Borough of Woodcliff Lake

Bergen County, New Jersey

ORDINANCE NO. 26-02

ARTICLE X

Affordable Housing Development Fees

WHEREAS, In Holmdel Builder's Association v. Holmdel Borough, 121 N.J. 550 (1990), the New Jersey Supreme Court determined that mandatory development fees are authorized by the Fair Housing Act of 1985, N.J.S.A. 52:27d-301, *et seq*., and the State Constitution, subject to the adoption of Rules by the Council on Affordable Housing (COAH); and

WHEREAS, The Borough established an affordable housing trust fund and adopted a development fee ordinance at Article X, "Affordable Housing Development Fees" in Chapter 380 of the Borough Code on November 15, 1993, which was amended on November 4, 2009 to incorporate the amendments to the MLUL (N.J.S.A. 40:55D-8.1 through 40:550-8.7) resulting from P.L. 2008, c. 46, Section 8., establishing the requirement to collect non-residential development fees; and

WHEREAS, The Borough development fee ordinance was most recently amended on October 16, 2023 in order to implement its amended Third Round Housing Element and Fair Share Plan; and

WHEREAS, NJDCA adopted NJAC 5:99 on November 20, 2025 replacing COAH regulations and supplementing NJSA 40:55D-8.1 through 8.7 with respect to the collection and spending of trust fund revenues pursuant to P.L. 2024, c.2., and the agreements with Fair Share Housing Center (FSHC) require the Borough to amend the development fee ordinance to reflect the new rules at 5:99; and

BE IT ORDAINED by the Mayor and Council of the Borough of Woodcliff Lake, Bergen County, New Jersey, that the Code of the Borough of Closter is hereby amended to include the following provisions regulating the collection and disposition of mandatory development fees to be used in connection with the Borough's affordable housing programs, as directed by the Superior Court and consistent with N.J.A.C. 5:99, et seq., N.J.A.C. 5:80-26.1, et seq., as amended and supplemented, and the New Jersey Fair Housing Act of 1985 as amended by P.L. 2024, c.2, as follows:

Section 1. Article X, "Affordable Housing Development Fees" in Chapter 380 of the Borough Code, is hereby repealed and replaced with the following:

§ 380-68. Purpose.

A. This article establishes standards for the collection, maintenance, and expenditure of development fees that are consistent with the New Jersey Fair Housing Act of 1985 as amended by P.L. 2024, c.2 (N.J.S.A. 52:27D-301 et seq.), the Statewide Non-Residential Development Fee Act (C. 40:55D-8.1 through 8.7), and N.J.A.C. 5:99, et seq. Fees collected pursuant to this Ordinance shall be used for the sole purpose of providing very low, low- and moderate-income

housing in accordance with a Spending Plan approved through the Program, the Division of Local Planning Services within the Department of Community Affairs, or a court of competent jurisdiction.

B. Basic requirements.

(1) This article shall not be effective until approved by the relevant jurisdiction.

(2) The Borough of Woodcliff Lake shall not spend development fees until the Division, Program, or court of competent jurisdiction has approved a plan for spending such fees (Spending Plan).

§ 380-69. Definitions.

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

"Administrative agent" means the entity, approved by the Division, responsible for the administration of affordable units in accordance with N.J.A.C. 5:99-7, and UHAC at N.J.A.C. 5:80-26.15.

"Affordability assistance" means the use of funds to render housing units more affordable to low- and moderate-income households and includes, but is not limited to, down payment assistance, security deposit assistance, low interest loans, rental assistance, assistance with homeowner's association or condominium fees and special assessments, common maintenance expenses, and assistance with emergency repairs and rehabilitation to bring deed restricted units up to code, pursuant to N.J.A.C. 5:99-2.5.

"Affordable" means a sales price or rent within the economic means of a low- or moderate-income household, as defined in the UHAC as, in the case of an ownership unit, that the sales price for the unit conforms to the standards set forth at N.J.A.C. 5:80-26.7 and, in the case of a rental unit, that the rent for the unit conforms to the standards set forth at N.J.A.C. 5:80-26.13.

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

"Affordable Housing Dispute Resolution Program" or "the Program" refers to the dispute resolution program established pursuant to N.J.S.A. 52:27D-313.2.

