

## ARTICLE V

### Development and Management of Low- and Moderate-Income Housing

[Added 6-17-2019 by Ord. No. 19-05<sup>1</sup>]

#### §380-15 General program purposes; procedure.

A. Affordable housing obligation.

- (1) This article sets forth regulations regarding the low- and moderate-income housing units in the Borough of Woodcliff Lake consistent with the provisions known as the "Substantive Rules of the New Jersey Council on Affordable Housing," the Uniform Housing Affordability Controls ("UHAC"), N.J.A.C. 5:80-26.1 et seq., and the Borough's constitutional obligation to provide a fair share of affordable housing for low- and moderate-income households. In addition, this article applies requirements for very-low-income housing established in P.L. 2008, c. 46 (the "Roberts Bill").<sup>2</sup>
- (2) This article is intended to assure that low- and moderate-income units ("affordable units") are created with controls on affordability over time and that low- and moderate-income households shall occupy these units. This article shall apply except where inconsistent with applicable law.
- (3) The Borough of Woodcliff Lake Planning Board has adopted a Housing Element and Fair Share Plan pursuant to the Municipal Land Use Law at N.J.S.A. 40:55D-1 et seq. The Fair Share Plan has been endorsed by the governing body. The Fair Share Plan describes the ways Woodcliff Lake Borough shall address its fair share for low- and moderate-income housing as determined by the Superior Court and documented in the Housing Element.
- (4) This article implements and incorporates the Fair Share Plan and addresses the requirements of the Act and regulations thereunder, as may be amended and supplemented.
- (5) The Borough shall file monitoring reports with the Superior Court and place the reports on its municipal website. Any plan evaluation report of the Housing Element and Fair Share Plan and monitoring prepared by the Special Master shall be available to the public at the Borough of Woodcliff Lake Municipal Building, 188 Pascack Road, Woodcliff Lake, New Jersey.

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

- (1) Beginning on December 14, 2023, and on every anniversary of that date through July 1, 2025, the Borough agrees to provide annual reporting of its Affordable Housing Trust Fund to the New Jersey Department of Community Affairs (NJDCA), Council on Affordable Housing (COAH), or Local Government Services (LGS), or other entity designated by the State of New Jersey, with a copy

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<sup>1</sup>. Editor's Note: This ordinance also repealed former Art. V, Development and Management of Low- and Moderate Income Housing, added 5-15-1995 by Ord. No. 95-6, as amended.

<sup>2</sup> 2.Editor's Note: See N.J.S.A. 52:27D-329.1 et seq.

provided to Fair Share Housing Center (FSHC) and posted on the municipal website, using forms developed for this purpose by NJDCA, COAH, or LGS. The reporting shall include an accounting of all Affordable Housing Trust Fund activity, including the source and amounts of funds collected, and the amount and purpose for which any funds have been expended.

- (2) Beginning on December 14, 2023, and on every anniversary of that date through July 27, 2025, the Borough agrees to provide annual reporting of the status of all affordable housing activity within the municipality through posting on the municipal website with a copy of such posting provided to Fair Share Housing Center, using forms previously developed for this purpose by COAH or any other forms endorsed by the Special Master and FSHC.
- (3) By July 1, 2023, as required pursuant N.J.S.A. 52:27D-313, 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 site or unfulfilled mechanisms continue to present a realistic opportunity and whether any mechanisms to meet unmet need should be revised or supplemented. Such posting shall invite any interest 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.
- (4) By December 14, 2025, and every third year thereafter, as required by N.J.S.A. 52:27D-329.1, 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 its family very low-income requirements. 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 obligations.

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

**ACCESSORY APARTMENT**

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

**ACT**

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

**ADAPTABLE**

Constructed in compliance with the technical design standards of the Barrier Free Subcode, N.J.A.C. 5:23-7.<sup>3</sup>

**ADMINISTRATIVE AGENT**

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<sup>3</sup>. Editor's Note: See now N.J.A.C. 5:23-3.14(b).

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

**AFFIRMATIVE MARKETING**

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

**AFFORDABILITY AVERAGE**

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

**AFFORDABLE**

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

**AFFORDABLE HOUSING DEVELOPMENT**

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

**AFFORDABLE HOUSING PROGRAM(S)**

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

**AFFORDABLE UNIT**

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

**AGE-RESTRICTED UNIT**

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

**AGENCY**

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

**ALTERNATIVE LIVING ARRANGEMENT**

A structure in which households live in distinct bedrooms, yet share kitchen and plumbing facilities, central heat and common areas. "Alternate living arrangements" include, but is not limited to: transitional facilities for the homeless; Class A, B, C, D, and E boarding homes, as regulated by the New Jersey Department of Community Affairs; residential health care facilities as regulated by the New Jersey Department of Health; group homes for the developmentally disabled and mentally ill as licensed and/or regulated by the New Jersey Department of Human Services; and congregate living arrangements.

**ASSISTED LIVING RESIDENCE**

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

**BOROUGH**

The Borough of Woodcliff Lake, Bergen County, New Jersey.

**CERTIFIED HOUSEHOLD**

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

**COAH**

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

**COMMISSIONER**

The Commissioner of Community Affairs.

**CONSTRUCTION**

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

**COUNCIL**

The Council on Affordable Housing, established pursuant to P.L.1985, c. 222 (N.J.S.A. 52:27D-301 et seq.).

**DCA**

The State of New Jersey Department of Community Affairs.

**DEFICIENT HOUSING UNIT**

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

**DEVELOPER**

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

**DEVELOPMENT**

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

**EQUALIZED ASSESSED VALUE**

The assessed value of a property divided by the current average ratio of assessed to true value for the municipality in which the property is situated, as determined in

accordance with Sections 1, 5 and 6 of P.L. 1973, c. 123 (N.J.S.A. 54:1-35a through 54:1-35c).

