



BOROUGH OF BOGOTA

ORDINANCE NO. 1651

PUBLIC HEARING & ADOPTION

DATE: 02-05-26

**AN ORDINANCE AMENDING CHAPTER 22A OF THE
BOGOTA CODE, ENTITLED "AFFORDABLE HOUSING
DEVELOPMENT FEES"**

PUBLIC HEARING OPEN

COUNCIL	MOTION	SECOND	YES	NO	RECUSE	ABSTAIN	ABSENT
Council President L. Kohles			✓				
Councilmember C. Carpenter			✓				
Councilmember W. Hordern		✓	✓				
Councilmember P. McHale	✓		✓				
Councilmember J. Mitchell			✓				
Councilmember D. Vergara			✓				

COMMENTS:

- Borough Attorney provided a brief summary.
- No comments from the public.

PUBLIC HEARING CLOSED

COUNCIL	MOTION	SECOND	YES	NO	RECUSE	ABSTAIN	ABSENT
Council President L. Kohles			✓				
Councilmember C. Carpenter		✓	✓				
Councilmember W. Hordern			✓				
Councilmember P. McHale	✓		✓				
Councilmember J. Mitchell			✓				
Councilmember D. Vergara			✓				

ADOPTION:

COUNCIL	MOTION	SECOND	YES	NO	RECUSE	ABSTAIN	ABSENT
Council President L. Kohles			✓				
Councilmember C. Carpenter	✓		✓				
Councilmember W. Hordern			✓				
Councilmember P. McHale			✓				
Councilmember J. Mitchell		✓	✓				
Councilmember D. Vergara			✓				



**AN ORDINANCE AMENDING CHAPTER 22A OF THE
BOGOTA CODE, ENTITLED "AFFORDABLE HOUSING
DEVELOPMENT FEES"**

WHEREAS, Chapter 22A of the Bogota Code sets forth the rules and regulations pertaining to the calculation and collection of affordable housing development fees in the Borough; and,

WHEREAS, the Mayor and Council seek to amend the language in Chapter 22A to conform it to the terms of a settlement reached between the Borough of Bogota and Fair Share Housing Center.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Council of the Borough of Bogota, that Chapter 22A of the Bogota Code is hereby deleted in its entirety and replaced with the following:

SECTION 1: AMENDMENT TO CHAPTER 22A, ENTITLED "AFFORDABLE HOUSING DEVELOPMENT FEES".

Chapter 22A, entitled "Affordable Housing Development Fees" is hereby deleted in its entirety and replaced with the following:

§ 22A-1. PURPOSE.

- a. In *Holmdel Builder's Association v. Holmdel Township*, 121 N.J. 550 (1990), the New Jersey Supreme Court determined that mandatory development fees are authorized by the Fair Housing Act of 1985, N.J.S.A. 52:27D-301 et seq., and the State Constitution, subject to the then functioning Council on Affordable Housing's (COAH's) adoption of rules as amended from time to time and/or in accordance with the enacted legislation and/or in accordance with directives from the courts.
- b. Pursuant to P.L. 2008, c. 46, § 8 (N.J.S.A. 52:27D-329.2), COAH was authorized to adopt and promulgate regulations necessary for the establishment, implementation, review, monitoring and enforcement of municipal affordable housing trust funds and corresponding spending plans. Municipalities that were under the jurisdiction of the Council or court of competent jurisdiction and had a COAH-approved spending plan were able to retain fees collected from nonresidential development.
- c. In *Re: Adoption of N.J.A.C. 5:96 and 5:97* by the New Jersey Council on Affordable Housing, 221 N.J. 1 (2015), also known as the Mount Laurel IV decision, the Supreme Court remanded COAH's duties to the Superior Court. As a result, affordable housing development fee collections and expenditures from the municipal affordable housing trust funds to implement municipal Third Round Fair Share Plans through July 1, 2025 were under the Court's jurisdiction and were subject to approval by the Court.



