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Community Planning
Land Development and Design
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HOUSING ELEMENT AND FAIR SHARE PLAN

**BOROUGH OF HAWTHORNE
PASSAIC COUNTY, NEW JERSEY**

PREPARED FOR:

**BOROUGH OF HAWTHORNE PLANNING BOARD
BA# 2091.03**

March 5, 2009

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PASSAIC COUNTY, NEW JERSEY**

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The original document was appropriately signed and sealed on March 5, 2009 in accordance with Chapter 41 of Title 13 of the State Board of Professional Planners.

**Joseph Burgis, P.P., AICP
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INTRODUCTION

In 1975 the New Jersey Supreme Court decided So. Burlington Cty. NAACP v. Borough of Mount Laurel, which concluded that every developing municipality in New Jersey has an affirmative obligation to provide for its fair share of affordable housing. In a subsequent decision in 1983, the Court acknowledged that the vast majority of municipalities in the State had ignored their constitutional obligation, and called for the State Legislature to enact legislation that would save municipalities from the burden of having the courts determine their affordable housing needs. The result was the establishment of the New Jersey Council on Affordable Housing (COAH), the state agency responsible for overseeing the manner in which the state's municipalities address their low- and moderate-income housing needs.

COAH had originally adopted in 1987 and again in 1994 a 'fair share' methodology to determine housing-need numbers for all municipalities in the state, and the adopted combined Prior Round housing-need numbers for Hawthorne indicated a 318-unit affordable housing new construction obligation. This 1st and 2nd Round 'combined' number was reduced to 71 units, inclusive of 57 new construction units and 14 rehabilitation units, through a vacant land adjustment received as part of a Judgment of Repose received September 29, 2005.

In December 2004, COAH adopted new substantive (N.J.A.C. 5:94) and procedural (N.J.A.C. 5:95) rules to address the Third Round period. At the same time, COAH readjusted all Prior Round housing-need new construction numbers and rehabilitation numbers. On October 20, 2008, COAH issued, yet again, adjustments to its Prior Round new construction and rehabilitation numbers, with the Prior Round obligation set at 58 new construction units and the rehabilitation share at 34 units for Hawthorne. However, since the Borough received a vacant land adjustment as part of its Judgment of Repose for its Prior Round obligation, the Borough's Prior Round new construction and rehabilitation obligations were established by the Court at 57 new construction units and 14 rehabilitation units, irrespective of COAH's newly published numbers which did not reflect to Judgment of repose.

Additionally, the Third Round rules implement a new 'growth share' approach to affordable housing, representing a significant departure from COAH's Prior Round rules in that the new rules attempt to link the production of affordable housing with actual development and projected growth. There are three components to the Third Round methodology. They include the rehabilitation share, any remaining Prior Round obligation for the period 1987-1999, and the "Growth Share" obligation. Growth share is determined by projections of residential and non-residential growth projections for the period covering January 1, 2004 to January 1, 2018. The new substantive rules state that for every four market rate residential units projected to be constructed, the municipality shall be obligated to provide one unit that is affordable to households of low- or moderate-income. In addition, each municipality is obligated to provide one affordable unit for every 16 newly created jobs.

Based on COAH's October 20, 2008 estimates of need, Hawthorne has a Third Round affordable housing obligation consisting of a 34 unit rehabilitation obligation and a 230 unit Growth Share component that is a function of projected residential and non-residential growth. COAH estimates that between 2004 and 2018 the Borough will add an additional 586 dwellings, which translates to 117 units of affordable housing, and 1,808 jobs, which translates into 113 units of affordable housing. Given the Borough's familiarity with its developed character and thus its conclusion that COAH substantially overestimates the community's residential and non-residential growth potential, the Borough hereby takes exception to COAH's projections of growth, and herein offers a more realistic analysis of the Borough's development potential.

Using development data to measure residential and non-residential growth as set forth the Third Round regulations, it is projected that Hawthorne has a Third Round growth share new construction obligation of 12 units. This is based on growth that has occurred since 2004 and the limited remaining vacant land available for development within the Borough. This information is outlined in Workbook C, which is included within this Housing Element.

The plan is organized into three sections. The first part of this plan, the housing element, contains background data on the Borough's population and housing characteristics. The second section calculates the Borough's fair share obligation for the provision of affordable housing in accordance with the procedures identified in the Third Round rules. The Borough's fair share plan for meeting its affordable housing obligation is contained in the final section of this plan.

This document is intended to determine Hawthorne's Third Round housing obligation and indicate the manner in which this obligation is to be addressed. The analysis has been prepared pursuant to the provisions of the Municipal Land Use Law (MLUL) and the applicable regulations of COAH governing the provision of affordable housing for the Third Round period ending in 2018.

**SECTION I
HOUSING ELEMENT**

Borough of Hawthorne Housing Element and Fair Share Plan

1. COMMUNITY OVERVIEW

The Borough of Hawthorne is located in southern Passaic County. Hawthorne shares a boundary with seven municipalities, including the Boroughs of North Haledon and Prospect Park and the City of Paterson in Passaic County, and the Bergen County municipalities of Glen Rock, Fair Lawn, Wyckoff, and Ridgewood.

The Borough has a land area of 3.44 square miles. It is essentially a fully developed community, with its little remaining vacant land characterized by environmentally sensitive features or constrained by contaminants. The Borough is primarily characterized by older residential neighborhoods consisting mainly of single- and two-family homes. Industrial uses are located in the southern portion of the Borough along the borders of Paterson and Fair Lawn, as well as in the northern portion of the Borough and along the Susquehanna Railroad right-of-way. The Borough also has a central business district extending along Lafayette Avenue, which consists of retail and service commercial and office uses.

2. INVENTORY OF MUNICIPAL HOUSING STOCK

As required by the MLUL, this section of the housing element provides an inventory of the Borough's housing stock. It details housing characteristics such as age, condition, purchase/rental value, and occupancy. This section also details the number of affordable units available to low- and moderate-income households and the number of substandard housing units capable of being rehabilitated.

- a. Number of Dwelling Units. As shown in the table below, the total number of dwelling units in Hawthorne has been increasing since the 1970s. The housing stock grew by just over five percent during the 1970s and the 1990s, with a slower rate of growth during the 1980s.

Table 1 - Dwelling Units (1970-2008), Hawthorne, New Jersey

Year	Total Dwelling Units	Numerical Change	Percentage Change
1970	6,623	-	-
1980	6,996	373	5.6%
1990	7,055	59	0.8%
2000	7,419	364	5.2%

Source: U.S. Census

The following table provides details regarding the tenure and occupancy of the Borough's housing stock. As shown below, about 64 percent of the Borough's housing stock in 2000 was owner-occupied. There were 159 vacant units in 2000, representing just over two percent of the Borough's housing units.

Borough of Hawthorne Housing Element and Fair Share Plan

Table 2 - Housing Characteristics: 1990 and 2000, Hawthorne, New Jersey

Category	1990		2000	
	No. Units	Percent	No. Units	Percent
Owner-Occupied Units	4,486	63.6	4,735	63.8
Renter-Occupied Units	2,345	33.2	2,525	34.0
Vacant Units	224	3.2	159	2.1
Total Units	7,055	100	7,419	1000

Source: U.S. Census, 1990 and 2000.

- b. Housing Characteristics. The following tables provide information on the characteristics of the Borough's housing stock, including data on the number of units in the structure and the number of bedrooms.

Table 3 - Units in Structure: 1990 and 2000; Hawthorne, New Jersey

Units in Structure	1990		2000	
	Number	Percent	Number	Percent
One Unit Detached	3,716	52.7	3,780	51.0
One Unit Attached	156	2.2	229	3.1
2 Units	2,341	33.2	2,561	34.5
3 to 4 Units	178	2.5	269	3.6
5 to 9 Units	116	1.6	100	1.3
10 or More	420	5.9	456	6.1
Mobile Home	1	0.0	24	0.3
Other	127	1.8	0	0.0
Total	7,055	100	7,419	100

Source: U.S. Census, 1990 and 2000.

Table 4 - Number of Bedrooms in Housing Units: 1990 and 2000; Hawthorne, New Jersey

Bedrooms	1990		2000	
	Number	Percent	Number	Percent
None	4	0.1	73	1.0
One	1,056	15.0	1,013	13.7
Two	2,241	31.8	2,384	32.1
Three	2,611	37.0	2,630	35.4
Four	985	14.0	1,065	14.4
Five or more	158	2.2	254	3.4
Total	7,055	100	7,419	100

Source: U.S. Census, 1990 and 2000.

Borough of Hawthorne Housing Element and Fair Share Plan

- c. Housing Age. Approximately 75 percent of the Borough's housing stock was constructed prior to 1960. Less than four percent has been constructed since 1990. The median year of home construction for the Borough is 1949.

Table 5 - Year Structure Built; Hawthorne, New Jersey

Year Units Built	Number of Units	Percent
1999 to March 2000	39	0.5
1990 to 1998	227	3.1
1980 to 1989	365	4.9
1970 to 1979	474	6.4
1960 to 1969	790	10.6
1940 to 1959	2,878	38.8
1939 or earlier	2,646	35.7
Total	7,419	100

Source: 2000 U.S. Census

- d. Housing Conditions. An inventory of the Borough's housing conditions is outlined in the following tables. The first table identifies the extent of overcrowding in the Borough, defined as housing units with more than one occupant per room. In 2000, the Census data indicates that 1.8 percent of the Borough's dwelling units are considered overcrowded.

Table 6 - Occupants per Room, 2000; Hawthorne, New Jersey

Occupants Per Room	Number of Units	Percent
1.00 or less	7,133	98.3
1.01 to 1.50	84	1.2
1.51 or more	43	0.6
Total	7,260	100

Source: 2000 U.S. Census

The following table presents other characteristics of housing conditions, including the presence of complete plumbing and kitchen facilities and the type of heating equipment used. According to U.S. Census data 10 units lacked complete kitchens and 15 units lacked complete plumbing in 2000. Thirty-five (35) units use non-standard means of heating or use no heating fuel.

Borough of Hawthorne Housing Element and Fair Share Plan

Table 7 - Equipment and Plumbing Facilities: 1990 and 2000; Hawthorne, New Jersey

Facilities	1990		2000	
	Number	Percent	Number	Percent
Kitchen:				
Lacking Complete Facilities	19	0.3	10	0.1
With Complete Facilities	7,036	99.7	7,409	99.9
Plumbing:				
Lacking Complete Facilities	21	0.3	15	0.2
With Complete Facilities	7,034	99.7	7,404	99.8
Heating Equipment:				
Other Standard Heating Facilities	17	0.2	7,384	99.5
Means, No Fuel Used	7,037	99.8	35	0.5

Source: U.S. Census; 1990 and 2000.

- e. Purchase and Rental Values. The Borough has experienced an increase in rental and purchase prices housing prices between 1990 and 2000 as shown in the following tables. As shown below, the median gross rent for the Borough's rental housing stock rose from \$667 in 1990 to \$949 in 2000.