**INCLUSIONARY DEVELOPMENT**

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

**LOW-INCOME HOUSEHOLD**

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

**LOW-INCOME UNIT**

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

**MAJOR SYSTEM**

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

**MARKET-RATE UNITS**

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

**MEDIAN INCOME**

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

**MIXED-USE DEVELOPMENT**

Any development which includes both a nonresidential development component and a residential development component, and shall include developments for which: 1) there is a common developer for both the residential development component and the nonresidential development component, provided that for purposes of this definition, multiple persons and entities may be considered a common developer if there is a contractual relationship among them obligating each entity to develop at least a portion of the residential or nonresidential development, or both, or otherwise to contribute resources to the development; and 2) the residential and nonresidential developments are located on the same lot or adjoining lots, including but not limited to lots separated by a street, a river, or another geographical feature.

**MODERATE-INCOME HOUSEHOLD**

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

**MODERATE-INCOME UNIT**

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

**NONEXEMPT SALE**

Any sale or transfer of ownership other than the transfer of ownership between husband and wife; the transfer of ownership between former spouses ordered as a result of a judicial decree of divorce or judicial separation, but not including sales

to third parties; the transfer of ownership between family members as a result of inheritance; the transfer of ownership through an executor's deed to a Class A beneficiary; and the transfer of ownership by court order.

#### **NONRESIDENTIAL DEVELOPMENT**

- (1) Any building or structure, or portion thereof, including but not limited to any appurtenant improvements, which is designated to a use group other than a residential use group according to the State Uniform Construction Code promulgated to effectuate the State Uniform Construction Code Act, P.L. 1975, c. 217 (N.J.S.A. 52:27D-119 et seq.), including any subsequent amendments or revisions thereto;
- (2) Hotels, motels, vacation timeshares, and child-care facilities; and
- (3) The entirety of all continuing care facilities within a continuing care retirement community which is subject to the Continuing Care Retirement Community Regulation and Financial Disclosure Act, P.L. 1986, c. 103 (N.J.S.A. 52:27D-330 et seq.).

#### **NONRESIDENTIAL DEVELOPMENT FEE**

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

#### **RANDOM SELECTION PROCESS**

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

#### **RECREATIONAL FACILITIES AND COMMUNITY CENTER**

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

#### **REGIONAL ASSET LIMIT**

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

#### **REHABILITATION**

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

#### **RENT**

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

#### **RESTRICTED UNIT**

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

#### **SPECIAL MASTER**

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

**SPENDING PLAN**

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

**TREASURER**

The Treasurer of the State of New Jersey.

**UHAC**

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

**VERY-LOW-INCOME HOUSEHOLD**

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

**VERY-LOW-INCOME UNIT**

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

**WEATHERIZATION**

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

D. Borough-wide mandatory set-aside.

- (1) Any future multifamily development of five (5) or more units in the Borough developed through planning board approval, zoning board approval, redevelopment or rehabilitation plan requires an affordable housing set aside of at least 20% of all units, with at least 50% of the units in each development being affordable to low-income households including 13% to very low-income households. All such affordable units including the required bedroom distribution, shall be governed by controls on affordability and affirmatively marketed in conformance with the Uniform Housing Affordability Controls (“UHAC”), N.J.A.C. 5:80-26.1 et seq. or any successor regulation, and all other applicable law.
- (2) Developers shall not subdivide a project for the purpose of avoiding compliance with this requirement.
- (3) This requirement does not give any developer the right to any such rezoning, variance or other relief, or establish any obligation on the part of Woodcliff Lake Borough to grant such rezoning, variance or other relief. No subdivision shall be permitted or approved for the purpose of avoiding compliance with this requirement.

E. Applicability.

- (1) The provisions of this Ordinance shall apply to all affordable housing developments and affordable housing units that currently exist and that are

proposed to be created within the Borough of Woodcliff Lake pursuant to the Borough's most recently adopted Housing Element and Fair Share Plan.

- (2) Moreover, this Ordinance shall apply to all developments that contain very low-, low- and moderate-income housing units, including any currently unanticipated future developments that will provide very low-, low-, and moderate-income housing units and including any developments funded with low-income housing tax credits.

F. Alternative Living Arrangements.

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

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

- (1) Phasing. Final site plan or subdivision approval shall be contingent upon the inclusionary development meeting the following phasing schedule for low- and moderate-income units.

<b>Maximum Percentage of Market-Rate Units Completed</b>	<b>Minimum Percentage of Low- and Moderate-Income Units Completed</b>
25%	0%
25% + 1	10%
50%	50%
75%	75%
90%	100%

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

developments, low- and moderate-income units shall have access to all of the same common elements and facilities as the market units.

- (3) Utilities. Affordable units shall utilize the same type of heating source as market units within an inclusionary development. 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.
- (4) Low/moderate split and bedroom distribution of affordable housing units.
  - (a) The fair share obligation shall be divided equally between low- and moderate-income units, except that where there is an odd number of affordable housing units, the extra unit shall be deemed a low-income unit. At least 13% of all restricted rental units within each bedroom distribution shall be very low-income units (affordable to a household earning 30% or less of regional median income by household size). The very low-income units shall be counted as part of the required number of low-income units within the development.
  - (b) In each affordable development, at least 50% of the restricted units within each bedroom distribution shall be very low- or low-income units.
  - (c) Affordable developments that are not age-restricted shall be structured in conjunction with realistic market demands such that:
    - [1] The combined number of efficiency and one-bedroom units shall be no greater than 20% of the total low- and moderate-income units;
    - [2] At least 30% of all low- and moderate-income units shall be two-bedroom units;
    - [3] At least 20% of all low- and moderate-income units shall be three-bedroom units; and
    - [4] The remaining units may be allocated among two- and Three-bedroom units at the discretion of the developer.
  - (d) Affordable developments that are age-restricted shall be structured such that the number of bedrooms shall equal the number of age-restricted low- and moderate-income units within the inclusionary development. This standard may be met by having all one-bedroom units or by having a two-bedroom unit for each efficiency unit.
- (5) Accessibility requirements.
  - (a) The first floor of all restricted townhouse dwelling units and all restricted units in all other multistory buildings shall be subject to the technical design standards of the Barrier Free Subcode, N.J.A.C. 5:23-7<sup>4</sup> and the following:

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<sup>4</sup>. Editor's Note: See now N.J.A.C. 5:23-3.14(b).

