

Introduced On: May 16, 2024			
Council	Motion	Second	Vote
Sohmer			X
Yoon			ABSENT
Suh		X	X
Drumgoole			ABSTAIN
Kasofsky			X
Cervieri	X		X

Adopted On: July 11, 2024			
Council	Motion	Second	Vote
Sohmer			X
Yoon			X
Suh		X	X
Drumgoole			ABSTAIN
Kasofsky			X
Cervieri	X		X

BOROUGH OF FORT LEE
309 Main Street
Fort Lee, New Jersey 07024

ORDINANCE NO. 2024-8

**AN ORDINANCE AMENDING CHAPTER 410 ENTITLED "ZONING" TO
UPDATE REGULATIONS RELATED TO AFFORDABLE HOUSING**

WHEREAS, it has been determined by the Mayor and Council of the Borough of Fort Lee that there is a need to amend Chapter 410 entitled "Zoning" to update the regulations related to Affordable Housing; and

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Council of the Borough of Fort Lee that Chapter 410 entitled "Zoning" is hereby amended and supplemented as follows:

Section 1:

Article XXI. Affordable Housing Ordinance

§ 410-86. General program purposes; procedure.

A. Affordable housing obligation.

- (1) This article sets forth regulations regarding the low- and moderate-income housing units in the Borough of Fort Lee consistent with the provisions known as the "Substantive Rules of the New Jersey Council on Affordable Housing," the Uniform Housing Affordability Controls ("UHAC"), N.J.A.C. 5:80-26.1 et seq., and the Borough's constitutional obligation to provide a fair share of affordable housing for low- and moderate-income households. In addition, this article applies requirements for very-low-income housing established in P.L. 2008, c. 46 (the "Roberts Bill").
- (2) This article 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 article shall apply except where inconsistent with applicable law.

- (3) The Borough of Fort Lee 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 Fort Lee shall address its fair share for low- and moderate-income housing as determined by the Superior Court and documented in the Housing Element.
- (4) This article implements and incorporates the Fair Share Plan and addresses the requirements of the Act and regulations thereunder, as may be amended and supplemented.
- (5) The Borough shall file monitoring reports with the Superior Court and place the reports on its municipal website.

B. **Monitoring and Reporting Requirements.** The Borough of Fort Lee shall comply with the following monitoring and reporting requirements regarding the status of the implementation of its Court-approved Housing Element and Fair Share Plan:

- (1) Beginning on April 21, 2024, and on every anniversary of that date through July 1, 2025, the Borough agrees to provide annual reporting of its Affordable Housing Trust Fund to the New Jersey Department of Community Affairs (NJDC), Council on Affordable Housing (COAH), or Local Government Services (LGS), or other entity designated by the State of New Jersey, with a copy provided to Fair Share Housing Center (FSHC) and posted on the municipal website, using forms developed for this purpose by NJDC, COAH, or LGS. The reporting shall include an accounting of all Affordable Housing Trust Fund activity, including the source and amounts of funds collected, and the amount and purpose for which any funds have been expended.
- (2) On the first anniversary of the “Judgment of Compliance and Repose,” or “the judicial equivalent of substantive certification,” and every anniversary of that date through the end of this repose period, the Borough agrees to provide annual reporting of the status of all affordable housing activity within the municipality through posting on the municipal website with a copy of such posting provided to Fair Share Housing Center, using forms previously developed for this purpose by COAH or any other forms endorsed by the Special Master and FSHC.
- (3) For the review of very low income housing requirements required by N.J.S.A. 52:27D-329.1, within 30 days of the third anniversary of the

"Judgment of Compliance and Repose" or "the judicial equivalent of substantive certification", and every third year thereafter, the Borough will post on its municipal website, with a copy provided to Fair Share Housing Center, a status report as to its satisfaction of its very low income requirements, including the family very low income requirements referenced herein.

- C. **Definitions.** The following terms, when used in this article, shall have the meanings given in this subsection:

ACCESSORY APARTMENT

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

ACT

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

ADAPTABLE

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

ADMINISTRATIVE AGENT

The entity designated by the Borough responsible for the administration of affordable units in accordance with this article, N.J.A.C. 5:93 and N.J.A.C. 5:80-26.1 et seq.

AFFIRMATIVE MARKETING

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

AFFORDABILITY AVERAGE

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

AFFORDABLE

A sales price or rent level within the means of a very low-, low- or

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

AFFORDABLE HOUSING DEVELOPMENT

A development included in and approved pursuant to the Housing Element and Fair Share Plan or otherwise intended to address the Borough's fair share obligation, and includes, but is not limited to, an inclusionary development, a municipal construction project or a 100% affordable housing development.

AFFORDABLE HOUSING PROGRAM(S)

Any mechanism in a municipal Fair Share Plan prepared or implemented to address a municipality's fair share obligation.

