. 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.
11. The applicant shall file documentation sufficient to establish the existence of the circumstances in (b)1 through 5 above with the Administrative Agent, who shall counsel the household on budgeting.

§185-242. Conversions.

Each housing unit created through the conversion of a non-residential structure shall be considered a new housing unit and shall be subject to the affordability controls for a new housing unit.

§185-243. 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, unless an alternative commitment is approved by the Court.

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.

§185-244. Reserved.

§185-245. Reserved.

ARTICLE XXXVIII

Administration

§185-246. Municipal Housing Liaison.

A. The position of Municipal Housing Liaison for the Village of South Orange is hereby established. The Municipal Housing Liaison shall be appointed by duly adopted resolution of the Village Council and be subject to the approval by the Superior Court.

B. The Municipal Housing Liaison must be either a full-time or part-time employee of the Village of South Orange.

C. The Municipal Housing Liaison must meet the requirements for qualifications, including initial and periodic training found in N.J.A.C. 5:93.

D. The Municipal Housing Liaison shall be responsible for oversight and administration of the affordable housing program for the Village of South Orange, including the following responsibilities which may not be contracted out to the Administrative Agent:

1. Serving as the municipality's primary point of contact for all inquiries from the State, affordable housing providers, Administrative Agents and interested households;
2. The implementation of the Affirmative Marketing Plan and affordability controls.
3. When applicable, supervising any contracting Administrative Agent.
4. Monitoring the status of all restricted units in the Village of South Orange's Fair Share Plan;
5. Compiling, verifying and submitting annual reports as required by the Superior Court;
6. Meeting with affordable housing developers and Administrative Agents, as applicable; and
7. Attending continuing education opportunities on affordability controls, compliance monitoring and

affirmative marketing as offered or approved by the Superior Court.

§185-247. Administrative Agent.

A. The Village shall designate by resolution of the Village Council, subject to the approval of the Superior Court, one or more Administrative Agents to administer newly constructed affordable units in accordance with N.J.A.C. 5:93 and UHAC.

B. An Operating Manual shall be provided by the Administrative Agent(s) to be adopted by resolution of the governing body and subject to approval of the Superior Court. The Operating Manuals shall be available for public inspection in the Office of the Municipal Clerk and in the office(s) of the Administrative Agent(s).

C. The Administrative Agent shall perform the duties and responsibilities of an administrative agent as are set forth in UHAC and which are described in full detail in the Operating Manual, including those set forth in N.J.A.C. 5:80-26.14, 16 and 18 thereof, which includes:

1. Attending continuing education opportunities on affordability controls, compliance monitoring, and affirmative marketing as offered or approved by the Superior Court;
2. Affirmative Marketing;
3. Household Certification;
4. Affordability Controls;
5. Records retention;
6. Resale and re-rental;
7. Processing requests from unit owners; and
8. Enforcement, although the ultimate responsibility for retaining controls on the units rests with the municipality.
9. The Administrative Agent shall, as delegated by the Village Council, have the authority to take all actions necessary and appropriate to carry out its responsibilities, hereunder.

§185-248. Enforcement of Affordable Housing Regulations.

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

B. After providing written notice of a violation to an Owner, Developer or Tenant of a low- or moderate-income unit and advising the Owner, Developer or Tenant of the penalties for such violations, the municipality may take the following action against the Owner, Developer or Tenant for any violation that remains uncured for a period of 60 days after service of the written notice:

1. The municipality may file a court action pursuant to N.J.S.A. 2A:58-11 alleging a violation, or violations, of the regulations governing the affordable housing unit. If the Owner, Developer or Tenant is found by the court to have violated any provision of the regulations governing affordable housing units the Owner, Developer or Tenant shall be subject to one or more of the following penalties, at the discretion of the court:

- (a) A fine of not more than \$500.00 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 low- or moderate-income unit in violation of the regulations governing affordable housing units, payment into the Village of South Orange 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 low- or moderate-income unit in violation of the regulations governing affordable housing units, payment of an innocent tenant's reasonable relocation costs, as determined by the court.

2. The municipality may file a court action in the Superior Court seeking a judgment, which would result in the termination of the Owner's equity or other interest in the unit, in the nature of a mortgage foreclosure. Any judgment shall be enforceable as if the same were a judgment of default of the First Purchase Money Mortgage and shall constitute a lien against the low- and moderate-income unit.

C. Such judgment shall be enforceable, at the option of the municipality, by means of an execution sale by the Sheriff, at which time the low- and moderate-income unit of the violating Owner shall be sold at a sale price which is not less than the amount necessary to fully satisfy and pay off any First Purchase Money Mortgage and prior liens and the costs of the enforcement proceedings incurred by the municipality, including attorney's fees. The violating Owner shall have the right to possession terminated as well as the title conveyed pursuant to the Sheriff's sale.

D. The proceeds of the Sheriff's sale shall first be applied to satisfy the First Purchase Money Mortgage lien and any prior liens upon the low- and moderate-income unit. The excess, if any, shall be applied to reimburse the municipality for any and all costs and expenses incurred in connection with either the court action resulting in the judgment of violation or the Sheriff's sale. In the event that the proceeds from the Sheriff's sale are insufficient to reimburse the municipality in full as aforesaid, the violating Owner shall be personally responsible for and to the extent of such deficiency, in addition to any and all costs incurred by the municipality in connection with collecting such deficiency. In the event that a surplus remains after satisfying all of the above, such surplus, if any, shall be placed in escrow by the municipality for the Owner and shall be held in such escrow for a maximum period of two years or until such earlier time as the Owner shall make a claim with the municipality for such. Failure of the Owner to claim such balance within the two-year period shall automatically result in a forfeiture of such balance to the municipality. Any interest accrued or earned on such balance while being held in escrow shall belong to and shall be paid to the municipality, whether such balance shall be paid to the Owner or forfeited to the municipality.

