

**BOROUGH OF MAYWOOD
COUNTY OF BERGEN**

ORDINANCE NO. 17-23

AN ORDINANCE OF THE BOROUGH OF MAYWOOD, COUNTY OF BERGEN AND STATE OF NEW JERSEY ADDING CHAPTER 211 "AFFORDABLE HOUSING" TO THE CODE OF THE BOROUGH OF MAYWOOD TO ADDRESS THE REQUIREMENTS OF THE NJ SUPERIOR COURT

Section 1: Chapter 210, **Development Fee Program to Support Affordable Housing**, is hereby repealed and reserved.

Section 2: There is hereby created a new chapter, Chapter 211, to be titled **Affordable Housing**, to read as follows:

**Chapter 211
AFFORDABLE HOUSING**

[Chapter 210 Development Fee Program to Support Affordable Housing is hereby repealed and reserved and by Ordinance No. 18-13 and included in and made part of Chapter 211 Article IV Development Fees.]

ARTICLE I

General Program Purposes, Procedures

§211-1. Affordable Housing Obligation.

- A. This section of the Borough Code sets forth regulations regarding the low and moderate income housing units in the Borough consistent with the provisions known as the "Substantive Rules of the New Jersey Council on Affordable Housing", *N.J.A.C. 5:93 et seq.*, as amended and supplemented, the Uniform Housing Affordability Controls ("UHAC"), *N.J.A.C. 5:80-26.1 et seq.*, as amended and supplemented, except where modified by the requirements for very-low income housing as established in P.L. 2008, c.46 (the "Roberts Bill", codified at N.J.S.A. 52:27D-329.1) as reflected in the terms of a Settlement Agreement between the Borough and Fair Share Housing Center ("FSHC") such that the statutory requirement to provide very-low income units equal to 13% of affordable units approved and constructed after July 17, 2008, to be affordable to households at 30% of the regional median income, overrides the UHAC requirement that 10% of all low- and moderate-income units must be affordable at 35% of the regional median income, and the Borough's constitutional obligation to provide a fair share of affordable housing for low and moderate income households.
- B. This Ordinance is intended to assure that very-low, low- and moderate-income units ("affordable units") are created with controls on affordability over time and that very-low, low- and moderate-income households shall occupy these units. This Ordinance shall apply to all inclusionary developments and 100% affordable developments (including those funded with low-income housing tax credit financing) except where inconsistent with applicable law.
- C. The Maywood Borough 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 Plan has also been endorsed by the Borough Council of the Borough of Maywood. The Fair Share Plan describes the ways the Borough shall address its fair share for low- and moderate-income housing as determined by the Superior Court and documented in the Housing Element.

- D. This Ordinance implements and incorporates the Fair Share Plan and addresses the requirements of *N.J.A.C. 5:93-1*, et seq., as amended and supplemented, *N.J.A.C. 5:80-26.1* et seq., as amended and supplemented, and the New Jersey Fair Housing Act of 1985.
- E. Beginning on October 18, 2022, and on every anniversary of that date through July 1, 2025, the Borough agrees to provide an annual reporting of its Affordable Housing Trust Fund activity to the New Jersey Department of Community Affairs, Committee on Affordable Housing, or Local Government Services, or other entity designated by the State of New Jersey, with a copy provided to FSHC and posted on the municipal website, using forms developed for this purpose by the New Jersey Department of Community Affairs (NJDCA), Committee on Affordable Housing (COAH), or Local Government Services (NJLGS). The reporting shall include an accounting of all Affordable Housing Trust Fund activity, including the source and amount of funds collected and the amount and purpose for which any funds have been expended.
- F. Beginning on October 18, 2022, and on every anniversary of that date through July 27, 2025, the Borough will provide annual reporting of the status of all affordable housing activity within the municipality through posting on the municipal website with a copy of such posting provided to all parties to the Borough's Court-approved Settlement Agreements, using forms previously developed for this purpose by the Council on Affordable Housing or any other forms endorsed by the Special Master and FSHC.
- G. The Fair Housing Act includes two provisions regarding action to be taken by the Borough during the period of protection provided in the Borough's Court-approved agreement with FSHC. The Borough agrees to comply with those provisions as follows:
 - 1. By July 1, 2022, the Borough must prepare a midpoint realistic opportunity review, as required pursuant to N.J.S.A. 52:27D-313, which the Borough will post on its municipal website, with a copy provided to FSHC, a status report as to its implementation of its Plan and an analysis of whether any unbuilt sites or unfulfilled mechanisms continue to present a realistic opportunity. Such posting shall invite any interested party to submit comments to the municipality, with a copy to FSHC, regarding whether any sites no longer present a realistic opportunity and should be replaced and whether any mechanisms to meet unmet need should be revised or supplemented. Any interested party may by motion request a hearing before the Court regarding these issues. In the event the Court determines that a site or mechanism no longer presents a realistic opportunity and should be replaced or supplemented, then the municipality shall have the opportunity to supplement or revise its plan to correct any deficiency.
 - 2. Within 30 days of October 18, 2022 and every third year thereafter, the Borough shall prepare a review of compliance with the very-low income housing requirements required by N.J.S.A. 52:27D-329.1 and its Court-approved Settlement Agreement with FSHC. The Borough will post on its municipal website, with a copy provided to FSHC, a status report as to its satisfaction of its very-low income requirements, including the family very-low income requirements referenced herein and in the Borough's Settlement Agreement with FSHC. Such posting shall invite any interested party to submit comments to the municipality and FSHC on the issue of whether the municipality has complied with its very-low income and family very low-income housing obligation.

§211-2. Definitions.

As used herein the following terms shall have the following meanings:

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

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

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

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

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

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

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

"Affordable housing development" means a development included in 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 development.

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

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

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

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

"Alternative living arrangement" means a structure in which households live in distinct bedrooms, yet share kitchen and plumbing facilities, central heat and common areas. Alternative living arrangements include,

but are not limited to: transitional facilities for the homeless, Class A, B, C, D, and E boarding homes as regulated by the New Jersey Department of Community Affairs; residential health care facilities as regulated by the New Jersey Department of Health; group homes for the developmentally disabled and mentally ill as licensed and/or regulated by the New Jersey Department of Human Services; and congregate living arrangements.

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

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

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

"COAH or the "COUNCIL" means The New Jersey Council on Affordable Housing established under the Fair Housing Act.

"DCA" means the State of New Jersey Department of Community Affairs.

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

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

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

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

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

"Green Building Strategies" means those strategies that minimize the impact of development on the environment and enhance the health, safety and well-being of residents by producing durable, low-maintenance, resource-efficient housing while making optimum use of existing infrastructure and community services.

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

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

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

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

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

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

"Median income" means the median income by household size for the applicable housing region, as adopted annually by COAH or a successor entity approved by the NJ Superior Court.

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

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

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

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

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

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

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

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

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

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

"Very-low income household" means a household with a total gross annual household income equal to 30% or less of the regional median household income by household size.

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

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

§211.3 Applicability

- A. The provisions of this Ordinance shall apply to all affordable housing units that currently exist and that are proposed to be created within the Borough of Maywood pursuant to the Borough's most recently adopted Housing Element and Fair Share Plan.
- B. Moreover, this Ordinance shall apply to all developments that contain low- and moderate-income housing units, including any currently unanticipated future developments that will provide low- and moderate-income housing units and including any developments funded with low-income housing tax credits.
- C. For inclusionary projects in which the low and moderate units are to be offered for sale, the appropriate set-aside percentage is 20 percent; for projects in which the low- and moderate-income units are to be offered for rent, the appropriate set-aside percentage is 15 percent.