"Affordable Housing Monitoring System" or "AHMS" means the Department's cloud-based software application, which shall be the central repository for municipalities to use for reporting detailed information regarding affordable housing developments, affordable housing unit completions, and the collection and expenditures of funds deposited into the municipal affordable housing trust fund.

"Affordable unit" means a housing unit proposed or developed pursuant to the Act, including units created with municipal affordable housing trust funds.

"Barrier-free escrow" means the holding of funds collected to adapt affordable unit entrances to be accessible in accordance with N.J.S.A. 52:27D-311a et seq. Such funds shall be held in a municipal affordable housing trust fund pursuant to N.J.A.C. 5:99-2.6.

"COAH" or the "Council" means the New Jersey Council on Affordable Housing established under the Fair Housing Act. This was eliminated by P.L. 2024, c2.

"Compliance certification" means the certification issued to the Borough by the Program pursuant to section 3 at P.L. 2024, c. 2, that provides the Borough immunity from exclusionary zoning litigation during the current round of present and prospective need and through July 1 of 4 the year the next round of affordable housing obligations begins, which is also known as a "judgment of compliance" resulting in an "order for repose." "Compliance certification" shall include a judgment of repose granted in an action filed pursuant to section 13 at P.L. 1985, c. 222 (N.J.S.A. 52:27D-313).

"Construction" means new construction and additions, but does not include alterations, reconstruction, renovations, conversion, relocation, or repairs, as those terms are defined in 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.).

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

"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 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 5 may be required pursuant to the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq

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

"Division" means the Division of Local Planning Services within the Department of Community Affairs.

"Equalized assessed value" or "EAV" means the assessed value of a property divided by the current average ratio of assessed to true value for the Borough in which the property is situated, as determined in accordance with sections 1, 5, and 6 at P.L. 1973, c. 123 (N.J.S.A. 54:1-35a, 54:1-35b, and 54:1-35c). Estimates at the time of building permit may be obtained by the tax assessor using construction cost estimates. Final EAV shall be determined at project completion by the Borough assessor.

“Extension of expiring controls” means extending the deed restriction period on units where the controls will expire in the current round of a housing obligation, so that the total years of a deed restriction is at least 60 years.

“Fair share obligation” means the total of the present need and prospective need as determined by the Affordable Housing Dispute Resolution Program, or a court of competent jurisdiction.

“Fair share plan” means the plan or proposal, which may readily be adopted with accompanying ordinances and resolutions, pursuant to subsection f. of section 3 at P.L. 2024, c. 2 (N.J.S.A. 52:27D-304.1) by which the Borough proposes to satisfy its obligation to create a realistic opportunity to meet its fair share of low- and moderate-income housing needs of its region and which details the affirmative measures the Borough proposes to undertake to achieve its fair share of low- and moderate-income housing, as provided in the municipal housing element, and addresses the development regulations necessary to implement the housing element, including, but not limited to, inclusionary requirements and development fees, and the elimination of unnecessary housing cost-generating features from the municipal land use ordinances and regulations.

“Firm and binding obligation” means a demonstration by a municipality, evidenced by documentation substantiating a legally enforceable agreement entered into by the municipality with a third party, sufficient proof of building or other permits, efforts concerning land acquisition or project development, or other documentation that demonstrates a commitment to spend trust fund monies in a manner consistent with the Act, the municipality’s fair share plan, the Act, an approved spending plan, and all applicable regulations. “Housing element” means the portion of the Borough’s master plan adopted in accordance with the Municipal Land Use Law (MLUL) at N.J.S.A. 40:55D-28.b(3) and the Act consisting of reports, statements, proposals, maps, diagrams, and text designed to meet the Borough’s fair share of its region’s present and prospective housing needs, particularly with regard to low- and moderate-income housing, which shall include the municipal present and prospective obligation for affordable housing, determined pursuant to subsection f. at N.J.S.A. 52:27D-304.1.

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

“Housing region” means a geographic area established pursuant to N.J.S.A. 52:27D-304.2 for each round of low- and moderate-income housing obligations pursuant to the Act.

“Inclusionary development” means a residential housing development in which a substantial percentage of the housing units are provided for a reasonable income range of low- 8 and moderate- income households. “Judgment of compliance” or “judgment for repose” means a determination issued by the Superior Court approving the Borough’s fair share plan to satisfy its affordable housing obligation for a particular 10-year round.