E. Foreclosure by the municipality due to violation of the regulations governing affordable housing units shall not extinguish the restrictions of the regulations governing affordable housing units as the same apply to the low- and moderate- income unit. Title shall be conveyed to the purchaser at the Sheriff's sale, subject to the restrictions and provisions of the regulations governing the affordable housing unit. The Owner determined to be in violation of the provisions of this plan and from whom title and possession were taken by means of the Sheriff's sale shall not be entitled to any right of redemption.

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

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

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

§185-249. Appeals. Appeals from all decisions of an Administrative Agent designated pursuant to this Ordinance shall be filed in writing with the Village.

Article XXXVIV

Developer Fees

§185-250. Purpose

A. In *Holmdel Builder's Association V. Holmdel Township*, 121 N.J. 550 (1990), the New Jersey Supreme Court determined that mandatory development fees are authorized by the Fair Housing Act of 1985 (the Act), N.J.S.A. 52:27d-301 et seq., and the State Constitution, subject to the Council on Affordable Housing's (COAH's) adoption of rules.

B. 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 is authorized to adopt and promulgate regulations necessary for the establishment, implementation, review, monitoring and enforcement of municipal affordable housing trust funds and corresponding spending plans. Municipalities that are under the jurisdiction of the Council or court of competent jurisdiction and have a COAH-approved spending plan may retain fees collected from non-residential development.

C. In *Re: Adoption of N.J.A.C. 5:96 and 5:97* by the New Jersey Council on Affordable Housing, 221 N.J. 1 (2015), also known as the Mount Laurel IV decision, the Supreme Court remanded COAH's duties to the Superior Court. As a result, affordable housing development fee collections and expenditures from the municipal affordable housing trust funds to implement municipal Third Round Fair Share Plans through July 1, 2025 are under the Court's jurisdiction and are subject to approval by the Court.

D. This ordinance establishes standards for the collection, maintenance, and expenditure of development fees pursuant to COAH's regulations and in accordance P.L.2008, c.46, Sections 8 and 32-38. Fees collected pursuant to this ordinance shall be used for the sole purpose of providing low- and moderate-income housing. This ordinance shall be interpreted within the framework of COAH's rules on development fees, codified at N.J.A.C. 5:93-8.

§185-251. Basic requirements

A. This ordinance shall not be effective until approved by Superior Court approves the Borough's development fee ordinance in accordance with N.J.A.C. 5:93-8.

B. The Township of South Orange Village shall not spend development fees until the Superior Court has approved a plan for spending such fees in conformance with N.J.A.C. 5:93-8.

§185-252. Definitions

A. The following terms, as used in this ordinance, shall have the following meanings:

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

2. "COAH" or the "Council" means the New Jersey Council on Affordable Housing established under

the Act which has primary jurisdiction for the administration of housing obligations in accordance with sound regional planning consideration in the State. Pursuant to the opinion and order of the New Jersey Supreme Court dated March 10, 2015, in the matter of "In re Adoption of N.J.A.C. 5:96 and 5:97 by N.J. Council on Affordable Housing (M-392-14) 067126," any reference to COAH or the Council shall be understood to refer to the Superior Court of New Jersey, Law Division-Essex County.

3. "Development fee" means money paid by a developer for the improvement of property as permitted in N.J.A.C. 5:97-8.3.

4. "Developer" means 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.

5. "Equalized assessed value" means 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).

6. "Green building strategies" means 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.

§185-253. Residential Development Fees

A. Imposed fees

1. Within all zoning districts, residential developers, except for developers of the types of development specifically exempted below, shall pay a fee of one and a half percent (1.5%) of the equalized assessed value for residential development provided no increased density is permitted.

2. When an increase in residential density pursuant to N.J.S.A. 40:55D-70d(5) (known as a "d" variance) has been permitted, developers may be required to pay a development fee of six percent (6%) of the equalized assessed value for each additional unit that may be realized. However, if the zoning on a site has changed during the two-year period preceding the filing of such a variance application, the base density for the purposes of calculating the bonus development fee shall be the highest density permitted by right during the two-year period preceding the filing of the variance application.

B. Eligible exactions, ineligible exactions and exemptions for residential development

1. Affordable housing developments, developments where the developer is providing for the construction of affordable units elsewhere in the municipality, and developments where the developer has made a payment in lieu of on-site construction of affordable units shall be exempt from development fees.

2. Developments that have received preliminary or final site plan approval prior to the adoption of a municipal development fee ordinance shall be exempt from development fees, unless the developer seeks a substantial change in the approval. Where a site plan approval does not apply, a zoning and/or building permit shall be synonymous with preliminary or final site plan approval for this purpose. The fee percentage shall be vested on the date that the building permit is issued.

3. Owner-occupied residential structures demolished and replaced as a result of a fire, flood, or natural disaster shall be exempt from paying a development fee.

4. Development fees shall be imposed and collected when an existing structure undergoes a change to a more intense use, is demolished and replaced, or is expanded, if the expansion is not otherwise exempt from the development fee requirement. The development fee shall be calculated on the increase in the equalized assessed value of the improved structure.