AFFORDABLE UNIT

A housing unit proposed or created pursuant to the Act and approved for crediting by the Court, and/or funded through an affordable housing trust fund.

AGE-RESTRICTED UNIT

A housing unit designed to meet the needs of, and exclusively for, the residents of an age-restricted segment of the population such that: 1) all the residents of the development where the unit is situated are 62 years or older; or 2) at least 80% 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.

AGENCY

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

ALTERNATIVE LIVING ARRANGEMENT

A structure in which households live in distinct bedrooms, yet share kitchen and plumbing facilities, central heat and common areas. "Alternate living arrangements" include, but is not limited to: transitional

facilities for the homeless; Class A, B, C, D, and E boarding homes, as regulated by the New Jersey Department of Community Affairs; residential health care facilities as regulated by the New Jersey Department of Health; group homes for the developmentally disabled and mentally ill as licensed and/or regulated by the New Jersey Department of Human Services; and congregate living arrangements.

ASSISTED LIVING RESIDENCE

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.

BOROUGH

The Borough of Fort Lee, Bergen County, New Jersey.

CERTIFIED HOUSEHOLD

A household that has been certified by an administrative agent as a very low-income, low-income household or moderate-income household.

COAH OR COUNCIL

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

COMMISSIONER

The Commissioner of Community Affairs.

CONSTRUCTION

New construction and additions, but does not include alterations, reconstruction, renovations, and repairs as those terms are defined under the State Uniform Construction Code promulgated pursuant to the State Uniform Construction Code Act, P.L. 1975, c. 217 (N.J.S.A. 52:27D-119 et seq.).

DCA

The State of New Jersey Department of Community Affairs.

DEFICIENT HOUSING UNIT

A housing unit with health and safety code violations that require the repair or replacement of a major system. A major system includes

weatherization, roofing, plumbing (including wells), heating, electricity, sanitary plumbing (including septic systems), lead paint abatement and/or load bearing structural systems.

DEVELOPER

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

DEVELOPMENT

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

DEVELOPMENT FEE

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

EQUALIZED ASSESSED VALUE

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

FAIR SHARE PLAN

The plan that described the mechanisms and the funding sources, if applicable, by which a municipality proposes to address its affordable housing obligation as established in the Housing Element, including the draft ordinances necessary to implement that plan, and addresses the requirements of N.J.A.C. 5:93.

FHA

The New Jersey Fair Housing Act, N.J.S.A. 52:27D-301 et seq.

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 PLAN ELEMENT

The portion of the Borough's Master Plan required by the Municipal Land Use Law (MLUL), N.J.S.A. 40:55D-28b(3) and other legislation.

INCLUSIONARY DEVELOPMENT

A development containing both affordable units and market rate units. This term includes, but is not necessarily limited to: new construction, the conversion of a nonresidential structure to residential use and the creation of new affordable units through the gut rehabilitation or reconstruction of a vacant residential structure.

INCOME

Revenue and receipts, actual or fairly imputed, from all sources, including but not limited to wages, interest, dividends, social security, pensions, government benefits, alimony, child support and rents from income property.

LOW-INCOME HOUSEHOLD

A household with a total gross annual household income equal to 50% or less of the regional median household income by household size.

LOW-INCOME UNIT

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

MAJOR SYSTEM

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

MARKET-RATE UNITS

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

MEDIAN INCOME

The median income by household size for the applicable housing region, as adopted annually by COAH or a successor entity approved by the New Jersey Superior Court.

MIXED-USE DEVELOPMENT

Any development which includes both a nonresidential 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 nonresidential 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 nonresidential development, or both, or otherwise to contribute resources to the development; and 2) the residential and nonresidential 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.

MODERATE-INCOME HOUSEHOLD

A household with a total gross annual household income in excess of 50% but less than 80% of the regional median household income by household size.

MODERATE-INCOME UNIT

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

NONEXEMPT SALE

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.

NONRESIDENTIAL 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 promulgated to effectuate the State Uniform Construction Code Act, P.L. 1975, c. 217 (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, P.L. 1986, c. 103 (N.J.S.A. 52:27D-330 et seq.).

NONRESIDENTIAL DEVELOPMENT FEE

The fee authorized to be imposed pursuant to Sections 32 through 38 of P.L. 2008, c. 46 (N.J.S.A. 40:55D-8.1 through 40:55D-8.7).

RANDOM SELECTION PROCESS

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

RECREATIONAL FACILITIES AND COMMUNITY CENTER

Any indoor or outdoor buildings, spaces, structures, or improvements intended for active or passive recreation, including but not limited to ball fields, meeting halls, and classrooms, accommodating either organized or informal activity; and "senior center" means any recreational facility or community center with activities and services oriented towards serving senior citizens.