(b) All restricted townhouse dwelling units and all restricted units in other multistory buildings in which a restricted dwelling unit is attached to at least one other dwelling unit shall have the following features:

- [1] An adaptable toilet and bathing facility on the first floor;
- [2] An adaptable kitchen on the first floor;
- [3] An interior accessible route of travel on the first floor;
- [4] An adaptable room that can be used as a bedroom, with a door or the casing for the installation of a door, on the first floor; and
- [5] If not all of the foregoing requirements in b(1) through b(4) can be satisfied, then an interior accessible route of travel must be provided between stories within an individual unit, but if all of the terms of paragraphs b(1) through b(4) above have been satisfied, then an interior accessible route of travel shall not be required between stories within an individual unit; and
- [6] An accessible entranceway as set forth at P.L. 2005, c. 350 (N.J.S.A. 52:27D-311a, et seq.) and the Barrier Free Subcode, N.J.A.C. 5:23-7,<sup>5</sup> or evidence that the Borough has collected funds from the developer sufficient to make 10% of the adaptable entrances in the development accessible:
  - [a] Where a unit has been constructed with an adaptable entrance, upon the request of a disabled person who is purchasing or will reside in the dwelling unit, an accessible entrance shall be installed.
  - [b] To this end, the builder of restricted units shall deposit funds within the Borough's affordable housing trust fund sufficient to install accessible entrances in 10% of the affordable units that have been constructed with adaptable entrances.
  - [c] The funds deposited under Subsection D(5)(b)[6][b] above 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.
  - [d] The developer of the restricted units shall submit a design plan and cost estimate for the conversion from adaptable to accessible entrances to the Construction Official of Woodcliff Lake Borough.
  - [e] Once the Construction Official has determined that the design plan to convert the unit entrances from adaptable to accessible meet the requirements of the Barrier Free Subcode, N.J.A.C. 5:23-7,<sup>6</sup> and that the cost estimate of such conversion is reasonable, payment shall be made to Woodcliff Lake's affordable housing trust fund in care of the Municipal

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<sup>5</sup> . Editor's Note: See now N.J.A.C. 5:23-3.14(b).

<sup>6</sup> Editor's Note: See now N.J.A.C. 5:23-3.14(b).

Treasurer, who shall ensure that the funds are deposited into the affordable housing trust fund and appropriately earmarked for use in accordance with the provisions of this subsection.

[f] Full compliance with the foregoing provisions shall not be required where an entity can demonstrate that it is “site impracticable” to meet the requirements. Determinations of site impracticability shall be in compliance with the Barrier Free Subcode, N.J.A.C. 5:23-7.<sup>7</sup>

- (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, 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 earning no more than 30% of median income, 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 prices for each bedroom type.
  - (e) In determining the initial sales prices and rents for compliance with the affordability average requirements for restricted units other than assisted living facilities age-restricted developments, the following standards shall be used:
    - [1] A studio shall be affordable to a one-person household;
    - [2] A one-bedroom unit shall be affordable to a one-and-one-half person household;
    - [3] A two-bedroom unit shall be affordable to a three-person household;
    - [4] A three-bedroom unit shall be affordable to a four-and-one-half person household; and

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<sup>7</sup> Editor's Note: See now N.J.A.C. 5:23-3.14(b).

- [5] A four-bedroom unit shall be affordable to a six-person household.
- (f) In determining the initial rents for compliance with the affordability average requirements for restricted units in assisted living facilities and age-restricted developments, the following standards shall be used:
- [1] A studio shall be affordable to a one-person household;
  - [2] A one-bedroom unit shall be affordable to a one-and-one-half person household; and
  - [3] A two-bedroom unit shall be affordable to a two-person household or to two one-person households.
- (g) The initial purchase price for all restricted ownership units shall be calculated so that the monthly carrying cost of the unit, including principal and interest (based on a mortgage loan equal to 95% of the purchase price and the Federal Reserve H.15 rate of interest), taxes, homeowner and private mortgage insurance and condominium or homeowners' association fees do not exceed 28% of the eligible monthly income of the appropriate size household as determined under N.J.A.C. 5:80-26.4, as may be amended and supplemented; provided, however, that the price shall be subject to the affordability average requirement of N.J.A.C. 5:80-26.3, as may be amended and supplemented.
- (h) The initial rent for a restricted rental unit shall be calculated so as not to exceed 30% of the eligible monthly income of the appropriate household size, including an allowance for tenant paid utilities, as determined under N.J.A.C. 5:80-26.4, as may be amended and supplemented; provided, however, that the rent shall be subject to the affordability average requirement of N.J.A.C. 5:80-26.3, as may be amended and supplemented.
- (i) The price of owner-occupied low- and moderate-income units may increase annually based on the percentage increase in the regional median income limit for each housing region. In no event shall the maximum resale price established by the administrative agent be lower than the last recorded purchase price.
- (j) The rents of very low-, low- and moderate-income units may be increased annually based on the permitted percentage increase in the Housing Consumer Price Index for the Northeast Urban Area. This increase shall not exceed 9% in any one year. Rent increases for units constructed pursuant to low-income housing tax credit regulations shall be indexed pursuant to the regulations governing low-income housing tax credits.
- (k) 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.

**§ 380-16. Administration.**

A. Municipal housing liaison.

- (1) The position of Municipal Housing Liaison (MHL) for Woodcliff Lake Borough is established by this section. The Borough shall appoint a specific municipal employee to serve as a MHL responsible for overseeing the Borough's affordable housing program, including overseeing the administration of affordability controls on the affordable units and the affirmative marketing of available affordable units in accordance with the Borough's Affirmative Marketing Plan; fulfilling

monitoring and reporting requirements; and supervising Administrative Agent(s). The MHL shall be appointed by the governing body and may be a full or part time municipal employee. The MHL shall be approved by the Court and shall be duly qualified through a training program sponsored by Affordable Housing Professionals of New Jersey before assuming the duties of MHL.