- d. Pursuant to P.L.2024, c. 2, the authority relating to rulemaking on the collection of residential and non-residential development fees is appropriately delegated to the Department of Community Affairs, following the abolition of COAH, effective March 20, 2024. As such, municipalities which have obtained or are in the process of seeking compliance certification may retain and expend these development fees.
- e. This article establishes standards for the collection, maintenance and expenditure of development fees pursuant to the regulations set forth in P.L. 2024, c. 2, N.J.S.A. 52:27D-301 et seq., N.J.A.C. 5:99-1 et seq. and as previously established in accordance with P.L. 2008, c. 46, Sections 8 and 32 through 38.

The purpose of this chapter is to establish standards for the collection, maintenance and expenditure of development fees pursuant to the above. Fees collected pursuant to this chapter shall be used for the sole purpose of providing low- and moderate-income housing.

§ 22A-2. DEFINITIONS.

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

ACT — The Fair Housing Act of 1985, P.L. 1985, c. 222 (N.J.S.A. 52:27D-301 et seq.), as amended through P.L. 2024, c.2.

ADMINISTRATIVE AGENT — The individual or entity designated by the Borough and approved by the Division to administer affordable units in accordance with this chapter, the regulations of the amended Fair Housing Act (P.L.1985, c. (N.J.S.A. 52:27D-301 et seq.)), as designated pursuant to N.J.A.C. 5:99-7, and the Uniform Housing Affordability Controls set forth at N.J.A.C. 5:80-26 et seq.

AFFORDABLE — A sales price or rent level that is within the means of a low- or moderate-income household as defined within N.J.S.A. 52:27D-301 et seq., and, in the case of an ownership unit, that the sales price for the unit conforms to the standards set forth in N.J.A.C. 5:80-26.7, 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. 5:80-26.13, as may be amended and supplemented.

AFFORDABLE HOUSING DEVELOPMENT — A development included in the Housing Element and Fair Share Plan, and includes, but is not limited to, an inclusionary development, a municipal construction project or a 100% affordable development.

AFFORDABLE HOUSING PROGRAM(S) — Any method of creating or preserving actual housing units available to low- and moderate-income households or creating a realistic opportunity for the construction of such units, and any mechanism in a municipal fair share plan prepared or implemented to address a municipality's fair share obligation.

AFFORDABLE HOUSING MONITORING SYSTEM or AHMS — The Department of Community Affairs (DCA) or Department's cloud-based software application, which shall be the central repository for municipalities to use for reporting detailed information regarding affordable housing developments, affordable housing unit completions, and the collection and expenditures of funds deposited into the municipal affordable housing trust fund.

AFFORDABLE UNIT — A housing unit proposed or created pursuant to the Fair Housing Act and approved for crediting by the court and/or funded through an affordable housing trust fund.

BOROUGH — The Borough of Bogota, in Bergen County, New Jersey..

COAH OR THE COUNCIL — The New Jersey Council on Affordable Housing, as previously established by the New Jersey Fair Housing Act (N.J.S.A. 52:27D-301 *et seq.*), prior to its abolition effective March 20, 2024 through P.L.2024, c.2.

COMPLIANCE CERTIFICATION — The certification issued to a municipality by a county-level housing judge pursuant to section 3 at P.L. 2024, c. 2, that protects the municipality from exclusionary



zoning litigation during the current round of present and prospective need and through July 1 of the year the next affordable housing round begins, which is also known as a "judgment of compliance" resulting in an "order for repose." The term "compliance certification" includes a judgment of repose granted in an action filed pursuant to section 13 at P.L. 1985, c. 222 (N.J.S.A. 52:27D-313).

DCA or DEPARTMENT — The State of New Jersey, Department of Community Affairs.

DEVELOPER — 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.

DEVELOPMENT FEE — Money paid by a developer for the improvement of residential and non-residential property as permitted pursuant to N.J.S.A. 52:27D-329.2 and 40:55D-8.1 through 40:55D-8.7 and N.J.A.C. 5:99-3.