§185-254. Non-residential Development Fees

A. Imposed fees

1. Within all zoning districts, non-residential developers, except for developers of the types of development specifically exempted, shall pay a fee equal to two and one-half percent (2.5%) of the equalized assessed value of the land and improvements, for all new non-residential construction on an unimproved lot or lots.

2. Non-residential developers, except for developers of the types of development specifically exempted, shall also pay a fee equal to two and one-half percent (2.5%) of the increase in equalized assessed value resulting from any additions to existing structures to be used for non-residential purposes.

3. Development fees shall be imposed and collected when an existing structure is demolished and replaced. The development fee of two and one-half percent (2.5%) shall be calculated on the difference between the equalized assessed value of the pre-existing land and improvement and the equalized assessed value of the newly improved structure, i.e. land and improvement, at the time final certificate of occupancy is issued. If the calculation required under this section results in a negative number, the non-residential development fee shall be zero.

B. Eligible exactions, ineligible exactions and exemptions for non-residential development

1. The non-residential portion of a mixed-use inclusionary or market rate development shall be subject to the two and a half (2.5) percent development fee, unless otherwise exempted below.

2. The 2.5 percent fee shall not apply to an increase in equalized assessed value resulting from alterations, change in use within existing footprint, reconstruction, renovations and repairs.

3. Non-residential developments shall be exempt from the payment of non-residential development fees in accordance with the exemptions required pursuant to P.L.2008, c.46, as specified in the Form N-RDF "State of New Jersey Non-Residential Development Certification/Exemption" Form. Any exemption claimed by a developer shall be substantiated by that developer.

4. A developer of a non-residential development exempted from the non-residential development fee pursuant to P.L.2008, c.46 shall be subject to it at such time the basis for the exemption no longer applies, and shall make the payment of the non-residential development fee, in that event, within three years after that event or after the issuance of the final certificate of occupancy of the non-residential development, whichever is later.

5. If a property which was exempted from the collection of a non-residential development fee thereafter ceases to be exempt from property taxation, the owner of the property shall remit the fees required pursuant to this section within 45 days of the termination of the property tax exemption. Unpaid non-residential development fees under these circumstances may be enforceable by the Township of South Orange Village as a lien against the real property of the owner.

§185-255. Collection Procedures

A. Upon the granting of a preliminary, final or other applicable approval, for a development, the applicable approving authority shall direct its staff to notify the construction official responsible for the issuance of a building permit.

B. For non-residential developments only, the developer shall also be provided with a copy of Form N-RDF "State of New Jersey Non-Residential Development Certification/Exemption" to be completed as per the instructions provided. The developer of a non-residential development shall complete Form N-RDF as per the instructions provided. The construction official shall verify the information submitted by the non-residential developer as per the instructions provided in the Form N-RDF. The Tax assessor shall verify exemptions and prepare estimated and final assessments as per the instructions provided in Form N-RDF.

C. The construction official responsible for the issuance of a building permit shall notify the local tax assessor of the issuance of the first building permit for a development which is subject to a development fee.

D. Within 90 days of receipt of that notice, the municipal tax assessor, based on the plans filed, shall provide an estimate of the equalized assessed value of the development.

E. The construction official responsible for the issuance of a final certificate of occupancy notifies the local assessor of any and all requests for the scheduling of a final inspection on property which is subject to a development fee.

F. Within 10 business days of a request for the scheduling of a final inspection, the municipal 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.

G. Should the Township of South Orange Village fail to determine or notify the developer of the amount of the development fee within 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).

H. Fifty percent of the development fee shall be collected at the time of issuance of the building permit. The remaining portion shall be collected at the issuance of the certificate of occupancy. The developer shall be responsible for paying the difference between the fee calculated at building permit and that determined at issuance of certificate of occupancy.

I. Appeal of development fees

1. 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 Township of South Orange Village. 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 90 days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.

2. 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 45 days of receipt of the challenge, collected fees shall be placed in an interest bearing escrow account by the Township of South Orange Village. 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 90 days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.

§185-256. Affordable Housing Trust Fund

A. There is hereby created a separate, interest-bearing housing trust fund to be maintained by the chief financial officer for the purpose of depositing development fees collected from residential and non-residential developers and proceeds from the sale of units with extinguished controls.

B. The following additional funds shall be deposited in the Affordable Housing Trust Fund and shall at all times be identifiable by source and amount:

1. Payments in lieu of on-site construction of affordable units;

2. Developer contributed funds to make ten percent (10%) of the adaptable entrances in a townhouse or other multistory attached development accessible;

3. Rental income from municipally operated units;

4. Repayments from affordable housing program loans;

5. Recapture funds;

6. Proceeds from the sale of affordable units; and

7. Any other funds collected in connection with the Township of South Orange Village's affordable housing program.

C. In the event of a failure by the Township of South Orange Village 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 the expenditure of funds on activities not approved by the Court; 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 Township of South Orange Village, or, if not practicable, then within the County or the Housing Region.

D. 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 Trust Fund. The Court may also impose such other remedies as may be reasonable and appropriate to the circumstances.

E. All interest accrued in the housing trust fund shall only be used on eligible affordable housing activities approved by the Court.

§185-257. Use of funds

A. The expenditure of all funds shall conform to a spending plan approved by the Court. Funds deposited in the housing trust fund may be used for any activity approved by the Court to address the Township of South Orange Village'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 apartment, market to affordable, or regional housing partnership programs, 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, or any other activity as permitted pursuant to N.J.A.C. 5:93-8 and specified in the approved spending plan.

