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Ordinance #769-23

Introduced: February 21, 2023

NOTICE IS HEREBY GIVEN, that the following proposed ordinance was introduced and passed on first reading at a meeting of the Mayor and Council of Harrington Park, County of Bergen, State of New Jersey, on the 21st of February, 2023, and that said Ordinance will be taken up for further consideration for final passage at a meeting of the said Mayor and Council to be held at its meeting place at the Municipal Building located at 85 Harriot Avenue, Harrington Park, New Jersey on Monday, the 13th of March, 2023, at 7:00 pm or as soon thereafter as the matter can be reached, at which time all persons interested therein will be given an opportunity to be heard concerning the same.

WHEREAS, on July 8, 2015, the Borough of Harrington Park had filed and served on all interested parties a Complaint for Declaratory Judgment with respect to the Borough of Harrington Park's affordable housing obligation; and

WHEREAS, the Borough of Harrington Park and Fair Share Housing Council, in consultation with the Court-appointed Master and the Borough's Planner, entered into a proposed settlement agreement on November 6, 2017; and

WHEREAS, following a fairness hearing on January 25, 2018, the Court approved the aforesaid proposed settlement agreement; and

WHEREAS, the purpose of the within ordinance is to address the Borough of Harrington Park's constitutional obligation to provide for its fair share of low- and moderate-income housing, as directed by the Superior Court and consistent with N.J.A.C. 5:80-26.1, *et seq.*, as amended and supplemented, and the New Jersey Fair Housing Act of 1985. This Ordinance is intended to provide assurances that very low-, low- and moderate-income units ("affordable units") are created with controls on affordability over time and that very low-, low- and moderate-income households shall occupy those units. This Ordinance shall apply, except where inconsistent with applicable law.

NOW, THEREFORE, BE IT ORDAINED by the Borough Council of the Borough of Harrington Park, Bergen County, New Jersey, as follows:

SECTION 1. Chapter 85 “Affordable Housing” of Part II, General Legislation, of the Code of the Borough of Harrington Park, is hereby amended to read in full as follows:

Chapter 85

Affordable Housing

§85-1. General Program Purposes, Procedure.

A. Affordable Housing Obligation.

- (1) This Chapter sets forth regulations regarding the low- and moderate-income housing units in the Borough of Harrington Park consistent with the provisions known as the “Substantive Rules of the New Jersey Council on Affordable Housing,” the Uniform Housing Affordability Controls (“UHAC”), N.J.A.C. 5:80-26.1 et seq., and the Borough’s constitutional obligation to provide a fair share of affordable housing for low- and moderate-income households. In addition, this Chapter applies requirements for very low-income housing established in P.L. 2008, c.46 (the “Roberts Bill”).
- (2) This Chapter is intended to assure that low- and moderate-income units ("affordable units") are created with controls on affordability over time and that low- and moderate-income households shall occupy these units. This Chapter shall apply except where inconsistent with applicable law.
- (3) The Borough of Harrington Park Planning Board has adopted a Housing Element and Fair Share Plan pursuant to the Municipal Land Use Law at N.J.S.A. 40:55D1, et seq. The Fair Share Plan has been endorsed by the governing body. The Fair Share Plan describes the ways Harrington Park Borough shall address its fair share for low- and moderate-income housing as determined by the Superior Court and documented in the Housing Element.
- (4) This Chapter implements and incorporates the Fair Share Plan and addresses the requirements of the Act and regulations thereunder, as may be amended and supplemented.
- (5) The Borough shall file monitoring reports with the Superior Court and place the reports on its municipal website. Any plan evaluation report of the Housing Element and Fair Share Plan and monitoring prepared by the Special Master shall be available to the public at the Borough of Harrington Park Municipal Building, 85 Harriot Avenue, Harrington Park, New Jersey.