REGIONAL ASSET LIMIT

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

REHABILITATION

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

RENT

The gross monthly cost of a rental unit to the tenant, including the rent paid to the landlord, as well as an allowance for tenant-paid utilities

computed in accordance with allowances published by DCA for its Section 8 program. In assisted living residences, rent does not include charges for food and services.

RESTRICTED UNIT

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

SPECIAL MASTER

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

SPENDING PLAN

A method of allocating funds collected and to be collected pursuant to an approved municipal development fee ordinance, or pursuant to P.L. 2008, c. 46 (N.J.S.A. 52:27D-329.1 et seq.) for the purpose of meeting the housing needs of low- and moderate-income individuals.

TREASURER

The Treasurer of the State of New Jersey.

UHAC

The Uniform Housing Affordability Controls set forth in N.J.A.C. 5:80-26, et seq.

VERY-LOW-INCOME HOUSEHOLD

A household with a total gross annual household income equal to 30% or less of the regional median household income by household size.

VERY-LOW-INCOME UNIT

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

WEATHERIZATION

Building insulation (for attic, exterior walls and crawl space), siding to improve energy efficiency, replacement storm windows, replacement storm doors, replacement windows and replacement doors, and is considered a major system for purposes of a rehabilitation program.

D. **Applicability.**

- (1) The provisions of this Ordinance shall apply to all affordable housing developments and affordable housing units that currently exist and that are proposed to be created within the Borough of Fort Lee pursuant to the Borough's most recently adopted Housing Element and Fair Share Plan.
- (2) Moreover, this Ordinance shall apply to all developments that contain very low-, low- and moderate-income housing units, including any currently unanticipated future developments that will provide very low-, low-, and moderate-income housing units and including any developments funded with low-income housing tax credits.

E. **Borough-wide mandatory set-aside.**

- (1) Any future multifamily development of five (5) or more new housing units in the Borough developed through municipal rezoning; Planning Board approval, Zoning Board approval, redevelopment or rehabilitation plan is required to include an affordable housing set aside of at least 10% of all units.
- (2) For all affordable units:
 - a At least 50% of the units in each development shall be affordable to low-income and very low-income households including 13% in rental developments affordable to very low-income households.
 - b The required bedroom distribution shall be governed by controls on affordability and affirmatively marketed in conformance with the Uniform Housing Affordability Controls ("UHAC"), N.J.A.C. 5:80-26.1 et seq. or any successor regulation, and all other applicable law.
 - c Fractional obligations may be satisfied by payments-in-lieu contributions or by rounding up for fractions of .5 units or more, at the sole discretion of the Borough; and
 - d Other than such fractional obligations, affordable housing obligations must only be satisfied by on-site construction or off-site units, either of which shall be provided in concert with the market rate units being developed in accordance with the phasing schedule provided for in N.J.A.C. 5:93-5.6(d).
- (3) Off-site Units: At the Borough's sole discretion, a developer may arrange to provide some or all required affordable units at a different site than the market-rate units. In such instances, the developer shall be subject to the following provisions:

- a All provisions governing the provision of affordable units off-site shall be set forth in a developer's agreement.
 - b The calculation of the required affordable housing set-aside shall be done based on the total of all market-rate units being provided on-site plus the required affordable units being provided off-site.
 - c The affordable units must be provided according to the phasing schedule above.
 - d Payments-in-Lieu of Construction: No developer may make a payment in lieu of constructing affordable units, except for fractional units as provided for above. ~~However, a developer can make a payment for unallocated affordable units under the Borough's control.~~
- (4) Developers shall not subdivide a project for the purpose of avoiding compliance with this requirement.
- (5) This requirement does not give any developer the right to any such rezoning, variance or other relief, or establish any obligation on the part of Fort Lee Borough to grant such rezoning, variance or other relief. No subdivision shall be permitted or approved for the purpose of avoiding compliance with this requirement.

F. Alternative Living Arrangements.

- (1) The administration of an alternative living arrangement shall be in compliance with N.J.A.C. 5:93-5.8 and UHAC, with the following exceptions:
- a Affirmative marketing (N.J.A.C. 5:80-26.15), provided, however, that the units or bedrooms may be affirmatively marketed by the provider in accordance with an alternative plan approved by the Court;
 - b Affordability average and bedroom distribution (N.J.A.C. 5:80-26.3).
- (2) With the exception of units established with capital funding through a 20-year operating contract with the Department of Human Services, Division of Developmental Disabilities, alternative living arrangements shall have at least 30-year controls on affordability in accordance with UHAC, unless an alternative commitment is approved by the Court.
- (3) The service provider for the alternative living arrangement shall act as the Administrative Agent for the purposes of administering the affirmative

marketing and affordability requirements for the alternative living arrangement.