DISPUTE RESOLUTION PROGRAM — The Affordable Housing Dispute Resolution Program, established pursuant to section 5 of P.L. 2024, c.2 (N.J.S.A. 52:27D-313.2). The Dispute Resolution Program is established within the Executive Branch of the State, for the purpose of resolving disputes associated with the Fair Housing Act with respect to municipalities seeking to obtain a certification of compliance of their adopted Housing Element & Fair Share Plan.

DIVISION — The Division of Local Planning Services within the Department of Community Affairs.

EMERGENT OPPORTUNITY — A circumstance that has arisen whereby affordable housing will be able to be produced through a delivery mechanism not originally contemplated by or included in a fair share plan that has been the subject of a compliance certification.

EQUALIZED ASSESSED VALUE or EAV— 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 at P.L. 1973, c. 123 (N.J.S.A. 54:1-35a, 54:1-35b, and 54:1-35c). Estimates at the time of issuance of a building permit may be obtained by the Tax Assessor utilizing estimates for construction cost. Final equalized assessed value will be determined at project completion by the Municipal Tax Assessor.

FAIR SHARE OBLIGATION — The total of the present need and prospective need as determined by a court of competent jurisdiction.

GREEN BUILDING STRATEGIES — Those strategies that minimize the impact of development on the environment and enhance the health, safety and well-being of residents by producing durable, low-maintenance, resource-efficient housing while making optimum use of existing infrastructure and community services.

HOUSING PROJECT — A project, or distinct portion of a project, which is designed and intended to provide decent, safe, and sanitary dwellings, apartments, or other living accommodations for persons of low- and moderate-income; such work or undertaking may include buildings, land, equipment, facilities, and other real or personal property for necessary, convenient, or desirable appurtenances, streets, sewers, water service, parks, site preparation, gardening, administrative, community, health, recreational, educational, welfare, or other purposes. The term "housing project" may also be applied to the planning of the buildings and improvements, the acquisition of property, the demolition of existing structures, the construction, reconstruction, alteration, and repair of the improvements, and all other work in connection therewith.

MIXED USE DEVELOPMENT — Any development that includes both a non-residential development component and a residential development component, and shall include developments for which: (1) there is a common developer for both the residential development component and the non-residential development component, provided that for purposes of this definition, multiple persons and entities may be considered a common developer if there is a contractual relationship among them obligating each entity to develop at least a portion of the residential or non-residential development, or both, or otherwise to contribute resources to the development; and (2) the residential and non-residential developments are



located on the same lot or adjoining lots, including, but not limited to, lots separated by a street, a river, or another geographical feature.

MUNICIPAL AFFORDABLE HOUSING TRUST FUND — A separate, interest-bearing account held by a municipality for the deposit of development fees, payments in lieu of constructing affordable units on sites zoned for affordable housing, barrier-free escrow funds, recapture funds, proceeds from the sale of affordable units, rental income, repayments from affordable housing program loans, enforcement fines, unexpended RCA funds remaining from a completed RCA project, application fees, and any other funds collected by the municipality in connection with its affordable housing programs, which shall be used to address municipal low- and moderate-income housing obligations within the time frames established by the Legislature and this chapter.

NEW JERSEY AFFORDABLE HOUSING TRUST FUND — An account established pursuant to N.J.S.A. 52:27D-320.

NON-RESIDENTIAL DEVELOPMENT

1. Any building or structure, or portion thereof, including, but not limited to, any appurtenant improvements, which is designated to a use group other than a residential use group according to the State Uniform Construction Code, N.J.A.C. 5:23, promulgated to effectuate the State Uniform Construction Code Act, N.J.S.A. 52:27D-119 et seq., including any subsequent amendments or revisions thereto;
2. Hotels, motels, vacation timeshares, and child-care facilities; and
3. The entirety of all continuing care facilities within a continuing care retirement community which is subject to the Continuing Care Retirement Community Regulation and Financial Disclosure Act, N.J.S.A. 52:27D-330 et seq.

NON-RESIDENTIAL DEVELOPMENT FEE — The fee authorized to be imposed pursuant to the Statewide Non-Residential Development Fee Act (N.J.S.A. 40:55D-8.1 through 40:55D-8.7.)