“Inclusionary development” means a residential housing development in which a substantial percentage of the housing units are provided for a reasonable income range of low-
and moderate- income households. “Judgment of compliance” or “judgment for repose” means a determination issued by the Superior Court approving a municipality’s fair share plan to satisfy its affordable housing obligation for a particular 10-year round. “Low-income household” means a household with a household income equal to 50 percent or less of the regional median income.

“Low-income housing” means housing affordable according to the Federal Department of Housing and Urban Development or other recognized standards for home ownership and rental costs and occupied or reserved for occupancy by households with a gross household income equal to 50 percent or less of the median gross household income for households of the same size within the housing region in which the housing is located.

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

“Moderate-income household” means a household with a household income in excess of 50 percent but less than or equal to 80 percent of the regional median income.

"Moderate-income housing" means housing affordable according to the Federal Department of Housing and Urban Development or other recognized standards for home ownership and rental costs and occupied or reserved for occupancy by households with a gross household income equal to more than 50 percent but less than 80 percent of the median gross household income for households of the same size within the housing region in which the housing is located.

“Municipal affordable housing trust fund” means a separate, interest-bearing account held by the Borough for the deposit of development fees, payments in lieu of constructing affordable units on sites zoned for affordable housing, barrier-free escrow funds, recapture funds, proceeds from the sale of affordable units, rental income, repayments from affordable

housing program loans, enforcement fines, unexpended RCA funds remaining from a completed RCA project, application fees, and any other funds collected by the Borough in connection with its affordable housing programs, which shall be used to address municipal low- and moderate-income housing obligations within the time frames established by the Legislature and this chapter. As used in this chapter, "municipal affordable housing trust fund" shall also mean a "municipal development trust fund" and a "municipal development fee Trust fund."

"Municipal development fee ordinance" means an ordinance adopted by the governing body of the Borough that authorizes the collection of development fees.

"Municipal housing liaison" or "MHL" means an appointed municipal employee who is responsible for oversight and/or administration of the affordable housing units created within the Borough and oversight of the authorization of individuals being provided access to the AHMS.

"New construction" means the creation of a new housing unit under regulation by a code enforcement official regardless of the means by which the unit is created. Newly constructed units are evidenced by the issuance of a certificate of occupancy and may include new residences created through additions and alterations, adaptive reuse, subdivision, or conversion of existing space, and moving a structure from one location to another.

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

"Non-residential development fee" means the fee authorized to be imposed pursuant to N.J.S.A. 40:55D-8.1 through 40:55D-8.7.

"Order for repose" means the protection the Borough has from a builder's remedy lawsuit for a period of time from the entry of a judgment of compliance by the Superior Court. A judgment of compliance often results in an order for repose.

"Payment in lieu of constructing affordable units" means the payment of funds to the Borough by a developer when affordable units are not produced on a site zoned for an inclusionary development.

"Reconstruction" means any project where the extent and nature of the work is such that the work area cannot be occupied while the work is in progress and where a new certificate of occupancy is required before the work area can be reoccupied, pursuant to the Rehabilitation

Subcode of the Uniform Construction Code, N.J.A.C. 5:23-6. Reconstruction shall not include projects comprised only of floor finish replacement, painting or wallpapering, or the replacement of equipment or furnishings. Asbestos hazard abatement and lead hazard abatement projects shall not be classified as reconstruction solely because occupancy of the work area is not permitted.

"Regional contribution agreement" or "RCA" means a contractual agreement, pursuant to the Act, into which two municipalities voluntarily entered into prior to July 18, 2008, to transfer a portion of the Borough's affordable housing obligation to another municipality within its housing region.

"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.

"Residential development fee" means money paid by a developer for the improvement of residential property as permitted pursuant to N.J.S.A 52:27D-329.2 and N.J.A.C. 5:99-3.2.

"Spending plan" means a method of allocating funds contained in an affordable housing trust fund account, which includes, but is not limited to, development fees collected and to be collected pursuant to an approved municipal development fee ordinance, or pursuant to N.J.S.A. 52:27D-329.1 et seq., for the purpose of meeting the housing needs of low- and moderate-income individuals.

"UHAC" means the Uniform Housing Affordability Controls set forth at N.J.A.C. 5:80- 26.

"Very-low-income household" means a household with a household income less than or equal to 30 percent of the regional median income.