G. Phasing Schedule for Inclusionary Housing Projects.

- (1) The following general guidelines apply to all newly constructed inclusionary housing developments. Final site plan or subdivision approval shall be contingent upon the inclusionary development meeting the following phasing schedule for very low-, low- and moderate-income units.

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%

H. New Construction.

- (1) Design.
- a In inclusionary developments, to the extent possible, very low-, low- and moderate-income units shall be integrated with the market units, and not situated so as to be concentrated in separate building(s) or in separate area(s) or floor(s) from the market-rate units. In inclusionary developments that are greater than three floors, no more than fifty (50) percent of any floor's units shall be very low-, low- and moderate-income units, and there should not be a concentration of certain income levels or bedroom sizes on certain floors. In buildings with multiple dwelling units, this shall mean that the affordable units shall be generally distributed within each building with market-rate units.
 - b In inclusionary developments, the residents of very low-, low- and moderate-income units shall have full and equal access to all of the same entryways, amenities, common areas, and recreation as the market units. Any amenities included in the rent for market rate units shall also be included in the rent for affordable units, any amenities that have an optional fee for market rate units may also have the same optional fee for affordable units.

- (2) Low/moderate split and bedroom distribution of affordable housing units.
- a 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 deemed a low-income unit. At least 13% of all restricted rental units within each bedroom distribution shall be very low-income units (affordable to a household earning 30% or less of regional median income by household size). The very low-income units shall be counted as part of the required number of low-income units within the development.
 - b In each affordable development, at least 50% of the restricted units within each bedroom distribution shall be very low- or low-income units.
 - c Affordable developments that are not age-restricted shall be structured in conjunction with realistic market demands such that:
 - [1] The combined number of efficiency and one-bedroom units shall be no greater than 20% of the total low- and moderate-income units;
 - [2] At least 30% of all low- and moderate-income units shall be two-bedroom units;
 - [3] At least 20% of all low- and moderate-income units shall be three-bedroom units; and
 - [4] The remaining units may be allocated among two- and three-bedroom units at the discretion of the developer.
 - d 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. This standard may be met by having all one-bedroom units or by having a two-bedroom unit for each efficiency unit.
- (3) Accessibility requirements.
- a 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 the following:
 - b 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:

- [1] An adaptable toilet and bathing facility on the first floor; and
- [2] An adaptable kitchen on the first floor; and
- [3] An interior accessible route of travel on the first floor; and
- [4] 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
- [5] If not all of the foregoing requirements in b(1) through b(4) can be satisfied, then an interior accessible route of travel must be provided between stories within an individual unit, but if all of the terms of paragraphs b(1) through b(4) above have been satisfied, then an interior accessible route of travel shall not be required between stories within an individual unit; and
- [6] An accessible entranceway as set forth at P.L. 2005, c. 350 (N.J.S.A. 52:27D-311a, et seq.) and the Barrier Free Subcode, N.J.A.C. 5:23-7 or evidence that the Borough of Fort Lee 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 Fort Lee'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 Subsection [6][b] above shall be used by the Borough of Fort Lee for the sole purpose of making the adaptable entrance of an 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 Fort Lee.

[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 that the cost estimate of such conversion is reasonable, payment shall be made to Fort Lee's Affordable Housing Trust Fund in care of the Municipal Chief Financial Officer/Treasurer, who shall ensure that the funds are deposited into the Affordable Housing Trust Fund and appropriately earmarked for use in accordance with the provisions of this subsection.

[5] 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.

(4) Maximum rents and sales prices.

- a In establishing rents and sales prices of affordable housing units, the Administrative Agent shall follow the procedures set forth in UHAC, utilizing the most recently published regional weighted average of the uncapped Section 8 income limits published by HUD and the calculation procedures as approved by the Court.
- b 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.
- c The developers and/or municipal sponsors of restricted rental units shall establish at least one rent for each bedroom type for both low-income and moderate-income units, provided that at least 13% of all low- and moderate-income rental units shall be affordable to very low-income households earning no more than 30% of median

income. Very low-income units shall be part of the low-income requirement.

- d 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.
- e In determining the initial sales prices and rents for compliance with the affordability average requirements for restricted units other than Assisted Living facilities and Age-Restricted developments, the following standards shall be used:
 - [1] A studio shall be affordable to a one-person household;
 - [2] A one-bedroom unit shall be affordable to a one-and-one-half person household;
 - [3] A two-bedroom unit shall be affordable to a three-person household;
 - [4] A three-bedroom unit shall be affordable to a four-and-one-half person household; and
 - [5] A four-bedroom unit shall be affordable to a six-person household.
- f In determining the initial rents for compliance with the affordability average requirements for restricted units in Assisted Living facilities and Age-Restricted developments, the following standards shall be used:
 - [1] A studio shall be affordable to a one-person household;
 - [2] A one-bedroom unit shall be affordable to a one-and-one-half person household; and
 - [3] A two-bedroom unit shall be affordable to a two-person household or to two one-person households.
- g The initial purchase price for all restricted ownership units shall be calculated so that the monthly carrying cost of the unit, including

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

- h 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, including an allowance for tenant paid utilities, 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.
- i 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.
- j The rents of very low-, low- and moderate-income units may be increased annually based on the permitted percentage increase in the Housing Consumer Price Index for the Northeast Urban Area. This increase shall not exceed 9 percent in any one year. Rent increases for units constructed pursuant to low-income housing tax credit regulations shall be indexed pursuant to the regulations governing low-income housing tax credits.