§211-4. Mandatory Affordable Housing Set-Aside.

- A. Except as otherwise regulated in this chapter, any multifamily residential development or redevelopment application in any zoning district proposing five (5) or more new dwelling units will be required, in the case of for-sale projects, to set aside twenty percent (20%) of these units for affordable housing, and in the case of rental projects, to set aside fifteen percent (15%) of these units for affordable to low-and -moderate-income households.
- B. This requirement applies to all new multi-family residential developments of five (5) or more units that become permissible through either a use variance, a density variance increasing the permissible density at the site, a rezoning permitting multi-family residential housing where not previously permitted, or the adoption of a new or amended redevelopment plan or rehabilitation plan.
- C. All subdivision and site plan approvals of qualifying developments shall be conditioned upon compliance with the provisions of the mandatory affordable housing set-aside.

- D. This requirement does not apply to residential expansions, additions, renovations, replacements, or any other type of residential development that does not result in a net increase of five or more in the number of dwellings.
- E. This requirement does not give a developer the right to any rezoning, variance, or other relief, or establish any obligation on the part of the Borough to grant any rezoning, variance, or other relief. Property may not be permitted to be subdivided so as to avoid compliance with the requirements of this section.
- F. All affordable housing units built as required by this section will comply with the requirements of Chapter 211 and any other applicable provision the Maywood Municipal Code relating to affordable housing, and shall fully comply with the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.1, et seq. ("UHAC"), including but not limited to the required bedroom and income distribution, with the sole exception that for inclusionary projects with more than four (4) affordable units at least thirteen percent (13%) of the affordable units shall be required to be restricted for very-low-income households earning thirty percent (30%) or less of the median income pursuant to the Fair Housing Act, N.J.S.A. 52:27D-301, et seq. ("FHA").
- G. At least fifty percent (50%) of the affordable units within each bedroom distribution shall be affordable to low-income households, inclusive of the at least thirteen percent (13%) of units affordable to very-low-income households for inclusionary projects with more than four (4) affordable units.
- H. The very-low-income affordable units shall be proportionately distributed within each bedroom distribution. In a family non-age-restricted development, at no time shall the number of efficiency/one-bedroom very-low-income units exceed the number of three-bedroom very-low-income units.
- I. Affordable units shall be integrated with the market-rate units on-site, and the affordable units shall not be concentrated in separate building(s) or in separate area(s) or floor(s) from the market-rate units. In buildings with multiple dwelling units, this shall mean that the affordable units shall be generally distributed within each building with market-rate units. The affordable units shall also be of the same type as the market-rate units (e.g., if the market-rate units are non-age-restricted family units, the affordable units shall be non-age-restricted family units as well). The residents of the affordable units shall have full and equal access to all of the amenities, common areas, and recreation areas and facilities as the residents of the market-rate units.
- J. Affordable units shall be subject to affordability controls of at least thirty (30) years from the date of initial occupancy and affordable deed restrictions as otherwise provided for by UHAC, with the sole exception that very low income shall be defined as at or below thirty percent (30%) of median income pursuant to the Fair Housing Act, and the affordability controls shall remain unless and until the municipality, in its sole discretion, takes action to extend or release the unit from such controls after at least thirty (30) years. In the event the municipality chooses to release the controls on rental affordable units after at least thirty (30) years, the controls shall remain in effect until the voluntary departure of the occupant household in accordance with N.J.A.C. 5:80-26.11(b).
- K. Construction of the affordable and market units shall be phased in compliance with N.J.A.C. 5:93-5.6(d).
- L. Affordable units shall be affirmatively marketed in accordance with UHAC and applicable law. The affirmative marketing shall include posting of all affordable units on the New Jersey Housing Resource Center website in accordance with applicable law.
- M. No developer may make a payment in lieu of constructing affordable units on site, except for fractional units as noted in Paragraph O, below.
- N. Nothing in this Ordinance precludes the municipality from imposing an affordable housing set-aside in accordance with applicable law in a development not required to have a set-aside pursuant to this Ordinance.

- O. In the event that the inclusionary set-aside percentage (15% or 20%) of the total number of residential units does not result in a full integer, the developer may choose one of two options of addressing the fractional unit:
1. The developer shall round the set-aside upward to construct a whole additional affordable unit; or
 2. If the set-aside includes a fractional unit equal to 0.49 or less, the developer may round the set-aside downward and construct the lesser whole number of affordable units but must also make a payment in-lieu of constructing the fractional additional unit ("fractional payment in-lieu").
 - (a) The fractional payment in-lieu amount shall be calculated as the fractional unit multiplied by the base payment in-lieu dollar amount established in §211-5.I.1 of the Borough Code.
 3. For Example: If seven (7) total units are developed at an inclusionary site, a 20% set-aside would require 1.4 affordable units. Per the requirements above:
 - (a) The developer shall round up the 0.4 unit to one (1) whole affordable unit so as to construct a total of two (2) affordable housing units, in accordance with §211-4.O.1; or
 - (b) In accordance with §211-4.O.2, the developer shall round the set-aside downward so as to construct only (1) affordable unit AND shall pay into the Borough's affordable housing trust fund a fractional in-lieu payment equal to the dollar amount established in §211-5.I.1 multiplied by 0.4 units.

§211-5. New Construction. The following requirements shall apply to all new or planned developments that contain low- and moderate- income housing units.

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

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

- B. Each unit of affordable housing shall require a certificate of occupancy, which shall become void upon a change of owner or tenant.
- C. No certificate of occupancy shall be issued for a low and moderate income unit unless the provisions of N.J.A.C. 5:93-9.3, or superseding administrative code, are met.
- D. The facade of an affordable housing dwelling shall be indistinguishable from those of market units in terms of the use of exterior materials, windows, doors, reveal, roof pitch, color, or other material. Affordable housing units shall be fully integrated with market rate housing to the greatest extent

feasible and shall have access to open space and site amenities comparable to that of market rate units, unless otherwise approved by the Municipal Housing Liaison.

E. For inclusionary developments with a single housing type, the affordable housing units shall have the same tenure as the market housing units.

F. Design. In inclusionary developments, to the extent possible, low- and moderate-income units shall be integrated with the market units, and not situated so as to be in less desirable locations than the other units in the development. This shall mean that low- and moderate-income units shall not be concentrated in separate building(s) or in separate area(s) from the market-rate units. In buildings with multiple dwelling units, this shall mean that the low- and moderate-income units shall be generally distributed within each building with market units. The residents of the low- and moderate-income units shall have full and equal access to all of the amenities, common areas, and recreation areas and facilities as the residents of the market-rate units.

G. In inclusionary developments, very low-, low- and moderate-income residents shall have and enjoy access equal to the market units to all common open space(s) and elements, amenities, public facilities, shopping facilities, and public transportation than the market units.

H. In inclusionary developments, the low- and moderate-income units shall be of the same average square footage and design as market-rate units of the same bedroom size.

