

ARTICLE I
General Program Purposes, Procedures

- § 35D-1.** Affordable housing obligation.
- § 35D-2.** Definitions.
- § 35D-3.** New construction.
- § 35D-4.** Condominium and homeowners association fees.

ARTICLE II
Affordable Unit Controls and Requirements

- § 35D-5.** Purpose.
- § 35D-6.** Affirmative marketing.
- § 35D-7.** Occupancy standards.
- § 35D-8.** Selection of occupants of affordable housing units.
- § 35D-9.** Control periods for restricted ownership units and enforcement mechanisms.
- § 35D-10.** Price restrictions for restricted ownership units, homeowner association fees and resale prices.
- § 35D-11.** Capital improvements to ownership units.
- § 35D-12.** Buyer income eligibility.
- § 35D-13.** Limitations on indebtedness secured by ownership unit; subordination.
- § 35D-14.** Control periods for restricted rental units.
- § 35D-15.** Rent restrictions for rental units; leases.
- § 35D-16.** Tenant income eligibility.
- § 35D-17.** Conversions.

ARTICLE III
Administration

- § 35D-18.** Municipal Housing Liaison.
- § 35D-19.** Administrative Agent.
- § 35D-20.** Enforcement of affordable housing regulations.
- § 35D-21.** Appeals.

ARTICLE IV
Affordable Housing Development Fees

- § 35D-22.** Authority and purpose.
- § 35D-23.** Limitations on enactment.
- § 35D-24.** Residential development fees.
- § 35D-25.** Nonresidential development fees.
- § 35D-26.** Collection procedures.
- § 35D-27.** Appeal procedures.
- § 35D-28.** Borough affordable housing fund.

[HISTORY: Adopted by the Mayor and Council of the Borough of Woodbury Heights 11-26-13 as Ord. No. 16-2013. Amendments noted where applicable.]

ARTICLE I General Program Purposes, Procedures

§ 35D-1. Affordable housing obligation.

- A. This chapter of the Woodbury Heights Borough Code sets forth regulations regarding low- and moderate-income housing units in the Borough consistent with the provisions known as the "Substantive Rules of the New Jersey Council on Affordable Housing for the period beginning June 2, 2008 with amendments through October 20, 2008," N.J.A.C. 5:97 et seq., 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 chapter applies requirements for very low-income housing as established in P.L. 2008, c.46.
- B. This chapter is intended to ensure 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 chapter shall apply except where inconsistent with other applicable law.
- C. The Woodbury Heights Borough Planning Board has adopted a Housing Element and Fair Share Plan pursuant to the Municipal Land Use Law at N.J.S.A. 40:55D-28 and has been endorsed by the Woodbury Heights Borough Council. The Fair Share Plan describes the ways the Borough shall address its fair share for low- and moderate-income housing as determined by the Council on Affordable Housing ("COAH") and documented in the Housing Element.
- D. This chapter implements the Fair Share Plan and addresses the requirements of N.J.A.C. 5:97-1, et seq., as it may be amended or superseded.
- E. The borough shall file monitoring reports as required by law or rule tracking the status of the implementation of the Housing Element and Fair Share Plan. Any plan evaluation report concerning the Housing Element and Fair Share Plan and monitoring prepared by COAH or successor agency in accordance with N.J.A.C. 5:96 shall be made available to the public at the Woodbury Heights Borough Municipal Building, 500 Elm Avenue, Woodbury Heights, New Jersey, or from COAH at 101 South Broad Street, Trenton, New Jersey.

§ 35D-2. Definitions.

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

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

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

ADMINISTRATIVE AGENT - Any entity responsible for the administration of affordable units in accordance with this article, N.J.A.C. 5:96 and 5:80-26.1 et seq.

AFFIRMATIVE MARKETING - Any 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 is affordable to low- and moderate-income households.

AFFORDABLE - Any sales price or rent within the means of a low- or moderate-income household as defined in N.J.A.C. 5:97-9; 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 DEVELOPMENT - Any housing development all or a portion of which consists of restricted units.

AFFORDABLE HOUSING DEVELOPMENT - Any 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 one hundred percent (100%) affordable 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 - Any housing unit proposed or created pursuant to the Act, credited pursuant to N.J.A.C. 5:97-4, and/or funded through an affordable housing trust fund.

AGE-RESTRICTED UNIT - Any housing unit designed to meet the needs of, and exclusively for, the residents of an age-restricted segment of the population such that:

- A. All the residents of the development where the unit is situated are sixty-two (62) years or older; or
- B. At least eighty percent (80%) of the units are occupied by one (1) person that is fifty-five (55) years or older; or
- C. 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.**

ASSISTED LIVING RESIDENCE - Any 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 (4) or more adult persons unrelated to the proprietor and that offers units containing, at a minimum, one (1) unfurnished room, a private bathroom, a kitchenette and a lockable door on the unit entrance.

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

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

DCA - The State of New Jersey Department of Community Affairs.

DEFICIENT HOUSING UNIT - Any 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 proposed to be included in a proposed development including the holder of an option to contract or purchase, or other person having an enforceable proprietary interest in such land.

DEVELOPMENT - Any division of a parcel of land into two (2) or more parcels, the construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any use or change in the use of any building or other structure, or of any mining, excavation or landfill, and any use or change in the use of any building or other structure, or land or extension of use of land, for which permission may be required pursuant to N.J.S.A. 40:55D-1 et seq.

DEVELOPMENT FEE - Any money paid by a developer for the improvement of property as permitted in N.J.A.C. 5:97-8.3.