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

B. Administrative agent. An Administrative Agent shall be an independent entity serving under contract to and reporting to the municipality. The fees of the Administrative Agent shall be paid by the owners of the affordable units for which the services of the Administrative Agent are required. The Administrative Agent shall perform the duties and responsibilities of an Administrative Agent set forth in UHAC, including those set forth in Sections 5:80-26.14, 16 and 18 thereof, which includes:

- (1) Affirmative Marketing:
  - (a) Conducting an outreach process to affirmatively market affordable housing units in accordance with the Affirmative Marketing Plan of the Borough of Woodcliff Lake 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.
- (2) Household certification:
  - (a) Soliciting, scheduling, conducting and following up on interviews with interested households;
  - (b) Conducting interviews and obtaining sufficient documentation of gross income and assets upon which to base a determination of income eligibility for a low- or moderate-income unit;

- (c) Providing written notification to each applicant as to the determination of eligibility or non-eligibility;
  - (d) Requiring that all certified applicants for restricted units execute a certificate substantially in the form, as applicable, of either the ownership or rental certificates set forth in Appendixes J and K of N.J.A.C. 5:80-26.1 et seq.;
  - (e) Creating and maintaining a referral list of eligible applicant households living in the housing region and eligible applicant households with members working in the housing region where the units are located;
  - (f) Employing the random selection process as provided in the affirmative marketing plan of the Borough when referring households for certification to affordable units; and
  - (g) Notifying the following entities of the availability of affordable housing units in the Borough of Woodcliff Lake: Fair Share Housing Center, the New Jersey State Conference of the NAACP, the Latino Action Network, NORWESCAP, the New Jersey Housing Resource Center, and the Supportive Housing Association.
- (3) Affordability controls.
- (a) Furnishing to attorneys or closing agents forms of deed restrictions and mortgages for recording at the time of conveyance of title of each restricted unit;
  - (b) Creating and maintaining a file on each restricted unit for its control period, including the recorded deed with restrictions, recorded mortgage and note, as appropriate;
  - (c) Ensuring that the removal of the deed restrictions and cancellation of the mortgage note are effectuated and properly filed with the appropriate county's Registrar of Deeds or County Clerk's office after the termination of the affordability controls for each restricted unit;
  - (d) Communicating with lenders regarding foreclosure; and
  - (e) Ensuring the issuance of continuing certificates of occupancy or certifications pursuant to N.J.A.C. 5:80-26.10.
- (4) Resale and rental:
- (a) Instituting and maintaining an effective means of communicating information between owners and the administrative agent regarding the availability of restricted units for resale or rental; and
  - (b) Instituting and maintaining an effective means of communicating information to low- and moderate-income households regarding the availability of restricted units for resale or rental.
- (5) Processing requests from unit owners:
- (a) Reviewing and approving requests from owners of restricted units who wish to take out home equity loans or refinance during the term of their ownership that the amount of indebtedness to be incurred will not violate the terms of this Ordinance;
  - (b) Reviewing and approving requests to increase sales prices from owners of restricted units who wish to make capital improvements to the units that would affect the selling price, such authorizations to be limited to

- those improvements resulting in additional bedrooms or bathrooms and the depreciated cost of central air-conditioning systems;
- (c) Notifying the municipality of an owner's intent to sell a restricted unit; and
  - (d) Making determinations on requests by owners of restricted units for hardship waivers.
- (6) Enforcement:
- (a) Securing annually from the municipality a list of all affordable housing units for which tax bills are mailed to absentee owners, and notifying all such owners that they must either move back to their unit or sell it;
  - (b) Securing from all developers and sponsors of restricted units, at the earliest point of contact in the processing of the project or development, written acknowledgment of the requirement that no restricted unit can be offered, or in any other way committed, to any person, other than a household duly certified to the unit by the administrative agent;
  - (c) Posting annually, in all rental properties, including two-family homes, a notice as to the maximum permitted rent together with the telephone number of the administrative agent where complaints of excess rent or other charges can be made;
  - (d) Sending annual mailings to all owners of affordable dwelling units, reminding them of the notices and requirements outlined in N.J.A.C. 5:80-26.18(d)4;
  - (e) Establishing a program for diverting unlawful rent payments to the municipality's affordable housing trust fund; and
  - (f) Creating and publishing a written operating manual for each affordable housing program administered by the Administrative Agent, to be approved by the Borough Council and the Court, setting forth procedures for administering the affordability controls.
- (7) Additional Responsibilities:
- (a) The administrative agent shall have authority to take all actions necessary and appropriate to carry out its responsibilities hereunder.
  - (b) The administrative agent shall prepare monitoring reports for submission to the MHL in time to meet the Court-approved monitoring and reporting requirements in accordance with the deadlines set forth in this Ordinance.
  - (c) The administrative agent shall attend continuing education sessions on affordability controls, compliance monitoring, and affirmative marketing at least annually and more often as needed.

### C. Enforcement of Affordable Housing Regulations

- (1) Upon the occurrence of a breach of any of the regulations governing the affordable unit by an owner, developer or tenant, the municipality shall have all remedies provided at law or equity, including but not limited to foreclosure, tenant eviction, 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.

- (2) 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 days after service of the written notice.
  - (a) The municipality may file a court action pursuant to N.J.S.A. 2A:58-11 alleging a violation, or violations, of the regulations governing the affordable housing unit. If the owner, developer or tenant is found by the court to have violated any provision of the regulations governing affordable housing units, the owner, developer or tenant shall be subject to one or more of the following penalties, at the discretion of the court:
    - [1] A fine of not more than \$500 per day or imprisonment for a period not to exceed 90 days, or both, provided that each and every day that the violation continues or exists shall be considered a separate and specific violation of these provisions and not as a continuing offense;
    - [2] In the case of an owner who has rented his or her low- or moderate-income unit in violation of the regulations governing affordable housing units, payment into the Woodcliff Lake Borough Affordable Housing Trust Fund of the gross amount of rent illegally collected;
    - [3] In the case of an owner who has rented his or her low- or moderate-income unit in violation of the regulations governing affordable housing units, payment of an innocent tenant's reasonable relocation costs, as determined by the court.
  - (b) The municipality may file a court action in the Superior Court seeking a judgment which would result in the termination of the owner's equity or other interest in the unit, in the nature of a mortgage foreclosure. Any judgment shall be enforceable as if the same were a judgment of default of the first purchase money mortgage and shall constitute a lien against the low- and moderate-income unit.
- (3) 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.
- (4) The proceeds of the Sheriff's sale shall first be applied to satisfy the first purchase money mortgage lien and any prior liens upon the low- and moderate-income unit. The excess, if any, shall be applied to reimburse the municipality for any and all costs and expenses incurred in connection with either the court action resulting in the judgment of violation or the Sheriff's sale. In the event that the proceeds from the Sheriff's sale are insufficient to reimburse the municipality in full as aforesaid, the violating owner shall be personally responsible for and to the extent of such deficiency, in addition to any and all costs incurred by the municipality in connection with collecting such deficiency. In the event that a surplus remains after satisfying all of the above, such surplus, if any, shall be placed in escrow by the