**Table 8 - Specified Renter-Occupied Housing Units: 1990 and 2000
Hawthorne, New Jersey**

Value Range	1990		2000	
	Number	Percent	Number	Percent
Less than \$200	22	0.9	7	0.3
\$200 to \$299	43	1.8	24	1.0
\$300 to \$499	313	13.4	43	1.7
\$500 to \$749	1,196	54.3	334	13.2
\$750 to \$999	502	21.5	1,094	43.3
\$1,000 or more	121	5.9	898	35.6
No Cash Rent	63	2.7	124	4.9
Total	2,330	100	2,524	100
Median Rent	\$667		\$949	

Source: U.S. Census, 1990 & 2000.

The median value of owner-occupied housing units rose by four percent between 1990 and 2000, from \$191,000 to \$198,600. The region has seen a marked increase in housing values since the publication of the 2000 census.

**Table 9 - Value of Specified Owner-Occupied Housing Units: 1990 and 2000
Hawthorne, New Jersey**

Value Range	1990		2000	
	Units	%	Units	%
Less than \$50,000	8	0.2	0	0.0
\$50,000 to \$99,999	49	1.5	6	0.2
\$100,000 to \$149,999	322	9.8	299	8.5
\$150,000 to \$199,999	1,563	47.6	1,487	42.3
\$200,000 to \$299,999	996	30.4	1,182	33.7
\$300,000 to \$499,999	325	9.9	498	14.2
\$500,000 or more	18	0.5	40	1.1
Total	3,281	100	3,512	100
Median Value	\$191,000		\$198,600	

Source: U.S. Census, 1990 & 2000.

- f. Number of Units Affordable to Low- and Moderate-Income Households. The median household income for a three-person household in Region 1 -- the Borough's housing region comprising Bergen, Hudson, Passaic and Sussex Counties -- is \$69,365 according to COAH's 2008 Regional Income Limits. A three-person moderate-income household, established at 80 percent of the median income or lower, would have an income of \$55,492 or less.

Per the 2008 Low- and Moderate-Income Sales Prices for New Construction published by COAH, an affordable sales price for a three-person moderate-income household earning 70 percent of the median income is estimated at \$126,244. This estimate is based on the Uniform Housing Affordability Controls (UHAC) outlined per N.J.A.C. 5:80-26.1. Approximately one percent of the Borough's housing units in 2000 were valued at less than \$126,244 according to the census data.

- g. Substandard Housing Capable of Being Rehabilitated. COAH has assigned Hawthorne a rehabilitation share of 34 units, which represents deficient housing units occupied by low- and moderate-income households not likely to experience "spontaneous rehabilitation." This item is further detailed in the Fair Share Plan section of this document.

3. PROJECTION OF MUNICIPAL HOUSING STOCK

The Fair Share Plan section of this document includes a detailed projection of the municipal housing stock, pursuant to COAH's rules for establishing the "growth share" component of the fair share obligation. It identifies both historical and projected growth trends.

Borough of Hawthorne Housing Element and Fair Share Plan

4. POPULATION ANALYSIS

The MLUL requires that a housing element provide data on the Borough's population, including population size, age and income characteristics.

- a. Population Size. As seen in the table below, the Borough's population saw tremendous growth between 1940 and 1960. After reaching its census peak at 19,173 persons in 1970, the population dropped during the 1970s and 1980s before rebounding during the 1990s. The 2007 population estimate of 18,106, provided by the New Jersey Department of Labor, represents a slightly lower population than the 2000 Census figure.

Table 10 - Rate of Population Growth: 1920-2007, Hawthorne, New Jersey

Year	Population	Population Change	Percent Change
1940	12,610	-	-
1950	14,816	2,206	17.5%
1960	17,735	2,919	19.7%
1970	19,173	1,438	8.1%
1980	18,200	-973	-5.1%
1990	17,084	-1,116	-6.1%
2000	18,218	1,134	6.6%
2007 (est.)	18,106	-112	-0.6%

Source: Passaic County Master Plan 1986 Land Use Element, 1990 & 2000 Census, NJ Department of Labor.

Data on births and deaths is shown in the following table.

Table 11 - Number of Births and Deaths: 1990-2004; Hawthorne, New Jersey

Year	Births	Deaths	Difference
1990	243	81	162
1991	247	89	158
1992	218	93	125
1993	258	92	166
1994	256	100	156
1995	268	79	189
1996	257	89	168
1997	185	84	101
1998	240	64	176
1999	237	182	55
2000	219	164	55
2001	219	143	76
2002	246	173	73
2003	217	177	40
2004	227	186	41
Total	3537	1796	1741

Source: State of New Jersey, Department of Health Center for Health Statistics

Borough of Hawthorne Housing Element and Fair Share Plan

- b. Age Characteristics. The Borough's age characteristics are outlined in the table below. As shown, the percentage of residents age 14 and under has risen over the previous decade, whereas the number of residents between the ages 20 through 34 has declined. The percentage of residents between the ages of 35 and 54 has also increased.

Table 12 - Age Characteristics: 1990 & 2000; Hawthorne, New Jersey

Age Group	1990		2000	
	Number	Percent	Number	Percent
Under 5	1,062	6.2	1,155	6.3
5-9	915	5.4	1,106	6.1
10-14	758	4.4	1,081	5.9
15-19	879	5.1	930	5.1
20-24	1,152	6.7	886	4.9
25-34	3,286	19.2	2,881	15.8
35-44	2,478	14.5	3,218	17.7
45-54	1,808	10.6	2,459	13.5
55-59	808	4.7	971	5.3
60-64	955	5.6	714	3.9
65-74	1,659	9.7	1,413	7.8
75-84	1,029	6.0	1,057	5.8
85+	295	1.7	347	1.9
Total	17,084	100	18,218	100
Median Age		-	38.2	-

Source: U.S. Census, 1990 & 2000.

- c. Average Household Size. Average household size had been on a downward trend until the 1990s, when the average household size rose from 2.42 in 1990 to 2.51 in 2000.

Table 13 - Average Household Size: 1960-2000; Hawthorne, New Jersey

Year	Total Population	Number of Households	Household Size
1970	19,173	6,623	2.89
1980	18,200	6,871	2.65
1990	17,084	6,831	2.42
2000	18,218	7,248	2.51

Source: 1990 & 2000 U.S. Census, Passaic County Data Book 1989

- d. Household Income. The median household income in Hawthorne increased 28 percent between 1990 and 2000, rising from \$43,109 to \$55,340. Detailed household income figures are shown in the table below.

Table 14 - Household Income: 1989 and 1999; Hawthorne, New Jersey

Income Category	1990		2000	
	Number	Percent	Number	Percent
Less than \$10,000	532	7.9	292	4.0
\$10,000 to \$14,999	406	6.0	288	4.0
\$15,000 to \$24,999	821	12.1	625	8.6
\$25,000 to \$34,999	743	11.0	730	10.1
\$35,000 to \$49,999	1,594	23.6	1,254	17.3
\$50,000 to \$74,999	1,605	23.7	1,680	23.2
\$75,000 to \$99,999	649	9.6	1,116	15.4
\$100,000 to \$149,999	311	4.6	862	11.9
\$150,000 or more	99	1.5	401	5.6
Total	6,760	100	7,248	100
Median Household	\$43,109		\$55,340	
Passaic County	\$37,596		\$49,210	

Source: U.S. Census, 1990 and 2000.

5. EMPLOYMENT ANALYSIS

The MLUL requires that a housing plan include data on employment levels in the community. The following tables present information on the Borough's employment characteristics.

- a. Covered Employment. Table 15 presents the covered employment trends for selected years within the Borough.

Table 15 - Covered Employment Trends (Private Sector), Selected Years; Hawthorne, New Jersey

Year	Number of Jobs
1997	5,243
1998	5,313
1999	5,655
2003	5,184

Source: New Jersey State Data Center, New Jersey Employment & Wages Municipality Report.

- b. Employment Characteristics of Employed Residents. The following two tables detail information on the employment characteristics of employed Hawthorne residents. The first table details occupation characteristics, while the second table details industry characteristics.

Borough of Hawthorne Housing Element and Fair Share Plan

Table 16 - Employed Persons 16 & Over, By Occupation: 1990 and 2000; Hawthorne, New Jersey

Occupation	1990		2000	
	Number	Percent	Number	Percent
Managerial and Professional Specialty:				
Executive, Administrative, Managerial	1,627	17.8	1,517	15.7
Professional Specialty	1,348	14.8	1,945	20.2
Sales	1,236	13.5	1,311	13.6
Technical & Administrative Support	1,980	21.7	1,779	18.5
Services	613	6.7	1,387	14.4
Farming, Forestry, Fishing	49	0.5	13	0.1
Production & Maintenance	1,199	13.1	484	5.0
Transportation and Material Moving	269	2.9	374	3.9
Construction, Operators, Laborers	803	8.8	826	8.6
Total	9,124	100	9,636	100

Source: U.S. Census; 1990 and 2000.

Table 17 - Employed Persons 16 & Over, By Industry: 1990 & 2000; Hawthorne, New Jersey

Industry	1990		2000	
	Number	Percent	Number	Percent
Agriculture, Forestry, Fisheries, Mining	105	1.2	11	.01
Construction	723	7.9	676	7.0
Manufacturing	1,730	19.0	1,128	11.7
Transportation, Warehousing, and Utilities	654	7.2	468	4.9
Wholesale trade	604	6.8	494	5.1
Retail Trade	1,366	15.0	1,184	12.3
Finance, Insurance, Real Estate, and Rental and Leasing	821	9.0	746	7.7
Services:				
Educational Services	572	6.3	915	9.5
Health Services	676	7.4	1,072	11.1
Entertainment & Recreation	118	1.3	622	6.5
Other Professional Services	1,373	15.0	1,459	15.1
Other Services	192	2.1	483	5.0
Public Administration	190	2.1	378	3.9
Total	9,124	100	9,636	100

Source: U.S. Census; 1990 and 2000.

- c. Employment Projections. Detailed employment projections are provided in the Fair Share Obligation section of this document, as required by COAH in determining the Borough's Growth Share obligation.

**SECTION II
FAIR SHARE OBLIGATION**

1. INTRODUCTION

The methodology for determining the Borough's Third Round affordable housing obligation changed significantly from the methodology utilized for the Prior Round. Under COAH's Third Round rules, the Third Round obligation is a function of three components:

- Rehabilitation share;
- Remaining Prior Round obligation (1987-1999); and
- Growth share.

The Growth Share component represents the most significant change from the Prior Round, as it requires that each municipality determine its own affordable housing obligation based on the amount of residential and non-residential growth it anticipates over the Third Round period from 2004 to 2018. Each of the three components combines to determine the municipality's total affordable housing obligation. More detail on each of the components is provided below.

a. Rehabilitation Share

The rehabilitation share component of the affordable housing obligation is based on the municipality's existing housing deficiencies. It is defined as "the number of deficient housing units occupied by low and moderate income households within a municipality." A deficient housing unit is a unit "with health and safety code violations that require the repair or replacement of a major system." A major system includes any of the following: weatherization, roofing, plumbing, heating, electricity, sanitary plumbing, lead paint abatement and/or load bearing structural systems. The rehabilitation share replaces what was known in the Prior Round as "indigenous need."