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).

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

INCLUSIONARY DEVELOPMENT - Any 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 and the creation of new affordable units through the reconstruction of a vacant residential structure.

LOW-INCOME HOUSEHOLD - Any household with a total gross annual household income equal to fifty percent (50%) or less of the median household income.

LOW-INCOME UNIT - Any 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 UNIT - Any housing not restricted to low- and moderate-income households that may sell or rent at any price.

MEDIAN INCOME - The median income of a household, by household size, for Cumberland County and as adopted annually by COAH.

MODERATE-INCOME HOUSEHOLD - Any household with a total gross annual household income in excess of fifty percent (50%) but less than eighty percent (80%) of the median household income.

MODERATE-INCOME UNIT - Any restricted unit that is affordable to a moderate-income household.

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

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.

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

REGIONAL ASSET LIMIT - The maximum housing value in each housing region affordable to a four-person household with an income at eighty percent (80%) of the regional median as defined by COAH's adopted Regional Income Limits published annually by COAH.

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 - Any 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 UHOP or MONI.

SUPPORTIVE AND SPECIAL NEEDS HOUSING - A structure or structures in which individuals or households reside, as listed in N.J.A.C. 5:97-6.10(a); previously defined by COAH as "alternative living arrangements."

SUPPORTIVE SHARED LIVING HOUSING - Permanent lease-based supportive housing that provides access to supportive services to individuals with special needs who

maintain separate leases for bedrooms and share common living space.

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

UNIT - Any dwelling unit, as defined in Section 70-8. For purposes of this chapter, bedrooms shall also be considered units in those limited instances where state affordable housing regulations allow bedrooms to be counted as units (e.g., group homes).

VERY-LOW-INCOME HOUSEHOLD - Any household with a total gross annual household income equal to thirty percent (30%) or less of the median household income.

VERY-LOW-INCOME UNIT - Any restricted unit that is affordable to a very-low-income household.

WEATHERIZATION - Any 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 rehabilitation.

§ 35D-3. New construction.

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

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

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

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

C. Utilities and common elements. In inclusionary developments, affordable units shall utilize the same type of heating source as the market units within the development, and the occupants of the affordable units shall have access to all of the same common elements and facilities as the occupants of the market units within the development.

D. Low/moderate split and bedroom distribution of affordable housing units.

- (1) Affordable units in a development shall be divided equally between low- and moderate- income units, except that where there is an odd number of affordable housing units, the extra unit shall be a low-income unit.
- (2) In each affordable development, at least fifty percent (50%) of the restricted units within each bedroom distribution shall be low-income units.
- (3) At least ten percent (10%) of all affordable rental units shall be very-low-income units (affordable to households earning thirty percent (30%) or less of median income). The very-low-income units shall be counted as part of the required number of low-income units within the development.
- (4) Affordable developments that are not age-restricted shall be structured in conjunction with realistic market demands such that:
 - (a) The combined number of efficiency and one-bedroom units shall be no greater than twenty percent (20%) of the total low- and moderate-income units;
 - (b) At least thirty percent (30%) of all low- and moderate-income units shall be two-bedroom units;
 - (c) At least twenty percent (20%) of all low- and moderate-income units shall be three-bedroom units; and
 - (d) The remaining units may be allocated among two and three-bedroom units at the discretion of the developer.
- (5) Affordable developments that are age-restricted shall be structured such that the number of bedrooms shall equal the number of age-restricted low- and moderate-income units within the inclusionary development. The standard may be met by having all one-bedroom units or by having a two-bedroom unit for each efficiency unit.

E. Accessibility requirements.

- (1) The first floor of all restricted townhouse dwelling units and all restricted units in all other multistory buildings shall be subject to the technical design standards of the Barrier Free Subcode, N.J.A.C. 5:23-7 and N.J.A.C. 5:97-3.14.
- (2) All restricted townhouse dwelling units and all restricted units in other multistory buildings in which a restricted dwelling unit is attached to at least one other dwelling unit shall have the following features:
 - (a) An adaptable toilet and bathing facility on the first floor;
 - (b) An adaptable kitchen on the first floor;
 - (c) An interior accessible route of travel on the first floor;
 - (d) An interior accessible route of travel shall not be required between stories within an individual unit;
 - (e) 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
 - (f) An accessible entranceway as set forth at P.L. 2005, c. 350 (N.J.S.A. 52:27D-311.a, et seq.) and the Barrier Free Subcode, N.J.A.C. 5:23-7 and N.J.A.C. 5:97-3.14, or evidence that the Borough has collected funds from the developer sufficient to make ten percent (10%) of the adaptable entrances in the development accessible:
 - [1] Where a unit has been constructed with an adaptable entrance, upon the request of a disabled person who is purchasing or will reside in the dwelling unit, an accessible entrance shall be installed.
 - [2] To this end, the builder of restricted units shall deposit funds within the Borough of Woodbury Heights' affordable housing trust fund sufficient to install accessible entrances in ten percent (10%) of the affordable units that have been constructed with adaptable entrances.
 - [3] The funds deposited under paragraph [2] herein, shall be used by the borough for the sole purpose of making the adaptable entrance of any affordable unit accessible when requested to do so by a person with a disability who occupies or intends to occupy the unit and requires an accessible entrance.
 - [4] The developer of the restricted units shall submit a design plan and cost estimate for the conversion from adaptable to accessible entrances to the Construction Official of the Borough of Woodbury Heights.
 - [5] Once the Construction Official has determined that the design plan to convert the unit entrances from adaptable to accessible meet the requirements of the Barrier Free Subcode, N.J.A.C. 5:23-7 and N.J.A.C. 5:97-3.14, and that the cost estimate of such conversion is reasonable, payment shall be made to the Borough of Woodbury Heights' affordable housing trust fund in care of the Chief Financial Officer who shall ensure that the funds are deposited into the affordable housing trust fund and appropriately earmarked.
 - [6] Full compliance with the foregoing provisions shall not be required where an entity can demonstrate that it is impracticable to meet the requirements on the site. Determinations of site impracticability shall be in compliance with the Barrier Free Subcode, N.J.A.C. 5:23-7 and N.J.A.C. 5:97-3.14.