municipality for the owner and shall be held in such escrow for a maximum period of two years or until such earlier time as the owner shall make a claim with the municipality for such. Failure of the owner to claim such balance within the two-year period shall automatically result in a forfeiture of such balance to the municipality. Any interest accrued or earned on such balance while being held in escrow shall belong to and shall be paid to the municipality, whether such balance shall be paid to the owner or forfeited to the municipality.

- (5) 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.
- (6) 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.
- (7) 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.
- (8) 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.

**§ 380-18. Affordable housing development fees.**

See Article X, Affordable Housing Development Fees, of Chapter 380, Zoning.

**§ 380-19. Option to buy sales units.**

- A. The restrictive covenant governing the deeds of affordable housing units shall include an option permitting the purchase of the affordable housing unit at the maximum allowable restricted sales price at the time of the first nonexempt sale after controls on affordability have been in effect on the unit for the minimum required period as set forth in this article. The option to buy shall be available to the Borough, the Department of Community Affairs ("DCA"), the New Jersey Housing and Home Finance Agency (the "NJHMFA") or a qualified nonprofit organization or entity as determined by COAH.

- B. All deed restrictions governing affordable housing units shall require the owner to notify the Board and COAH by certified mail of any intent to sell the unit 90 days prior to entering into an agreement for the first nonexempt sale after controls have been in effect on the housing unit for the minimum required period as set forth in this article.
- C. Upon receipt of such notice, the option to buy the unit at the maximum allowable restricted sales price or any mutually agreeable sales price that does not exceed the maximum allowable restricted sales price shall be available for 90 days. The Board shall notify the Borough Council, the DCA, NJHMFA and COAH that the unit is for sale. If the Borough exercises this option, it may enter into a contract of sale. If the municipality fails to exercise this option within 90 days, the first of the other entities giving notice to the seller of its intent to purchase during the ninety-day period shall be entitled to purchase the unit. If the option to purchase the unit at the maximum allowable restricted sales price is not exercised by a written offer to purchase the housing unit within 90 days of receipt of the intent to sell, the owner may proceed to sell the housing unit pursuant to this article. If the owner does not sell the unit within one year of the date of delivery of notice of intent to sell, the option to buy the unit shall be restored, and the owner shall be required to submit a new notice of intent to sell 90 days prior to any future proposed date of sale.
- D. Any option to buy an affordable housing unit at the maximum allowable restricted sales price shall be exercised by certified mail and shall be deemed exercised upon mailing.

**§ 380-20. Option of Borough to buy units.**

- A. If the Borough elects to purchase an affordable housing unit pursuant to this article, it may:
  - (1) Convey or rent the housing unit to a low- or moderate-income purchaser or tenant at a price or rent not to exceed the maximum allowable restricted sales price or rent, provided that the unit is controlled by a deed restriction in accordance with COAH regulations or an alternative approved by COAH; or
  - (2) Convey the unit at a fair market value subject to the provisions of § 380-20C below.
- B. If the Borough purchases low-income housing units, it shall maintain them as low-income housing units.
- C. If the Borough elects to purchase low- or moderate-income housing units and convey them at a fair market value, it shall:
  - (1) Notify COAH of any proposed sale and sales price 90 days before closing.
  - (2) Notify COAH of the price differential as defined in N.J.A.C. 5:93-1.3.8
  - (3) Deposit the price differential in an interest-bearing housing trust fund devoted solely to the creation, rehabilitation or maintenance of low- and moderate-income housing.
- D. Money deposited in housing trust funds may not be expended until the Borough submits, and COAH or any court having jurisdiction over the same approves, a spending plan in

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<sup>8</sup>. Editor's Note: In accordance with N.J.S.A. 52:14B-5.1b, Chapter 93, Substantive Rules of the New Jersey Council on Affordable Housing for the Period Beginning June 6, 1994, expired on 10-16-2016.

accordance with N.J.A.C. 5:93-5.1(c).9 Money deposited in housing trust funds shall be subject to the restrictions, monitoring requirements and penalties outlined in N.J.A.C. 5:93-8.15 through 17.10

**§ 380-21. State and nonprofit purchase of units.**

If the DCA or a qualified nonprofit agency or organization purchases a low- or moderate-income unit, they shall meet all requirements set forth in N.J.A.C. 5:93-9.6 and N.J.A.C. 5:93-9.7, respectively.<sup>11</sup>