PAYMENT IN LIEU OF CONSTRUCTING AFFORDABLE UNITS — The payment of funds to the municipality by a developer when affordable units are not produced on a site zoned for an inclusionary development.

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

RESIDENTIAL DEVELOPMENT FEE — Money paid by a developer for the improvement of residential property as permitted pursuant to N.J.S.A. 52:27D-329.2 and N.J.A.C. 5:99-3.2.

SPENDING PLAN — A plan to predict funds that will be paid into a municipality's affordable housing trust fund and to allocate how those funds will be spent to advance the interest of low and moderate income households subject to limitations required by law.

The definitions in the Uniform Housing Affordability Controls (UHAC) at N.J.A.C 5:80-26.2 and N.J.A.C. 5:99 shall be applicable where a term is not defined. In the event of a discrepancy between a definition in this section and UHAC and N.J.A.C. 5:99, the current UHAC or N.J.A.C. 5:99 definition shall be applicable.

§ 22A-3. RESIDENTIAL DEVELOPMENT FEES.

Development fees assessed on new construction shall be based on the equalized assessed value of land and improvements. Development fees assessed on additions and alterations shall be based only on the increase in equalized assessed value that results from the addition or alteration, the expansion, change to a more intense use, or replacement;

- a. Within all zoning districts, residential developers, except for developers of the types of development specifically exempted in § 22A-5 below, shall pay a fee of 1.5% of the equalized assessed value for residential development, provided no increased density is permitted.
- b. When an increase in residential density pursuant to N.J.S.A. 40:55D-70d(5) has been permitted, developers shall pay a development fee of 6% of the equalized assessed value for each



additional unit that may be realized. However, if the zoning on a site has changed during the two-year period preceding the filing of such a variance application, the base density for the purposes of calculating the bonus development fee shall be the highest density permitted by right during the two-year period preceding the filing of the variance application.

§ 22A-4. NONRESIDENTIAL DEVELOPMENT FEES.

- a. The Borough shall impose, collect, retain, and expend fees collected from non-residential development in accordance with the Statewide Non-Residential Development Fee Act, N.J.S.A. 40:55D-8.1 through 40:55D-8.7 and this chapter.
- b. Within all zoning districts, nonresidential developers, except for developers of the types of development specifically exempted, shall pay a fee of 2.5% of the equalized assessed value of the land and improvements for all new nonresidential construction on an unimproved lot or lots.
- c. Nonresidential developers, except for developers of the types of development specifically exempted, shall also pay a fee equal to 2.5% of the increase in equalized assessed value resulting from any additions or alterations to existing structures to be used for nonresidential purposes.
- d. Development fees shall be imposed and collected when an existing structure is demolished and replaced. The development fee of 2.5% shall be calculated on the difference between the equalized assessed value of the preexisting land and improvement and the equalized assessed value of the newly improved structure, i.e., land and improvement, at the time the final certificate of occupancy is issued. If the calculation required under this subsection results in a negative number, the nonresidential development fee shall be zero.
- e. In all mixed-use projects, developers shall pay to the Borough the 2.5 percent fee generated by the non-residential component of the project unless an exemption of the Statewide Nonresidential Development Fee Act applies.
- f. In the event of any conflict between this ordinance and the Statewide Non-Residential Development Fee Act (SNDFA), the SNDFA shall apply

§ 22A-5. ELIGIBLE EXACTIONS, INELIGIBLE EXACTIONS AND EXEMPTIONS.

- a. The following types of developments are exempt from the imposition of residential and nonresidential development fees:
 1. Affordable housing developments, affordable housing developments where the affordable units are being provided elsewhere in the municipality, and developments where the developer has paid a payment in lieu of on-site construction for all the units in the project shall be exempt from residential development fees. All other forms of new construction shall be subject to development fees, unless exempted below.
 2. Developments that have received preliminary or final approval prior to the imposition of a municipal development fee ordinance shall be exempt from development fees unless the developer seeks a substantial change in the approval. Where a site plan approval does not apply, a zoning and/or building permit shall be synonymous with preliminary or final site



plan approval for this purpose. The fee percentage shall be vested on the date that the building permit is issued.