F. Maximum rents and sales prices.

- (1) In establishing rents and sales prices of affordable housing units, the administrative agent shall follow the procedures set forth in UHAC and in COAH, utilizing

the regional income limits established by COAH.

- (2) The maximum rent for restricted rental units within each affordable development shall be affordable to households earning no more than sixty percent (60%) of median income, and the average rent for restricted low- and moderate-income units shall be affordable to households earning no more than fifty-two percent (52%) of median income.
- (3) 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. At least ten percent (10%) of all low- and moderate-income rental units shall be affordable to households earning no more than thirty percent (30%) of median income.
- (4) The maximum sales price of restricted ownership units within each affordable development shall be affordable to households earning no more than seventy percent (70%) of median income, and each affordable development shall achieve an affordability average of fifty-five percent (55%) for restricted ownership units; in achieving this affordability average, moderate-income ownership units shall be available for at least three (3) different prices for each bedroom type, and low-income ownership units shall be available for at least two (2) different prices for each bedroom type.
- (5) In determining the initial sales prices and rents for compliance with the affordability average requirements for restricted units other than assisted living facilities, the following standards shall be met:
 - (a) A studio or efficiency unit shall be affordable to a one-person household;
 - (b) A one-bedroom unit shall be affordable to a one and one-half person household;
 - (c) A two-bedroom unit shall be affordable to a three-person household;
 - (d) A three-bedroom unit shall be affordable to a four and one-half person household; and
 - (e) A four-bedroom unit shall be affordable to a six-person household.
- (6) In determining the initial rents for compliance with the affordability average requirements for restricted units in assisted living facilities, the following standards shall be met:
 - (a) A studio or efficiency unit shall be affordable to a one-person household;
 - (b) A one-bedroom unit shall be affordable to a one and one-half person household; and
 - (c) A two-bedroom unit shall be affordable to a two-person household or to two (2) one-person households.
- (7) 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 ninety-five percent (95%) of the purchase price and the Federal Reserve H.15 rate of interest), taxes, homeowner and private mortgage insurance and condominium or homeowner association fees do not exceed twenty-eight percent (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.
- (8) The initial rent for a restricted rental unit shall be calculated so as not to exceed thirty percent (30%) of the eligible monthly income of the appropriate household size 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.
- (9) 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.
- (10) The rent of low- and moderate-income units may be increased annually based on the percentage increase in the Housing Consumer Price Index for the United States. This increase shall not exceed nine percent (9%) in any one year. Rents for units constructed pursuant to low-income housing tax credit regulations shall be indexed pursuant to the regulations governing low-income housing tax credits.
- (11) 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.

§ 35D-4. Condominium and homeowners association fees.

For any affordable housing unit that is part of a condominium association and/or homeowners association, the master deed shall reflect that the association fee assessed for each affordable housing unit shall be established at one hundred percent (100%) of the market rate fee.

ARTICLE II Affordable Unit Controls and Requirements

§ 35D-5. Purpose.

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

§ 35D-6. Affirmative marketing.

- A. 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 COAH Housing Region 5 and covers the period of deed restriction. **[Amended 9-17-14 by Ord. No. 5-2014]**
- B. The affirmative marketing plan shall provide a regional preference for all households that live and/or work in COAH Housing Region 5, comprised of Camden, Gloucester and Burlington Counties. **[Amended 9-17-14 by Ord. No. 5-2014]**
- C. Although the borough has the ultimate responsibility for implementing all aspects of Woodbury Heights' affordable housing program, the Administrative Agent designated by the borough shall assure the affirmative marketing of all affordable units is consistent with the affirmative marketing plan for the municipality.
- D. 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.
- E. The affirmative marketing process for available affordable units shall begin at least four (4) months prior to the expected date of occupancy.
- F. The costs of advertising and affirmative marketing of the affordable units shall be the responsibility of the developer, sponsor or owner, unless otherwise determined or agreed to by the Borough of Woodbury Heights.
- G. The affirmative marketing plan for each affordable housing development shall describe the media to be used in advertising and publicizing the availability of housing. In implementing the affirmative marketing plan, the Administrative Agent shall consider the use of language translations where appropriate.
- 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.

§ 35D-7. Occupancy standards.

A. In referring certified households to specific restricted units, to the extent feasible, and without causing an undue delay in occupying the unit, the Administrative Agent shall strive to:

- (1) Provide an occupant for each bedroom;
- (2) Provide children of different sexes with separate bedrooms;
- (3) Provide separate bedrooms for parents and children; and
- (4) Prevent more than two (2) persons from occupying a single bedroom.

B. Additional provisions related to occupancy standards (if any) shall be provided in the municipal Operating Manual.

§ 35D-8. Selection of occupants of affordable housing units.

A. The Administrative Agent shall use a random selection process to select occupants of low- and moderate-income housing.