A municipality has two options for determining the rehabilitation share component of its affordable housing obligation. The first option is to use the rehabilitation share number assigned to the municipality by COAH, which has devised a methodology using 2000 Census data to estimate the number of low- and moderate-income housing units qualifying as deficient. Utilizing this methodology, COAH assigned a rehabilitation share for each municipality. The methodology is based on regional averages that are then applied to local conditions. It adjusts for potential double counting, incorporates credits for municipalities which have been "increasingly impacted" by the rehabilitation share, and accounts for the portion of units likely to experience spontaneous rehabilitation, i.e., those likely to rehabilitate through private forces. Alternatively, a municipal can conduct its own housing survey to develop an actual rehabilitation share.

COAH has assigned a new rehabilitation share of 34 units to Hawthorne. This contrasts with the 14 unit rehabilitation share obligation outlined in the Judgment of Repose dated September 29, 2005. The 14 unit obligation is based on a municipal survey conducted prior to the Judgment of Repose. This survey served as the basis to reduce the rehabilitation number to 14 units, which is being used in this plan as the rehabilitation obligation.

b. Remaining Prior Round Obligation

Prior Round Obligation is comprised of previous prospective need (Rounds 1 and 2) and the reallocated present need from Round 2. Because COAH utilized current Census data to adjust previously published Prior Round obligation numbers in order to correct for under/overestimates, it has provided each municipality with a new Prior Round obligation number in an appendix to its Third Round rules. The Borough has no remaining Prior Round obligation, having satisfied the 57 unit Prior Round new construction obligation as outlined in the Judgment of Repose.

c. Growth Share

The Growth Share portion of a municipality's fair share obligation is based on the projected residential and employment growth in the municipality over the period between 2004 and 2018. It is defined as:

“The affordable housing obligation generated in each municipality by both residential and non-residential development from 2004 through 2018 and represented by a ratio of one affordable housing unit among five market rate housing units constructed plus one affordable housing unit for every 16 newly created jobs as measured by new or expanded non-residential construction within the municipality.”

That is, each individual municipality's actual growth between 2004 and 2018 generates an affordable housing obligation. Specifically, for residential development, one affordable housing unit obligation is generated for every four market rate residential units constructed in the municipality. For non-residential development, a unit of affordable housing obligation is generated for each 16 jobs created in the municipality. Job creation estimates are based on the amount of non-residential square footage developed within the municipality.

For example, if the municipality experiences a net growth of 80 market rate units between 2004 and 2018, an obligation of 16 affordable housing units is generated. If 25,000 square feet of additional office space is constructed in the municipality, 70 jobs would be generated (based on a ratio of 2.8 office jobs per 1,000 square feet), resulting in a four unit affordable housing obligation.

2. CALCULATION OF AFFORDABLE HOUSING OBLIGATION

The calculation of the Borough’s affordable housing obligation is detailed below.

a. Rehabilitation Share

Per Appendix B of the Third Round Rules, the Borough is listed as having a rehabilitation share of 34 units. The Judgment of Repose dated September 29, 2005 designates a 14 unit rehabilitation obligation based on a contemporaneous windshield survey and a detailed rehabilitation program instituted by the Borough and accepted by the Judge and Court Master involved in the Judgment of Repose. Our position is the Borough’s rehabilitation obligation should be 14 units identified in the Judgment of Repose. The rehabilitation share obligation has been addressed through the creation of a housing trust funded by development fees.

b. Remaining Prior Round Obligation

Although Appendix C of the Third Round Rules indicates COAH has set the Borough’s prior (second) round obligation to 58 units, the Judgment of Repose sets the new construction number at 57 units, which has been satisfied as outlined below. Since the Borough received a vacant land adjustment as part of its second round certified plan, the realistic development potential (RDP) established in the prior round remains at 57 units.

The Borough’s Second Round certified plan addressed its obligation through a vacant land adjustment, regional contribution agreements, an inclusionary development, and accessory units. The second round plan components are represented below.

**Table 18
Second Round Plan Components and Status
Hawthorne, New Jersey**

Plan Component	Number of Affordable Units	Status
RCA (Lafayette Realty)	23	Complete
Inclusionary Development: Van Dyk Assisted Living (age restricted)	10 (8 units + 2 bonus)	Complete
Inclusionary Development: Westervelt Ave Alt Living	24 (12 new const + 12 bonus)	Complete
Inclusionary Development: 55 Westervelt Ave	6	Approved
Total	63	

Based on the components outlined above, the Borough has addressed its Prior Round new construction obligation and has additional credits to address the Third Round obligation.

c. Growth Share Obligation

The Growth Share component of the Borough's affordable housing obligation is calculated based on the projected amount of residential and non-residential growth anticipated between 2004 and 2018. This projection involves a number of steps, including the formulation of a baseline projection that must ultimately be reconciled with the detailed projection resulting from an analysis of approved, pending and anticipated development applications.

Once the detailed analysis is complete and reconciled with the baseline projections, this growth is translated into an affordable housing obligation, based on a standard of one affordable housing unit for every four market rate units that are projected and one affordable unit for every 16 jobs that are projected to be created. Job creation is tied directly to the amount of non-residential floor space constructed.

The Growth Share calculation is presented below, separated into residential growth and non-residential growth.

1. Calculation of Residential Growth Share

- a. Baseline Residential Growth Projection. The baseline growth projection for residential development is set forth in Appendix F of N.J.A.C. 5:97, as outlined in the June 2008 amendments. The projection suggests the Borough's residential growth between 2004 and 2018 equals 586 dwelling units. COAH determines this creates a residential Growth Share of 117.2 affordable units.

Table 19
Baseline Residential Growth Projection
Hawthorne, New Jersey

2018 Household	-	2004 Household	=	Household
Estimate		Estimate		Growth
8,028		7,442		586

Source: N.J.A.C. 5:97, Appendix F, June 16, 2008 rule amendments

- b. Actual Growth Projection. COAH permits municipalities to conduct a detailed analysis of historical trends, pending and approved development applications, and other local knowledge to generate a growth projection for the municipality. This projection will be compared to their estimated projection. The actual projection is determined through a series of steps and analyses, as shown below.

Historical Trends in Residential Development. Data for the years 1995 through 2008 year to date is presented in order to determine the Borough's historic residential growth trends and to determine actual growth since 2004, as evidenced by Certificates of Occupancy (COs) and demolition permits issued.

Table 20
Historical Trends in Residential Development
Analysis of Certificates of Occupancy and Demolition Permits, 1996-2008 YTD
Hawthorne, New Jersey

	'96	'97	'98	'99	'00	'01	'02	'03	'04	'05	'06	'07	'08* YTD
COs Issued	11	24	10	5	4	5	8	3	14	1	16	17	33
Demo Permits Issued	2	5	1	3	0	1	2	4	4	3	2	1	2
Net Growth	9	19	9	2	4	4	6	-1	10	-2	14	16	31

* Through November 2008

Sources: NJDCA Division of Codes and Standards, Municipal Activity Reports.

As shown above, the Borough has experienced a relatively small amount of residential development. In the last several years, almost all of the residential development growth is attributable to the Lafayette Realty / Delford Gardens townhouse development which has been developed to address the Borough's affordable housing obligation. As outlined in the following section, it is anticipated that residential development will continue at a relatively small pace in the upcoming years.

Anticipated (Projected) Residential Development. In this section, COAH requires that residential development be projected to 2018. This analysis involves documenting residential projects that have been approved, but have not yet received COs, pending residential development applications and anticipated residential development. The analysis requires that the plan estimate the year in which the CO will likely be granted.

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Anticipated development is that which likely will occur before 2018 based on site-specific analysis of remaining developable parcels and local knowledge. This analysis also includes an estimate of other projected development, based, in part, on historical growth trends. Because of the large amount of residential development foreseen, particularly as compared to historical trends, no other projects are anticipated to be developed. As noted in Workbook C, the developable vacant land for residential development is very limited.

c. Comparison: Baseline Projection and Actual Projection

COAH’s household growth projection of 586 units is not going to occur given the historical development patterns and lack of available vacant land not limited by environmental regulations. Our vacant land analysis indicates that future growth will be constrained by the developed nature of the Borough and lack of buildable vacant land. As noted in Workbook C, the market-rate growth and anticipated growth is estimated at 20 units from 2004 through 2018. This excludes inclusionary development that was outlined in the Judgment of Repose.

d. Determining the Residential Growth Share

In this step, the projected growth is adjusted based on that portion of the projection that includes affordable units that are to be constructed in accordance with the Prior Round certified plan. All affordable housing units may be excluded, as well as a portion of any market rate units that are part of an inclusionary development. Market rate units in an inclusionary development may be excluded at a rate of four times the number of affordable units constructed on-site.

Exclusion of the units that received COs attributable to the Lafayette Realty inclusionary development limits the growth share potential as outlined below. The lack of developable vacant land as confirmed in the judgment of repose and in Workbook C, both of which are included in the Appendix of this Housing Element, limits the potential for further development. The projected residential growth share obligation is approximately four units.

**Table 21
Residential Growth Share Obligation
Hawthorne, New Jersey**

	04	05	06	07	08	09-10	11-12	13-14	15-16	17-18	Total
Final Net Growth	14	1	0	0	0	0	1	1	1	2	20
Growth Share (÷5)	2.8	0.2	0.0	0.0	0.0	0.0	0.2	0.2	0.2	0.4	4.0

2. Calculation of Non-Residential Growth Share

a. COAH Employment Growth Projection

COAH projects that Hawthorne will add 1,808 jobs between 2004 and 2018. This is identified on the following table:

Table 22
Baseline Non-Residential Growth Projection
Hawthorne, New Jersey

2018	-	2004	=	Employment
Employment		Employment		Growth
Estimate		Estimate		
7,500		5,692		1,808

Source: N.J.A.C. 5:97, Appendix F, June 16, 2008 rule amendments

b. Non-Residential Actual Growth Projection

Like the residential growth share analysis, COAH requires that the municipality undergo a detailed analysis of historical trends, pending and approved development applications, and other local knowledge to generate an actual non-residential growth projection for the Borough. This projection is compared to the baseline projection to determine its validity.

The detailed projection is determined through a series of similar steps and analyses to that referenced above. The analysis is shown below.

Historical Trends in Non-Residential Development

In this step, historical data for the years 1995 through 2008 year to date is shown. This data establishes the Borough's historical non-residential growth trends and provides actual growth figures for 2004 through 2008 year to date. As with the residential analysis, growth is indicated by certificates of occupancy and demolition permits issued. Historical trends are then utilized in a subsequent stage to help predict non-residential growth. The Certificates of Occupancy information is based on the total square footage by type of non-residential development (i.e. office, retail, etc.). The demolition permit information is based on the number of permits issued. Square footage of demolished buildings was not available for review.