"Very-low-income housing" means housing affordable according to the Federal Department of Housing and Urban Development or other recognized standards for home ownership and rental costs and occupied or reserved for occupancy by households with a gross household income equal to 30 percent or less of the median gross household income for households of the same size within the housing region in which the housing is located.

§ 380-70. Development fees.

A. Residential development fees.

(1) Imposed fees.

(a) Within all zone districts, 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 one and a half percent (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. When an increase in residential density has been permitted pursuant to a "d" variance granted under N.J.S.A. 40:55D-70d(5), developers shall be required to pay a increased development fee of a maximum 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 zoning on a site has changed during the two-year period preceding the filing of such a variance application, the base density for the purposes of calculating the bonus development fee shall be the highest density permitted by right during the two-year period preceding the filing of the variance application.

(2) Eligible exactions, ineligible exactions and exemptions for residential development.

(a) Affordable housing developments and/or developments where the developer is providing for the construction of affordable units elsewhere in the municipality, and 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 Woodcliff Lake, shall be exempt from the payment of development fees.

(b) Developments that have received preliminary or final site plan approval prior to the adoption of this article 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, necessitating an amended preliminary or a new preliminary approval pursuant to N.J.S.A. 40:55D-46.b and 40:55-48.b. . Where a site plan approval does not apply, a zoning and/or building permit shall be synonymous with preliminary or final site plan approval for the purpose of determining the right to an exemption. In all cases, the applicable fee percentage shall be determined based upon the Development Fee Ordinance in effect on the date that the construction permit is issued, regardless of the time of collection of the fee.

(c) 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 Borough 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 when the first alteration of any wall, flow or other structural part of the building commences, whether or not the alteration affects the external dimensions of the structure. The term does not, however, include either:

[1] 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

[2] 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 previous 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.

(d) 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.

(e) 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 charges, shall be exempted from paying a development fee.

(f) Federal, state, county and local governments shall be exempted from paying a development fee.

(g) Residential structures demolished and replaced as a result of a fire, flood, or any natural disaster or catastrophe shall be exempt from paying any residential development fee, even if the new structure has an increased EAV as compared to the previous structure.

B. Non-residential development fees.

(1) Imposed fees.

(a) Within all zoning districts, non-residential developers, except for developers of the types of developments specifically exempted below, shall pay a fee equal to two and one-half (2.5) percent of the equalized assessed value of the land and improvements, for all new non-residential construction on an unimproved lot or lots, or such other amount pursuant to the Statewide Non-Residential Development Fee Act, N.J.S.A. 40:55D-8.1 through 40:55D-8.7. Nonresidential developers, except for developers of the types of development specifically exempted below, 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.

(b) 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 calculations shall be made at the time the 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.

(2) Eligible exactions, ineligible exactions and exemptions for nonresidential development.

(a) A developer of a mixed-use development shall be required to pay the non-residential development fee of 2.5% relating to the non-residential development component of a mixed- use development subject to the provisions at N.J.S.A. 52:27D-329.1 et seq., unless otherwise exempted below.

(b) 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.

(c) A developer of a non-residential development exempted from the non-residential development fee pursuant to the Statewide Non-Residential Development Fee Act shall be subject to the fee at such time as the basis for the exemption no longer applies, and shall make the payment of the non-residential development fee, in that event, within three years after that event or after the issuance of the final Certificate of Occupancy for the non-residential development, whichever is later.

(d) 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 of Woodcliff Lake as a lien against the real property of the owner.

(e) A fee equal to two-and-one-half percent of the increase in EAV, of the additions or alterations to existing structures to be used for non-residential purposes, or such other amount pursuant to the Non-Residential Development Fee Act, N.J.S.A. 40:55D-8.1 through 40:55D-8.7. All non-residential construction of buildings or structures on property used by churches, synagogues, mosques, and other houses of worship, and property used for educational purposes, that are tax-exempt pursuant to N.J.S.A. 54:4-3.6, shall be exempt from the imposition of a non-residential development fee pursuant to this section, provided that the property continues to maintain its tax exempt status pursuant to that statute for a period of at least three years from the date of issuance of the certificate of occupancy. In addition, the following shall be exempt from the imposition of a non-residential development fee pursuant to the Statewide Non-Residential Development Fee Act, N.J.S.A. 40:55D-8.1 through 40:55D-8.7:

i. Parking lots and parking structures, regardless of whether the parking lot or parking structure is constructed in conjunction with a non-residential development, or whether the parking lot is developed as an independent non-residential development.