I. Utilities.

- (1) Affordable units shall utilize the same type of heating source as market units within an inclusionary development.
- (2) In affordable units, tenant-paid utilities included in the utility allowance shall be set forth in the lease and shall be consistent with the utility allowance approved by HUD for the Section 8 program.

J. Occupancy Standards.

- (1) In referring certified households to specific restricted units, the Administrative Agent shall, to the extent feasible and without causing an undue delay in the occupancy of a unit, strive to:
 - a Provide an occupant for each bedroom;
 - b Provide children of different sexes with separate bedrooms;
 - c Provide separate bedrooms for parents and children; and
 - d Prevent more than two persons from occupying a single bedroom.

K. Control periods for restricted ownership units and enforcement mechanisms.

- (1) 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 section for a period of at least thirty (30) years, until the Borough of Fort Lee takes action to release the unit from such requirements; prior to such action, 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.
- (2) The affordability control period for a restricted ownership unit shall commence on the date the initial certified household takes title to the unit.
- (3) 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 nonrestricted, fair market value of the unit based on either an appraisal or the unit's equalized assessed value without restrictions in place.
- (4) 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 nonexempt sale after the unit's release from the requirements as set forth in this Ordinance, an amount equal to the difference between the unit's nonrestricted 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.
- (5) 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.

- (6) 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 removal of the restrictions provided under N.J.A.C. 5:80-26.5(a), as may be amended and supplemented.

L. **Price Restrictions for Restricted Ownership Units, Homeowners' 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:

- (1) The initial purchase price for a restricted ownership unit shall be approved by the Administrative Agent.
- (2) The Administrative Agent shall approve all resale prices, in writing and in advance of the resale, to assure compliance with the foregoing standards.
- (3) The master deeds of inclusionary developments shall provide no distinction between the condominium or homeowner association fees and special assessments paid by low- and moderate-income purchasers and those paid by market purchasers.
- (4) The owners of restricted ownership units may apply to the Administrative Agent to increase the maximum sales price for the unit on the basis of anticipated capital improvements. Eligible capital improvements shall be those that render the unit suitable for a larger household or the addition of a bathroom.

M. **Buyer Income Eligibility.**

- (1) 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 very low-income ownership units shall be reserved for households with a gross household income less than or equal to 30% of median income, 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.
- (2) Notwithstanding the foregoing, the Administrative Agent may, upon approval by the Mayor and Council, and subject to the Court's approval, permit a moderate-income purchaser to buy a low-income unit if and only if the Administrative Agent can demonstrate that there is an insufficient number of eligible low-income purchasers in the housing region to permit

prompt occupancy of the unit and all other reasonable efforts to attract a low-income purchaser, including pricing and financing incentives, have failed. Any such low-income unit that is sold to a moderate-income household shall retain the required pricing and pricing restrictions for a low-income unit.

- (3) A certified household that purchases a restricted ownership unit must occupy it as the certified household's principal residence and shall not lease the unit; provided, however, that the Administrative Agent may permit the owner of a restricted ownership unit, upon application and a showing of hardship, to lease the restricted unit to another certified household for a period not to exceed one year.
- (4) The Administrative Agent shall certify a household as eligible for a restricted ownership unit when the household is a very low-income household, 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 homeowners' association fees, as applicable) does not exceed 33 percent of the household's certified, eligible monthly income.

N. Limitations on Indebtedness Secured by Ownership Unit; Subordination.

- (1) Prior to incurring any indebtedness to be secured by a restricted ownership unit, the owner shall apply to the Administrative Agent for a determination in writing that the proposed indebtedness complies with the provisions of this section, and the Administrative Agent shall issue such determination prior to the owner incurring such indebtedness.
- (2) With the exception of original purchase money mortgages, neither an owner nor a lender shall at any time cause or permit the total indebtedness secured by a restricted ownership unit to exceed 95% of the maximum allowable resale price of that unit, as such price is determined by the administrative agent in accordance with N.J.A.C. 5:80-26.6(b).

O. Capital Improvements to Ownership Units.

- (1) 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 made since the purchase of the unit. Eligible capital improvements shall be those that render the unit suitable for a larger household or that add an additional bathroom. In no event shall the

maximum sales price of an improved housing unit exceed the limits of affordability for the larger household.