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Table 23
Historical Trends in Non-Residential Development, 1995-2008 YTD
Analysis of Certificates of Occupancy, Building and Demolition Permits
Hawthorne, New Jersey

	96	97	98	99	00	01	02	03	04	05	06	07	08
Certificates of Occupancy / Building Permits Issued (sf)													
B-Business(Ofc)	0	0	18,888	98,214	1,400	5,953	30,955	0	24,100	0	20,297	0	4,471
A3: Assembly	0	0	0	0	18,768	0	22,703	0	0	0	0	0	0
Demolition Permits Issued													
Office	4	0	2	3	6	2	2	1	2	1	1	0	1
A3: Assembly							1						
NO DEMOLITION SQUARE FOOTAGE AVAILABLE													

Source: NJDCA Division of Codes and Standards, Municipal Activity Reports

As shown above, the Borough has experienced a significant amount of non-residential development over the previous decade, particularly in the office sector. Several demolitions occurred, but because data on actual square footage demolished is not available, actual negative growth during this period is impossible to determine.

The data from 2004 through 2008 year to date is translated into employment growth, based on the multipliers provided in Appendix D of COAH's Substantive Rules. This is shown on the table below.

Table 24
Actual Non-Residential Growth Share, 2004-2008 YTD
Hawthorne, New Jersey

	2004-05		2006-07		2008 YTD		Total Jobs
	Sq. Ft.	Jobs	Sq. Ft.	Jobs	Sq. Ft.	Jobs	
Certificate of Occupancy Issued (sf)							
B-Business	24,100	67.4	20,297	56.8	4,471	12.5	136.7
Demolition Permits Issued: specific sq. footage data not available							
Total Net Jobs	67.4		56.8		12.5		136.7

Anticipated Non-Residential Development

In this section, COAH requires that the municipality estimate non-residential development to 2018. This analysis involves the identification of all prospective non-residential projects, including those that have been approved but not yet received COs, any pending non-residential development applications, and other anticipated residential development. Anticipated development is that which will likely occur before 2018, based on site-specific analysis of remaining developable parcels. This analysis also includes an estimate of other projected non-residential development, based on historical growth trends. Yield calculations are based on existing zoning and other features that may impact the amount of development, such as the presence of environmental constraints, etc. Using Workbook C, there are no non-residential parcels without environmental constraints or contaminants, that have the potential to generate growth share.

c. Comparison: Baseline Projection and Actual Projection

If the actual projection is greater than or equal to the baseline projection, the actual projection has an automatic presumption of validity. However, if this projection is less than the baseline, COAH may deny substantive certification based on this fact, unless the validity of the alternate projection can be affirmatively established. The projected job growth is significantly less than that projected under Appendix D.

d. Determining the Non-Residential Growth Share

The non-residential growth share obligation is determined by dividing the Final Net Employment Growth projections by 16, based on the requirement that one affordable unit be constructed for every 16 jobs created. This is shown in the table below.

**Table 25
Non-Residential Growth Share Obligation
Hawthorne, New Jersey**

	04-05	06-07	08	09	10	11	12	13-14	15-16	17-18	Total
Final Net Growth	67.4	56.8	12.5	0.0	0.0	0.0	0.0	0.0	0.0	0.0	136.7
Non-Residential Growth Share (÷16)	4.2	3.5	0.7	0.0	0.0	0.0	0.0	0.0	0.0	0.0	8.4

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3. Total Growth Share Obligation: Residential and Non-Residential Development

The complete growth share projection is shown in the table below, and represents the Borough's growth share affordable housing obligation for the Third Round period.

**Table 26
Total Growth Share Obligation
Hawthorne, New Jersey**

	04-05	06-07	08	09	10	11	12	13-14	15-16	17-18	Total
Residential Growth Share	2.8	0.2	0.0	0.0	0.0	0.0	0.2	0.2	0.2	0.4	4.0
Non-Residential Growth Share	4.2	3.5	0.7	0.0	0.0	0.0	0.0	0.0	0.0	0.0	8.4
Total Growth Share Obligation											12

4. Total Affordable Housing Obligation

As indicated previously, the total fair share obligation is the sum of the rehabilitation share, remaining Prior Round obligation, and the growth share. As shown below, Hawthorne has a total 12 unit Third Round Obligation. The Borough has satisfied its Prior Round new construction and rehabilitation obligations as noted in the Judgment of Repose. When the six units of surplus credit from the Prior Round is considered, the Borough has to address six units for its Third Round Obligation.

**Table 27
Total 3rd Round Fair Share Obligation
Hawthorne, New Jersey**

Component	Obligation
Rehabilitation Share (completed)	0
Remaining Prior Round Obligation	6 unit surplus credit
Growth Share	12
Total 3rd Round Fair Share Obligation	6

**SECTION III
FAIR SHARE PLAN**

I. PLAN SUMMARY

This section of the plan details the projects, mechanisms and funding sources which will be used to meet the Borough's affordable housing obligation.

- A. **Rehabilitation Obligation.** The Borough has a rehabilitation obligation of 14 units. In order to address this obligation, the Borough already has established a Housing Rehabilitation Program intended to assist qualifying households for rehabilitation.

- B. **Remaining Prior Round Obligation:** The Third Round rules assign the Borough a Prior Round obligation of 58 units, but the Judgment of Repose specifically calls for an obligation of 57 units. As detailed in Part II, the 57 unit obligation has been satisfied through a regional contribution agreement and inclusionary developments. Six units of surplus credits are carried over to address the Borough's Third Round obligation.

- C. **Growth Share Obligation:** As detailed in the body of this report, Hawthorne's growth share obligation is 12 units. The following is noted with respect to the growth share obligation:
 - 1. **Surplus Credits.** The Borough has a Prior Round surplus of six units credit. The total number of Third Round Units remaining is six units.

 - 2. **Age Restricted Units.** The Borough may age-restrict no more than 25 percent of the affordable unit obligation, or three units.

 - 3. **Rental Component and Bonus Credits.** COAH regulations stipulate that at least 25 percent, or three units, of a municipality's growth share obligation must be addressed with rental housing. Third Round rules provide for a 2:1 rental bonus credit for rental units constructed in excess of the rental obligation identified above. No more than 50 percent of the rental obligation can be classified as age-restricted housing.

 - 4. **Family Housing.** At least 50 percent, or six units, of the new construction affordable housing obligation must be considered "family housing," that is available to all who meet the specific income guidelines.

 - 5. **Maximum Bonus Credits.** No more than 25 percent of the growth share obligation, or three units, may be satisfied using bonus credits.

II. THIRD ROUND PLAN COMPONENTS

1. Surplus Credits. The Borough generated 63 units credit for the Prior Round obligation, six units more than what was required per the Judgment of Repose. The six surplus units will be applied toward the Third Round Obligation.
2. Assisted Living / Age Restricted Units. The Borough will take credit for three units, in addition to those having received Prior Round credit, of age-restricted assisted living units at the Van Dyk Assisted Living facility. The three units are the maximum number of age restricted units permitted for a 12 unit obligation.
3. Group Homes. There are four group homes in the Borough eligible for COAH credits. These group homes and the number of credits are as follows:
 - a. Eastern Christian Children's Retreat, Goffle Road, group home, 5 beds
 - b. Eastern Christian Children's Retreat, Surrey Place, group home, 5 beds
 - c. Slade Rehabilitation Specialists, DeVoe Place, group home for brain injured, 5 beds
 - d. Slade Rehabilitation Specialists, Park Avenue, group home for brain injured, 10 beds

The four group homes located in the Borough have 25 beds, each eligible for one COAH credit. There are 25 credits generated to address the Third Round obligation.

4. Affordable Housing Ordinance. The Borough should adopt an affordable housing ordinance that provides an obligatory overlay requirement throughout the Borough mandating that whenever a developer proposes at least five units on a site, 20 percent of the total number of units must be set aside for income-qualified households.
5. Development Fees. The Borough should adjust its development fee ordinance to collect fees as permitted by COAH's Third Round rules. The funds generated by the collection of development fees will be applied directly toward the implementation of the Borough's Fair Share Plan, including spending at least 30 percent of funds for affordability assistance.

Development fees of up to 1.5 percent of the equalized assessed value may be collected on residential development, while 2.5 percent of the equalized assessed value may be collected on non-residential development. Additional residential units resulting from a "d" variance and additional non-residential floor area resulting from a "d" variance will be subject to a six percent development fee based on equalized assessed value.

III. PLAN DOCUMENTS

The appendices include the ordinances and resolutions related to the implementation of the Third Round Plan, including the supporting information for the findings of the Third Round Plan.

APPENDICES

A - 1: Judgment of Repose dated September 29, 2005


 David N. Kinsey, Special Master
 Kinsey & Hand
 14 Aiken Avenue
 Princeton, New Jersey 08540
 609-924-4990

LAFAYETTE REALTY CO., a New Jersey
 Partnership, and
 DELFORD GARDENS, INC., a
 New Jersey Corporation,

Plaintiffs,

vs.

THE BOROUGH OF HAWTHORNE, a
 Municipal Corporation of New Jersey,
 located in Passaic County, New Jersey,
 THE MAYOR AND COUNCIL OF
 THE BOROUGH OF HAWTHORNE and
 THE PLANNING BOARD OF
 THE BOROUGH OF HAWTHORNE,

Defendants.

SUPERIOR COURT OF NEW JERSEY
 LAW DIVISION
 PASSAIC COUNTY

DOCKET NO: 1-89 P.W.E.

CIVIL ACTION
 (MOUNT LAUREL II)

**FINAL JUDGMENT OF COMPLIANCE
 AND REPOSE**

THIS MATTER coming before the Court by way of application by Defendant, Borough of Hawthorne ("Hawthorne"), seeking final judgment in the form of a judgment of compliance and repose; and

The Court, having entered an Interim Judgment on December 6, 2004 that determined that Hawthorne had an adjusted Second Round (1987-1999) fair share housing obligation of 71 units (14 rehabilitation units and 57 new construction units) and approved the Hawthorne Housing Element and Fair Share Plan, subject to certain conditions; and

The Court, having entered an Amended Interim Judgment on December 21, 2004, granted certain credits for the Van Dyk Assisted Living Residence and established certain conditions on the conceptually-approved Hawthorne-Paterson Regional Contribution Agreement ("RCA"); and

The New Jersey Council on Affordable Housing ("COAH") having, by Resolution adopted September 14, 2005, recommended to the Court that the Court approve the Hawthorne-Paterson

Regional Contribution Agreement to transfer 23 units of Hawthorne's housing obligation to Paterson; and

The Court, having been received the letter-reports of the Special Master dated September 14, 2005 and September 23, 2005; and

The Court, having conducted a continued compliance hearing on September 26, 2005, and having heard from Michael J. Pasquale, Esq., counsel for the defendant, Borough of Hawthorne; Kenneth E. Meiser, Esq., Hill Wallack, counsel for plaintiffs; and the Special Master, David N. Kinsey; and no other person appearing or requesting opportunity to address the Court, and for the reasons stated in the Court's oral opinion of September 26, 2005;

IT IS ON this 29th day of September 2005, ORDERED as follows:

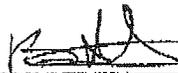
1. The Hawthorne-Paterson Regional Contribution Agreement to transfer 23 units of Hawthorne's housing obligation to Paterson is hereby approved, subject to the terms and conditions specified in the COAH Resolution adopted September 14, 2005, including the following amended payment schedule:

<u>Payment schedule</u>	<u>Amount</u>
1st payment no more than 30 days after the effective date of the Agreement:	\$200,000
2nd payment no more than 90 days after the date of the 1st payment:	\$200,000
<u>3rd and final payment within 365 days of the effective date of the Agreement:</u>	<u>\$175,000</u>
Total	\$575,000

2. Defendants are hereby granted a Final Judgment of Compliance and Repose as to the First Count (*Mount Laurel Compliance*) of the First Amended Complaint, effective August 9, 2001 through August 9, 2007, which shall shield Hawthorne from exclusionary zoning and/or *Mount Laurel* litigation. *The court RESERVES Decision on Hawthorne's application for a longer period of Repose.*
3. The Court retains jurisdiction over all disputes with respect to the Final Judgment previously granted as to the Second Count (*Builder's Remedy*) of the First

Amended Complaint, entered January 2, 2002, and the Order Approving Settlement Agreement, entered April 18, 2004. Plaintiff or Defendant may bring a motion in aid of litigant's rights, or a motion to reopen.