3. Residential structures demolished and replaced as a result of a fire, flood, or any natural disaster or catastrophe shall be exempt from paying a development fee, even if the new structure has an increased equalized assessed value as compared to the previous structure.
4. The development fee shall not apply to the expansion of a single- or two-family home where the net increase in interior floor area is less than 15% of the existing structure. In no event shall the development fee be collected where the total increase in floor area is 500 square feet or less. Upon the request of the Zoning Officer, the property owner shall produce, within 30 days, a set of certified plans, signed by a licensed architect, confirming the amount of previously existing and as-built conditions.
5. Non-profit organizations that have received tax exempt status pursuant to the Internal Revenue Code, providing current evidence of that status is submitted to the municipal clerk, together with a certification that services of the organization are provided at reduced rates to those who establish an inability to pay existing charges, shall be exempted from paying a development fee.
6. Federal, State, county, and local governments shall be exempt from paying a development fee.
7. All non-residential construction of buildings or structures on property used by churches, synagogues, mosques, and other houses of worship, and property used for educational purposes, that are tax-exempt pursuant to N.J.S.A. 54:4-3.6, shall be exempt from the imposition of a non-residential development fee pursuant to this section, provided that the property continues to maintain its tax exempt status pursuant to that statute for a period of at least three years from the date of issuance of the certificate of occupancy.
8. Parking lots and parking structures, regardless of whether the parking lot or parking structure is constructed in conjunction with a non-residential development, or whether the parking lot is developed as an independent non-residential development;
9. Any non-residential development that is an amenity to be made available to the public, including, but not limited to, recreational facilities, community centers, and senior centers that are developed in conjunction with, or funded by, a non-residential developer;
10. Non-residential construction resulting from a relocation of, or an on-site improvement to, a nonprofit hospital or a nursing home facility;
11. Projects that are located within a specifically delineated urban transit hub, as defined pursuant to N.J.S.A. 34:1B-208;
12. Projects that are located within an eligible municipality, as defined pursuant to N.J.S.A. 34:1B-208, the Urban Transit Hub Tax Credit Act, when a majority of the project is located within a one-half mile radius of the midpoint of a platform area for a light rail system; and



13. Projects determined by the New Jersey Transit Corporation to be consistent with a transit village plan developed by a transit village designated by the New Jersey Department of Transportation.

- b. A developer of a mixed use development shall be required to pay the non-residential development fee relating to the non-residential development component of a mixed use development subject to the provisions at N.J.S.A. 52:27D-329.1 et seq.
- c. Non-residential construction connected with the relocation of the facilities of a for-profit hospital shall be subject to the fee authorized to be imposed pursuant to this section to the extent of the increase in equalized assessed valuation.
- d. A developer of a non-residential development exempted from the non-residential development fee pursuant to this section shall be subject to that fee at such time as the basis for the exemption set forth in this subsection no longer applies, and shall make the payment of the 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.
- e. If a property that was exempt 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 in these circumstances may be enforceable by the Borough as a lien against the real property of the owner.

§ 22A-6. COLLECTION OF FEES.

The Borough shall collect 100 percent of the development fee for residential and non-residential development prior to the issuance of the certificate of occupancy. 50% of the development fee will be collected at the time of issuance of the building permit. The remaining portion will be collected at, or prior to, 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. Developers shall be notified of the fee by the Borough, including when payment is required to be made, at the time of land use board approval or application for a construction permit. After issuance of a building permit, the Construction Official shall refer the plans for the development to the Tax Assessor. The Tax Assessor shall certify to the Construction Official the final equalized assessed value in advance of the issuance of a certificate of occupancy by the Construction Official. The remaining portion of the development fee shall be adjusted to reflect any change in the estimated equalized assessed value so that the total of the two payments shall equal 100% of the total development fee based upon the final equalized assessed value.

§ 22A-7. CONTESTED FEES.