**§ 380-22. Seller option.**

- A. An eligible seller of a low- or moderate-income unit which has been controlled for the minimum required period specified in this article and who has provided notice of an intent to sell may proceed with the sale if no eligible entity exercises its option to purchase within 90 days.
- B. Subject to § 380-22A above, the seller may elect to:
  - (1) Sell to a qualified low- and moderate-income household at a price not to exceed the maximum permitted sales price in accordance with existing Board rules, provided that the unit is regulated by the deed restriction and lien adopted by COAH, incorporated herein by reference for a period of at least 20 years; or
  - (2) Exercise the repayment option and sell to any purchaser at market price, provided that 95% of the price differential is paid to the Board, as an instrument of the Borough at closing.
  - (3) If the sale will be to a qualified low- and moderate-income household, the Board shall certify the income qualifications of the purchaser and shall ensure the housing unit is regulated by the restrictive covenants and repayment lien required by COAH, which has been incorporated herein by reference.
- C. The Board shall examine any contract or sale containing a repayment option to determine if the proposed sales price bears a reasonable relationship to the housing unit's fair market value. In making this determination, the Board may rely on comparable sales data or an appraisal. The Board shall not approve any contract of sale where there is a determination that the sales price does not bear a reasonable relationship to fair market value. The Board shall make a determination within 20 days of receipt of the contract of sale and shall calculate the repayment option payment.
- D. The Board shall provide for an appeal procedure by which a seller may submit written documentation requesting the Board to recompute the repayment obligation if the seller believes an error has been made or to reconsider a determination that a sale price does not bear a reasonable relationship to fair market value. A repayment obligation determination

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<sup>9</sup>. Editor's Note: In accordance with N.J.S.A. 52:14B-5.1b, Chapter 93, Substantive Rules of the New Jersey Council on Affordable Housing for the Period Beginning June 6, 1994, expired on 10-16-2016.

<sup>10</sup>. Editor's Note: In accordance with N.J.S.A. 52:14B-5.1b, Chapter 93, Substantive Rules of the New Jersey Council on Affordable Housing for the Period Beginning June 6, 1994, expired on 10-16-2016.

<sup>11</sup>. Editor's Note: In accordance with N.J.S.A. 52:14B-5.1b, Chapter 93, Substantive Rules of the New Jersey Council on Affordable Housing for the Period Beginning June 6, 1994, expired on 10-16-2016.

made as a result of an owner's appeal shall be a final administrative determination of the Board.

- E. The repayment shall occur at the date of closing and transfer of title for the first nonexempt transaction after the expiration of controls on affordability.
- F. Repayment proceeds shall be deposited in a housing trust fund and may be used as per N.J.A.C. 5:93-8.15.12 Money deposited in a housing trust fund may not be expended until the Borough submits, and COAH or a court having jurisdiction over the same approves, a spending plan.

**§ 380-23. Affirmative marketing within inclusionary development.**

- A. Adoption of an affirmative marketing plan.
  - (1) Woodcliff Lake Borough shall adopt by resolution an affirmative marketing plan, subject to approval of the Court, that is in compliance with N.J.A.C. 5:80-26.15, as may be amended and supplemented.
  - (2) The affirmative marketing plan is a regional marketing strategy designed to attract buyers and/or renters of all majority and minority groups, regardless of race, creed, color, national origin, ancestry, marital or familial status, gender, affectional or sexual orientation, disability, age or number of children to housing units which are being marketed by a developer, sponsor or owner of affordable housing. The affirmative marketing plan is also intended to target those potentially eligible persons who are least likely to apply for affordable units in that region. It is a continuing program that directs all marketing activities toward Housing Region 1 and is required to be followed throughout the period of restriction.
- B. The affirmative marketing plan shall provide a regional preference for all households that live and/or work in Housing Region 1, comprised of Bergen, Hudson, Passaic, and Sussex Counties.
- C. 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 rerentals. The Administrative Agent designated by the Borough of Woodcliff Lake shall implement the Affirmative Marketing Plan to assure the affirmative marketing of all affordable units.
- D. The administrative agent designated by Woodcliff Lake Borough shall assure the affirmative marketing of all affordable units consistent with the affirmative marketing plan for the municipality.
  - (1) All newspaper articles, announcements and requests for applications for low- and moderate-income units will appear in the following newspapers/ publications: the Star Ledger, the Bergen Record and the Ridgewood News.
  - (2) The primary marketing will take the form of at least one press release sent to the above publications and a paid display advertisement in each of the above newspapers. Additional advertising and publicity will be on an as-needed basis.
  - (3) The advertisement will include:
    - (a) The street address and location of units;
    - (b) Directions to the housing units;
    - (c) The size, as measured in the number of bedrooms, of the housing units;

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<sup>12</sup>. Editor's Note: In accordance with N.J.S.A. 52:14B-5.1b, Chapter 93, Substantive Rules of the New Jersey Council on Affordable Housing for the Period Beginning June 6, 1994, expired on 10-16-2016.

- (d) A range of prices/rents for the housing units;
  - (e) The maximum income permitted to qualify for the housing units;
  - (f) The location of applications for the housing units;
  - (g) The business hours when interested households may obtain an application for a housing unit;
  - (h) The name of the rental manager and/or sales agent for the housing units.
- (4) All newspaper articles, announcements and requests for applications for low- and moderate-income housing will appear in publications circulated within the housing region that are likely to be read by low- and moderate-income households, such as neighborhood-oriented weekly newspapers, religious publications and organizational newsletters.
  - (5) Regional radio and/or cable television stations will also be used.
  - (6) Applications, brochures, signs and/or posters used as part of the affirmative marketing program will be provided to specific employment centers within the region and to the Municipal Clerks of all municipalities in the region.
  - (7) Applications for low- and moderate-income housing shall be available in several convenient locations within the Borough of Woodcliff Lake, including, at a minimum, Borough Hall, the Woodcliff Lake Public Library and the developer's sales/rental office. The following is a listing of community contact persons and/or organizations in Woodcliff Lake that will administer the program and will aid in the affirmative marketing program, with particular emphasis on contacts that will reach out to groups that are least likely to apply for housing within the region: land use administrator, Bergen County Housing Office and houses of worship.
  - (8) Quarterly flyers and applications will be sent to each of the following agencies for publication in their journals and for circulation among their members: Board of Realtors in Bergen, Hudson, Passaic and Sussex Counties.
  - (9) Applications will be mailed to prospective applicants upon request. Additionally, quarterly informational circulars and applications will be sent to the chief administrative employees of each of the following agencies in the counties in the Borough of Woodcliff Lake's region: Welfare or Social Service Board, Rental Assistance Office (local office of DCA), Office on Aging, libraries and housing agency or authority.
  - (10) The affirmative marketing program will meet the following requirements:
    - (a) The affirmative marketing process for available affordable units shall begin at least four months prior to the expected date of occupancy.
    - (b) A random selection method will be used to select occupants of low- and moderate-income housing.
    - (c) Low- and moderate-income households who live or work in the housing region in which the Borough of Woodcliff Lake is located shall be given preference for sales and rental units constructed within the Borough of Woodcliff Lake. Applicants living outside the housing region will have an equal opportunity for units after regional applicants have been initially serviced.
    - (d) Low- and moderate-income households residing or working within the Borough of Woodcliff Lake shall be provided a preference for low- and moderate-income units created within the Borough of Woodcliff Lake that respond to Woodcliff Lake's rehabilitation component.