I. Fractional Payments-in-lieu. The constructing affordable units, shall

Commented [EC1]: FYI, I think you cover the possibility of off-site construction above under the mandatory set-aside provisions when you specify that a certain percentage of "these units." So I don't think we need to say specifically that no off-site units are permitted. Happy to be convinced otherwise if you feel as though it should be added I specifically.

1. The base dollar amount of the fractional payment in lieu of constructing an affordable unit at the time of adoption of this Ordinance shall be \$180,267.00. This amount shall be adjusted periodically by the Borough to reflect the most current and accurate market conditions or better cover the cost to the Borough to subsidize affordable housing construction. The payment shall be imposed as a condition of development approval by the Joint Land Use Board.

2. During the development approval process, a developer may demonstrate to the Governing Body that the actual construction cost of an affordable unit less estimated capitalized revenue at the development in question is lower than the imposed payment in-lieu in §211-5.I.1. At its discretion, the Governing Body may impose a lower payment in-lieu amount equal or proximate to the amount estimated by the developer.

J. Utilities.

1. Affordable units shall utilize the same type of heating source as market units within an inclusionary development.

2. 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

K. Low/Moderate Split and Bedroom Distribution of Affordable Housing Units:

1. The fair share obligation shall be divided equally between low- and moderate-income units, except that where there is an odd number of affordable housing units, the extra unit shall be a low-income unit. 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 the 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.

2. In each affordable development, at least 50% of the restricted units within each bedroom distribution shall be very low or low-income units.
3. Affordable developments that are not age-restricted shall be structured in conjunction with realistic market demands such that:
 - (a) The combined number of efficiency and one-bedroom units shall be no greater than 20% of the total low- and moderate-income units;
 - (b) At least 30% of all low- and moderate-income units shall be two bedroom units;
 - (c) At least 20% of all low- and moderate-income units shall be three-bedroom units; and
 - (d) The remaining units may be allocated among two- and three-bedroom units at the discretion of the developer.
4. Affordable developments that are age-restricted shall be structured such that the number of bedrooms shall equal the number of age-restricted low- and moderate-income units within the inclusionary development. The standard may be met by having all one-bedroom units or by having a two-bedroom unit for each efficiency unit.

L. Accessibility Requirements:

1. The first floor of all new 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:
2. All restricted townhouse dwelling units and all restricted units in other multistory buildings in which a restricted dwelling unit is attached to at least one (1) other dwelling unit shall have the following features:
 - (a) An adaptable toilet and bathing facility on the first floor;
 - (b) An adaptable kitchen on the first floor;
 - (c) An interior accessible route of travel on the first floor;
 - (d) An 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
 - (e) If not all of the foregoing requirements in 2.(a) through 2.(d) 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 in paragraphs 2.(a) through

2.(d) above have been satisfied, then an interior accessible route of travel shall not be required between stories within an individual unit; and

(f) An accessible entranceway as set forth at P.L. 2005, c. 350

(*N.J.S.A. 52:27D-311a et seq.*) and the Barrier Free Subcode, *N.J.A.C. 5:23-7*, or evidence that the Borough has collected funds from the developer sufficient to make 10% of the adaptable entrances in the development accessible:

(1) Where a unit has been constructed with an adaptable entrance, upon the request of a disabled person who is purchasing or will reside in the dwelling unit, an accessible entrance shall be installed.

(2) To this end, the builder of restricted units shall deposit funds within the Borough of Maywood's affordable housing trust fund sufficient to install accessible entrances in 10% of the affordable units that have been constructed with adaptable entrances.

(3) The funds deposited under paragraph (f)(2) herein, shall be used by the Borough 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.

(4) The developer of the restricted units shall submit a design plan and cost estimate for the conversion from adaptable to accessible entrances to the Construction Official of the Borough of Maywood.

(5) Once the Construction Official has determined that the design plan to convert the unit entrances from adaptable to accessible meet the requirements of the Barrier Free Subcode, *N.J.A.C. 5:23-7*, and that the cost estimate of such conversion is reasonable, payment shall be made to the Borough of Maywood's affordable housing trust fund in care of the Borough Treasurer who shall ensure that the funds are deposited into the affordable housing trust fund and appropriately earmarked.

(6) Full compliance with the foregoing provisions shall not be required where an entity can demonstrate that it is "site impracticable" to meet the requirements. Determinations of site impracticability shall be in compliance with the Barrier Free Subcode, *N.J.A.C. 5:23-7*.

§211-6. 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 and by the Superior Court, 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% of median income, and the average rent for restricted

low- and moderate-income units shall be affordable to households earning no more than 52% of median income.

- 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, which 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% of median income, and each affordable development must achieve an affordability average of 55% for restricted ownership units; in achieving this affordability average, moderate-income ownership units must be available for at least three different prices for each bedroom type, and low-income ownership units must be available for at least two different sales prices for each bedroom type.
- E. In determining the initial sales prices and rent levels for compliance with the affordability average requirements for restricted units other than assisted living facilities age-restricted developments, the following standards shall be used:
 - 1. A studio or efficiency unit 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 sales prices and 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:
 - (a) A studio or efficiency unit shall be affordable to a one-person household;
 - (b) A one-bedroom unit shall be affordable to a one- and one-half-person household; and
 - (c) A two-bedroom unit shall be affordable to a two-person household or to two 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 homeowner association fees do not exceed 28% of the eligible monthly income of the appropriate size household as determined under *N.J.A.C. 5:80-26.4*, as may be amended and supplemented; provided, however, that the price shall be subject to the affordability average requirement of *N.J.A.C. 5:80-26.3*, as may be amended and supplemented.
- H. The initial rent for a restricted rental unit shall be calculated so as not to exceed 30% of the eligible monthly income of the appropriate household size, 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. Income limits for all units for which income limits are not already established through a federal program exempted from the Uniform Housing Affordability Controls pursuant to *N.J.A.C. 5:80-26.1* shall be updated by the Borough annually within 30 days of the publication of determinations of median income by HUD as follows:
 1. Regional income limits shall be established for the Region 1 based on the median income by household size, which shall be established by a regional weighted average of the uncapped Section 8 income limits published by HUD. To compute this regional income limit, the HUD determination of median county income for a family of four is multiplied by the estimated households within the county according to the most recent decennial Census. The resulting product for each county within the housing region is summed. The sum is divided by the estimated total households from the most recent decennial Census in Region 1. This quotient represents the regional weighted average of median income for a household of four. The income limit for a moderate-income unit for a household of four shall be 80 percent of the regional weighted average median income for a family of four. The income limit for a low-income unit for a household of four shall be 50 percent of the HUD determination of the regional weighted average median income for a family of four. The income limit for a very-low income unit for a household of four shall be 30 percent of the regional weighted average median income for a family of four. These income limits shall be adjusted by household size based on multipliers used by HUD to adjust median income by household size. In no event shall the income limits be less than those for the previous year.
 - a. The income limits calculated each year shall be the result of applying the percentages set forth in paragraph (a) above to HUD's determination of median income for the relevant fiscal year and shall be utilized until the Borough updates the income limits after HUD has published revised determinations of median income for the next fiscal year.
 - b. The Regional Asset Limit used in determining an applicant's eligibility for affordable housing pursuant to *N.J.A.C. 5:80-26.16(b)3* shall be calculated by the Borough annually by taking the percentage increase of the income limits calculated pursuant to paragraph (a) above over the previous year's income limits, and applying the same percentage increase to the Regional Asset Limit from the prior year. In no event shall the Regional Asset Limit be less than that for the previous year.
- K. The rent levels 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, upon its publication for the prior calendar year. This increase shall not exceed nine percent

in any one year. Rents for units constructed pursuant to low-income housing tax credit regulations shall be indexed pursuant to the regulations governing low-income housing tax credits.