B. Funds shall not be expended to reimburse the Township of South Orange Village for past housing activities.

C. At least thirty percent (30%) of all development fees collected and interest earned shall be used to provide affordability assistance to low- and moderate-income households in affordable units included in the municipal Fair Share Plan, One-third of the affordability assistance portion of development fees collected shall be used to provide affordability assistance to those households earning thirty percent (30%) or less of median income by region.

1. 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.

2. Affordability assistance to households earning thirty percent (30%) or less of median income may include buying down the cost of low or moderate income units in the municipal Fair Share Plan to make them affordable to households earning thirty percent (30%) or less of median income.

3. Payments in lieu of constructing affordable units on site and funds from the sale of units with extinguished controls shall be exempt from the affordability assistance requirement.

D. The Township of South Orange Village may contract with a private or public entity to administer any part of its Housing Element and Fair Share Plan, including the requirement for affordability assistance, in accordance with N.J.A.C. 5:94-7.

E. No more than twenty percent (20%) of all revenues collected from development fees, may be expended on administration, including, but not limited to, salaries and benefits for municipal employees or consultant fees necessary to develop or implement a new construction program, a Housing Element and Fair Share Plan, and/or an affirmative marketing program. In the case of a rehabilitation program, no more than twenty percent (20%) of the revenues collected from development fees shall be expended for such administrative expenses. Administrative funds may be used for income qualification of households, monitoring the turnover of sale and rental units, and compliance with monitoring requirements for the affordable housing in compliance with the Housing Element and Fair Share Plan. Legal or other fees related to litigation opposing affordable housing sites or objecting to the Council's regulations and/or action are not eligible uses of the affordable housing trust fund.

F. The Township of South Orange Village shall make it a priority to expend payments in lieu of construction on its affordable housing program within a reasonable amount of time after collection and deposit into the Affordable Housing Trust Fund.

§185-258. Monitoring

On an annual basis commencing with the first anniversary of the entry of the Order granting a Final Judgment of Compliance and Repose The Township of South Orange Village shall provide annual reporting of trust fund activity to the New Jersey Department of Community Affairs ("DCA"), COAH, or Local Government Services ("LGS"), 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 DCA, COAH, or LGS. This reporting shall include an accounting of all housing trust fund activity, including the collection of development fees from residential and nonresidential developers, payments in lieu of constructing affordable units on site, funds from the sale of units with extinguished controls, barrier-free escrow funds, rental income, repayments from affordable housing program loans, and any other funds collected in connection with the Township's housing program, as well as to the expenditure of revenues and implementation of the plan approved by the court.

§185-259. Ongoing collection of fees

A. The ability for the Township of South Orange Village to impose, collect and expend development fees shall expire with its substantive certification unless the Township of South Orange Village has filed an adopted Housing Element and Fair Share Plan with the court or other appropriate jurisdiction, has filed a Declaratory Judgment action and has received court approval of its development fee ordinance. If the Township of South Orange Village fails to renew its ability to impose and collect development fees prior to the expiration of substantive certification, it may be subject to forfeiture of any or all funds remaining within its municipal trust fund. 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). The Township of South Orange Village 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 and repose, nor shall the Township of South Orange Village retroactively impose a development fee on such a development. The Township of South Orange Village shall not expend development fees after the expiration of judgment of compliance and repose.

Section 3.

Repealer

All ordinances or parts of ordinances inconsistent with the provisions of this ordinance are hereby repealed to the extent of such inconsistency.

Section 4.:

This ordinance shall take effect after final passage and publication as required by law.

Section 5.

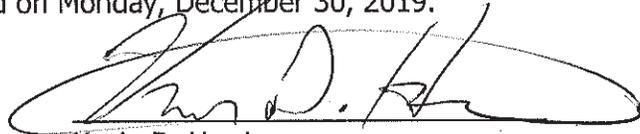
On passage this ordinance shall be codified.

Introduction – First Reading

| Trustee Member | Motion | Second | Ayes | Nays | Abstain | Absent |
|------------------|--------|--------|------|------|---------|--------|
| Clarke | | | X | | | |
| Coallier | | | X | | | |
| Hartshorn Hilton | X | | X | | | |
| Jones | | | X | | | |
| Schnall | | | X | | | |
| Zuckerman | | X | X | | | |

CERTIFICATION

I, Kevin D. Harris, Village Clerk of the Township of South Orange Village, County of Essex, State of New Jersey, do hereby certify that this Ordinance was introduced on first reading by the Board of Trustees at their special meeting held on Monday, December 30, 2019.



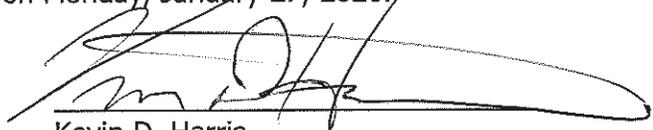
Kevin D. Harris
Village Clerk

Adoption – Second Reading

| Trustee Member | Motion | Second | Ayes | Nays | Abstain | Absent |
|------------------|--------|--------|------|------|---------|--------|
| Clarke | | | X | | | |
| Coallier | | | X | | | |
| Hartshorn Hilton | X | | X | | | |
| Jones | | X | X | | | |
| Schnall | | | X | | | |
| Zuckerman | | | X | | | |

CERTIFICATION

I, Kevin D. Harris, Village Clerk of the Township of South Orange Village, County of Essex, State of New Jersey, do hereby certify that this Ordinance was adopted on second reading by the Board of Trustees at their regular meeting held on Monday, January 27, 2020.