ii. Any non-residential development that is an amenity to be made available to the public, including, but not limited to, recreational facilities, community centers, and senior centers that are developed in conjunction with, or funded by, a non-residential developer.

iii. Non-residential construction resulting from a relocation of, or an on-site improvement to, a nonprofit hospital or a nursing home facility.

iv. Projects that are located within a specifically delineated urban transit hub, as defined pursuant to N.J.S.A. 34:1B-208.

v. Projects that are located within an eligible municipality, as defined pursuant to N.J.S.A. 34:1B-208, the Urban Transit Hub Tax Credit Act, when a majority of the project is located within a one-half mile radius of the midpoint of a platform area for a light rail system.

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

(f) Non-residential construction connected with the relocation of the facilities of a for-profit hospital shall be subject to the fee authorized to be imposed pursuant to this section to the extent of the increase in equalized assessed valuation.

§ 380-71. Collection of fees.

A. Collection procedures.

(1) Upon the granting of a preliminary, final or other applicable approval for a development, the applicable approving authority or entity shall notify or direct its staff to notify the Construction Official responsible for the issuance of a building permit.

(2) For nonresidential developments only, the developer shall also be provided with a copy of Form N-RDF, 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.

(3) For residential developments, regardless of the time of collection or the date of approvals, the fee shall be based on the residential development fee percentage pursuant to the municipal ordinance in effect on the date that residential building permits are issued.

(4) The Construction Official responsible for the issuance of a building permit shall notify the local Tax Assessor of the issuance of the first building permit for a development which is subject to a development fee.

(5) 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.

(6) The Construction Official responsible for the issuance of a final certificate of occupancy shall notify the local Tax Assessor of any and all requests for the scheduling of a final inspection on property which is subject to a development fee.

(7) Within 10 business days of a request for the scheduling of a final inspection, the Borough Tax Assessor shall confirm or modify the previously estimated equalized assessed value of the improvements associated with the development in accordance with the rules adopted by the Treasurer pursuant to N.J.S.A. 54:1-35.35; calculate the development fee pursuant to N.J.S.A. 40:55D-8.1 through 40:55D-8.7; and thereafter notify the developer of the amount of the non-residential 30 development fee.

(8) Should the Borough of Woodcliff Lake 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 N.J.S.A. 40:55D-8.6.b.

(9) Except as provided in § 380-70B(1)(c) hereinabove, 50% of the initially calculated development fee shall be collected at the time of issuance of the building permit. The remaining portion shall be collected at the issuance of the certificate of occupancy. The developer shall be responsible for paying the difference between the fee calculated at building permit and that determined at the time of issuance of certificate of occupancy.

B. Appeal of development fees.

(1) A developer may challenge residential development fees imposed pursuant to N.J.S.A. 52:27D-329.1 et seq.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, if possible, escrow account by the Borough of Woodcliff Lake. Appeals from a determination of the Board may be made to the Tax Court in accordance with the provisions of the State Uniform Tax Procedure Law, N.J.S.A. 54:48-1 et seq., within 90 days after the date of such determination. Any 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, if possible, escrow account by the Borough of Woodcliff Lake. Appeals from a determination of the Director may be made to the Tax Court in accordance with the provisions of the State Uniform Tax Procedure Law, N.J.S.A. 54:48-1 et seq., within 90 days after the date of such determination. Any interest earned on amounts escrowed shall be credited to the prevailing party.

§ 380-72. Affordable Housing Trust Fund.

A. A separate, interest-bearing Municipal Affordable Housing Trust Fund shall be maintained by the Borough chief financial officer for the purpose of depositing development fees collected from residential and non-residential developers and proceeds from the sale of units with

extinguished controls.

B. The following additional funds shall be deposited in the affordable housing trust fund and shall at all times be identifiable by source and amount:

(1) Payments in lieu of on-site construction of a fraction of an affordable unit, where permitted by Ordinance or Agreement with the Borough of Woodcliff Lake;

(2) Developer-contributed funds to make 10% of the adaptable entrances in a townhouse or other multistory attached development accessible;

(3) Rental income from municipally operated units;

(4) Repayments from affordable housing program loans;

(5) Recapture funds;

(6) Proceeds from the sale of affordable units; and

(7) Any other funds collected in connection with the Borough of Woodcliff Lake's affordable housing program.