- L. Tenant-paid utilities that are included in the utility allowance shall be so stated in the lease and shall be consistent with the utility allowance approved by DCA for its Section 8 program.

ARTICLE II

Affordable Unit Controls and Requirements

§211-7. Purpose.

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

§211-8. Occupancy Standards.

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

§211-9. Selection of Occupants of Affordable Housing Units.

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

§211-10. Control Periods for Restricted Ownership Units and Enforcement Mechanisms.

- A. Control periods for restricted ownership units shall be in accordance with *N.J.A. C. 5:80-26.5*, and each restricted ownership unit shall remain subject to the controls on affordability for a period of at least 30 years, until the municipality takes action to release the controls on affordability.
- B. Rehabilitated owner-occupied housing units that are improved to code standards shall be subject to affordability controls for a period of 10 years.
- C. The affordability control period for a restricted ownership unit shall commence on the date the initial certified household takes title to the unit.
- D. Prior to the issuance of the initial certificate of occupancy for a restricted ownership unit and upon each successive sale during the period of restricted ownership, the Administrative Agent shall determine the restricted price for the unit and shall also determine the non-restricted, fair market value of the unit based on either an appraisal or the unit's equalized assessed value without the restrictions in place.
- E. At the time of the initial sale of the unit, the initial purchaser shall execute and deliver to the Administrative Agent a recapture note obligating the purchaser (as well as the purchaser's heirs, successors, and assigns) to repay, upon the first non-exempt sale after the unit's release from the restrictions set forth in this Ordinance, an amount equal to the difference between the unit's non-restricted fair market value and its restricted price, and the recapture note shall be secured by a recapture lien evidenced by a duly recorded mortgage on the unit.
- F. 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.
- G. A restricted ownership unit shall be required to obtain a Continuing Certificate of Occupancy or a certified statement from the Construction Official stating that the unit meets all code standards upon the first transfer of title that follows the expiration of the applicable minimum control period provided under *N.J.A.C. 5:80-26.5(a)*, as may be amended and supplemented.

§211-11. Price Restrictions for Restricted Ownership Units, Homeowner Association Fees and Resale Prices.

Price restrictions for restricted ownership units shall be in accordance with *N.J.A.C. 5:8026.1*, as may be amended and supplemented, including:

- A. The initial purchase price for a restricted ownership unit shall be approved by the Administrative Agent.
- B. The Administrative Agent shall approve all resale prices, in writing and in advance of the resale, to assure compliance with the foregoing standards.
- C. The method used to determine the condominium association fee amounts and special assessments shall be indistinguishable between the low- and moderate-income unit owners and the market unit owners.
- D. The master deeds of inclusionary developments shall provide no distinction between condominium or homeowner association fees and special assessments paid by low- and moderate-income purchasers and those paid by market purchasers.

- E. 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.

§211-12. Buyer Income Eligibility.

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

§211-13. Limitations on indebtedness secured by ownership unit; subordination.

- A. 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.
- B. With the exception of First 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)*.

§211-14. Condominium and Homeowners Association Fees.

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

§211-15. Capital Improvements to Ownership Units

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.

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 the 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 a 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.

§211-16. Control Periods for Restricted Rental Units.

- A. Control periods for restricted rental units shall be in accordance with *N.J.A.C. 5:80-26.11*, as may be amended and supplemented, and each restricted rental unit shall remain subject to the requirements of this Ordinance for a period of at least 30 years, until Maywood 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.
 - 1. Restricted rental units created as part of developments receiving nine percent (9%) Low Income Housing Tax Credits must comply with a control period of not less than a 30-year compliance period plus a 15-year extended use period.
- B. Rehabilitated renter-occupied housing units that are improved to code standards shall be subject to affordability controls for a period of 10 years.
- C. Deeds of all real property that include restricted rental units shall contain deed restriction language. The deed restriction shall have priority over all mortgages on the property, and the deed restriction shall be filed by the developer or seller with the records office of the County of Bergen. A copy of the filed document shall be provided to the Administrative Agent within 30 days of the receipt of a Certificate of Occupancy.
- D. A restricted rental unit shall remain subject to the affordability controls of this Ordinance, despite the occurrence of any of the following events:
 - 1. Sublease or assignment of the lease of the unit;
 - 2. Sale or other voluntary transfer of the ownership of the unit; or

3. The entry and enforcement of any judgment of foreclosure on the property containing the unit.

§211-17. Price Restrictions for Rental Units; Leases.

- A. A written lease shall be required for all restricted rental units, except for units in an assisted living residence, and tenants shall be responsible for security deposits and the full amount of the rent as stated on the lease. A copy of the current lease for each restricted rental unit shall be provided to the Administrative Agent.
- B. No additional fees or charges shall be added to the approved rent (except, in the case of units in an assisted living residence, to cover the customary charges for food and services) without the express written approval of the Administrative Agent.
- C. Application fees (including the charge for any credit check) shall not exceed 5% of the monthly rent of the applicable restricted unit and shall be payable to the Administrative Agent to be applied to the costs of administering the controls applicable to the unit as set forth in this Ordinance.
- D. No rent control ordinance or other pricing restriction shall be applicable to either the market units or the affordable units in any development in which at least 15% of the total number of dwelling units are restricted rental units in compliance with this Ordinance.

§211-18. Tenant Income Eligibility.

- A. Tenant income eligibility shall be in accordance with *N.J.A.C. 5:80-26.13*, as may be amended and supplemented, and shall be determined as follows:
 1. Very-low-income rental units shall be reserved for households with a gross household income less than or equal to 30% of the regional median household income by household size.
 2. Low-income rental units shall be reserved for households with a gross household income less than or equal to 50% of the regional median household income by household size.
 3. Moderate-income rental units shall be reserved for households with a gross household income less than 80% of the regional median household income by household size.
- B. The Administrative Agent shall certify a household as eligible for a restricted rental unit when the household is a very-low-income, low-income household or a moderate-income household, as applicable to the unit, and the rent proposed for the unit does not exceed 35% (40% for age-restricted units) of the household's eligible monthly income as determined pursuant to *N.J.A.C. 5:80-26.16*, as may be amended and supplemented; provided, however, that this limit may be exceeded if one or more of the following circumstances exists:
 1. The household currently pays more than 35% (40% for households eligible for age-restricted units) of its gross household income for rent, and the proposed rent will reduce its housing costs;

2. 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;
 3. The household is currently in substandard or overcrowded living conditions;
 4. The household documents the existence of assets with which the household proposes to supplement the rent payments; or
 5. The household documents 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.
- C. The applicant shall file documentation sufficient to establish the existence of the circumstances in (B)1 through 5 above with the Administrative Agent, who shall counsel the household on budgeting.

§211-19. Conversions.

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

§211-20. Alternative Living Arrangements.

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

ARTICLE III
Administration

§211-21. Municipal Housing Liaison.