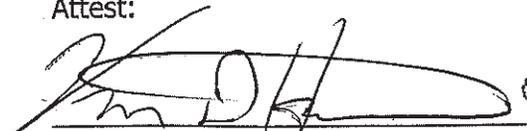


Kevin D. Harris
Village Clerk

Adopted:


Sheena C. Collum, Village President

Attest:


Kevin D. Harris, Village Clerk

APPENDIX D:

Spending Plan

TOWNSHIP OF SOUTH ORANGE VILLAGE

RESOLUTION APPROVING THE AFFORDABLE HOUSING SPENDING PLAN FOR THE
TOWNSHIP OF SOUTH ORANGE VILLAGE

WHEREAS, on May 17, 2019, the Township of South Orange Village ("Village") signed a settlement agreement with Fair Share Housing Center ("FSHC") which established the Village's fair share obligation and preliminarily approved the Village's compliance mechanisms in accordance with the March 10, 2015 decision of the Supreme Court, which transferred responsibility to review and approve housing elements and fair share plans from the Council on Affordable Housing ("COAH") to designated Mount Laurel trial judges within the Superior Court; and

WHEREAS, the Village has prepared a Spending Plan, pursuant to N.J.A.C. 5:93-5.1 et., seq. and consistent with P.L.2008, c.46 Council on Affordable Housing ("COAH") which projects anticipated revenues to the Village's Affordable Housing Trust Fund and describes anticipated expenditures of funds through the end of the Third Round;

WHEREAS, the Village requires approval of its Spending Plan in order to utilize any of the funds within the Affordable Housing Trust Fund;

WHEREAS, the Village desires to submit its Spending Plan to the Court in connection with the Compliance Action for review and approval.

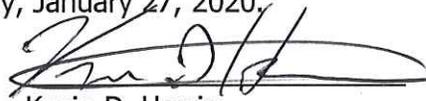
NOW THEREFORE BE IT RESOLVED, by the Board of Trustees of the Township of South Orange Village, County of Essex, and the State of New Jersey hereby adopts the Spending Plan that is attached hereto as Exhibit A and requests that the Court review and approve the Village's Spending Plan, so that it can expend funds in its Affordable Housing Trust Fund.

#

| Trustee Member | Motion | Second | Ayes | Nays | Abstain | Absent |
|------------------|--------|--------|------|------|---------|--------|
| Clarke | | | X | | | |
| Coallier | | | X | | | |
| Hartshorn Hilton | | X | X | | | |
| Jones | | | | | X | |
| Schnall | | | X | | | |
| Zuckerman | X | | X | | | |

CERTIFICATION

I, Kevin D. Harris, Village Clerk of the Township of South Orange Village, County of Essex, State of New Jersey, do hereby certify that this is a true and correct copy of the Resolution adopted by the Board of Trustees at their meeting held on Monday, January 27, 2020.



Kevin D. Harris
Village Clerk

INTRODUCTION

The Village of South Orange has prepared a Housing Element and Fair Share plan that addresses its regional fair share of the affordable housing need in accordance with the Municipal Land Use Law (N.J.S.A. 40:55D-1 et seq.), the Fair Housing Act (N.J.S.A. 52:27D-301) and the regulations of the Council on Affordable Housing (COAH) (N.J.A.C. 5:93-1 et seq.), as requested by the New Jersey Supreme Court. A development fee ordinance creating a dedicated revenue source for affordable housing was adopted by the municipality in 2010, and amended through 2020. This ordinance establishes funds into the South Orange's Affordable Housing Trust Fund. This spending plan has been prepared to set priorities of the disbursement of funds from the trust fund through 2025.

As of December 2019, the Village of South Orange has collected \$487,059.72 in development fees and payments-in-lieu of construction. These funds shall be spent in accordance with N.J.A.C. 5:93-8.16 as described in the sections that follow.

1. Revenues for Certification Period

To calculate projected revenue during the period of the anticipated third round judgment of repose, the Village of South Orange considered all redevelopment projects which are likely to contribute payment-in-lieu of construction and regular residential and nonresidential development fees likely to be imposed based on historic rates of development. To date, the Village's revenue has been generated from the following sources:

- (A) Development fees: The Village analyzed four years (2016 to 2019) of residential and nonresidential projects which qualified for development fees and averaged expected fee amount annually. These fees will continue to be assessed in the future and are projected from 2020-2025 in the following sections.
- (B) Payment in lieu (PIL): Payments in lieu of construction expected to be collected from developers.
- (C) Funds from other sources such as the sale of units with extinguished controls, repayment of affordable housing program loans, rental income, or proceeds from the sale of affordable units are not anticipated.
- (D) Projected Interest: interest on the projected revenue in the municipal affordable housing trust fund at the current average interest rate.

Table A in the following section indicates the anticipated revenue to be generated from development impact fees, payments-in-lieu-of-construction and interest. The Village of South Orange projects a subtotal of \$89,711.32 to be collected between January 1, 2020 and December 31, 2025, including interest, to be used for affordable housing purposes under the assumptions presented after the table. The total after adding the money currently in the AHTF account is projected to be \$563,787.87.