B. A waiting list of all eligible candidates will be maintained in accordance with the provisions of N.J.A.C. 5:80-26 et seq.

§ 35D-9. Control periods for restricted ownership units and enforcement mechanisms.

A. Control periods for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.5 and each restricted ownership unit shall remain subject to the controls on affordability for a period of at least thirty (30) years and, thereafter, until Woodbury Heights takes action to release the unit from such requirements.

B. Rehabilitated owner-occupied single-family housing units that are improved to code standards shall be subject to affordability controls for a period of ten (10) years.

C. The affordability control period for a restricted ownership unit shall commence on the date the initial certified household takes title to the unit.

D. Prior to the issuance of the initial certificate of occupancy for a restricted ownership unit and upon each successive sale during the period of restricted ownership, the Administrative Agent shall determine the restricted price for the unit and shall also determine the nonrestricted, fair market value of the unit based on either an appraisal or the unit's equalized assessed value without the restrictions in place.

E. At the time of the initial sale of the unit, the initial purchaser shall execute and deliver to the Administrative Agent a recapture note obligating the purchaser (as well as the purchaser's heirs, successors and assigns) to repay, upon the first non-exempt sale after the unit's release from the restrictions set forth in this chapter, 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.

F. The affordability controls set forth in this chapter shall remain in effect despite the entry and enforcement of any judgment of foreclosure with respect to restricted ownership units.

G. A restricted ownership unit shall be required to obtain a continuing certificate of occupancy or a certified statement from the Construction Official stating that the unit meets all code standards upon the first transfer of title that follows the expiration of the applicable minimum control period provided under N.J.A.C. 5:80-26.5(a), as may be amended and supplemented.

§ 35D-10. Price restrictions for restricted ownership units, homeowner association fees and resale prices.

Price restrictions for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.1, as may be amended or superseded, including:

A. The initial purchase price for a restricted ownership unit shall be approved by the Administrative Agent.

B. The Administrative Agent shall approve all resale prices, in writing and in advance of the resale, to assure compliance with the foregoing standards.

C. The method used to determine the condominium association fee amounts and special assessments shall be indistinguishable between the low- and moderate-income unit owners and the market unit owners.

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

§ 35D-11. Capital improvements to ownership units.

A. 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 adds 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.

B. Upon the resale of a restricted ownership unit, all items of property that are permanently affixed to the unit or were included when the unit was initially restricted (for example, refrigerator, range, washer, dryer, dishwasher, wall-to-wall carpeting) shall be included in the maximum allowable resale price. Other items may be sold to the purchaser at a reasonable price that has been approved by the Administrative Agent at the time of the signing of the agreement to purchase. The purchase of central air conditioning installed subsequent to the initial sale of the unit and not included in the base price may be made a condition of the unit resale provided the price, which shall be subject to 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 shall 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.

§ 35D-12. Buyer income eligibility.

A. Buyer income eligibility for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.1, as may be amended and supplemented, such that low-income ownership units shall be reserved for households with a gross household income less than or equal to fifty percent (50%) of median income and moderate-income ownership units shall be reserved for households with a gross household income less than eighty percent (80%) of median income.

B. Notwithstanding the foregoing, however, the Administrative Agent may, in accordance with COAH's criteria, permit moderate-income purchasers to buy low-income units in housing markets determined by COAH to have an insufficient number of eligible low-income purchasers to permit prompt occupancy of the units. All such low-income units to be sold to moderate-income households shall retain the required pricing restrictions for low-income units.

C. A certified household that purchases a restricted ownership unit shall 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 a certified household for a period not to exceed one (1) year.

D. The Administrative Agent shall certify a household as eligible for a restricted ownership unit when the household is a low-income household or a moderate-income household, as applicable to the unit, and the estimated monthly housing cost for the particular unit (including principal, interest, taxes, homeowner and private mortgage insurance and condominium or homeowner association fees, as applicable) does not exceed thirty-three percent (33%) of the household's certified monthly income.

§ 35D-13. Limitations on indebtedness secured by ownership unit; subordination.

A. Prior to incurring any indebtedness to be secured by a restricted ownership unit, the administrative agent shall determine in writing that the proposed indebtedness complies with the provisions of this section.

B. With the exception of original purchase money mortgages, during a control period neither an owner nor a lender shall at any time cause or permit the total

indebtedness secured by the restricted ownership unit to exceed ninety-five percent (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).

§ 35D-14. Control periods for restricted rental units.

- A. Control periods for restricted rental units shall be in accordance with N.J.A.C. 5:80-26.11 and each restricted rental unit shall remain subject to the controls on affordability for a period of at least thirty (30) years and, thereafter, until Woodbury Heights takes action to release the unit from such requirements.
- B. Rehabilitated renter-occupied housing units that are improved to code standards shall be subject to affordability controls for a period of ten (10) years.
- C. Deeds of all real property that include restricted rental units shall contain deed restriction language. The deed restriction shall have priority over all mortgages on the property, and the deed restriction shall be filed by the developer or seller with the records office of the County of Monmouth. A copy of the filed document shall be provided to the Administrative Agent within thirty (30) days of the receipt of a certificate of occupancy.
- D. A restricted rental unit shall remain subject to the affordability controls of this chapter, despite the occurrence of any of the following events:
 - (1) Sublease or assignment of the lease of the unit;
 - (2) Sale or other voluntary transfer of the ownership of the unit; or
 - (3) The entry and enforcement of any judgment of foreclosure.

§ 35D-15. Rent restrictions for rental units; leases.