4. Jurisdiction over the Hawthorne Second Round Housing Element and Fair Share Plan approved by the Court is hereby transferred to COAH for the purpose of monitoring overall compliance, as well as monitoring the implementation of the Hawthorne-Paterson Regional Contribution Agreement and Hawthorne's affordable housing trust fund revenues and expenditures. The Court shall continue to be responsible for enforcement of Hawthorne's Development Fee Ordinance when and if advised by COAH, as a result of its monitoring, of the need for any enforcement action. Jurisdiction over the Builder's Remedy aspect of the case is not transferred to COAH.
5. The Special Master, David N. Kinsey, is discharged. Plaintiff or Defendant may bring a motion to reinstate the Special Master for limited purposes under Count Two (Builder's Remedy).
6. A true copy of this Order shall be served upon all counsel, the Special Master, and COAH within 7 days of the date hereof.



Burrell Ives Humphreys, J.A.D.
Retired and temporarily assigned on recall

A - 2: Changes to Municipal Zoning Ordinances During the Previous Two Years

[Insert changes in ordinance that occurred during previous two years. JB: Obtain copies from Borough].

A - 3: Development Fee Ordinance

1. Purpose

- a) In Holmdel Builder's Association V. Holmdel Borough, 121 N.J. 550 (1990), the New Jersey Supreme Court determined that mandatory development fees are authorized by the Fair Housing Act of 1985 (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) 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. 5:97-8.

2. Basic requirements

- a) This ordinance shall not be effective until approved by COAH pursuant to *N.J.A.C. 5:96-5.1*.
- b) Hawthorne shall not spend development fees until COAH has approved a plan for spending such fees in conformance with *N.J.A.C. 5:97-8.10* and *N.J.A.C. 5:96-5.3*.

3. Definitions

- a) The following terms, as used in this ordinance, shall have the following meanings:
 - i. **"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.

- ii. **“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.
- iii. **“Development fee”** means money paid by a developer for the improvement of property as permitted in *N.J.A.C. 5:97-8.3*.
- iv. **“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.
- v. **“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).
- vi. **“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.

4. Residential Development fees

a) Imposed fees

- i. Within the residential zoning districts, residential developers, except for developers of the types of development specifically exempted below, shall pay a fee of 1.5 percent of the equalized assessed value for residential development provided no increased density is permitted.
- ii. 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 6 percent 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.

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

- b) Eligible exactions, ineligible exactions and exemptions for residential development
 - i. Affordable housing developments and developments where the developer has made a payment in lieu of on-site construction of affordable units shall be exempt from development fees.
 - ii. 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.
 - iii. 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.
 - iv. Developers of one or two owner-occupied dwelling units, residential structures demolished and replaced as a result of a natural disaster, green buildings etc. shall be exempt from paying a development fee.

5. Non-residential Development fees

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

- iii. Development fees shall be imposed and collected when an existing structure is demolished and replaced. The development fee of two and a 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
- i. 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.
 - ii. 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.
 - iii. 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.
 - iii. 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.
 - iv. 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 Hawthorne as a lien against the real property of the owner.

6. 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 or designated municipal 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 Hawthorne 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 Hawthorne. 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 Hawthorne. 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.

7. 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 Hawthorne's affordable housing program.

- c) Within seven days from the opening of the trust fund account, the Borough of Hawthorne shall provide COAH with written authorization, in the form of a three-party escrow agreement between the municipality, the bank, and COAH to permit COAH to direct the disbursement of the funds as provided for in N.J.A.C. 5:97-8.13(b).
- d) All interest accrued in the housing trust fund shall only be used on eligible affordable housing activities approved by COAH.

8 Use of funds

- a) The expenditure of all funds shall conform to a spending plan approved by COAH. Funds deposited in the housing trust fund may be used for any activity approved by COAH to address the Hawthorne'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. 5:97-8.7 through 8.9 and specified in the approved spending plan.
- b) Funds shall not be expended to reimburse Hawthorne for past housing activities.
- c) At least 30 percent 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 30 percent or less of median income by region.
 - i. 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.

- ii. Affordability assistance to households earning 30 percent 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 30 percent or less of median income. The use of development fees in this manner shall entitle Hawthorne to bonus credits pursuant to N.J.A.C. 5:97-3.7.
- iii. 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) Hawthorne 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. 5:96-18.
- e) No more than 20 percent 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 20 percent 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 COAH's monitoring requirements. 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.

9. Monitoring

- a) Hawthorne shall complete and return to COAH all monitoring forms included in monitoring requirements related to the collection of development fees from residential and non-residential 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 Hawthorne's housing program, as well as to the expenditure of revenues and implementation of the plan certified by COAH. All monitoring reports shall be completed on forms designed by COAH.

10. Ongoing collection of fees

- a) The ability for Hawthorne to impose, collect and expend development fees shall expire with its substantive certification unless Hawthorne has filed an adopted Housing Element and Fair Share Plan with COAH, has petitioned for substantive certification, and has received COAH's approval of its development fee ordinance. If Hawthorne 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). Hawthorne shall not impose a residential development fee on a development that receives preliminary or final site plan approval after the expiration of its substantive certification or judgment of compliance, nor shall Hawthorne retroactively impose a development fee on such a development. Hawthorne shall not expend development fees after the expiration of its substantive certification or judgment of compliance.

A - 4: Resolution Requesting COAH to Review the Development Fee Ordinance

WHEREAS, Hawthorne, Passaic County was granted a judgment of repose on *September 29, 2005*; and

WHEREAS, 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), permits municipalities that are under the jurisdiction of COAH or of a court of competent jurisdiction and that have a COAH-approved spending plan to impose and retain fees on residential and non-residential development; and

WHEREAS, subject 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), N.J.A.C. 5:97-8.3 permits a municipality to prepare and submit a development fee ordinance for review and approval by the Council on Affordable Housing (COAH) that is accompanied by and includes the following:

1. A description of the types of developments that will be subject to fees per N.J.A.C. 5:97-8.3(c) and (d);
2. A description of the types of developments that are exempted per N.J.A.C. 5:97-8.3(e);
3. A description of the amount and nature of the fees imposed per N.J.A.C. 5:97-8.3(c) and (d);
4. A description of collection procedures per N.J.A.C. 5:97-8.3(f);
5. A description of development fee appeals per N.J.A.C. 5:97-8.3(g); and
6. A provision authorizing COAH to direct trust funds in case of non-compliance per N.J.A.C. 5:97-8.3(h).

WHEREAS, Hawthorne has prepared a draft development fee ordinance that establishes standards for the collection, maintenance, and expenditure of development fees consistent with COAH's regulations at N.J.A.C. 5:97-8 and in accordance with P.L.2008, c.46, Sections 8 (C. 52:27D-329.2) and 32-38 (C. 40:55D-8.1 through 8.7).

NOW THEREFORE BE IT RESOLVED that the Governing Body of Hawthorne, Passaic County requests that COAH review and approve Hawthorne's development fee ordinance.

Susan Witkowski
Borough Clerk

A - 5: Spending Plan

Spending Plan

INTRODUCTION

The Borough of Hawthorne, Passaic County has a development fee ordinance that was approved by the Council on Affordable Housing (COAH) on *[insert date of approval]*. This spending plan is prepared in accordance with N.J.A.C. 5:94-6.2(c) and 6.5 and includes the following:

1. Projection of revenues anticipated from imposing fees on development, based on actual proposed and approved developments and historic rate of development activity.
2. A description of the administrative mechanism that the municipality will use to collect and distribute revenues.
3. A description of the anticipated use of all development fees, payments in lieu of constructing affordable units on site, funds from the sale of units with extinguished controls, pursuant to N.J.A.C. 5:94-6.12, repayment of loans for rehabilitation or affordability assistance, and voluntary contributions.
4. A schedule for the creation and/or rehabilitation of housing units.
5. If the municipality is including a municipally sponsored or 100 percent affordable program, a new construction alternative living arrangement or an affordable housing partnership program, a pro-forma statement of the anticipated costs and revenues associated with the development.
6. The manner in which the municipality will address any expected or unexpected shortfall if the anticipated revenues from development fees are not sufficient to implement the plan.

To date, the Borough of Hawthorne has \$115,000 in its affordable housing trust fund. All development fees collected and interest generated by the fees are deposited in a separate interest-bearing account in *[insert name of bank]* for the purposes of affordable housing.

1. PROJECTION OF REVENUES FOR CERTIFICATION PERIOD

To calculate a projection of revenue anticipated through the expiration of substantive certification, The Borough of Hawthorne considered the following:

- (a) Residential and nonresidential projects which have had development fees imposed upon them at the time of preliminary or final development approvals are anticipated to provide \$ 0 in development fees at issuance of building permits and/or certificates of occupancy during the period of substantive certification.
- (b) All projects currently before the planning and zoning boards for development approvals that may apply for building permits and certificates of occupancy are anticipated to provide \$ 0 in development fees during the period of substantive certification.

- (c) Development projected to begin construction based on historic rates of development is anticipated to provide an additional \$200,000 in development fees during the period of substantive certification.
- (d) Payments in lieu of construction from developers pursuant to N.J.A.C. 5:94-4.4(b-e) are anticipated to provide \$ 0 in development fees during the period of substantive certification.
- (e) Funds from other sources, including, but not limited to, the sale of units with extinguished controls, repayment of loans for rehabilitation or affordability assistance, and voluntary contributions are anticipated to provide \$ 0 in fees during the period of substantive certification.
- (f) Interest on the projected revenue in the housing trust fund at the current average interest rate is anticipated to provide \$30,000 to accrue to the affordable housing trust fund during the period of substantive certification.

The Borough of Hawthorne projects a total of \$ 230,000 in revenue to be collected between *March 1, 2009* and the expiration of substantive certification. When the total revenue projected of \$ 230,000 is added to the amount collected to date of \$115,000, a total of \$ 345,000 will be collected prior to the expiration of substantive certification. All development fees, payments in lieu of construction and other funds listed above will be deposited in a separate interest-bearing account in *[insert name of bank]* and all interest earned on the account will accrue to the account to be used only for the purposes of affordable housing.