2. Administrative Mechanism to Collect and Distribute Funds

The following procedural sequence for the collection and distribution of development fee revenues shall be followed by the Village:

- (A) Collection of development fee revenues: Collection of development fee revenues shall be consistent with South Orange's development fee ordinance for both residential and non-residential developments in accordance with COAH's rules and P.L.2008, c.46, sections 8 (C. 52:27D-329.2) and 3238 (C. 40:55D-8.1 through 8.7).
- (B) Distribution of development fee revenues: The governing body shall approve all expenditures from the account, including administrative expenses and direct expenditures. The Affordable Housing Administrator and the Municipal Housing Liaison shall directly manage projects and expenditures from the fund.

Projected residential and nonresidential development fees are based on average annual fees collected since the Village adopted its development ordinance in 2010. Interest on projected revenue is calculated based on an average rate of interest for the trust fund at .45%. Estimated fee development fee revenue from 2020-2025 from residential and non-residential construction was estimated based on the dollar value of eligible construction from 2016-2019 and a development fee of 2.5% for nonresidential projects and 1.5% for residential projects.

Table A: Projected Revenue

| | 2020 | 2021 | 2022 | 2023 | 2024 | 2025 | Total |
|---|-------------|-------------|-------------|-------------|-------------|-------------|------------------|
| Development Fees | \$11,865 | \$11,865 | \$11,865 | \$11,865 | \$11,865 | \$11,865 | \$83,055 |
| Payment in lieu | \$0* | \$0* | \$0* | \$0* | \$0* | \$0* | \$0* |
| Interest | \$533.93 | \$557.95 | \$1,092.96 | \$1,117.03 | \$1,118.12 | \$1,118.17 | \$5,538.15 |
| Total | \$12,398.93 | \$12,422.95 | \$12,957.96 | \$12,982.03 | \$12,983.12 | \$12,983.17 | \$76,728.15 |
| | | | | | | | |
| Fees (Above) | | | | | | | (+) \$76,728.15 |
| Starting Balance | | | | | | | (+) \$487,059.72 |
| Projected Revenue | | | | | | | \$563,787.87 |
| *The Spending Plan shall be modified upon receipt of any incoming Payment-in-Lieu funds | | | | | | | |

3. Description of Anticipated Use of Affordable Housing Funds

The Village of South Orange may use the funds in the trust fund for any of the below listed items, pursuant to N.J.A.C. 5:93-8.16(a) and (c):

- New construction of affordable housing units and related development costs, and in the case of inclusionary developments, eligible costs shall be pro-rated based on the proportion of affordable housing units included in the development;
- Extensions or improvements of roads and infrastructure directly serving affordable housing development sites; in the case of inclusionary developments, costs shall be pro-rated based on the proportion of affordable housing units included in the development;
- Acquisition and/or improvement of land to be used for affordable housing;
- Purchase of existing market rate or affordable housing for the purpose of maintaining or implementing affordability controls, such as in the event of foreclosure;
- Accessory apartment or market-to-affordable programs;
- Green building strategies designed to save money for low and moderate income households, either for new construction that is not funded by other sources, or as part of necessary maintenance or repair of existing affordable units;
- Maintenance and repair of affordable housing units;
- Repayment of municipal bonds issued to finance low and moderate income housing activity;
- Affordability assistance to very low, low and moderate income buyers and renters of affordable housing units to lower the cost of homeownership and fund maintenance and emergency repairs that do not constitute rehabilitation of substandard units; and
- Any other activity as specified herein.

Below are the specific estimates for funds to be dedicated to affordable housing activities and administration.

(A) Rehabilitation and New Construction: The Village will dedicate \$200,000 to rehabilitation of existing affordable units, either for sale or rental. This number was projected based on \$10,000 a unit for the Village's rehabilitation obligation of 20. The Village will dedicate \$81,893.93 to provide contributions/subsidy to qualifying developers to construct affordable units, either for sale or rental. This number was projected based on projected revenues, minus rehabilitation, affordability assistance, and administration costs.

(B) Affordability Assistance: At least 30% of collected development fees, excluding expenditures from the affordable housing trust fund shall be dedicated to affordability assistance to low- and moderate-income households. The Village of South Orange will dedicate a minimum of \$169,136.36 from the affordable

housing trust fund to render units more affordable through 2025, if projected development fees are realized. At least \$56,373.15 from the Affordable Housing Trust Fund will be used to render units more affordable to households earning 30 percent or less of median income by region (i.e. VLI). Funds will go towards down payment assistance as part of a monetary contribution to owner occupied affordable units. Affordability assistance through the end of 2025 will include assistance with common maintenance expenses and emergency repairs. Thus, South Orange's significant investment in repairs, maintenance, and down-payment assistance on a project-by-project basis will satisfy the remainder of the Village's obligation for affordability assistance.

(C) Administrative Expenses (N.J.A.C. 5:93-8.16): The Village of South Orange will expend no more than 20 percent of the revenues collected from development fees and payments in lieu of construction. A projected \$112,757.57 will be available from the affordable housing trust fund to be used for administrative purposes. Projected administrative expenditures are as follows:

- Administration and setup expenses for all affordable housing programs including rehabilitation and new construction;
- Administration and setup expenses for affordability assistance program;
- Staffing and consulting fees associated with future planning and outreach and activities, as permitted under N.J.A.C. 5:93-8.16;
- Other expenses associated with the implementation of the Housing Element and the monitoring of current and future housing programs in the Village.

4. Expenditure Schedule

The Village of South Orange intends to use affordable housing trust fund revenues for the rehabilitation of affordable housing units as needed and to assist the active community development groups in the Village and the region with new opportunities for affordable housing. Where applicable, the funding schedule below parallels the implementation schedule set forth in the Housing Element and Fair Share Plan. To date, no expenditures have been made from the Village's Affordable Housing Trust Fund.