- A. 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.
- B. No additional fees or charges shall be added to the approved rent (except, in the case of units in an assisted living residence, to cover the customary charges for food and services) without the express written approval of the Administrative Agent.
 - C. Application fees (including the charge for any credit check) shall not exceed five percent (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 chapter.

§ 35D-16. Tenant income eligibility.

- A. Tenant income eligibility shall be in accordance with N.J.A.C. 5:80-26.13, as may be amended and supplemented, and shall be determined as follows:
 - (1) Very-low-income rental units shall be reserved for households with a gross household income less than or equal to thirty percent (30%) of median income.
 - (2) Low-income rental units shall be reserved for households with a gross household income less than or equal to fifty percent (50%) of median income.
 - (3) Moderate-income rental units shall be reserved for households with a gross household income less than eighty percent (80%) of median income.
- B. The Administrative Agent shall certify a household as eligible for a restricted rental unit when the household is a very-low-income, low-income household or a moderate-income household, as applicable to the unit, and the rent proposed for the unit does not exceed thirty-five percent (35%) (forty percent (40%) for age-restricted units) of the household's eligible monthly income as determined pursuant to N.J.A.C. 5:80-26.16, as may be amended and supplemented; provided, however, that this limit may be exceeded if one or more of the following circumstances exists:
 - (1) The household currently pays more than thirty-five percent (35%) (forty percent (40%) for households eligible for age-restricted units) of its gross household income for rent, and the proposed rent will reduce its housing costs;
 - (2) The household has consistently paid more than thirty-five percent (35%) (forty percent (40%) for households eligible for age-restricted units) of eligible monthly income for rent in the past and has proven its ability to pay;
 - (3) The household is currently in substandard or overcrowded living conditions;
 - (4) The household documents the existence of assets with which the household proposes to supplement the rent payments; or
 - (5) The household documents proposed third-party assistance from an outside source such as a family member in a form acceptable to the Administrative Agent and the owner of the unit.
- C. The applicant shall file documentation sufficient to establish the existence of the circumstances in subsections B(1) through B(5) above with the Administrative Agent, who shall counsel the household on budgeting.

§ 35D-17. Conversions.

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

ARTICLE III Administration

§ 35D-18. Municipal Housing Liaison.

- A. The position of Municipal Housing Liaison for the Borough of Woodbury Heights is hereby established. The Municipal Housing Liaison shall be appointed by duly adopted resolution of the Borough Council and be subject to the approval of the Court or COAH, as appropriate. Nothing herein shall be construed as to affect any person presently serving in the capacity of the Municipal Housing Liaison.
- B. The Municipal Housing Liaison shall be either a full-time or part-time employee of the Borough of Woodbury Heights.
- C. The Municipal Housing Liaison shall meet COAH's requirements for qualifications, including initial and periodic training.
- D. The Municipal Housing Liaison shall be responsible for oversight and administration of the affordable housing program for the Borough of Woodbury Heights, including the following responsibilities if not contracted out to the Administrative Agent:
 - (1) Serving as the municipality's primary point of contact for all inquiries from the state, affordable housing providers, Administrative Agents and interested households;
 - (2) The implementation of the affirmative marketing plan and affordability controls, unless contracted to the Administrative Agent.
 - (3) When applicable, supervising all Administrative Agents.
 - (4) Monitoring the status of all restricted units in the Borough of Woodbury Heights' Fair Share Plan;
 - (5) Compiling, verifying and submitting annual reports as required by COAH;
 - (6) Coordinating meetings with affordable housing providers and Administrative Agents, as needed; and
 - (7) Attending continuing education opportunities on affordability controls, compliance monitoring and affirmative marketing as offered or approved by COAH.

§ 35D-19. Administrative Agent.

- A. The Borough shall designate by resolution of the Borough Council, subject to the approval of the Court, one or more Administrative Agents to administer newly constructed affordable units in accordance with N.J.A.C. 5:96, N.J.A.C. 5:97 and UHAC.
- B. An Operating Manual shall be provided by the Administrative Agent(s) to be adopted by resolution of the Governing Body and subject to approval of the Court. The Operating Manuals shall be available for public inspection in the Office of the Municipal Clerk and in the office(s) of the Administrative Agent(s).
- C. The Administrative Agents shall perform the duties and responsibilities of an Administrative Agent as are set forth in UHAC and which are described in full detail in the Operating Manuals, including those set forth in N.J.A.C. 5:80-26.14, -26.15, -26.16 and -26.18 thereof, which includes:
- (1) Attending continuing education opportunities on affordability controls, compliance monitoring, and affirmative marketing as offered or approved by COAH;
 - (2) Affirmative marketing;
 - (3) Household certification;
 - (4) Affordability controls;
 - (5) Records retention;
 - (6) Resale and rental;
 - (7) Processing requests from unit owners; and
 - (8) Enforcement, although the ultimate responsibility for retaining controls on the units rests with the municipality.
 - (9) The Administrative Agent shall, as delegated by the Borough Council, have the authority to take all actions necessary and appropriate to carry out its responsibilities, hereunder.

§ 35D-20. Enforcement of affordable housing regulations.