2. ADMINISTRATIVE MECHANISM TO COLLECT AND DISTRIBUTE FUNDS

The following procedural sequence for the collection and distribution of development fee revenues will be followed by the Borough of Hawthorne:

(a) Collection of development fee revenues:

The planning board secretary notifies the designated municipal official, who is the Administrative Assistant to the Mayor, whenever preliminary, final or other applicable approval is granted for a development which is subject to a development fee.

When a request is made for a building permit, the designated municipal official, who is the Administrative Assistant to the Mayor, determines if the project is subject to the imposition of a mandatory development fee.

If so, the designated municipal official, who is the Administrative Assistant to the Mayor, will notify the Borough tax assessor to calculate the approximate value of the project and set the fee based on:

For residential fees: the equalized assessed value
For non-residential fees: the equalized assessed value

The developer will pay up to 50 percent of the estimated development fee to the designated municipal official, who is the Administrative Assistant to the Mayor, at the time the building permit is issued. The funds are then forwarded to the designated municipal official, who is the Administrative Assistant to the Mayor, and deposited in the affordable housing trust fund.

The balance of the development fee will be paid by the developer to the designated municipal official, who is the Administrative Assistant to the Mayor, at the issuance of the certificate of occupancy. The funds are then forwarded to the Borough Treasurer and deposited in the affordable housing trust fund.

(b) Distribution of development fee revenues:

The Affordable Housing Board adopts and forwards a resolution to the governing body recommending the expenditure of development fee revenues as set forth in this spending plan. The governing body reviews the request for consistency with the spending plan and adopts the recommendation by resolution.

The release of funds requires the adoption of the governing body resolution in accordance with the COAH-approved spending plan. Once a request is approved by resolution, the Borough Treasurer releases the requested revenue from the trust fund for the specific use approved in the governing body's resolution.

3. DESCRIPTION OF ANTICIPATED USE OF DEVELOPMENT FEES

- (a) The Borough of Hawthorne will dedicate \$ 0 to New Construction programs which are exempt from the affordability assistance requirement.

New Construction project(s): \$ 0

(b) The Borough of Hawthorne will dedicate \$ 105,000 from the affordable housing trust fund to render units more affordable, including \$ 35,000 to render units more affordable to households earning 30 percent or less of median income by region, as follows:

[provide detailed description of the proposed affordability assistance program]

(c) The Borough of Hawthorne will dedicate \$65,000 from the affordable housing trust fund to be used for administrative purposes as follows:

Housing plan and ordinance amendments and updates.

(d) The remaining \$0 in the affordable housing trust fund will be used as follows:

N/A

SPENDING PLAN CALCULATION SUMMARY	
Existing Balance	\$115,000
Pending fees due upon issuance of building permit and/or CO	+ \$0
Projects awaiting approval	+ \$0
Projection based on historic development activity	+ \$200,000
Payments in lieu of construction	+ \$0
Projected Interest	+ \$30,000
Other	+ \$0
TOTAL PROJECTED REVENUE	= \$345,000
Funds used for Rehabilitation, RCA or New Construction (not including administration of such programs)	- \$480,000
TOTAL SUBJECT TO AFFORDABILITY ASSISTANCE REQUIREMENT	= \$105,000
Affordability Assistance (minimum of 30% of above total)	- \$105,000
Affordability Assistance to Very Low Income Households (minimum of 1/3 of above allotment)	\$35,000
Administration (maximum of 20% of total projected revenue minus RCA contribution)	- \$65,000
REMAINING FUNDS FOR OTHER HOUSING ACTIVITY	= \$175,000
1. <i>[list individual projects]</i>	- \$
2.	- \$
3.	- \$
	= \$0.00

4. SCHEDULE FOR CREATION AND/OR REHABILITATION OF HOUSING UNITS

The Borough of Hawthorne intends to use development fee revenues for the creation and/or rehabilitation of housing units. The creation/rehabilitation schedule will parallel the schedule set forth in the Housing Element and Fair Share Plan as follows:

[Provide information for your municipality's rehabilitation program and each of the following new construction project types, if applicable: municipally sponsored and 100 percent affordable program, new construction alternative living arrangement, accessory apartments, buy-down program, municipally sponsored rental program, and affordable housing partnership program]

PROGRAM	NUMBER OF UNITS	FUNDS REQUIRED									
		(YEAR)									
		1	2	3	4	5	6	7	8	9	10
1.											
2.											
3.											
4.											
5.											
6.											
7.											

5. MUNICIPALLY SPONSORED OR 100 PERCENT AFFORDABLE PROGRAMS, NEW CONSTRUCTION ALTERNATIVE LIVING ARRANGEMENTS, AND AFFORDABLE HOUSING PARTNERSHIP PROGRAMS

[Insert Description of Total Development Cost Breakdown Per Project, Construction Schedule, and Sources of Funding]

SUMMARY

The Borough of Hawthorne intends to spend development fee revenues pursuant to N.J.A.C. 5:94-6.12 and in conjunction with the housing programs outlined in the housing element and fair share plan dated November 2008.

The Borough of Hawthorne has collected \$ to date and anticipates an additional \$ *[insert total projected revenue]* in revenues before the expiration of substantive certification for a total of \$*[insert total of collections and projections]*. The municipality will dedicate \$ *[insert amount of revenue for housing activities]* towards *[insert types of housing programs]*, \$ *[insert amount of revenue for affordability assistance]* to render units more affordable, and \$*[insert amount of revenue for administrative costs]* to administrative costs. Any shortfall of funds will be offset by funds from the municipality or other sources as yet to be determined.

A - 6: Resolution Forwarding the Spending Plan to COAH For Review

Resolution Forwarding the Spending Plan to COAH For Review

WHEREAS, the Governing Body of the Borough of Hawthorne, Passaic County petitioned the Council on Affordable Housing (COAH) for substantive certification on *(insert date)*; and

WHEREAS, the Borough of Hawthorne received approval from COAH on *[insert date]* of its development fee ordinance; and

WHEREAS, N.J.A.C. 5:94-6.2(c) requires a municipality with an adopted development fee ordinance, payments that have been received in lieu of constructing affordable housing pursuant to the terms of a developer's agreement and/or funds from the sale of units with extinguished controls to receive approval of a spending plan from COAH prior to spending any of the funds in its housing trust fund; and

WHEREAS, N.J.A.C. 5:94-6.5 requires a spending plan to include the following:

1. A projection of revenues anticipated from imposing fees on development, based on actual proposed and approved developments and historic development activity;
2. A description of the administrative mechanism that the municipality will use to collect and distribute revenues;
3. A description of the anticipated use of all development fees, payments in lieu of constructing affordable housing units on site, and/or funds from the sale of units with extinguished controls, pursuant to N.J.A.C. 5:94-6.12;
4. A schedule for the expenditure of all development fees, payments in lieu of constructing affordable units on site, and/or funds from the sale of units with extinguished controls;
5. A schedule for the creation or rehabilitation of housing units;
6. A pro-forma statement of the anticipated costs and revenues associated with the development if the municipality envisions being responsible for public sector or non-profit construction of housing; and
7. The manner through which the municipality will address any expected or unexpected shortfall if the anticipated revenues from development fees are not sufficient to implement the plan; and

WHEREAS, the Borough of Hawthorne has prepared a spending plan consistent with N.J.A.C. 5:94-6.5.

NOW THEREFORE BE IT RESOLVED that the Governing Body of the Borough of Hawthorne, Passaic County requests that COAH review and approve Hawthorne's spending plan.

Susan Witkowski
Borough Clerk

A - 7: Affordable Housing Ordinance

AN ORDINANCE OF Borough of Hawthorne TO ADDRESS THE REQUIREMENTS OF THE COUNCIL ON AFFORDABLE HOUSING (COAH) REGARDING COMPLIANCE WITH THE MUNICIPALITY'S PRIOR ROUND AND THIRD ROUND AFFORDABLE HOUSING OBLIGATIONS

Section 1. Affordable Housing Obligation

- (a) This Ordinance is intended to assure that low- and moderate-income units ("affordable units") are created with controls on affordability over time and that low- and moderate-income households shall occupy these units. This Ordinance shall apply except where inconsistent with applicable law.
- (b) The Borough of Hawthorne Planning Board has adopted a Housing Element and Fair Share Plan pursuant to the Municipal Land Use Law at N.J.S.A. 40:55D-1, et seq. The Fair Share Plan has been endorsed by the governing body. The Fair Share Plan describes the ways the Borough of Hawthorne shall address its fair share for low- and moderate-income housing as determined by the Council on Affordable Housing (COAH) and documented in the Housing Element.
- (c) This Ordinance implements and incorporates the Fair Share Plan and addresses the requirements of N.J.A.C. 5:97, as may be amended and supplemented.
- (d) The Borough of Hawthorne shall file monitoring reports with COAH in accordance with N.J.A.C. 5:96, tracking the status of the implementation of the Housing Element and Fair Share Plan. Any plan evaluation report of the Housing Element and Fair Share Plan and monitoring prepared by COAH in accordance with N.J.A.C. 5:96 shall be available to the public at the Borough of Hawthorne Municipal Building, or from COAH at 101 South Broad Street, Trenton, New Jersey and on COAH's website, www.nj.gov/dca/affiliates/coah.

Section 2. Definitions

The following terms when used in this Ordinance shall have the meanings given in this Section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 3. Reserved

Section 4. Reserved

Section 5. Reserved

Section 6. Reserved

Section 7. Inclusionary Zoning

- (a) **Presumptive densities and set-asides.** To ensure the efficient use of land through compact forms of development and to create realistic opportunities for the construction of affordable housing, inclusionary zoning permits minimum presumptive densities and presumptive maximum affordable housing set-asides as follows:
1. For Sale Developments
 - i. Inclusionary zoning in Planning Area 1 permits residential development at a presumptive minimum gross density of eight units per acre and a presumptive maximum affordable housing set-aside of 25 percent of the total number of units in the development;
 2. Rental Developments
 - i. Inclusionary zoning permits a presumptive minimum density of 12 units per acre and a presumptive maximum affordable housing set-aside of 20 percent of the total number of units in the development and the zoning provides for at least 10 percent of the affordable units to be affordable to households earning 30 percent or less of the area median income for the COAH region.

(b) **Phasing.** In inclusionary developments the following schedule shall be followed:

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

(c) **Design.** In inclusionary developments, to the extent possible, low- and moderate-income units shall be integrated with the market units.

(d) **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 N.J.A.C. 5:97-6.4.

(e) **Utilities.** Affordable units shall utilize the same type of heating source as market units within the affordable development.