Table B: Spending Plan Summary of Revenues and Expenditures

| REVENUES | | |
|---|---|--------------|
| Current Cash on Hand as of 12/2019 | | \$487,059.72 |
| Projected Fee Revenue* | + | \$76,728.15 |
| Projected Revenues | = | \$563,787.87 |
| EXPENDITURES | | |
| Funds used for Rehabilitation | - | \$200,000.00 |
| Funds used for New Construction | | \$81,893.93 |
| Minimum Affordability Assistance (Projected) | - | \$169,136.36 |
| 1. For Very Low-Income Households | = | \$56,373.15 |
| 2. Other Affordability Assistance | = | \$112,763.21 |
| Total Administration (Projected 20%) | - | \$112,757.57 |
| TOTAL PROJECTED EXPENDITURES | = | \$563,787.87 |
| REMAINING BALANCE | = | \$0.00 |
| *The Spending Plan shall be modified upon receipt of any incoming Payment-in-Lieu funds | | |

Table C: Schedule of Expenditures (Estimated)*

| | 2020 | 2021 | 2022 | 2023 | 2024 | 2025 | TOTAL |
|---|-------------|-------------|-------------|-------------|-------------|-------------|--------------|
| Rehabilitation (20 Projected) | \$33,333.33 | \$33,333.33 | \$33,333.33 | \$33,333.33 | \$33,333.33 | \$33,333.33 | \$200,000 |
| New Construction 100% Affordable | \$13,648.99 | \$13,648.99 | \$13,648.99 | \$13,648.99 | \$13,648.99 | \$13,648.99 | \$81,893.93 |
| Affordability Assistance | \$28,189.39 | \$28,189.39 | \$28,189.39 | \$28,189.39 | \$28,189.39 | \$28,189.39 | \$169,136.36 |
| Administration | \$18,792.93 | \$18,792.93 | \$18,792.93 | \$18,792.93 | \$18,792.93 | \$18,792.93 | \$112,757.57 |
| Total | \$93,964.64 | \$93,964.64 | \$93,964.64 | \$93,964.64 | \$93,964.64 | \$93,964.64 | \$563,787.87 |
| *The Spending Plan shall be modified upon receipt of any incoming Payment-in-Lieu funds | | | | | | | |

5. Excess or Shortfall of Funds

The governing body of the Village of South Orange reserves the right to revise projections and anticipated funding commitments based upon actual revenues to the Affordable Housing Trust Fund. In the event that a shortfall of anticipated revenues occurs, the Village will revise its spending plan accordingly.

In the event of excess funds, any remaining funds above the amount necessary to satisfy the municipal affordable housing obligation will be used toward the affordability assistance program.

6. Barrier Free Escrow

Collection and distribution of barrier free funds shall be consistent with South Orange's Affordable Housing Ordinance in accordance with N.J.A.C. 5:93.

7. Summary

The Village of South Orange intends to spend affordable housing trust fund revenues pursuant to the extant regulations governing such funds and consistent with the housing programs outlined in the Housing Element and Fair Share Plan dated January 2020. The Village had a balance of \$487,059.72 as of December 2019 and anticipates an additional \$76,728.15 in revenues before the expiration of the judgment of repose for a total of \$563,787.87. The Village will dedicate \$200,000 towards rehabilitation of approximately 20 units; \$81,893.93 towards contributions of new construction of 100% affordable units; \$169,136.36 towards affordability assistance to render units more affordable; and approximately \$112,757.57 to administrative costs.

APPENDIX E:

HEFSP Planning Board + Governing Body
Resolution

TOWNSHIP OF SOUTH ORANGE VILLAGE

RESOLUTION OF THE GOVERNING BODY OF THE TOWNSHIP OF SOUTH ORANGE
VILLAGE ENDORSING THE TOWNSHIP'S ROUND 3 HOUSING ELEMENT AND FAIR
SHARE PLAN

WHEREAS, on January 6, 2020, the Planning Board of the Township of South Orange Village, County of Essex, State of New Jersey, adopted an amended Housing Element and Fair Share Plan ("Fair Share Plan"); and

WHEREAS, the Fair Share Plan address the Township's Mount Laurel obligations as delineated in the court-approved Settlement Agreement between the Township of Fair Share Housing Center, executed on or around May 17, 2019; and

WHEREAS, the Township of South Orange Village remains committed to comply with its constitutional Mount Laurel obligations by voluntarily providing its "Fair Share" of affordable housing.

NOW THEREFORE BE IT RESOLVED that the Council of the Township of South Orange Village, County of Essex, State of New Jersey, hereby endorses the Fair Share Plan as adopted by the South Orange Village Planning Board on January 6, 2020; and

BE IT FURTHER RESOLVED that the Council of the Township of South Orange Village, pursuant to the provisions of N.J.S.A. 52:27D-301 et.seq. hereby authorizes and directs its professionals to immediately file the adopted and endorsed amended Fair Share Plan and all other relevant documents with the Court; and

BE IT FURTHER RESOLVED that the Council of the Township of South Orange Village hereby authorizes and directs its professionals to take any and all actions reasonable and necessary to secure approval of the Township's Fair Share Plan, to maintain the Township's immunity from any Mount Laurel lawsuits, and to secure a Final Round 3 Judgment of Compliance and Repose; and

BE IT FURTHER RESOLVED that, upon seeking approval of its Fair Share Plan, all known interested parties shall receive notice of the Township's actions and requests; and

BE IT FURTHER RESOLVED that notice of the Township's application for approval of its amended Fair Share Plan shall be published in a newspaper of regional circulation and the Township shall otherwise provide all the notice which the Court deems appropriate as it determines whether the Fair Share Plan satisfies the Township's affordable housing responsibilities under applicable laws and consistent with the Settlement Agreement between the Township and Fair Share Housing Center. Said notice shall give the public sufficient time to review the Township's Fair Share Plan and offer any comments that the individual or entity may deem appropriate.