- (e) All developers of low- and moderate-income housing units will be required to assist in the marketing of the affordable units in their respective developments.
- (f) The cost of advertising and administrating low- and moderate-income units shall be the responsibility of the developer and/or owner of low- and moderate-income housing units within the Borough of Woodcliff Lake.
- (g) The marketing program will commence at least 120 days before the issuance of either temporary or permanent certificates of occupancy. The marketing program will continue until all low- and moderate-income housing units are initially occupied and for as long as affordable units are deed-restricted and occupancy or reoccupancy of units continues to be necessary.
- (h) Households that apply for low- and moderate-income housing shall be screened for preliminary income eligibility by comparing their total income to the low- and moderate-income limits pursuant to state law and regulations. Applicants shall be notified as to their eligibility status.
- (i) Having screened applicants for preliminary income eligibility, the Borough may analyze the income and household sizes of applicants to determine which applicants have the assets and/or income necessary to purchase or rent each available low- or moderate-income unit.
- (j) The Borough shall conduct a process and interview each applicant to verify the applicant's income and household size; determine the applicant's asset availability; and review the applicant's credit history. Applicants shall be required to submit income verification for each household member 18 years or older. This process shall be utilized in establishing the final certified applicant group.
- (k) The process described in Subsection C(10)(h) through (j) above may begin no sooner than one month after the advertising program begins. Households shall be selected to proceed through the process described Subsection C(10)(h) through (j) above through a method of random selection. Households shall be certified for low- and moderate-income units. The process described in Subsection C(10)(h) through (j) shall be continued until all the low- and moderate-income units are occupied.
- (l) Continuing marketing activities shall be undertaken after the completion of initial occupancy of sales and rental units in order to fill vacancies resulting from normal turnover, which shall include:
  - [1] Ensuring a sufficient supply of income-eligible applicants by continuing to implement the marketing plan throughout the housing region. At a minimum, the Borough shall maintain a current pool of at least five income-eligible applicants for each low- and moderate income unit.
  - [2] Contacting each income-eligible applicant annually to request updated information regarding income and family size.
  - [3] As units become available, the municipal entity shall select eligible applicants for the units until the units are occupied by low- and moderate-income households.

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 use 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 Woodcliff Lake, and copies of the application forms, to the following entities: Fair Share Housing Center, the New Hersey State Conference of the NAACP, the Latino Action Network, STEPS, NORWESCAP, the Supportive Housing Association, and the New Jersey Housing Resource Center.
- J. The costs of advertising and affirmative marketing of the affordable units shall be the responsibility of the developer, sponsor or owner.

**§ 380-24. Affordable unit controls and requirements.**

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

- A. Occupancy standards. In referring certified households to specific restricted units, to the extent feasible, and without causing an undue delay in occupying the unit, the administrative agent shall strive to:
  - (1) Provide an occupant for each bedroom;
  - (2) Provide children of different sexes with separate bedrooms;
  - (3) Provide separate bedrooms for parents and children; and
  - (4) Prevent more than two persons from occupying a single bedroom.
- B. Control periods for restricted ownership units and enforcement mechanisms.
  - (1) Control periods for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.5, as may be amended and supplemented, and each restricted ownership unit shall remain subject to the requirements of this section for a period of at least thirty (30) years, until Woodcliff Lake Borough takes action to release the unit from such requirements; prior to such action, a restricted ownership unit must remain subject to the requirements of N.J.A.C. 5:80-26.1, as may be amended and supplemented.

- (2) The affordability control period for a restricted ownership unit shall commence on the date the initial certified household takes title to the unit.
- (3) Prior to the issuance of the initial certificate of occupancy for a restricted ownership unit and upon each successive sale during the period of restricted ownership, the administrative agent shall determine the restricted price for the unit and shall also determine the nonrestricted, fair market value of the unit based on either an appraisal or the unit's equalized assessed value without restrictions in place.
- (4) At the time of the first sale of the unit, the purchaser shall execute and deliver to the administrative agent a recapture note obligating the purchaser (as well as the purchaser's heirs, successors and assigns) to repay, upon the first nonexempt sale after the unit's release from the requirements of this section, an amount equal to the difference between the unit's nonrestricted fair market value and its restricted price, and the recapture note shall be secured by a recapture lien evidenced by a duly recorded mortgage on the unit.
- (5) The affordability controls set forth in this section shall remain in effect despite the entry and enforcement of any judgment of foreclosure with respect to restricted ownership units.
- (6) A restricted ownership unit shall be required to obtain a continuing certificate of occupancy or a certified statement from the Construction Official stating that the unit meets all code standards upon the first transfer of title that follows the removal of the restrictions provided under N.J.A.C. 5:80-26.5(a), as may be amended and supplemented.
- (7) Deeds of all real property that include restricted ownership 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. The deed restriction shall be subject to the approval of the administrative agent and shall be substantially in the form set forth in Schedule B, annexed hereto and made part of this article.<sup>13</sup>
- (8) Price restrictions for restricted ownership units, homeowners' association fees and resale prices. Price restrictions for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.1, as may be amended and supplemented, including:
  - (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 master deeds of inclusionary developments shall provide no distinction between the condominium or homeowner association fees and special assessments paid by low- and moderate-income purchasers and those paid by market purchasers.
  - (d) The owners of restricted ownership units may apply to the administrative agent to increase the maximum sales price for the unit on the basis of

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<sup>13</sup> . Editor's Note: Said schedule is included as an attachment to this chapter.

anticipated capital improvements. Eligible capital improvements shall be those that render the unit suitable for a larger household or the addition of a bathroom.