Section 8. New Construction

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

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

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

(b) Accessibility Requirements:

1. The first floor of all restricted townhouse dwelling units and all restricted units in all other multistory buildings shall be subject to the technical design standards of the Barrier Free Subcode, N.J.A.C. 5:23-7 and N.J.A.C. 5:97-3.14.
2. All restricted townhouse dwelling units and all restricted units in other multistory buildings in which a restricted dwelling unit is attached to at least one other dwelling unit shall have the following features:
 - i. An adaptable toilet and bathing facility on the first floor;
 - ii. An adaptable kitchen on the first floor;
 - iii. An interior accessible route of travel on the first floor;
 - iv. An interior accessible route of travel shall not be required between stories within an individual unit;
 - v. An adaptable room that can be used as a bedroom, with a door or the casing for the installation of a door, on the first floor; and
 - vi. An accessible entranceway as set forth at P.L. 2005, c. 350 (N.J.S.A. 52:27D-311a et seq.) and the Barrier Free Subcode, N.J.A.C. 5:23-7 and N.J.A.C. 5:97-3.14, or evidence that the Borough of Hawthorne has collected funds from the developer sufficient to make 10 percent of the adaptable entrances in the development accessible:
 - A. Where a unit has been constructed with an adaptable entrance, upon the request of a disabled person who is purchasing or will reside in the dwelling unit, an accessible entrance shall be installed.
 - B. To this end, the builder of restricted units shall deposit funds within the Borough of Hawthorne's affordable housing trust fund sufficient to install accessible entrances in 10 percent of the affordable units that have been constructed with adaptable entrances.
 - C. The funds deposited under paragraph B. above shall be used by the Borough of Hawthorne for the sole purpose of making the adaptable entrance of any affordable unit accessible when requested to do so by a person with a disability who occupies or intends to occupy the unit and requires an accessible entrance.
 - D. The developer of the restricted units shall submit a design plan and cost estimate for the conversion from adaptable to accessible entrances to the Construction Official of the Borough of Hawthorne.
 - E. Once the Construction Official has determined that the design plan to convert the unit entrances from adaptable to accessible meet the requirements of the Barrier Free Subcode, N.J.A.C. 5:23-7 and N.J.A.C. 5:97-3.14, and that the cost estimate of such conversion is reasonable, payment shall be made to the Borough of Hawthorne'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.
 - F. Full compliance with the foregoing provisions shall not be required where an entity can demonstrate that it is site impracticable to meet the requirements. Determinations of site impracticability shall be in compliance with the Barrier Free Subcode, N.J.A.C. 5:23-7 and N.J.A.C. 5:97-3.14.

(c) Maximum Rents and Sales Prices

1. In establishing rents and sales prices of affordable housing units, the administrative agent shall follow the procedures set forth in UHAC and in COAH, utilizing the regional income limits established by COAH.
2. The maximum rent for restricted rental units within each affordable development shall be affordable to households earning no more than 60 percent of median income, and the average rent for restricted low- and moderate-income units shall be affordable to households earning no more than 52 percent of median income.
3. The developers and/or municipal sponsors of restricted rental units shall establish at least one rent for each bedroom type for both low-income and moderate-income units.
 - i. At least 10 percent of all low- and moderate-income rental units shall be affordable to households earning no more than 30 percent of median income.

****NOTE:** N.J.S.A. 52:27D-329.1 (P.L. 2008, C. 46) includes the requirement that all municipal fair share plans provide for the reservation of at least 13% of the affordable units for very low income households, i.e. households earning 30% or less of the median income. The new statute states that the requirement is not project-specific. Each municipality's version of this ordinance must reflect the determinations made in the Fair Share Plan as to the percentage of units necessary for very low income units in rental projects. Additional incentives to subsidize the creation of affordable housing available to very-low income households may be included in the zoning section of this ordinance or specified in a developer's or redeveloper's agreement.
4. The maximum sales price of restricted ownership units within each affordable development shall be affordable to households earning no more than 70 percent of median income, and each affordable development must achieve an affordability average of 55 percent for restricted ownership units; in achieving this affordability average, moderate-income ownership units must be available for at least three different prices for each bedroom type, and low-income ownership units must be available for at least two different prices for each bedroom type.
5. In determining the initial sales prices and rents for compliance with the affordability average requirements for restricted units other than assisted living facilities, the following standards shall be used:
 - i. A studio shall be affordable to a one-person household;
 - ii. A one-bedroom unit shall be affordable to a one and one-half person household;
 - iii. A two-bedroom unit shall be affordable to a three-person household;
 - iv. A three-bedroom unit shall be affordable to a four and one-half person household; and
 - v. A four-bedroom unit shall be affordable to a six-person household.
6. In determining the initial rents for compliance with the affordability average requirements for restricted units in assisted living facilities, the following standards shall be used:
 - i. A studio shall be affordable to a one-person household;
 - ii. A one-bedroom unit shall be affordable to a one and one-half person household; and
 - iii. A two-bedroom unit shall be affordable to a two-person household or to two one-person households.
7. The initial purchase price for all restricted ownership units shall be calculated so that the monthly carrying cost of the unit, including principal and interest (based on a mortgage loan equal to 95 percent of the purchase price and the Federal Reserve H.15 rate of interest), taxes, homeowner and private mortgage insurance and condominium or homeowner association fees do not exceed 28 percent of the eligible monthly income of the appropriate size household as determined under N.J.A.C. 5:80-26.4, as may be amended and supplemented; provided, however, that the price shall be subject to the affordability average requirement of N.J.A.C. 5:80-26.3, as may be amended and supplemented.

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

The following general guidelines apply to all developments that contain low-and moderate-income housing units, including any currently unanticipated future developments that will provide low- and moderate-income housing units.

Section 9. Affirmative Marketing Requirements

- (a) Borough of Hawthorne shall adopt by resolution an Affirmative Marketing Plan, subject to approval of COAH, compliant with N.J.A.C. 5:80-26.15, as may be amended and supplemented.
- (b) The affirmative marketing plan is a regional marketing strategy designed to attract buyers and/or renters of all majority and minority groups, regardless of race, creed, color, national origin, ancestry, marital or familial status, gender, 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 1 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 1 comprised of Bergen, Hudson, Passaic and Sussex Counties.
- (d) The Administrative Agent designated by the Borough of Hawthorne shall assure the affirmative marketing of all affordable units consistent with the Affirmative Marketing Plan for the municipality.
- (e) In implementing the affirmative marketing plan, the Administrative Agent shall provide a list of counseling services to low- and moderate-income applicants on subjects such as budgeting, credit issues, mortgage qualification, rental lease requirements, and landlord/tenant law.
- (f) The affirmative marketing process for available affordable units shall begin at least four months prior to the expected date of occupancy.
- (g) The costs of advertising and affirmative marketing of the affordable units shall be the responsibility of the developer, sponsor or owner, unless otherwise determined or agreed to by Borough of Hawthorne.

Section 10. Occupancy Standards

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

Section 11. Control Periods for Restricted Ownership Units and Enforcement Mechanisms

- (a) Control periods for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.5, as may be amended and supplemented, and each restricted ownership unit shall remain subject to the requirements of this Ordinance until the Borough elects to release the unit from such requirements however, and prior to such an election, a restricted ownership unit must remain subject to the requirements of N.J.A.C. 5:80-26.1, as may be amended and supplemented, for at least 30 years.
- (b) The affordability control period for a restricted ownership unit shall commence on the date the initial certified household takes title to the unit.
- (c) Prior to the issuance of the initial certificate of occupancy for a restricted ownership unit and upon each successive sale during the period of restricted ownership, the administrative agent shall determine the restricted price for the unit and shall also determine the non-restricted, fair market value of the unit based on either an appraisal or the unit's equalized assessed value.
- (d) At the time of the first sale of the unit, the purchaser shall execute and deliver to the Administrative Agent a recapture note obligating the purchaser (as well as the purchaser's heirs, successors and assigns) to repay, upon the first non-exempt sale after the unit's release from the requirements of this Ordinance, an amount equal to the difference between the unit's non-restricted fair market value and its restricted price, and the recapture note shall be secured by a recapture lien evidenced by a duly recorded mortgage on the unit.
- (e) The affordability controls set forth in this Ordinance shall remain in effect despite the entry and enforcement of any judgment of foreclosure with respect to restricted ownership units.
- (f) A restricted ownership unit shall be required to obtain a Continuing Certificate of Occupancy or a certified statement from the Construction Official stating that the unit meets all code standards upon the first transfer of title that follows the expiration of the applicable minimum control period provided under N.J.A.C. 5:80-26.5(a), as may be amended and supplemented.

Section 12. 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.

Section 13. Buyer Income Eligibility

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

Section 14. 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 percent of the maximum allowable resale price of that unit, as such price is determined by the administrative agent in accordance with N.J.A.C.5:80-26.6(b).

Section 15. Control Periods for Restricted Rental Units

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

Section 16. Price Restrictions for Rental Units; Leases

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

Section 17. Tenant Income Eligibility

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

- (b) The Administrative Agent shall certify a household as eligible for a restricted rental unit when the household is a very low-income, low-income household or a moderate-income household, as applicable to the unit, and the rent proposed for the unit does not exceed 35 percent (40 percent for age-restricted units) of the household's eligible monthly income as determined pursuant to N.J.A.C. 5:80-26.16, as may be amended and supplemented; provided, however, that this limit may be exceeded if one or more of the following circumstances exists:
1. The household currently pays more than 35 percent (40 percent for households eligible for age-restricted units) of its gross household income for rent, and the proposed rent will reduce its housing costs;
 2. The household has consistently paid more than 35 percent (40 percent for households eligible for age-restricted units) of eligible monthly income for rent in the past and has proven its ability to pay;
 3. The household is currently in substandard or overcrowded living conditions;
 4. The household documents the existence of assets with which the household proposes to supplement the rent payments; or
 5. The household documents proposed third-party assistance from an outside source such as a family member in a form acceptable to the Administrative Agent and the owner of the unit.
- (c) The applicant shall file documentation sufficient to establish the existence of the circumstances in (b)1 through 5 above with the Administrative Agent, who shall counsel the household on budgeting.

Section 18. Administration

- (a) The position of Municipal Housing Liaison (MHL) for Borough of Hawthorne is established by this ordinance. The governing body shall make the actual appointment of the MHL by means of a resolution.
1. The MHL must be either a full-time or part-time employee of Borough of Hawthorne.
 2. The person appointed as the MHL must be reported to COAH for approval.
 3. The MHL must meet all COAH requirements for qualifications, including initial and periodic training.
**NOTE: if the MHL position is one that will always be included in the job description for a particular position in the local staff, e.g. Township Clerk, that position can be named in this ordinance.
 4. The Municipal Housing Liaison shall be responsible for oversight and administration of the affordable housing program for the Borough of Hawthorne, including the following responsibilities which may not be contracted out to the Administrative Agent:
 - i. Serving as the municipality's primary point of contact for all inquiries from the State, affordable housing providers, Administrative Agents and interested households;
 - ii. The implementation of the Affirmative Marketing Plan and affordability controls.
 - iii. When applicable, supervising any contracting Administrative Agent.
 - iv. Monitoring the status of all restricted units in the Borough of Hawthorne's Fair Share Plan;
 - v. Compiling, verifying and submitting annual reports as required by COAH;
 - vi. Coordinating meetings with affordable housing providers and Administrative Agents, as applicable; and
 - vii. Attending continuing education opportunities on affordability controls, compliance monitoring and affirmative marketing as offered or approved by COAH.
- (b) The Borough of Hawthorne shall designate by resolution of the governing body, subject to the approval of COAH, one or more Administrative Agents to administer newly constructed affordable units in accordance with N.J.A.C. 5:96, N.J.A.C. 5:97 and UHAC.