#

| Trustee Member | Motion | Second | Ayes | Nays | Abstain | Absent |
|------------------|--------|--------|------|------|---------|--------|
| Clarke | | X | X | | | |
| Coallier | | | X | | | |
| Hartshorn Hilton | X | | X | | | |
| Jones | | | X | | | X |
| Schnall | | | | | | |
| Zuckerman | | | X | | | |

CERTIFICATION

I, Kevin D. Harris, Village Clerk of the Township of South Orange Village, County of Essex, State of New Jersey, do hereby certify that this is a true and correct copy of the Resolution adopted by the Board of Trustees of the Township of South Orange Village at their Regular Meeting held on Monday, January 13, 2020.



Kevin D. Harris
Village Clerk

RESOLUTION OF THE SOUTH ORANGE PLANNING BOARD
RE: ADOPTION OF A NEW HOUSING ELEMENT AND FAIR SHARE PLAN
AS AN AMENDMENT TO THE TOWNSHIP OF SOUTH ORANGE VILLAGE
MASTER PLAN

WHEREAS, the South Orange Planning Board (the "Board") is authorized to prepare, adopt, and amend a Master Plan to guide the use of lands within the Township of South Orange Village in accordance with the purposes of the Municipal Land Use Law; and

WHEREAS, pursuant to N.J.S.A. 40:55D-28.b(3), the Master Plan may include a Housing Element and Fair Share Plan meeting the requirements of N.J.S.A. 52:27D-310 and relevant regulations promulgated by the New Jersey Council on Affordable Housing ("COAH"); and

WHEREAS, the Village's current Round 3 Housing Element and Fair Share Plan was adopted on December 3, 2008; and

WHEREAS, on January 13, 2010, COAH approved the aforementioned Round 3 Housing Element and Fair Share Plan and adopted a resolution granting the Village "substantive certification" of same; and

WHEREAS, on March 10, 2015, the New Jersey Supreme Court issued In re Adoption of N.J.A.C. 5:96 & 5:97 by N.J. Council on Affordable Housing, 221 N.J. 1 (2015) ("Mount Laurel IV") which, among other things, effectively nullified the Village's Round 3 substantive certification; and

WHEREAS, pursuant to the new judicial procedures set forth in Mount Laurel IV, the Village filed a timely Declaratory Judgment Action for purposes of maintaining its immunity from all Mount Laurel lawsuits and taking the actions necessary to secure a Final Round 3 Judgment of Compliance and Repose, the judicial equivalent of an administrative grant of substantive certification; and

WHEREAS, on May 17, 2019, the Village executed a Settlement Agreement with Fair Share Housing Center which, among other things, established the Village's new Round 3 "fair share" obligations and set forth its plan to satisfy same; and

WHEREAS, on August 14, 2019, the court entered an Order approving the FSHC Settlement Agreement at a duly-noticed Mount Laurel "Fairness Hearing"; and

WHEREAS, in light of the facts and procedures set forth above, on January 6, 2019 the Board held a duly-noticed public hearing to consider whether to adopt the Village's Amended Round 3 Housing Element and Fair Share Plan, as prepared by Golda Speyer, P.P., A.I.C.P. and dated January 2020; and

WHEREAS, the Board considered the relevant documents, the information provided by the Village's professionals, discussion by its members, and all public comments regarding the proposed amended Round 3 Housing Element and Fair Share Plan and has determined that it represents a reasonable and realistic plan to address the Village's Mount Laurel "fair share" obligations; and

WHEREAS, accordingly, the Board intends to adopt the proposed amended Round 3 Housing Element and Fair Share Plan of the Village's Master Plan, and to refer it to the Village's Board of Trustees for endorsement.

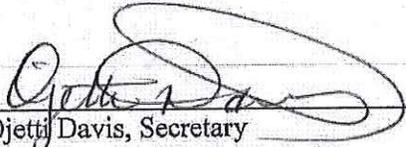
NOW, THEREFORE, BE IT RESOLVED by the Planning Board of the Township of South Orange Village as follows:

1. The Planning Board of the Township of South Orange Village hereby adopts the Round 3 Housing Element and Fair Share Plan referenced above as an amendment to the Township of South Orange Village Master Plan.

2. A true copy of the adopted Round 3 Housing Element and Fair Share Plan shall immediately be submitted by the Planning Board Secretary to the Board of Trustees for purposes of considering whether to endorse same at an upcoming public hearing.

3. The Board Secretary shall, not more than thirty (30) days after the date of adoption of this resolution, transmit to the Essex County Planning Board a certified true copy of this resolution, together with a certified true copy of the New Housing Element, in satisfaction of the notice requirements of N.J.S.A. 40:55D-13(3).

I HEREBY CERTIFY that this is a true copy of a resolution adopted by the Planning Board of the Township of South Orange Village at a public meeting duly held on January 6, 2020.


Ojetta Davis, Secretary
South Orange Planning Board