- A. The position of Municipal Housing Liaison for the Borough of Maywood is hereby established. The Municipal Housing Liaison shall be appointed by duly adopted resolution of the Borough Council and be subject to the approval by the Superior Court. The Borough of Maywood shall appoint a specific municipal employee to serve as a Municipal Housing Liaison 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). Maywood shall adopt an Ordinance creating the position of Municipal Housing Liaison and a Resolution appointing the person to fulfill the position of Municipal Housing Liaison. The Municipal Housing Liaison shall be appointed by the governing body and may be a full or part time employee.
- B. The Municipal Housing Liaison must be duly qualified through a training program sponsored by Affordable Housing Professionals of New Jersey and meet the requirements for qualifications, including initial and periodic training found in *N.J.A.C. 5:93* before assuming the duties of Municipal Housing Liaison.
- C. The Municipal Housing Liaison shall be responsible for oversight and administration of the affordable housing program for the Borough of Maywood, including the following responsibilities which may not be contracted out to the Administrative Agent:
1. Serving as the municipality's primary point of contact for all inquiries from the State, affordable housing providers, Administrative Agents and interested households;
 2. The implementation of the Affirmative Marketing Plan and affordability controls.
 3. When applicable, supervising any contracting Administrative Agent.
 4. Monitoring the status of all restricted units in the Borough of Maywood's Fair Share Plan;
 5. Compiling, verifying and submitting annual reports as required by the Superior Court;
 6. Coordinating meetings with affordable housing providers and Administrative Agents, as needed; and
 7. Attending continuing education opportunities on affordability controls, compliance monitoring and affirmative marketing at least annually and more often as needed.
- D. Subject to the approval of the Court, the Borough of Maywood 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 governing body and subject to approval of the 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).

§211-22. Administrative Agent.

- A. The Borough shall designate by resolution of the Borough Council, subject to the approval of the Superior Court, one or more Administrative Agents to administer newly constructed affordable units in accordance with *N.J.A.C. 5:93* and UHAC. 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.
- B. An Operating Manual shall be provided by the Administrative Agent(s) to be adopted by resolution of the governing body and subject to approval of the Superior Court. The Operating Manuals shall be available for public inspection in the Office of the Municipal Clerk and in the office(s) of the Administrative Agent(s).
- C. An Operating Manual shall be provided by the Administrative Agent(s) to be adopted by resolution of the governing body and subject to approval of the Superior Court. The Operating Manuals shall be available for public inspection in the Office of the Municipal Clerk and in the office(s) of the Administrative Agent(s). The Borough Administrative Agent shall monitor the designated Administrative Agent of the developer in the initial sales and rental transactions for low- and moderate-income dwellings in accordance with *N.J.A.C. 5:80-26.14*, as it may be amended or superseded. The developer's administrative agent shall have all of responsibilities as put forth in this rule. After the initial sales and rental transactions, the Borough Administrative Agent shall monitor the activities of the developer's or owner's Administrative Agent for any re-sales or rentals. If the person is the Borough's Administrative Agent, then he or she shall assume all of the duties and responsibilities set forth in *N.J.A.C. 5:80-26.14* following the initial renting, sales and occupancy of low- and moderate-income dwellings. The affordability controls set forth in this Article shall be administered and enforced by the Administrative Agent regardless of association. The primary responsibility of the Administrative Agent shall be to ensure that the restricted units are sold or rented, as applicable, only to low- and moderate-income households in accordance with the Fair Housing Act.
- D. The Administrative Agent, whether the Borough's representative, developer's agent, or a delegated agent, shall have the responsibility to income qualify low and moderate-income households, to place income eligible households in low- and moderate-income units upon initial occupancy, to provide for the initial occupancy of low- and moderate-income units with income qualified households, to continue to qualify households for re-occupancy of units as they become vacant during the period of affordability controls, to assist with advertising and outreach to low- and moderate-income households, and to enforce the terms of the deed restriction and mortgage loan. All Administrative Agents shall provide counseling services to low- and moderate-income applicants on subjects such as budgeting, credit issues, mortgage qualification, rental lease requirements and landlord/tenant law.
- E. The Municipal Housing Liaison shall supervise the work of the Administrative Agent(s) and shall coordinate his or her activities with the Borough Administrative Agent to ensure the accurate tracking of the progress of the occupancy of affordable housing in the municipality, answer inquiries regarding affordable housing from the public or direct same to the appropriate official or agency, and comply with the affordable housing monitoring and reporting requirements of the state.

- F. The Borough Council may establish a reasonable fee to program participants for the administration of the affordability controls program. 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.
- G. In order to ensure an orderly transfer of control responsibility from a municipality to an Administrative Agent, from one Administrative Agent to another Administrative Agent, or other transfer, the requirements as set forth in N.J.A.C. 5:80-26.17 shall apply as are necessary before or during the transition. The Administrative Agent's enforcement responsibility for implementing such practices and procedures shall not be delegated or otherwise transferred to any other party, except to a successor administrative agent.
- H. By accepting state funds for affordable housing purposes, or by submitting to the jurisdiction of the court, the Borough of Maywood shall be deemed to have delegated to the Administrative Agent the day-to-day responsibility for implementing practices and procedures designated to ensure effective compliance with the controls set forth in this Article. The governing body of the municipality, however, shall retain the ultimate responsibility for ensuring effective compliance with the requirements as set forth in UHAC and any settlement agreements pertaining to affordable housing matters.
- I. The Administrative Agent shall perform the duties and responsibilities of an administrative agent as are set forth in UHAC and which are described in full detail in the Operating Manual, including those set forth in *N.J.A.C. 5:80-26.14, 16 and 18* thereof, which includes:
1. Attending continuing education opportunities on affordability controls, compliance monitoring, and affirmative marketing as offered or approved by the Superior Court;
 2. Affirmative Marketing:
 - a. Conducting an outreach process to affirmatively market affordable housing units in accordance with the Affirmative Marketing Plan of the Borough of Maywood and the provisions of N.J.A.C. 5:80-26.15; and
 - b. Providing counseling or contracting to provide counseling services to low- and moderate-income applicants on subjects such as budgeting, credit issues, mortgage qualification, rental lease requirements, and landlord/tenant law.
 3. 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 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 Appendices 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;
 - f. Employing a random selection process as provided in the Affirmative Marketing Plan of the Borough of Maywood when referring households for certification to affordable units; and

- g. Notifying the following entities of the availability of affordable housing units in the Borough of Maywood: Fair Share Housing Center, the New Jersey State Conference of the NAACP, the Latino Action Network, NORWESCAP, the New Jersey Resource Center, and the Supportive Housing Association.
4. 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 Bergen County Register of Deeds or Bergen County Clerk's office after the termination of the affordability controls for each restricted unit;
 - d. Communicating with lenders regarding foreclosures; and
 - e. Ensuring the issuance of Continuing Certificates of Occupancy or certifications pursuant to N.J.A.C. 5:80-26.10.
 5. Records retention;
 6. Resales and re-rentals:
 - 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 re-rental; and
 - b. Instituting and maintaining an effective means of communicating information to low- (or very low-) and moderate-income households regarding the availability of restricted units for resale or re-rental.
 7. Processing requests from unit owners:
 - a. Reviewing and approving requests for determination 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.
 8. Enforcement, although the ultimate responsibility for retaining controls on the units rests with the municipality:
 - 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 acknowledgement 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 Borough Council and the Court, setting forth procedures for administering the affordability controls.
9. Additional Responsibilities:
- a. The Administrative Agent shall have the 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.