Monitoring and Reporting Requirements

The Borough of Harrington Park shall comply with the following monitoring and reporting requirements regarding the status of the implementation of its Court-approved Housing Element and Fair Share Plan:

- (1) Beginning on November 21, 2017, and on every anniversary of that date through July 1, 2025, the Township agrees to provide annual reporting of its Affordable Housing Trust Fund activity to the New Jersey Department of Community Affairs, Committee on Affordable Housing, or Local Government Services, or other entity designated by the State of New Jersey, with a copy provided to Fair Share Housing Center (FSHC) and posted on the municipal website, using forms developed for this purpose by the New Jersey Department of Community Affairs (NJDC), Committee on Affordable Housing (COAH), or Local Government Services (NJLGS). The reporting shall include an accounting of all Affordable Housing Trust Fund activity, including the source and amount of funds collected and the amount and purpose for which any funds have been expended.
- (2) Beginning on November 21, 2017, and on every anniversary of that date through July 27, 2025, the Township agrees to provide annual reporting of the status of all affordable housing activity within the municipality through posting on the municipal website with a copy of such posting provided to Fair Share Housing Center, using forms previously developed for this purpose by COAH or any other forms endorsed by the Special Master and FSHC.
- (3) By July 1, 2022, as required pursuant to N.J.S.A. 52:27D-313, the Township will post on its municipal website, with a copy provided to FSHC, a status report as to its implementation of its Plan and an analysis of whether any unbuilt sites or unfulfilled mechanisms continue to present a realistic opportunity and whether any mechanisms to meet unmet need should be revised or supplemented. Such posting shall invite any interested party to submit comments to the municipality, with a copy to FSHC, regarding whether any sites no longer present a realistic opportunity and should be replaced and whether any mechanisms to meet unmet need should be revised or supplemented. Any interested party may by motion request a hearing before the Court regarding these issues.
- (4) By December 21, 2017, and every third year thereafter, as required by N.J.S.A. 52:27D-329.1, the Township will post on its municipal website, with a copy provided to FSHC, a status report as to its satisfaction of its very low income requirements, including its family very low income requirements. Such posting shall invite any interested party to submit comments to the municipality and FSHC on the issue of whether the municipality has complied with its very low income and family very low income housing obligations.

B. Definitions.

The following terms when used in this Chapter shall have the meanings given in this Section:

“Accessory Apartment” means a second dwelling unit on a lot containing single-familyly dwelling, which existed at the time of the adoption of this article, which second unit may be located within a principal structure, added to a principal structure or located in a separate accessory building. The creation of such a dwelling unit shall be clearly incidental to the primary use of the property as a single-family dwelling and shall in no way confer upon the property owner any future rights to subdivide the existing lot in order to place each unit on a separate lot unless such a subdivision and the structures involved could conform to all

municipal zoning standards. Accessory apartments shall conform to the requirements of the New Jersey Council on Affordable Housing.

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

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

“Administrative agent” means the entity responsible for the administration of affordable units in accordance with this Chapter, N.J.A.C. 5:80-26.1 et seq.

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

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

“Affordable” means, a sales price or rent within the means of a low- or moderate income household; 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” means a housing development all or a portion of which consists of restricted units.

“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 development.

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

“Affordable unit” means a housing unit proposed or created pursuant to the Act, and/or funded through an affordable housing trust fund.

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

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

“Alternative living arrangement” a structure in which households live in distinct bedrooms, yet share kitchen and plumbing facilities, central heat and common areas. Alternate living arrangements includes, but is not limited to: transitional facilities for the homeless, Class A, B, C, D, and E boarding homes, as regulated by the New Jersey

Department of Community Affairs; residential health care facilities as regulated by the New Jersey Department of Health; group homes for the developmentally disabled and mentally ill as licensed and/or regulated by the New Jersey Department of Human Services; and congregate living arrangements.

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

“Borough” means the Borough of Harrington Park, Bergen County, New Jersey.

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

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

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

“Commissioner” means the Commissioner of Community Affairs.

“Council” means the Council on Affordable Housing, established pursuant to P.L.1985, c.222 (C.52:27D-301 et al.).

“DCA” means the State of New Jersey Department of Community Affairs.

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

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

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

“Equalized Assessed Value” means the assessed value of a property divided by the current average ratio of assessed to true value for the municipality in which the property is situated,

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

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

“Low-income household” means a household with a total gross annual household income equal to 50 percent or less of the median household income.