- A. Upon the occurrence of a breach of any of the regulations governing the affordable unit by an owner, developer or tenant, the municipality shall have all remedies provided at law or equity, including but not limited to foreclosure, tenant eviction, municipal fines, a requirement for household recertification, acceleration of all sums due under a mortgage, recoupment of any funds from a sale in the violation of the regulations, injunctive relief to prevent further violation of the regulations, entry on the premises, and specific performance.
- B. After providing written notice of a violation to an owner, developer or tenant of a low- or moderate-income unit and advising the owner, developer or tenant of the penalties for such violations, the municipality may take the following action against the owner, developer or tenant for any violation that remains uncured for a period of sixty (60) days after service of the written notice:
- (1) The municipality may file a court action pursuant to N.J.S.A. 2A:58-11 alleging a violation, or violations, of the regulations governing the affordable housing unit. If the owner, developer or tenant is found by the court to have violated any provision of the regulations governing affordable housing units the owner, developer or tenant shall be subject to one or more of the following penalties, at the discretion of the court:
 - (a) A fine of not more than five hundred dollars (\$500.) or imprisonment for a period not to exceed ninety (90) days, or both. Each and every day that the violation continues or exists shall be considered a separate and specific violation of these provisions and not as a continuing offense;
 - (b) In the case of an owner who has rented his or her low- or moderate-income unit in violation of the regulations governing affordable housing units, payment into the Borough of Woodbury Heights Affordable Housing Trust Fund of the gross amount of rent illegally collected;
 - (c) In the case of an owner who has rented his or her low- or moderate-income unit in violation of the regulations governing affordable housing units, payment of an innocent tenant's reasonable relocation costs, as determined by the court.
 - (2) The municipality may file a court action in the Superior Court seeking a judgment, which would result in the termination of the owner's equity or other interest in the unit, in the nature of a mortgage foreclosure. Any 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.
- C. 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.
- D. 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 (2) 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.
- E. 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.
- F. 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.
- G. 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.
- H. 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.

§ 35D-21. Appeals.

Appeals from all decisions of an Administrative Agent designated pursuant to this chapter shall be filed in writing with the Executive Director of COAH.

ARTICLE IV Affordable Housing Development Fees **[Adopted 11-26-13 as Ord. No. 17-2013]**

§ 35D-22. Authority and purpose.

- A. In *Holmdel Builder's Association V. Holmdel Township*, 121 N.J. 550 (1990), the New Jersey Supreme Court determined that mandatory development fees are authorized

by the Fair Housing Act of 1985 (the Act), N.J.S.A. 52:27d-301 et seq., and the State Constitution and the Council on Affordable Housing's adoption of rules.

B. Pursuant to N.J.S.A. 52:27D-329.2 and the Statewide Non-Residential Development Fee Act, N.J.S.A. 40:55D-8.1 through -8.7, the NJ Department of Community Affairs is authorized to adopt and promulgate regulations necessary for the establishment, implementation, review, monitoring and enforcement of municipal affordable housing trust funds and corresponding spending plans. Municipalities that are under the jurisdiction of COAH or a court of competent jurisdiction and have a COAH-approved spending plan may retain fees collected from nonresidential development.

C. This Article establishes standards for the collection, maintenance, and expenditure of development fees pursuant to COAH's regulations and in accordance P.L.2008, c.46, Sections 8 and 32-38. Fees collected pursuant to this ordinance shall be used for the sole purpose of providing low- and moderate-income housing. This Article shall be interpreted within the framework of COAH's rules on development fees, N.J.A.C. 5:97-8.

§ 35D-23. Limitations on enactment.

A. This Article shall take effect upon approval by the Court pursuant to N.J.A.C. 5:96-5.1.

B. Borough of Woodbury Heights shall not spend development fees until COAH or the Court has approved a plan for spending such fees in conformance with N.J.A.C. 5:97-8.10 and N.J.A.C. 5:96-5.3.

§ 35D-24. Residential development fees.

A. Imposed fees.

(1) Within any zoning district, residential developers, except for developers of the types of development specifically exempted below, shall pay a fee of one and one-half percent (1.5%) of the equalized assessed value for residential development provided no increased density is permitted.

(2) When an increase in residential density pursuant to N.J.S.A. 40:55D-70d(5) (known as a "d" variance) has been permitted, developers shall be required to pay a development fee of six percent (6%) of the equalized assessed value for each additional unit that may be realized. However, if the zoning on a site has changed during the two-year period preceding the filing of such a variance application, the base density for the purposes of calculating the bonus development fee shall be the highest density permitted by right during the two-year period preceding the filing of the variance application.

Example: If an approval allows four (4) units to be constructed on a site that was zoned for two (2) units, the fees could equal one and one-half percent (1.5%) of the equalized assessed value on the first two (2) units; and six percent (6%) of the equalized assessed value for the two (2) additional units, provided zoning on the site has not changed during the two-year period preceding the filing of such a variance application.

B. Eligible exactions, ineligible exactions and exemptions for residential development.

(1) Affordable housing developments, 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 shall be exempt from development fees.

(2) Developments that have received preliminary or final site plan approval prior to the date of the first adoption of the Woodbury Heights municipal development fee ordinance shall be exempt from development fees, unless the developer seeks a substantial change in the approval. Where a site plan approval does not apply, a zoning and/or building permit shall be synonymous with preliminary or final site plan approval for this purpose. The fee percentage shall be vested on the date that the building permit is issued.

(3) Development fees shall be imposed and collected when an existing structure undergoes a change to a more intense use, is demolished and replaced, or is expanded, if the expansion is otherwise not exempt from the payment of a development fee. The development fee shall be calculated on the increase in the equalized assessed value of the improved structure.

(4) Nonprofit organizations 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 Borough Clerk, together with a certification that services of the organization are provided at reduced rates to those who establish an inability to pay at established, existing charges, shall be exempted from paying a development fee.

(5) Federal, state, county, local governments and agencies of the same shall be exempted from paying a residential development fee.