§211-23. Affirmative Marketing Requirements

- A. The Borough of Maywood shall adopt by resolution an Affirmative Marketing Plan, subject to the approval of the Court that is compliant with N.J.A.C. 5:80-26.15, as may be amended and supplemented.
- B. The Affirmative Marketing Plan is a regional marketing strategy designed to attract buyers and/or renters of all majority and minority groups, regardless of race, creed, color, national origin, ancestry, marital or familial status, gender, affectional or sexual orientation, disability, age or number of children to housing units which are being marketed by a developer, sponsor or owner of affordable housing. The Affirmative Marketing Plan is 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 marketing activities toward Housing Region 3 and is required to be followed throughout the period of restriction.
- C. The Affirmative Marketing Plan shall provide a regional preference for all households that live and/or work in Housing Region 1, comprising of Bergen, Hudson, Passaic and Sussex Counties.
- D. The municipality has the ultimate responsibility for adopting the Affirmative Marketing Plan and for the proper administration of the Affirmative Marketing Program, including initial sales and rentals and resales and re-rentals. The Administrative Agent designated by the Borough of Maywood shall implement the Affirmative Marketing Plan to assure the affirmative marketing of all affordable units.
- E. In implementing the Affirmative Marketing Plan, the Administrative Agent shall provide a list of counseling services to low- and moderate-income applicants on subjects such as budgeting, credit issues, mortgage qualification, rental lease requirements, and landlord/tenant law.
- F. The Affirmative Marketing 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.

- G. The affirmative marketing process for available affordable units shall begin at least four months (120 days) prior to the expected date of occupancy.
- H. 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.
- I. In addition to other affirmative marketing strategies, the Administrative Agent shall provide specific notice of the availability of affordable housing units in Maywood, 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, STEPS, NORWESCAP, the New Jersey Housing Resource Center, and the Supportive Housing Association.
- J. The costs of advertising and affirmative marketing of the affordable units shall be the responsibility of the developer, sponsor or owner.

§211-24. Enforcement of Affordable Housing Regulations.

- A. Upon the occurrence of a breach of any of the regulations governing the affordable unit by an Owner, Developer or Tenant, the municipality shall have all remedies provided at law or equity, including but not limited to foreclosure, tenant eviction, municipal fines, a requirement for household recertification, acceleration of all sums due under a mortgage, recoupment of any funds from a sale in the violation of the regulations, injunctive relief to prevent further violation of the regulations, entry on the premises, and specific performance.
- B. After providing written notice of a violation to an Owner, Developer or Tenant of a low- or moderate-income unit and advising the Owner, Developer or Tenant of the penalties for such violations, the municipality may take the following action(s) against the Owner, Developer or Tenant for any violation that remains uncured for a period of 60 calendar days after service of the written notice:
 - 1. The municipality may file a court action pursuant to *N.J.S.A. 2A:58-11* alleging a violation, or violations, of the regulations governing the affordable housing unit. If the Owner, Developer or Tenant is found by the court to have violated any provision of the regulations governing affordable housing units the Owner, Developer or Tenant shall be subject to one or more of the following penalties, at the discretion of the court:
 - (a) A fine of not more than \$500.00 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;
 - (b) In the case of an Owner who has rented his or her low- or moderate-income unit in violation of the regulations governing affordable housing units, payment into the Borough of Maywood Affordable Housing Trust Fund of the gross amount of rent illegally collected;
 - (c) In the case of an Owner who has rented his or her low- or moderate-income unit in violation of the regulations governing affordable housing units,

payment of an innocent tenant's reasonable relocation costs, as determined by the court.

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

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

- (b) The proceeds of the Sheriff's sale shall first be applied to satisfy the First Purchase Money Mortgage lien and any prior liens upon the low- and moderate-income unit. The excess, if any, shall be applied to reimburse the municipality for any and all costs and expenses incurred in connection with either the court action resulting in the judgment of violation or the Sheriff's sale. In the event that the proceeds from the Sheriff's sale are insufficient to reimburse the municipality in full as aforesaid, the violating Owner shall be personally responsible for the full 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.

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

- (d) If there are no bidders at the Sheriff's sale, or if insufficient amounts are bid to satisfy the First Purchase Money Mortgage and any prior liens, the municipality may acquire title to the low- and moderate-income unit by satisfying the First Purchase Money Mortgage and any prior liens and crediting the violating owner with an amount equal to the difference between the First Purchase Money Mortgage and any prior liens and costs of the enforcement proceedings, including

legal fees and the maximum resale price for which the low- and moderate-income unit could have been sold under the terms of the regulations governing affordable housing units. This excess shall be treated in the same manner as the excess which would have been realized from an actual sale as previously described.

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

(f) 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.

§211-25. Appeals. Appeals from all decisions of an Administrative Agent designated pursuant to this Ordinance shall be filed in writing with the Superior Court.

Article IV
Development Fees

§211-26. Purpose

- A. This Ordinance establishes standard for the collection, maintenance, and expenditure of development fees that are consistent with COAH's regulations developed in response to P.L. 2008, c. 46, Sections 8 and 32-38 (C. 52:27D-329.2) and the Statewide Non-Residential Development Fee Act (C. 40:55D-8.1 through 8.7). Fees collected pursuant to this Ordinance shall be used for the sole purpose of providing very low-, low- and moderate-income housing.
- B. Basic Requirements
 - 1. This Ordinance shall not be effective until approved by the Court.
 - 2. The Borough of Maywood shall not spend development fees until the Court has approved a plan for spending such fees (Spending Plan).

§211-27. Residential development fees.

- A. Imposed fees.
 - (1) Within the Borough, all residential developers, except for developers of the types of developments specifically exempted below and developers of developments that include affordable housing, shall pay a fee of 1.5% of the equalized assessed value for all new residential development, provided no increased density is permitted. Development fees shall also be imposed and collected when an additional dwelling unit is added to an existing residential structure; in such cases, the fee shall be calculated based on the increase in the equalized assessed value of the property due to the additional dwelling unit.
 - (2) When an increase in residential density pursuant to N.J.S.A. 40:55D-70d(5) (known as a "d" variance) has been permitted, developers shall be required to pay a "bonus" development fee of 6% of the equalized assessed value for each additional unit that may be realized, except that this provision shall not be applicable to a development that will include affordable housing. 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 "d" variance application.
- B. Eligible exactions, ineligible exactions and exemptions for residential development.
 - (1) Affordable housing developments and/or developments where the developer has made a payment in lieu of on-site construction of affordable units, if permitted by Ordinance or by Agreement with the Borough of Maywood, shall be exempt from the payment of residential development fees.
 - (2) Developments that have received preliminary or final site plan approval prior to the adoption of this municipal development fee chapter and any preceding Ordinance permitting the collection of development fees shall be exempt from the payment of development fees, unless the developer seeks a substantial change in the original approval. Where a site plan approval does not apply, the issuance of a zoning and/or building permit shall be synonymous with preliminary or final site plan approval for the purpose of determining the right to an exemption. In all cases, the applicable fee percentage shall be determined based on the Development Fee Ordinance in effect on the date that the Construction Permit is issued.
 - (3) Any repair, reconstruction or improvement of a structure, the cost of which is less than 50% of the market value of the structure before the improvement or repair is started shall be exempt

from the payment of development fees. For purposes of this section, "market value" shall mean the equalized assessed value of the existing improvement as established by the Township Tax Assessor. The cost of the repair, reconstruction or improvements shall be determined by an itemized construction cost estimate prepared and submitted to the Construction Official. The estimate shall be signed and sealed by an architect or professional engineer licensed by the State of New Jersey, or where no such professionals are retained, signed by the contractor or the homeowner. Where prepared by the homeowner or contractor, the Borough Engineer may review such estimates for accuracy. "Substantial improvement" is considered to commence, whether or not alteration affects the external dimensions of the structure. The term does not, however, include either:

- a. Any project for improvement of a structure to comply with existing state or local building, fire, health, sanitary or safety code specifications which are solely necessary to assure safe living conditions; or
 - b. Any alteration of a structure listed on the National Register of Historic Places or a state inventory of historic places but a development fee shall be charged for any new dwelling constructed as a replacement for a previously existing dwelling on the same lot that was or will be demolished, unless the owner resided in the previously dwelling for a period of one year or more prior to obtaining a demolition permit. Where a development fee is charged for a replacement dwelling, the development fee shall be calculated on the increase in the equalized assessed value of the new structure as compared to the previous structure.
- (4) Structural alterations that do not increase gross floor area of a building or structure or increase the equalized assessed value of a property shall be exempted from paying a development fee.
 - (5) Nonprofit organizations constructing residential projects which have received tax-exempt status pursuant to Section 501(c)(3) of 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 charged, shall be exempted from paying a development fee.
 - (6) Federal, state, county and local governments shall be exempted from paying a development fee.
 - (7) Homes replaced as a result of a fire, flood, or natural disaster shall be exempt from paying a residential development fee. (This exemption applies only for the owner of record at the time of the fire, flood, or natural disaster.)

§211-28. Nonresidential development fees.

A. Imposed fees.

- (1) Within all zoning districts, nonresidential developers, except for developers of the types of development specifically exempted, shall pay a fee equal to 2.5 % of the equalized assessed value of the land and improvements, for all new nonresidential construction on an unimproved lot or lots.
- (2) Within all zoning districts, 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 to existing structures to be used for nonresidential purposes.
- (3) 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 improvements, and such calculation shall

be made at the time a final certificate of occupancy is issued. If the calculation required under this section results in a negative number, the nonresidential development fee shall be zero.

- B. Eligible exactions, ineligible exactions and exemptions for nonresidential development.
- (1) The nonresidential portion of a mixed-use inclusionary or market rate development shall be subject to the 2.5 % development fee, unless otherwise exempted below.
 - (2) The fee of 2.5 % shall not apply to an increase in equalized assessed value resulting from alterations, change in use within existing footprint, reconstruction, renovations and repairs.
 - (3) Nonresidential developments shall be exempt from the payment of nonresidential development fees in accordance with the exemptions required pursuant to P.L. 2008, c.46, as specified in the Form N-RDF "State of New Jersey Nonresidential Development Certification/Exemption" Form. Any exemption claimed by a developer shall be substantiated by that developer.
 - (4) A developer of a nonresidential development exempted from the nonresidential development fee pursuant to P.L. 2008, c.46, shall be subject to it at such time the basis for the exemption no longer applies, and shall make the payment of the nonresidential development fee, in that event, within three years after that event or after the issuance of the final certificate of occupancy of the nonresidential development, whichever is later.
 - (5) If a property which was exempted from the collection of a nonresidential 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 nonresidential development fees under these circumstances may be enforceable by the Borough as a lien against the real property of the owner.
 - (6) Federal, state, county and local governments of nonresidential development shall be exempted from paying a development fee.

§211-29. Collection procedures.

- A. Upon the granting of a preliminary, final or other applicable approval for a development, the applicable approving authority shall direct its staff to notify the Borough's construction official responsible for the issuance of a building permit.
- B. For nonresidential developments only, the developer shall also be provided with a copy of Form N-RDG "State of New Jersey Nonresidential Development Certification/Exemption" to be completed as per the instructions provided. The developer of a nonresidential development shall complete Form N-RDF as per the instructions provided. The construction official shall verify the information submitted by the nonresidential developer as per the instructions provided in the Form N-RDF. The tax assessor shall verify exemptions and prepare estimated and final assessments as per the instructions provided in Form N-RDF.
- C. The construction official responsible for the issuance of a building permit shall notify the municipal tax assessor of the issuance of the first building permit for a development which is subject to a development fee.
- D. Within 90 days of receipt of that notice, the municipal tax assessor, based on the plans filed, shall provide an estimate of the equalized assessed value of the development.
- E. The construction official responsible for the issuance of a final certificate of occupancy shall notify the municipal tax assessor of any and all requests for the scheduling of a final inspection on property which is subject to a development fee.
- F. Within 10 business days of a request for the scheduling of a final inspection, the municipal tax assessor shall confirm or modify the previously estimated equalized assessed value of the

improvements associated with the development, calculate the development fee and thereafter notify the construction official and the developer of the amount of the fee.

- G. Should the Borough fail to determine or notify the developer of the amount of the development fee within 10 business days of the request for final inspection, the developer may estimate the amount due and pay that estimated amount consistent with the dispute process set forth in Subsection b. of Section 37 of P.L.2008, c.46 (N.J.S.A. 40:55D-8.6).
- H. Except as provided in §211-24(A)(3) hereinabove, fifty percent of the initially calculated development fee shall be collected at the same time of the issuance of the building permit. The remaining portion shall be collected at the time of issuance of certificate of occupancy. The developer shall be responsible for paying the difference between the fee calculated at the time of issuance of the building permit and that determined at the time of issuance of certificate of occupancy. No certificate of occupancy shall be issued unless and until the fee is paid to the Borough.
- I. Appeal of development fees
 - (1) A developer may challenge residential development fees imposed by filing a challenge with the County Board of Taxation. Pending a review and determination by the Board, collected fees shall be placed in an interest-bearing escrow account by the Borough. Appeals from a determination of the Board may be made to the tax court in accordance with the provisions of the State Tax Uniform Procedure Law, RS.54:48-1 et seq., within 90 days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.
 - (2) A developer may challenge nonresidential development fees imposed by filing a challenge with the Director of the Division of Taxation. Pending a review and determination by the Director, which shall be made within 45 days of receipt of the challenge, collected fees shall be placed in an interest-bearing escrow account by the Borough. Appeals from a determination of the Director may be made to the tax court in accordance with the provisions of the State Tax Uniform Procedure Law, R.S. 54:48-1 et seq., within 90 days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.

§211-30. Affordable housing trust fund.

- A. There has previously been created a separate, interest-bearing housing trust fund which will continue to be maintained by the chief financial officer or other designated municipal employee for the purpose of depositing development fees collected from residential and nonresidential developers and proceeds from the sale of units with extinguished controls.
- B. The following additional funds shall be deposited in the Borough's Affordable Housing Trust Fund and shall at all times be identifiable by source and amount:
 - (1) Payments in lieu of on-site construction of a fraction of an affordable unit where permitted by Ordinance or by Agreement with the Borough of Maywood;
 - (2) Developer-contributed funds to make 10% of the adaptable entrances in a townhouse or other multistory attached dwelling unit development accessible;
 - (3) Rental income from municipally operated units;
 - (4) Repayments from affordable housing program loans;
 - (5) Recapture funds;
 - (6) Proceeds from the sale of affordable units; and
 - (7) Any other funds collected in connection with the Borough's affordable housing program.