- a. A developer may challenge nonresidential development fees imposed by filing a challenge with the Director of the Division of Taxation. Collected fees shall be placed in an interest-bearing escrow account by the Borough of Bogota. The local code enforcement official shall thereafter issue the certificate of occupancy provided that the construction is otherwise eligible for a certificate of occupancy. 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, N.J.S.A.



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.

§ 22A-8. AFFORDABLE HOUSING TRUST FUND.

- a. There is hereby created a separate, interest-bearing housing trust fund, in a bank utilized by the Borough for its ordinary business purposes, and maintained by the Chief Financial Officer of the Borough, for the purpose of depositing development fees collected from residential and nonresidential developers, any other payments made pursuant to this chapter from residential and nonresidential developers, and proceeds from the sale of units with extinguished controls. The Borough shall provide written authorization, in the form of a three-party escrow agreement between the Borough, the bank or other financial institution, and the Division, to permit the Division to direct the disbursement of the funds, as provided for at N.J.A.C. 5:99-5.6, shall be maintained at all times. This authorization shall be submitted to the Division within 21 days from the opening of the trust fund account and/or within 21 days of any change in banks or other financial institutions in which trust funds are deposited. Bogota's affordable housing trust fund shall be used to address municipal low- and moderate-income housing obligations within the time frames established by the Act and N.J.A.C 5:99-1 et seq. All development fees paid by developers pursuant to this chapter shall be deposited into this fund. The Borough shall identify the funds on its monitoring report pursuant to N.J.A.C. 5:99-5 and include a plan for the use of the funds in its spending plan.
- 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 10% of the adaptable entrances in a townhouse or other multistory attached development accessible (barrier-free escrow funds);
 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. Enforcement fines
 8. Unexpended RCA funds remaining from a completed RCA project
 9. Any other funds collected in connection with the Borough of Bogota's affordable housing program

§ 22A-9. USE OF FUNDS.

- a. Funds deposited in the housing trust fund may be used for any eligible activity as set forth in the amended Fair Housing Act (N.J.S.A. 52:27D-301 et seq.), N.J.A.C. 5:99-2, and for any housing



activity as approved by the Dispute Resolution Program pursuant to N.J.S.A. 52:27D-329.2.a(4) to address the municipal fair share or by the Division pursuant to N.J.S.A. N.J.A.C. 5:99-4. Such activities include, but are not limited to:

1. A rehabilitation program whose purpose is to renovate deficient housing units that are occupied by low- and moderate-income households, in accordance with the New Jersey State Housing Code, N.J.A.C. 5:28, or the requirements of the Rehabilitation Subcode, N.J.A.C. 5:23-6, as applicable, and costs related to the rehabilitation of the unit. Any recaptured funds from a rehabilitation program shall be deposited into the Borough's affordable housing trust fund and subject to the provisions thereof;
2. New construction of affordable housing units and related development costs; in the case of inclusionary developments, eligible costs shall be prorated based on the proportion of affordable housing units included in the development;
3. Creation of a market to affordable program to pay down the cost of unrestricted units and offer them in sound condition, for sale or rent, at affordable prices to low- and moderate-income households to address all or a portion of the affordable housing obligation;
4. Extensions or improvements of roads and infrastructure directly serving affordable housing development sites; in the case of inclusionary developments, costs shall be prorated based on the proportion of affordable housing units included in the development;
5. RCAs, approved prior to July 17, 2008;
6. Acquisition and/or improvement of land to be used for affordable housing;
7. Accessory dwelling units;
8. The extension of expiring controls;
9. The construction of group homes and supportive and special needs housing;
10. Maintenance and repair of affordable housing units;
11. To defray the costs of structured parking; in the case of inclusionary developments, eligible costs shall be prorated based on the proportion of affordable housing units included in the development;
12. Affordability assistance in accordance with N.J.A.C. 5:99-2.5;
13. Repayment of municipal bonds issued to finance low- and moderate-income housing activity;
14. Any other activity as specified in the approved spending plan or as approved by the Division as an emergent affordable housing opportunity; or
15. Any other activity approved by the Division.