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

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

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

“Median income household” means the median income by household size for the applicable county, as adopted annually by COAH or approved by the New Jersey Superior Court.

“Mixed use development” means any development which includes both a nonresidential development component and a residential development component, and shall include developments for which: (1) there is a common developer for both the residential development component and the 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 total gross annual household income in excess of 50 percent but less than 80 percent of the median household income.

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

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

“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 promulgated to effectuate the “State Uniform Construction Code Act,” P.L.1975, c.217 (C.52:27D-119 et seq.), including any subsequent amendments or revisions thereto; (2) hotels, motels, vacation timeshares, and child-care facilities; and (3) the entirety of all continuing care facilities within a continuing care retirement community which is subject to the “Continuing Care Retirement Community Regulation and Financial Disclosure Act,” P.L.1986, c.103 (C.52:27D-330 et seq.).

“Non-residential development fee” means the fee authorized to be imposed pursuant to Sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1 through C.40:55D-8.7).

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

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

“Regional asset limit” means the maximum housing value in each housing region affordable to a four-person household with an income at 80 percent of the regional median as defined by/approved regional income limits.

“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.

“Relating to the provision of housing” shall be liberally construed to include the construction, maintenance, or operation of housing, including but not limited to the provision of services to such housing and the funding of any of the above.

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

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

“Spending plan” means a method of allocating funds collected and to be collected pursuant to an approved municipal development fee ordinance, or pursuant to P.L.2008, c.46 (C.52:27D-329.1 et al.) for the purpose of meeting the housing needs of low and moderate income individuals.

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

“Treasurer” means the Treasurer of the state of New Jersey.

“UHAC” means the Uniform Housing Affordability Controls set forth in N.J.A.C. 5:8026.1 et seq.

“**Very low-income household**” means a household with a total gross annual household income equal to 30 percent or less of the median household income.

“**Very low-income unit**” means a restricted unit that is affordable to a very low-income household.

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

Applicability

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

Alternative Living Arrangements

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

C. Accessory Apartment Program.

- (1) All accessory apartments shall comply with the following:

- (a) Accessory apartments shall be a permitted accessory use in the R-1, R-2 and R-3 Zones.
- (b) Accessory apartments shall conform to the bulk requirements of the zone in which they are located, except for minimum lot size. For the purposes of this article, detached accessory apartments shall be considered structures, and accessory apartments attached to a principal dwelling shall be considered a principal structure.
- (c) The minimum lot size for accessory apartments in all zones shall be 7,500 square feet, except that where a property which is less than 7,500 square feet already contains an existing accessory structure which can be converted into an accessory apartment without increase in its building footprint, such a unit can be counted as a qualifying accessory apartment, subject to all of the provisions and limitations specified herein.
- (d) Accessory apartments shall comply with all applicable codes and standards of the State of New Jersey and the Borough of Harrington Park. Each apartment shall contain at least 500 square feet of gross floor area, a minimum of two rooms and shall also contain a bathroom and kitchen facilities. Accessory apartments shall also have a separate entrance and, where attached to a principal structure, shall not have direct internal access.
- (e) Accessory apartments shall be rented only to a household which is either a low- or moderate- income household in accordance with N.J.A.C. 5:93-5.9 at the time of initial occupancy. Rents shall be affordable to low- and moderate-income households and include appropriate utility allowances, in accordance with N.J.A.C. 5:93-7.4. One- half of the accessory apartments created shall be for low-income households; the other half shall be for moderate-income households.
- (f) Properties containing accessory apartments shall be deed restricted to ensure that the accessory apartment shall be rented only to a low- or moderate-income household for a period of at least 10 years. Said deed restriction shall run with the land and shall be assignable to all successors or heirs.
- (g) Each accessory apartment shall be connected to adequate potable water and sewage disposal systems.
- (h) Accessory apartments shall be affirmatively marketed in accordance with N.J.A.C. 5:93-11 within the housing region of the Borough of Harrington Park.
- (i) The maximum height of any detached accessory structure containing an accessory apartment shall not exceed the maximum height permitted for principal structures in the zone.
- (j) In no case shall a detached accessory structure containing an accessory apartment be located closer to a public street than the principal structure, except in the case of an existing accessory structure where no expansion is required.