- (2) Upon the resale of a restricted ownership unit, all items of property that are permanently affixed to the unit or were included when the unit was initially restricted (for example, refrigerator, range, washer, dryer, dishwasher, wall-to-wall carpeting) shall be included in the maximum allowable resale price. Other items may be sold to the purchaser at a reasonable price that has been approved by the Administrative Agent at the time of signing of the agreement to purchase. The purchase of central air conditioning installed subsequent to the initial sale of the unit and not included in the base price may be made a condition of the unit resale provided the price, which shall be subject to 10-year, straight-line depreciation, has been approved by the Administrative Agent. Unless otherwise approved by the Administrative Agent, the purchase of any property other than central air conditioning shall not be made a condition of the unit resale. The owner and the purchaser must personally certify at the time of closing that no unapproved transfer of funds for the purpose of selling and receiving property has taken place at the time of or as a condition of resale.

P. Control Periods for Restricted Rental Units.

- (1) 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 section for a period of at least 30 years, until the Borough of Fort Lee takes action to release the unit from such requirements. Prior to such action, 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.
- (2) 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 recorded by the developer or seller with the land records office of Bergen County. A copy of the filed, recorded document shall be provided to the Administrative Agent within 30 days of the receipt of a Certificate of Occupancy.
- (3) A restricted rental unit shall remain subject to the affordability controls of this Ordinance, despite the occurrence of any of the following events:
 - a Sublease or assignment of the lease of the unit;

- b Sale or other voluntary transfer of the ownership of the unit; or
- c The entry and enforcement of any judgment of foreclosure on the property containing the unit.

Q. **Price Restrictions for Rental Units; Leases.**

- (1) A written lease shall be required for all restricted rental units, except for units in assisted living residences, 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.
- (2) 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.
- (3) Application fees (including the charge for any credit check) shall not exceed 5 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.
- (4) No rent control ordinance or other pricing restriction shall be applicable to the affordable units in any development in which at least 15 percent of the total number of dwelling units are restricted rental units in compliance with this Ordinance.

R. **Tenant Income Eligibility.**

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

- (2) The Administrative Agent shall certify a household as eligible for a restricted rental unit when the household is a very-low-income household, a 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:
- a 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;
 - b The household has consistently paid more than 35% (40% for households eligible for age-restricted units) of eligible monthly income for rent in the past and has proven its ability to pay;
 - c The household is currently in substandard or overcrowded living conditions;
 - d The household documents the existence of assets with which the household proposes to supplement the rent payments; or
 - e The household documents reliable anticipated 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.
- (3) The applicant shall file documentation sufficient to establish the existence of the circumstances in (1)(a) through (2)(e) above with the Administrative Agent, who shall counsel the household on budgeting.

§ 410-87. Administration.

A. Municipal housing liaison.

- (1) The position of Municipal Housing Liaison ("MHL") for the Borough of Fort Lee is established by this section. The Borough shall appoint a specific municipal employee to serve as a MHL responsible for overseeing the Borough's affordable housing program, including overseeing the administration of affordability controls on the affordable units and the affirmative marketing of available affordable units in accordance with the Borough's Affirmative Marketing Plan; fulfilling monitoring and reporting requirements; and supervising Administrative Agent(s). The governing body shall adopt a resolution appointing the MHL who may be a full or

part time municipal employee. The MHL shall be approved by the Court and shall be duly qualified through a training program sponsored by Affordable Housing Professionals of New Jersey before assuming the duties of MHL.

- (2) The Municipal Housing Liaison shall be responsible for oversight and administration of the affordable housing program for the Borough of Fort Lee, including the following responsibilities, which may not be contracted out to the Administrative Agent.
 - a Serving as the municipality's primary point of contact for all inquiries from the State, affordable housing providers, Administrative Agents, and interested households;
 - b Monitoring the status of all restricted units in the Fort Lee's Fair Share Plan;
 - c Compiling, verifying, submitting and posting all monitoring reports as required by the Superior Court and by this Ordinance;
 - d Coordinating meetings with affordable housing providers and administrative agents, as applicable; and
 - e Attending continuing education opportunities on affordability controls, compliance monitoring and affirmative marketing annually and more often as needed.