C. The municipality shall provide the Division with written authorization, in the form of a tri-party escrow agreement(s) between the municipality, the Division and the financial institution in which the municipal affordable housing trust fund has been established to permit the Division to direct the disbursement of the funds as provided for in N.J.A.C. 5:99-2.1 et seq.

D. Occurrence of any of the following deficiencies may result in the Division requiring the forfeiture of all or a portion of the funds in the municipal Affordable Housing Trust Fund:

(1) Failure to meet deadlines for information required by the Division in its review of a development fee ordinance;

(2) Failure to commit or expend development fees within four years of the date of collection in accordance with N.J.A.C. 5:99-5.5;

(3) Failure to comply with the requirements of the Non-Residential Development Fee Act and N.J.A.C. 5:99-3;

(4) Failure to address the Division's conditions for approval of a plan to spend funds within the deadlines imposed by the Division;

(5) Failure to submit accurate monitoring reports pursuant to this subchapter within the time limits imposed by the Act, this chapter, and/or the Division;

(6) Expenditure of funds on activities not approved by the Program or the Division or otherwise permitted by law;

(7) Revocation of compliance certification or a judgment of compliance and repose;

(8) Failure of a municipal housing liaison or administrative agent to comply with the requirements set forth at N.J.A.C. 5:99-6, 7, and 8;

(9) Other good cause demonstrating that municipal affordable housing funds are not being

used for an approved purpose.

E. N.J.A.C. 5:99-5.6, Enforcement, identifies the remedies available to the Division or a court of competent jurisdiction should any of the items above be found to have occurred.

F. On or before February 15 of each year, the municipality shall provide annual electronic data reporting of trust fund activity for the previous year from January 1st to December 31st through the AHMS Reporting System. This reporting shall include an accounting of all Municipal Affordable Housing Trust Fund activity, including the sources and amounts of all 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, previously eligible payments in lieu of constructing affordable units on site, funds from the sale of units with extinguished controls, barrier-free escrow funds, rental income from municipally-owned affordable housing units, repayments from affordable housing program loans, interest and any other funds collected in connection with municipal housing programs, as well as an accounting of the expenditures of revenues and implementation of the Spending Plan approved by the Court.

§ 380-73. Use of funds.

A. The expenditure of all funds shall conform to a Spending Plan approved by Superior Court. Funds deposited in the municipal Affordable Housing Trust Fund may be used for any activity approved by the Court to address the 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; a market-to-affordable program; conversion of existing non-residential buildings to create new affordable units; green building strategies designed to be cost-saving and in accordance with accepted national or state standards; purchase of land for affordable housing; improvement of land to be used for affordable housing; extensions or improvements of roads and infrastructure to affordable housing sites; financial assistance designed to increase affordability; administration necessary for implementation of the Housing Element and Fair Share Plan; and/or any other activity permitted by Superior Court and specified in the approved Spending Plan.

B. Funds shall not be expended to reimburse the municipality or activities that occurred prior to the authorization of a municipality to collect development fees.

C. At least a portion of all development fees collected, and interest earned shall be used to provide affordability assistance to very low-, low- and moderate-income households in affordable units included in the municipal Fair Share Plan. A portion of the development fees which provide affordability assistance shall be used to provide affordability assistance to very low-income households.

(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 regional median household income by household size may include buying down the cost of low- or moderate-income units in the municipal Fair Share Plan to make them affordable to households earning 30% 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.

D. The Borough of Woodcliff Lake may contract with a private or public entity to administer any part of its Housing Element and Fair Share Plan, including its programs for affordability assistance, in accordance with N.J.A.C. 5:96-18. Note: Former Ch. 96 of the New Jersey Administrative Code, Procedural Rules of the New Jersey Council on Affordable Housing for the Period Beginning on June 2, 2008, expired 6-2-2015 in accordance with N.J.S.A. 52:14b-5.1b.

E. No more than 20 percent of all affordable housing trust funds, exclusive of those collected prior to July 17, 2008, to fund an RCA, shall be expended on administration.