C. Buyer income eligibility.

- (1) Buyer income eligibility for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.1, as may be amended and supplemented, such that 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.
- (2) Notwithstanding the foregoing, the Administrative Agent may, upon approval by the Borough Council, and subject to the Court's approval, permit a moderate-income purchaser to buy a low-income unit if and only if the Administrative Agent can demonstrate that there is an insufficient number of eligible low-income purchasers in the housing region to permit prompt occupancy of the unit and all other reasonable efforts to attract a low-income purchaser, including pricing and financing incentives, have failed. Any such low-income unit that is sold to a moderate-income household shall retain the required pricing and pricing restrictions for a low-income unit.
- (3) A certified household that purchases a restricted ownership unit must occupy it as the certified household's principal residence and shall not lease the unit; provided, however, that the Administrative Agent may permit the owner of a restricted ownership unit, upon application and a showing of hardship, to lease the restricted unit to another certified household for a period not to exceed one year.
- (4) The administrative agent shall certify a household as eligible for a restricted ownership unit when the household is a low-income household or a moderate-income household, as applicable to the unit, and the estimated monthly housing cost for the particular unit (including principal, interest, taxes, homeowner and private mortgage insurance and condominium or homeowners' association fees, as applicable) does not exceed 33% of the household's certified monthly income.

D. Limitations on indebtedness secured by ownership unit; subordination.

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

E. Capital Improvements to Ownership Units

- (1) The owners of restricted ownership units may apply to the Administrative Agent to increase the maximum sales price for the unit on the basis of capital improvements made since the purchase of the unit. Eligible capital improvements shall be those that render the unit suitable for a larger household or that add an additional bathroom. In no event shall the maximum sales price of an improved housing unit exceed the limits of affordability for the larger household.
- (2) Upon the resale of a restricted ownership unit, all items of property that are permanently affixed to the unit or were included when the unit was initially restricted (for example, refrigerator, range, washer, dryer, dishwasher, wall-to-wall carpeting) shall be included in the maximum allowable resale price. Other items may be sold to the purchaser at a reasonable price that has been approved by the Administrative Agent at the time of signing of the agreement to purchase. The purchase of central air conditioning installed subsequent to the initial sale of the unit and not included in the base price may be made a condition of the unit resale provided the price, which shall be subject to 10-year, straight-line depreciation, has been approved by the Administrative Agent. Unless otherwise approved by the Administrative Agent, the purchase of any property other than central air conditioning shall not be made a condition of the unit resale. The owner and the purchaser must personally certify at the time of closing that no unapproved transfer of funds for the purpose of selling and receiving property has taken place at the time of or as a condition of resale.

F. Control periods for restricted rental units.

- (1) Control periods for restricted rental units shall be in accordance with N.J.A.C. 5:80-26.11, as may be amended and supplemented, and each restricted rental unit shall remain subject to the requirements of this section for a period of at least 30 years, until the Borough of Woodcliff Lake takes action to release the unit from such requirements. Prior to such action, a restricted rental unit must remain subject to the requirements of N.J.A.C. 5:80-26.1, as may be amended and supplemented.
- (2) Deeds of all real property that include restricted rental units shall contain deed restriction language. The deed restriction shall have priority over all mortgages on the property, and the deed restriction shall be filed by the developer or seller with the land records office of the Clerk 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. The deed restriction shall be subject to the approval of the administrative agent and shall be substantially in the form set forth in Schedule B, annexed hereto and made part of this article.<sup>14</sup>
- (3) A restricted rental unit shall remain subject to the affordability controls of this section, despite the occurrence of any of the following events:
  - (a) Sublease or assignment of the lease of the unit;
  - (b) Sale or other voluntary transfer of the ownership of the unit; or
  - (c) The entry and enforcement of any judgment of foreclosure on the property containing the unit.

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<sup>14</sup> . Editor's Note: Said schedule is included as an attachment to this chapter.

G. Price restrictions for rental units; leases.

- (1) A written lease shall be required for all restricted rental units and tenants shall be responsible for security deposits and the full amount of the rent as stated on the lease. A copy of the current lease for each restricted rental unit shall be provided to the administrative agent.
- (2) No additional fees or charges shall be added to the approved rent (except, in the case of units in an assisted living residence, to cover the customary charges for food and services) without the express written approval of the administrative agent.
- (3) Application fees (including the charge for any credit check) shall not exceed 5% 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 section.
- (4) 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.

H. Tenant income eligibility.

- (1) Tenant income eligibility shall be in accordance with N.J.A.C. 5:80-26.13, as may be amended and supplemented, and shall be determined as follows:
  - (a) Very-low-income rental units shall be reserved for households with a gross household income less than or equal to 30% of the regional median household income by household size.
  - (b) Low-income rental units shall be reserved for households with a gross household income less than or equal to 50% of the regional median household income by household size.
  - (c) Moderate-income rental units shall be reserved for households with a gross household income less than 80% of the regional median household income by household size.
- (2) The administrative agent shall certify a household as eligible for a restricted rental unit when the household is a very-low-income household, a low-income household or a moderate-income household, as applicable to the unit, and the rent proposed for the unit does not exceed 35% (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:
  - (a) 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;
  - (b) The household has consistently paid more than 35% (40% for households eligible for age-restricted units) of eligible monthly income for rent in the past and has proven its ability to pay;
  - (c) The household is currently in substandard or overcrowded living conditions;
  - (d) The household documents the existence of assets with which the household proposes to supplement the rent payments; or

- (e) The household documents reliable anticipated third-party assistance from an outside source, such as a family member, in a form acceptable to the administrative agent and the owner of the unit.
- (3) The applicant shall file documentation sufficient to establish the existence of the circumstances in Subsection I(2)(a) through (e) above with the administrative agent, who shall counsel the household on budgeting.

I. Appeals. Appeals from all decisions of an Administrative Agent appointed pursuant to this Ordinance shall be filed in writing with the Court.

**§ 380-25. through § 380-40. (Reserved)**