B. **Administrative Agent.** The Borough shall designate one or more Administrative Agent(s) to administer and to affirmatively market the affordable units constructed in the Borough in accordance with UHAC and this Ordinance. An operating manual for each affordable housing program shall be provided by the Administrative Agent(s) to be adopted by resolution of the Borough Council and subject to approval of the Superior Court. The operating manual(s) shall be available for public inspection in the office of the Borough Clerk, in the office of the Municipal Housing Liaison, and in the office(s) of the Administrative Agent(s). The Municipal Housing Liaison shall supervise the work of the Administrative Agent(s). An Administrative Agent shall be an independent entity serving under contract to and reporting to the municipality. The fees of the Administrative Agent shall be paid by the owners of the affordable units for which the services of the Administrative Agent are required. The Administrative Agent shall perform the duties and responsibilities of an Administrative Agent set forth in UHAC, including those set forth in Sections 5:80-26.14, 16 and 18 thereof, which includes:

- (1) Affirmative Marketing:

- a Conducting an outreach process to affirmatively market affordable housing units in accordance with the Affirmative Marketing Plan of the Borough of Fort Lee and the provisions of N.J.A.C. 5:80-26.15; and
 - b Notifying the following entities of the availability of affordable housing units in the Borough of Fort Lee: Fair Share Housing Center, the New Jersey State Conference of the NAACP; the Latino Action Network, Bergen County NAACP, Bergen County Urban League, and Bergen County Housing Coalition.
- (2) Household certification:
- a Soliciting, scheduling, conducting and following up on interviews with interested households;
 - b Conducting interviews and obtaining sufficient documentation of gross income and assets upon which to base a determination of income eligibility for a very low-, low- or moderate-income unit;
 - c Providing written notification to each applicant as to the determination of eligibility or non-eligibility;
 - d Requiring that all certified applicants for restricted units execute a certificate substantially in the form, as applicable, of either the ownership or rental certificates set forth in Appendixes J and K of N.J.A.C. 5:80-26.1 et seq.;
 - e Creating and maintaining a referral list of eligible applicant households living in the housing region and eligible applicant households with members working in the housing region where the units are located (Housing Region 1) comprising Bergen, Passaic, Hudson, and Sussex Counties;
 - f Employing the random selection process as provided in the Affirmative Marketing Plan of the Borough when referring households for certification to affordable units; and
 - g Providing counseling or contracting to provide counseling services to very low-, low- and moderate-income applicants on subjects such as budgeting, credit issues, mortgage qualification, rental lease requirements, and landlord/tenant law.
- (3) Affordability controls.

- a Furnishing to attorneys or closing agents forms of deed restrictions and mortgages for recording at the time of conveyance of title of each restricted unit;
 - b Creating and maintaining a file on each restricted unit for its control period, including the recorded deed with restrictions, recorded mortgage and note, as appropriate;
 - c Ensuring that the removal of the deed restrictions and cancellation of the mortgage note are effectuated and properly filed with the appropriate county's Registrar of Deeds or County Clerk's office after the termination of the affordability controls for each restricted unit;
 - d Communicating with lenders regarding foreclosure; and
 - e Ensuring the issuance of continuing certificates of occupancy or certifications pursuant to N.J.A.C. 5:80-26.10.
- (4) Resale and Re-rental:
- a Instituting and maintaining an effective means of communicating information between owners and the Administrative Agent regarding the availability of restricted units for resale or rental; and
 - b Instituting and maintaining an effective means of communicating information to very low-, low- and moderate-income households regarding the availability of restricted units for resale or re-rental.
- (5) Processing requests from unit owners:
- a Reviewing and approving requests from owners of restricted units who wish to take out home equity loans or refinance during the term of their ownership that the amount of indebtedness to be incurred will not violate the terms of this Ordinance;
 - b Reviewing and approving requests to increase sales prices from owners of restricted units who wish to make capital improvements to the units that would affect the selling price, such authorizations to be limited to those improvements resulting in additional bedrooms or bathrooms and the depreciated cost of central air-conditioning systems;
 - c Notifying the municipality of an owner's intent to sell a restricted unit; and

- d Making determinations on requests by owners of restricted units for hardship waivers.

(6) Enforcement:

- a Securing annually from the municipality a list of all affordable housing units for which tax bills are mailed to absentee owners, and notifying all such owners that they must either move back to their unit or sell it;
- b Securing from all developers and sponsors of restricted units, at the earliest point of contact in the processing of the project or development, written acknowledgment of the requirement that no restricted unit can be offered, or in any other way committed, to any person, other than a household duly certified to the unit by the Administrative Agent;
- c Posting annually, in all rental properties, including two-family homes, a notice as to the maximum permitted rent together with the telephone number of the administrative agent where complaints of excess rent or other charges can be made;
- d Sending annual mailings to all owners of affordable dwelling units, reminding them of the notices and requirements outlined in N.J.A.C. 5:80-26.18(d)4;
- e Establishing a program for diverting unlawful rent payments to the municipality's Affordable Housing Trust Fund; and
- f Creating and publishing a written operating manual for each affordable housing program administered by the Administrative Agent, to be approved by the Mayor and Council and the Court, setting forth procedures for administering the affordability controls.

(7) Additional Responsibilities:

- a The Administrative Agent shall have authority to take all actions necessary and appropriate to carry out its responsibilities hereunder.
- b The Administrative Agent shall prepare monitoring reports for submission to the Municipal Housing Liaison in time to meet the Court-approved monitoring and reporting requirements in accordance with the deadlines set forth in this Ordinance.