- b. Until a new spending plan is approved pursuant to the declaratory judgement action filed in accordance with the amended Fair Housing Act, the Borough shall be entitled to expend funds from the housing trust fund in accordance with the approved spending plan dated March 2018 in conjunction with the Borough's application for approval for Round 3 or in accordance with the Fair Housing Act as amended in March 2024. Thereafter, funds shall not be expended to reimburse the Borough for activities that occurred prior to the authorization of the Borough to collect development fees; on attorney fees or court costs to obtain a judgment of compliance or order of repose, including any associated administration costs; on any costs in connection with a challenge to a determination of the Borough's fair share obligation; on any costs in connection with a challenge to the Borough's obligation, housing element, or fair share plan.
- c. At least 20% of all development fees collected and interest earned shall be used to provide affordability assistance to very-low-, low- and moderate-income households in affordable units included in the Municipal Fair Share Plan pursuant to N.J.S.A. 52:27D-329.1 and in accordance with N.J.A.C. 5:99-2.5.. One-third of the affordability assistance portion of development fees collected shall be used to provide affordability assistance to those households earning 30% or less of regional median income by region.
 - 1. Affordability assistance programs may include downpayment assistance, security deposit assistance, low-interest loans, and rental assistance.
 - 2. Affordability assistance to households earning 30% or less of regional median income may include offering a subsidy to developers of inclusionary or 100 percent affordable housing developments or buying down the cost of low- or moderate-income units in the Municipal Fair Share Plan to make them affordable to households earning 30% or less of regional median income, including special needs and supportive housing opportunities.
- d. 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. The Borough 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 or any program or activity for which the Borough expends development fee proceeds, in accordance with N.J.S.A. 52:27D-301 *et seq.* and N.J.A.C. 5:99-1 *et seq.*
- e. No more than 20% of the revenues collected from development fees each year shall be expended on administration in accordance with N.J.A.C. 5:99-2.4. Administrative expenses may include costs reasonably related to the determination of the fair share obligation and the development of a municipal housing element and fair share plan and may include fees necessary to develop or implement affordable housing programs, an affirmative marketing program, and/or expenses that are reasonably necessary for compliance with the processes of the Program, including, but not limited to, the costs to the Borough of resolving a challenge pursuant to the Program. Administrative expenses may also include costs associated with functions carried out in compliance with UHAC, including activities related to the marketing program and waitlist management, administering the placement of occupants in housing units, income qualification



of households, monitoring the turnover of sale and rental units, preserving existing affordable housing, and compliance with the Division's monitoring requirements. The proportion of a municipal employee's salary related to the MHL or RCA administrator functions and fees for required educational programs, may be paid as an administrative expense from the municipal affordable housing trust fund.

§ 22A-10. MONITORING.

Bogota shall comply with the monitoring and reporting requirements set forth in N.J.S.A. 52:27D-329.2 and N.J.S.A. 52:27D-329.4, and as set forth at N.J.A.C. 5:99-5.

SECTION 2: SEVERABILITY.

If any section, subsection, paragraph, sentence, clause or phrase of this Ordinance shall be declared invalid for any reason whatsoever, such a decision shall not affect the remaining portions of the Ordinance, which shall remain in full force and effect, and for this purpose the provisions of this Ordinance are hereby declared to be severable.

SECTION 3: INCONSISTENCY.

Any and all ordinances, or parts thereof, in conflict or inconsistent with any of the terms and provisions of this Ordinance are hereby repealed to such extent as they are so in conflict or inconsistent.

SECTION 4: EFFECTIVE DATE

This ordinance shall take effect twenty (20) days after the first publication thereof after final passage.

CERTIFICATION

✓

ATTEST:

Deputy Clerk

APPROVED:

Mayor

I, Melissa Baque, Deputy Clerk of the Borough of Bogota, Bergen County, New Jersey, do hereby certify that the foregoing is a correct and true copy of an Ordinance adopted by the Borough of Bogota at a meeting held on 02-05-26.