(1) Administrative expenses may include costs reasonably related to the determination of the fair share obligation and the development of a municipal housing element and fair share plan and may include fees necessary to develop or implement affordable housing programs, an affirmative marketing program, and/or expenses that are reasonably necessary for compliance with the processes of the Program, including, but not limited to, the costs to the municipality of resolving a challenge pursuant to the Program.

(2) Administrative expenses may also include costs associated with functions carried out in compliance with UHAC, including activities related to the marketing program and waitlist management, administering the placement of occupants in housing units, income qualification of households, monitoring the turnover of sale and rental units, preserving existing affordable housing, and compliance with the Division's monitoring requirements.

F. The proportion of a municipal employee's salary related to the MHL or RCA administrator functions and fees for required educational programs, may be paid as an administrative expense from the municipal affordable housing trust fund. Development fees collected by the Borough shall be expended or committed for expenditure within four years of the date of collection. For the purposes of this section, funds are expended, or committed for expenditure, if one of the following standards has been met:

(1) The funds have been spent on a housing activity in accordance with N.J.A.C. 5:99-2.3;
(2) The Division has been provided with an executed contract or legally enforceable agreement funding the implementation of an allowable housing activity in accordance with N.J.A.C. 5:99-2.3, and the following, as applicable: a municipal resolution or ordinance creating the affordable housing program, a policy and procedures manual, and completion of affordable housing trust fund and unit monitoring, indicating units completed or rehabilitated, or the Borough has otherwise demonstrated a firm and binding obligation to spend such funds in a manner consistent with addressing its respective affordable housing obligation;
(3) For affordability assistance expenses, the Division has been provided with the following: demonstration of a firm and binding obligation to spend such funds in a manner consistent

with addressing the affordability assistance obligation required by the Act or a municipal resolution or ordinance and an executed contract or agreement for expenses related to providing affordability assistance to existing low- and moderate-income households, a policies and procedures manual for any affordability assistance program executed by the Borough, and a contract with an administrative agent to carry out the program if applicable; or

(4) For administrative expenses, the Division has been provided with the following: a municipal resolution or ordinance and an executed contract or agreement for expenses related to administering affordable housing.

G. Emergent Affordable Housing Opportunities. Requests to expend affordable housing trust funds on emergent affordable housing opportunities not included in the municipal fair share plan shall be made to the Division and shall be in the form of a governing body resolution. Any request shall be consistent with N.J.A.C. 5:99-4.1.

H. Emergent Affordable Housing Opportunities. Requests to expend affordable housing trust funds on emergent affordable housing opportunities not included in the municipal fair share plan shall be made to the Division and shall be in the form of a governing body resolution. Any request shall be consistent with N.J.A.C. 5:99-4.1.

§ 380-74. Ongoing collections of fees.

A. The ability of the Borough of Woodcliff Lake to impose, collect and expend development fees shall expire with the expiration of the repose period covered by its judgment of compliance unless the Borough of Woodcliff Lake has first filed an adopted Housing Element and Fair Share Plan with the Affordable Housing Dispute Resolution Program or filed a Declaratory Judgment with a court of competent jurisdiction, and has received compliance certification or a Judgment Of Compliance and has received approval of its Development Fee Ordinance from the entity that will be reviewing and approving the Housing Element and Fair Share Plan.

B. If the Borough of Woodcliff Lake fails to renew its ability to impose and collect development fees prior to the expiration of its judgment 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 (N.J.S.A. 52:27D-320).

C. The Borough of Woodcliff Lake 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 of Woodcliff Lake retroactively impose a development fee on such a development. The Borough of Woodcliff Lake also shall not expend any of its collected development fees after the expiration of its judgment of compliance.

§ 380-75. through § 380-77. (Reserved)

Section 2. If any section, paragraph, subsection, clause, or provision of this Ordinance shall be adjudged by the courts to be invalid, such adjudication shall apply only to the section, paragraph, subsection, clause, or provision so adjudicated, and the remainder of the Ordinance shall be deemed valid and effective.

Section 3. Any ordinances or parts thereof in conflict with the provisions of this Ordinance are repealed to the extent of such conflict.

Section 4. To the extent that any portion of the Ordinance conflicts with or amends or modifies any provision of any other of the Borough' s development regulations, the conflicts shall supersede or amend or modify, as applicable, such development regulations and the zoning district map included in the Borough' s zoning ordinance shall be deemed amended accordingly.

Section 5. This Ordinance shall take effect upon passage and publication in accordance with applicable law.