- (c) 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 COAH. The Operating Manuals shall be available for public inspection in the Office of the Municipal Clerk and in the office(s) of the Administrative Agent(s).
**NOTE: If it is decided that an employee of the municipality will act as administrative agent or if the Housing Affordability Service (HAS) of the Agency is selected, the determination of such can be included in this ordinance.
- (d) The Administrative Agent shall perform the duties and responsibilities of an administrative agent as are set forth in UHAC and which are described in full detail in the Operating Manual, including those set forth in N.J.A.C. 5:80-26.14, 16 and 18 thereof, which includes:
1. Attending continuing education opportunities on affordability controls, compliance monitoring, and affirmative marketing as offered or approved by COAH;
 2. Affirmative Marketing;
 2. Household Certification;
 3. Affordability Controls;
 4. Records retention;
 5. Resale and re-rental;
 6. Processing requests from unit owners; and
 7. Enforcement, though the ultimate responsibility for retaining controls on the units rests with the municipality.
 8. The Administrative Agent shall have authority to take all actions necessary and appropriate to carry out its responsibilities, hereunder.

Section 19. Enforcement of Affordable Housing Regulations

- (a) Upon the occurrence of a breach of any of the regulations governing the affordable unit by an Owner, Developer or Tenant the municipality shall have all remedies provided at law or equity, including but not limited to foreclosure, tenant eviction, municipal fines, a requirement for household recertification, acceleration of all sums due under a mortgage, recoupment of any funds from a sale in the violation of the regulations, injunctive relief to prevent further violation of the regulations, entry on the premises, and specific performance.
- (b) After providing written notice of a violation to an Owner, Developer or Tenant of a low- or moderate-income unit and advising the Owner, Developer or Tenant of the penalties for such violations, the municipality may take the following action against the Owner, Developer or Tenant for any violation that remains uncured for a period of 60 days after service of the written notice:
1. The municipality may file a court action pursuant to N.J.S.A. 2A:58-11 alleging a violation, or violations, of the regulations governing the affordable housing unit. If the Owner, Developer or Tenant is found by the court to have violated any provision of the regulations governing affordable housing units the Owner, Developer or Tenant shall be subject to one or more of the following penalties, at the discretion of the court:
 - i. A fine of not more than *[insert amount]* or imprisonment for a period not to exceed 90 days, or both. Each and every day that the violation continues or exists shall be considered a separate and specific violation of these provisions and not as a continuing offense;
 - ii. In the case of an Owner who has rented his or her low- or moderate-income unit in violation of the regulations governing affordable housing units, payment into the Borough of Hawthorne Affordable Housing Trust Fund of the gross amount of rent illegally collected;

iii. In the case of an Owner who has rented his or her low- or moderate-income unit in violation of the regulations governing affordable housing units, payment of an innocent tenant's reasonable relocation costs, as determined by the court.

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

- (c) Such judgment shall be enforceable, at the option of the municipality, by means of an execution sale by the Sheriff, at which time the low- and moderate-income unit of the violating Owner shall be sold at a sale price which is not less than the amount necessary to fully satisfy and pay off any First Purchase Money Mortgage and prior liens and the costs of the enforcement proceedings incurred by the municipality, including attorney's fees. The violating Owner shall have the right to possession terminated as well as the title conveyed pursuant to the Sheriff's sale.
- (d) The proceeds of the Sheriff's sale shall first be applied to satisfy the First Purchase Money Mortgage lien and any prior liens upon the low- and moderate-income unit. The excess, if any, shall be applied to reimburse the municipality for any and all costs and expenses incurred in connection with either the court action resulting in the judgment of violation or the Sheriff's sale. In the event that the proceeds from the Sheriff's sale are insufficient to reimburse the municipality in full as aforesaid, the violating Owner shall be personally responsible for and to the extent of such deficiency, in addition to any and all costs incurred by the municipality in connection with collecting such deficiency. In the event that a surplus remains after satisfying all of the above, such surplus, if any, shall be placed in escrow by the municipality for the Owner and shall be held in such escrow for a maximum period of two years or until such earlier time as the Owner shall make a claim with the municipality for such. Failure of the Owner to claim such balance within the two-year period shall automatically result in a forfeiture of such balance to the municipality. Any interest accrued or earned on such balance while being held in escrow shall belong to and shall be paid to the municipality, whether such balance shall be paid to the Owner or forfeited to the 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.

Section 20. Appeals

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

REPEALER

All Ordinances or parts of Ordinances inconsistent herewith are repealed as to such inconsistencies.

SEVERABILITY

If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

EFFECTIVE DATE

This ordinance shall take effect upon passage and publication as provided by law.

B – 1: COAH Vacant Land Calculator Data (Workbook C)

Summary of Adjusted Growth Share Projection Based On Land Capacity

(Introduction to Workbook C)

Municipality Name:

This workbook contains two separate worksheets to be used for determining the projected Municipal Growth Share Obligation. Worksheet A must be completed by all municipalities. The Worksheet is a tool that allows the user to enter COAH-generated Growth Projections included in Appendix F(2) of the revised Third Round Rules to determine the projected Growth Share Obligation after applying exclusions permitted by N.J.A.C. 5:97-2.4. Municipalities that accept the COAH-generated Growth projections need only use Worksheet A.
[Click Here to complete Worksheet A](#)

Municipalities seeking to request a downward adjustment to the COAH-generated growth projections may do so by providing a detailed analysis of municipal land capacity. After completing this analysis, the growth projections may be lowered if the resulting growth share obligation results in a figure that is at least 10 percent lower than the projected Growth Share Obligation that would result from the COAH-generated growth projections. Actual growth must first be determined using the Actual Growth worksheet. A growth projection adjustment may only apply to any remaining growth.

[Click Here to Enter Actual Growth to Date](#)

[Click Here to Complete the Residential Parcel Inventory and Capacity Analysis](#)

[Click Here to Complete the Non-residential Parcel Inventory and Capacity Analysis](#)

Summary Of Worksheet Comparison

	COAH Projected Growth Share (From Worksheet A)	Growth Share Based on Municipal Capacity (From Worksheet C)
Residential Growth	586	20
Residential Exclusions	0	0
Net Residential Growth	586	20
Residential Growth Share	117.20	3.93
Non-Residential Growth	1,808	137
Non-Residential Exclusions	0	0
Net Non- Residential Growth	1,808	137
Non-Residential Growth Share	113.00	8.55
Total Growth Share	230	12

The Municipal land capacity analysis results in a reduction to the COAH-generated growth projection. Please file Workbook C and use a Residential Growth Share of 3.93 plus a Non-residential Growth Share of 8.55 for a total Growth Share Obligation of 12 affordable units

Growth Projection Adjustment - Actual Growth

Municipality Name: Hawthorne

Actual Growth 01/01/04 to Present					
Residential COs Issued	15	Square Feet Added (COs Issued)	Square Feet Lost Demolition Permits Issued	Jobs/1,000 SF	Total Jobs
Non-residential CO's by Use Group					
B		48868		2.8	136.83
M				1.7	0.00
F				1.2	0.00
S				1.0	0.00
H				1.6	0.00
A1				1.6	0.00
A2				3.2	0.00
A3				1.6	0.00
A4				3.4	0.00
A5				2.6	0.00
E				0.0	0.00
I				2.6	0.00
R1				1.7	0.00
Total		48868	0		137

[Return to Growth Projection Adjustment Summary Screen](#)

[Proceed to Inventory of Vacant Residential Land](#)

[Proceed to Inventory of Non-residential Land](#)

Hawthorne Growth Projection Adjustment - Residential Parcel Inventory

Block	Lot	Address	Owner	SDRP Planning Area	Urban Center (Y/N)	Sewer Service Area (Y/N)	HUC.11 NO3 Density*	Total Acreage	Constrained Acreage	Constraint Description	Buildable Acreage	Density (Units/Ac)	Capacity (Units)
2	1 01 2 N 7th St		Ambrògio, M	1	n	y	0.06	0.06	0.00		0.00	8.00	0.00
7	6 56 N 10th St		Viruet, E & J	1	n	y	0.04	0.04	0.00		0.00	8.00	0.00
18	2 13 Passaic Ave		Aldi, J	1	n	y	0.14	0.14	0.00		0.14	8.00	1.12
84	2 03 72 Mazur Pl		Oliver, F & S	1	n	y	0.16	0.16	0.00		0.16	8.00	1.28
86	12 24 48 N 19th St		Warren Bros CO	1	n	y	0.12	0.12	0		0.00	8.00	0.00
167	1 119 Fourth Ave		Van Den Burg Rlty	1	n	y	0.15	0.15	0		0.15	8.00	1.20
202	5 63 Ninth Ave		Van Lenten, R	1	n	y	0.11	0.11	0		0.00	8.00	0.00
217	6 01 Van Winkle Ave		Scro F	1	n	y	0.13	0.13	0		0.13	8.00	1.04

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[Click Here to Return to Workbook C Summary](#)

[Click Here to Proceed to Non-residential Parcel Inventory and Capacity Analysis](#)

* Note: Hyperlink to GIS files requires GIS software. Files must be downloaded first and then opened in a GIS Viewer.

Worksheet A: Growth Share Determination Using Published Data
 (Appendix F(2), *Allocating Growth To Municipalities*)

<p>COAH Growth Projections</p> <p>Must be used in all submissions</p>
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Municipality Name: Hawthorne

Enter the COAH generated growth projections form Appendix F(2) found at the back of N.J.A.C. 5:97-1 et seq. on Line 1 of this worksheet. Use the Tab at the bottom of this page or the links within the page to toggle to the exclusions portion of this worksheet. After entering all relevant exclusions, toggle back to this page to view the growth share obligation that has been calculated based on COAH's growth projections.

	Residential	Non-Residential
1 Enter Growth Projections From Appendix F(2)*	586	1,808
2 Subtract the following Residential Exclusions pursuant to 5:97-2.4(a) from "Exclusions" tab	Click Here to enter Prior Round Exclusions	
COs for prior round affordable units built or projected to be built post 1/1/04		
Inclusionary Development	0	
Supportive/Special Needs Housing	0	
Accessory Apartments	0	
Municipally Sponsored or 100% Affordable	0	
Assisted Living	0	
Other	0	
Market Units in Prior Round Inclusionary development built post 1/1/04	0	
3 Subtract the following Non-Residential Exclusions (5:97-2.4(b))		
Affordable units	0	
Associated Jobs		0
4 Net Growth Projection	586	1,808
5 Projected Growth Share (Conversion to Affordable Units Divide HH by 5 and Jobs by 16)	117.20 Affordable Units	113.00 Affordable Units
6 Total Projected Growth Share Obligation		230 Affordable Units

[Click Here to return to Workbook C Summary](#)

* For Residential Growth, See Appendix F(2), Figure A.1, Housing Units by Municipality. For Non-residential Growth, See Appendix F(2), Figure A.2, Employment by Municipality