(6) Residential dwellings destroyed due to fire, flood, or natural disaster and rebuilt by their owners shall be exempt from paying a development fee.

§ 35D-25. Nonresidential development fees.

A. Imposed fees.

(1) Within all zoning districts, nonresidential developers, except for developers of the types of development specifically exempted, shall pay a fee equal to two and one-half percent (2.5%) of the equalized assessed value of the land and improvements, for all new nonresidential construction on an unimproved lot or lots.

(2) Nonresidential developers, except for developers of the types of development specifically exempted, shall also pay a fee equal to two and one-half percent (2.5%) of the increase in equalized assessed value resulting from any additions to existing structures to be used for nonresidential purposes.

(3) Development fees shall be imposed and collected when an existing structure is demolished and replaced. The development fee of two and one-half percent (2.5%) shall be calculated on the difference between the equalized assessed value of the pre-existing land and improvement and the equalized assessed value of the newly improved structure, i.e. land and improvement, at the time the final certificate of occupancy is issued. If the calculation required under this section results in a negative number, the nonresidential development fee shall be zero.

B. Eligible exactions, ineligible exactions and exemptions for nonresidential development.

(1) The nonresidential portion of a mixed-use inclusionary or market rate development shall be subject to the two and one-half percent (2.5%) development fee, unless otherwise exempted below.

(2) The two and one-half percent (2.5%) fee shall not apply to an increase in equalized assessed value resulting from alterations, change in use within existing footprint, reconstruction, renovations and repairs.

(3) Any exemption claimed by a developer of nonresidential development shall be substantiated in accordance with the exemptions required pursuant to P.L. 2008, c.46, as specified in the Form N-RDF "State of New Jersey Non-Residential Development Certification/Exemption Form." Nonresidential development exempt from the development fee (exempted categorically, not exempted by statutory moratorium), include the following:

(a) State, county and local government buildings;

(b) Houses of worship and ancillary structures and buildings exempt from real property taxation;

(c) Nonresidential development that is an amenity made available to the public, including but not limited to, recreational facilities, community centers, and senior centers, which are developed in conjunction with or funded by a nonresidential developer; and

(d) Nonresidential construction resulting from a relocation of or an on-site improvement to a nonprofit hospital or skilled nursing facility.

(4) A developer of a nonresidential development exempted from the nonresidential development fee pursuant to P.L.2008, c.46 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 nonresidential development fee, in that event, within three (3) years after that event or after the issuance of the final certificate for occupancy of the nonresidential development, whichever is later.

(5) If a property which was exempted from the collection of a nonresidential development fee thereafter ceases to be exempt from property taxation, the owner of the property shall remit the fees required pursuant to this section within forty-five (45) days of the termination of the property tax exemption. Unpaid nonresidential development fees under these circumstances may be enforceable by the Borough of Woodbury Heights as a lien against the real property of the owner.

§ 35D-26. Collection procedures.

- A. Upon the granting of a preliminary, final or other applicable approval, for a development, the applicable approving authority shall direct the combined Planning Board Secretary to notify the Construction Official responsible for the issuance of a building permit.
- B. For nonresidential developments only, the developer shall also be provided with a copy of Form N-RDF "State of New Jersey Non-Residential Development Certification/Exemption Form" to be completed as per the instructions provided. The developer of a nonresidential development shall complete Form N-RDF as per the instructions provided. The Construction Official shall verify the information submitted by the nonresidential developer as per the instructions provided in the Form N-RDF. The Tax Assessor shall verify exemptions and prepare estimated and final assessments as per the instructions provided in Form N-RDF.
- C. The Construction Official responsible for the issuance of a building permit shall notify the Municipal Tax Assessor of the issuance of the first building permit for a development which is subject to a development fee.
- D. Within ninety (90) days of receipt of that notice, the Municipal Tax Assessor, based on the plans filed, shall provide an estimate of the equalized assessed value of the development.
- E. The Construction Official responsible for the issuance of a final certificate of occupancy shall notify the Municipal Tax Assessor of any and all requests for the scheduling of a final inspection on property which is subject to a development fee.
- F. Within ten (10) business days of a request for the scheduling of a final inspection, the Municipal Tax Assessor shall confirm or modify the previously estimated equalized assessed value of the improvements in the development; calculate the development fee; and thereafter notify the developer of the amount of the fee.
- G. Should the Borough of Woodbury Heights fail to determine or notify the developer of the amount of the development fee within ten (10) business days of the request for final inspection, the developer may estimate the amount due and pay that estimated amount consistent with the dispute process set forth in subsection b. of section 37 of P.L.2008, c.46 (N.J.S.A. 40:55D-8.6).
- H. Fifty percent (50%) of the total estimated 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 the issuance of the building permit and that determined at the issuance of the certificate of occupancy.

§ 35D-27. Appeal procedures.

- A. Appeal of development fees. A developer may challenge residential development fees imposed by filing a challenge with the County Board of Taxation. Pending a review and determination by the Board, collected fees shall be placed in an interest bearing escrow account by the Borough of Woodbury Heights. Appeals from a determination of the Board may be made to the tax court in accordance with the provisions of the State Tax Uniform Procedure Law, N.J.S.A. 54:48-1 et seq., within ninety (90) days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.
- B. 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 forty-five (45) days of receipt of the challenge, collected fees shall be placed in an interest bearing escrow account by the Borough of Woodbury Heights. Appeals from a determination of the Director may be made to the tax court in accordance with the provisions of the State Tax Uniform Procedure Law, N.J.S.A. 54:48-1, et seq., within ninety (90) days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.