- c The Administrative Agent shall attend continuing education sessions on affordability controls, compliance monitoring, and affirmative marketing at least annually and more often as needed.

C. Affirmative Marketing.

- (1) The Borough of Fort Lee shall adopt by resolution an Affirmative Marketing Plan, subject to approval of the Court, that is in compliance with N.J.A.C. 5:80-26.15 and the FHA, as may be amended and supplemented.
- (2) 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 Housing Region 1 and is required to be followed throughout the period of restriction.
- (3) The Affirmative Marketing Plan shall provide a regional preference for all households that live and/or work in Housing Region 1, comprised of Bergen, Hudson, Passaic, and Sussex Counties.
- (4) The municipality has the ultimate responsibility for adopting the Affirmative Marketing Plan and for the proper administration of the Affirmative Marketing Plan, including initial sales and rentals and resales and re-rentals. The Administrative Agent designated by the Borough of Fort Lee shall implement the Affirmative Marketing Plan to assure the affirmative marketing of all affordable units.
- (5) In implementing the Affirmative Marketing Plan, the Administrative Agent shall provide a list of counseling services to very low-, low- and moderate-income applicants on subjects such as budgeting, credit issues, mortgage qualification, rental lease requirements, and landlord/tenant law.
- (6) The Affirmative Marketing Plan shall describe the media to be used in advertising and publicizing the availability of housing. In implementing the Affirmative Marketing Plan, the Administrative Agent shall consider the use of language translations where appropriate.
- (7) The affirmative marketing process for available affordable units shall begin at least four months (120 days) prior to the expected date of occupancy.

- (8) Applications for affordable housing shall be available in several locations, including, at a minimum, the County Administration Building and/or the County Library for each county within the housing region; the municipal administration building and the municipal library in the municipality in which the units are located; and the developer's rental office. Applications shall be mailed to prospective applicants upon request.
- (9) In addition to other affirmative marketing strategies, the Administrative Agent shall provide specific notice of the availability of affordable housing units in Fort Lee, and copies of the application forms, to the following entities: Fair Share Housing Center, the New Jersey State Conference of the NAACP, the Latino Action Network, Bergen County NAACP, Bergen County Urban League, and Bergen County Housing Coalition.
- (10) The costs of advertising and affirmative marketing of the affordable units shall be the responsibility of the developer, sponsor or owner.

D. **Enforcement of Affordable Housing Regulations.**

- (1) 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,, 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.
- (2) After providing written notice of a violation to an owner, developer or tenant of a very low-, 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(s) against the owner, developer or tenant for any violation that remains uncured for a period of 60 days after service of the written notice.
 - a 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:

- [1] A fine of not more than \$500 per day or imprisonment for a period not to exceed 90 days, or both, provided that 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;
- [2] In the case of an owner who has rented his or her very low-, low- or moderate-income unit in violation of the regulations governing affordable housing units, payment into the Borough of Fort Lee Affordable Housing Trust Fund of the gross amount of rent illegally collected;
- [3] In the case of an owner who has rented his or her very low-, 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.

b 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 very low-, low- or moderate-income unit.

- [1] Such judgment shall be enforceable, at the option of the municipality, by means of an execution sale by the Sheriff, at which time the very low-, 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.
- [2] 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 very low-, 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.

- [3] 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 very low-, 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.
- [4] 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 very low-, 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.

[5] Failure of the very low-, 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 very low-, low- and moderate-income unit as permitted by the regulations governing affordable housing units.

[6] 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.

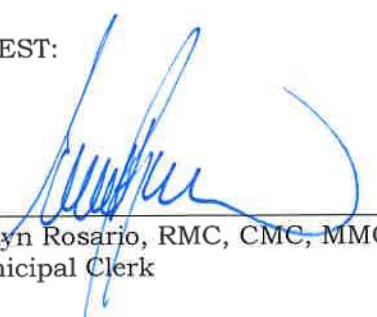
E. **Appeals:** Appeals from all decisions of an Administrative Agent appointed pursuant to this Ordinance shall be filed, in writing, with the Superior Court.

Section 2. If any section or provision of this Ordinance shall be held invalid in any court of competent jurisdiction, the same shall not affect the other sections or provisions of this Ordinance, except so far as the section or provision so declared invalid shall be inseparable from the remainder of any portion thereof.

Section 3. All ordinances or parts of ordinances inconsistent with this Ordinance are hereby repealed to the extent of such inconsistency.

Section 4. This Ordinance shall take effect upon final adoption and publication in accordance with Law.

ATTEST:



Evelyn Rosario, RMC, CMC, MMC
Municipal Clerk

BOROUGH OF FORT LEE



Mark Sokolich, Mayor