- C. In the event of a failure of the Borough of Maywood to comply with trust fund monitoring and reporting requirements or to submit accurate monitoring reports; or a failure to comply with the conditions of the judgment of compliance or a revocation of the judgment of compliance; or a failure to implement the approved Spending Plan and to expend funds within the applicable required time period as set forth in *In re Tp. Of Monroe*, 442 N.J. Super. 565 (Law Div. 2015) (aff'd 442 N.J. Super. 563); or for other good cause demonstrating the unapproved use(s) of funds, the Court may authorize the State of New Jersey, Department of Community Affairs, Division of Local Government Services, to direct the manner in which the funds in the Affordable Housing Trust Fund shall be expended, provided that all such funds shall, to the extent practicable, be utilized for affordable housing programs within the Borough of Maywood, or, if not practicable, then within the County or the Housing Region.
- D. Any party may bring a motion before the Superior Court presenting evidence of such condition(s), and the Court may, after considering the evidence and providing the municipality a reasonable opportunity to respond and/or to remedy the non-compliant condition(s), and upon a finding of continuing and deliberate non-compliance, determine to authorize LGS to direct the expenditure of funds in the Trust Fund or impose such other remedies as may be reasonable and appropriate to the circumstances.
- E. The Borough shall provide COAH and/or the Department of Community Affairs ("DCA") with written authorization in the form of a three-party escrow agreement between the Borough, the bank and COAH and/or DCA to permit COAH and/or DCA to direct the disbursement of the funds as provided for in N.J.A.C. 5:93-8.17. No funds shall be expended by the Borough until this Agreement is executed.
- F. All interest accrued in the housing trust fund shall only be used to fund eligible affordable housing activities approved by order of the Superior Court of New Jersey.

§211-31. Use of Funds.

- A. The expenditure of all funds shall conform to a spending plan approved by the Superior Court of New Jersey. Funds deposited in the housing trust fund may be used for any activity approved by the Superior Court to address the Borough's fair share obligation and may be set up as a grant or revolving loan program. Such activities include, but are not limited to: preservation or purchase of housing for the purpose of maintaining or implementing affordability controls, housing rehabilitation, new construction of affordable housing units and related costs, accessory apartments and market to affordable programs, Regional Housing Partnership programs, conversion of existing nonresidential buildings to create new affordable units, green building strategies designed to be cost saving and in accordance with accepted national or State standards, purchase of land for affordable housing, improvement of land to be used for affordable housing, extensions or improvements of roads and infrastructure to affordable housing sites, financial assistance designed to increase affordability, administration necessary for implementation of the Housing Element and Fair Share Plan or any other activity as permitted pursuant to N.J.A.C. 5:93-8.16, as permitted by the Court and specified in the approved spending plan.
- B. Funds shall not be expended to reimburse the Borough for past housing activities.
- C. At least 30% of all development fees collected and interest earned on such fees shall be used to provide affordability assistance to very low-, low- and moderate-income households in affordable units included in the Borough's Fair Share Plan. One-third of the affordability assistance portion of development fees collected shall be used to provide affordability assistance to those households earning 30% or less of median household income by household size for Housing Region 1, in which Maywood is located.
 - (1) Affordability assistance programs may include down payment assistance, security deposit assistance, low-interest loans, rental assistance, assistance with homeowners' association or condominium fees and special assessments, and assistance with emergency repairs. The specific programs to be used for affordability assistance shall be identified and described within the Spending Plan.

- (2) Affordability assistance to households earning 30% or less of the regional median household income by household size may include buying down the cost of low- or moderate-income units in the Borough's Fair Share Plan to make them affordable to households earning 30% or less of median income. The specific programs to be used for very low-income affordability assistance shall be identified and described within the Spending Plan.
- (3) Payments in lieu of constructing affordable units on site, if permitted by Ordinance or by Agreement with the Borough of Maywood, and funds from the sale of units with extinguished controls shall be exempt from the affordability assistance requirement.
- (4) 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, in accordance with N.J.A.C. 5:93-8.16(d).
- (5) No more than 20% of all revenues collected from development fees may be expended on administration, including, but not limited to, salaries and benefits for Borough employees or consultant fees necessary to develop or implement a new construction program, an updated Housing Element and Fair Share Plan, and/or an affirmative marketing program. In the case of a rehabilitation program, no more than 20% of the revenues collected from development fees shall be expended for such administrative expenses. Administrative funds may be used for income qualification of households, monitoring the turnover of sale and rental units, and compliance with COAH's or the Superior Court's monitoring requirements. Legal or other fees related to litigation opposing affordable housing sites or related to securing or appealing a judgment from the Court are not eligible uses of the affordable housing trust fund.

§211-32. Monitoring.

The Borough of Maywood shall provide annual reporting of Affordable Housing Trust Fund activity to the State of New Jersey, Department of Community Affairs, Council on Affordable Housing or Local Government Services or other entity designated by the State of New Jersey, with a copy provided to Fair Share Housing Center and posted on the municipal website, using forms developed for this purpose by the New Jersey Department of Community Affairs, Council on Affordable Housing or Local Government Services. The reporting shall include an accounting of funds collected and the amounts and purposes for which any funds have been expended. Such reporting shall include an accounting of development fees collected from residential and non-residential developers, payments in lieu of constructing affordable units on site (if permitted by Ordinance or by Agreement with the Borough), funds from the sale of units with extinguished controls, barrier free escrow funds, rental income from Borough owned affordable housing units, repayments from affordable housing program loans, any other funds collected in connection with Maywood's affordable housing programs, as well as an accounting of the expenditures of revenues and implementation of the Spending Plan approved by the Court.

§211-33. Ongoing Collection of Fees.

The ability for the Borough to impose, collect and expend development fees shall expire with the expiration of the repose period covered by its judgement of compliance from the court unless the Borough has first filed an adopted Housing Element and Fair Share Plan with the Court or with a designated State administrative agency, has petitioned for substantive certification or the entry of a judgement of compliance from the court or its equivalent from a State administrative agency authorized to approve and administer municipal affordable housing compliance, and has received COAH's or the court's approval of its development fee ordinance from the entity that will be reviewing and approving the Housing Element and Fair Share Plan.

If the Borough fails to renew its ability to impose and collect development fees prior to the expiration of its judgement of compliance, it may be subject to forfeiture of any or all funds remaining within its Affordable Housing Trust Fund. Any funds so forfeited shall be deposited into the "New Jersey Affordable Housing Trust Fund" established pursuant to Section 20 of P.L. 1985, c. 222 (C. 52:27D-320).

The Borough of Maywood shall not impose a residential development fee on a development that receives preliminary or final site plan approval after the expiration of its Judgment of Compliance, nor shall the

Borough retroactively impose a development fee on such a development. The Borough shall not expend development fees after the expiration of its judgement of compliance.

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

Section 4. Severability. If any section, subsection, paragraph, sentence or any other part of this ordinance is adjudged unconstitutional or invalid by a court of competent jurisdiction, such judgement shall not affect, impair or invalidate the remainder of this ordinance.

Section 5. Effective Date. This ordinance shall take effect upon its passage and publication, as required by law. Copies of this ordinance shall be provided to the Court, the Special Master, and counsel for FSHC.

Introduced: September 25, 2023
Adopted: October 23, 2023