§ 35D-28. Borough affordable housing fund.

- A. Establishment of fund. There is hereby created a separate, interest-bearing housing trust fund to be maintained by the chief financial officer of the Borough of Woodbury Heights 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. General provisions.
 - (1) The following funds shall be deposited in the affordable housing trust fund and shall at all times be identifiable by source and amount:
 - (a) Payments in lieu of on-site construction of affordable units;
 - (b) Developer contributed funds to make ten percent (10%) of the adaptable entrances in a townhouse or other multistory attached development accessible;
 - (c) Rental income from municipally operated units;
 - (d) Repayments from affordable housing program loans;
 - (e) Recapture funds;
 - (f) Proceeds from the sale of affordable units; and
 - (g) Any other funds collected in connection with Woodbury Heights' housing program.
 - (2) The Mayor and Council, in the name of the fund, shall have the right to apply for and receive grants from any source to further the purposes of the fund.
- C. Within seven (7) days of the opening of the trust fund account or change to a different bank, the Borough of Woodbury Heights shall provide COAH with written authorization, in the form of a three-party escrow agreement between the municipality, the bank of deposit and any bank in successor, and COAH to direct the disbursement of the funds as provided for in N.J.A.C. 5:97-8.13(b).
- D. All interest accrued in the housing trust fund shall only be used on eligible affordable housing activities approved by the COAH. Funds shall not be expended to reimburse the Borough of Woodbury Heights for past housing activities.
- E. Use of funds. The expenditure of all funds shall conform to a spending plan approved by the Court and COAH. Funds deposited in the housing trust fund may be used for **any activity approved as part of the spending plan to address the municipality's fair share obligation and may be set up as a grant or revolving loan program.** Such activities include, but are not limited to: preservation or purchase of housing for the purpose of maintaining or implementing affordability controls, rehabilitation, new construction of affordable housing units and related costs, accessory apartment, market to affordable, or regional housing partnership programs, conversion of existing nonresidential buildings to create new affordable units, green building strategies designed to be cost saving and in accordance with accepted national or state standards, purchase of land for affordable housing, improvement of land to be used for affordable housing, extensions or improvements of roads and infrastructure to affordable housing sites, financial assistance designed to increase affordability, administration necessary for implementation of the Housing Element and Fair Share Plan, or any other activity as permitted pursuant to N.J.A.C. 5:97-8.7 through -8.9 and as otherwise specified in the approved spending plan.
 - (1) At least thirty percent (30%) of all development fees collected and interest earned shall be used to provide affordability assistance to low- and moderate-income households in affordable units included in the Municipal Fair Share Plan. One-third (1/3) of the affordability assistance portion of development fees collected shall be used to provide affordability assistance to those households earning thirty percent (30%) or less of median income by region.
 - (2) 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.
 - (3) Affordability assistance to households earning thirty percent (30%) or less of median income 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 thirty percent (30%) or less of median income.
 - (4) Payments in lieu of constructing affordable units on site and funds from the sale of units with extinguished controls shall be exempt from the affordability assistance requirement.
- F. Administrative expenditures. No more than twenty percent (20%) of all revenues collected from development fees, may be expended on administration, including, but not limited to, salaries and benefits for municipal employees or consultant fees necessary to develop or implement a new construction program, a Housing Element and Fair Share Plan, and/or an affirmative marketing program. In the case of a rehabilitation program, no more than twenty (20%) percent of the revenues collected from development fees shall be expended for such administrative expenses. Administrative funds may be used for income qualification of households, monitoring the

turnover of sale and rental units, and compliance with COAH's monitoring requirements. Legal or other fees related to litigation opposing affordable housing sites or objecting to the Council's regulations and/or action are not eligible uses of the affordable housing trust fund.

- G. Monitoring requirements. Woodbury Heights Borough shall complete and return to COAH all monitoring forms included in monitoring requirements related to the collection of development fees from residential and nonresidential developers, payments in lieu of constructing affordable units on site, funds from the sale of units with extinguished controls, barrier free escrow funds, rental income, repayments from affordable housing program loans, and any other funds collected in connection with Woodbury Heights' housing program, as well as to the expenditure of revenues and implementation of the plan approved by the court. All monitoring reports shall be completed on forms designed by COAH.
- H. Collection coterminous with certification. The ability for the Borough of Woodbury Heights to impose, collect and expend development fees shall expire with its substantive certification or judgment of repose unless the Borough of Woodbury Heights has filed an adopted Housing Element and Fair Share Plan with COAH or the court, has **petitioned for substantive certification or judgment of repose, and has received the Court and COAH's approval of its development fee ordinance.** If the Borough of Woodbury Heights fails to renew its ability to impose and collect development fees prior to the expiration of substantive certification, it may be subject to forfeiture of any or all funds remaining within its municipal trust fund. Any funds so forfeited shall be deposited into the "New Jersey Affordable Housing Trust Fund" established pursuant to N.J.S.A. 52:27D-320. The Borough of Woodbury Heights shall not impose a residential development fee on a development that receives preliminary or final site plan approval after the expiration of its substantive certification or judgment of compliance, nor shall Borough of Woodbury Heights retroactively impose a development fee on such a development. The Borough of Woodbury Heights shall not expend development fees after the expiration of its substantive certification or judgment of repose.
- I. The Borough of Woodbury Heights may contract with a private or public entity to administer any part of its Housing Element and Fair Share Plan, including the requirement for affordability assistance, in accordance with N.J.A.C. 5:96-18.