- (k) A minimum of one off-street parking space shall be provided for an accessory apartment, in addition to the off-street parking already provided on site for the principal structure.
 - (l) No accessory apartment created as a result of this Section or these regulations shall exceed the gross floor area of the existing principal dwelling on the lot.
- (2) Administrative requirements for Accessory Apartment Program.
- (a) The Borough of Harrington Park shall designate an administrative entity to administer the accessory apartment program.
 - [1.] The Borough or its assignee shall administer the accessory apartment program, including advertising, income-qualifying prospective renters, setting rents and annual rent increases, maintaining a waiting list, distributing the subsidy, securing certificates of occupancy, qualifying properties, handling application forms, filing deed restrictions and monitoring reports and affirmatively marketing the accessory apartment program.
 - [2.] The Borough shall only deny an application for an accessory apartment if the project is not in conformance with N.J.A.C. 5:93-5.9, the municipal development ordinances or this Section.
 - [3.] In accordance with N.J.A.C. 5:93-5.9, the Borough shall provide \$10,000 to subsidize the physical creation of an accessory apartment conforming to the requirements of this article and all other COAH requirements. Prior to the grant of such a subsidy and prior to the issuance of a building permit, the owner shall enter into a written agreement with the Borough of Harrington Park ensuring that:
 - i. The subsidy will be used to create the accessory apartment; and
 - ii. The apartment shall meet the requirements of this Section and N.J.A.C. 5:93-5.9.
 - (b) Applicants seeking to create an accessory apartment shall submit the following prior to the issuance of a building permit:
 - [1.] A sketch showing floor plans depicting the size and location of the rooms within the accessory structure and its relationship to the principal structure.
 - [2.] A site plan on a current survey depicting the location of all existing and proposed structures on site, parking and driveways, and clearly indicating all dimensions.
 - [3.] Building elevations showing all exterior building modifications proposed, including specifying materials, colors and window locations.
 - (c) The Borough hereby appoints the Harrington Park Affordable Housing Commission as the agency responsible for the administration, marketing, advertising and implementation of this Section.

(3) Sunset clause for Accessory Apartment Program.

- (a) The provisions of this article permitting accessory apartments shall become null and void, having no further force or effect upon the issuance of a certificate of occupancy for the sixth accessory apartment in the Borough of Harrington Park. The administrative provisions shall remain in full force and effect, unless otherwise modified by law, until the last deed restriction expires.

D. Borough-wide Mandatory Set-Aside

- (1) A multi-family or single-family development providing a minimum of five (5) new housing units created through any future development application, municipal rezoning or Zoning Board action, use or density variance, redevelopment plan, or rehabilitation plan is required to include an affordable housing set-aside of 20 percent if the affordable units will be for sale and 15 percent if the affordable units will be for rent. This requirement does not give any developer the right to any such rezoning, variance or other relief, or establish any obligation on the part of Harrington Park Borough to grant such rezoning, variance or other relief. No subdivision shall be permitted or approved for the purpose of avoiding compliance with this requirement.
- (2) The requirement of Section 85-1 D(1) above shall not apply to any sites or specific zones otherwise identified in the Borough's Settlement Agreement with Fair Share Housing Center dated November 6, 2017, or in the Borough's Housing Element and Fair Share Plan, adopted by the Borough Planning Board and endorsed by the Borough Council, for which density and set-aside standards shall be governed by the specific standards set forth therein.

E. New Construction.

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

- (1) 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 in inclusionary developments:

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%

(2) Design. In inclusionary developments, to the extent possible, low- and moderate-income units shall be integrated with the market units. In inclusionary developments, low- and moderate-income units shall have access to all of the same common elements and facilities as the market units.

(3) Utilities. Affordable units shall utilize the same type of heating source as market units within the affordable development. Tenant-paid utilities included in the utility allowance shall be set forth in the lease and shall be consistent with the utility allowance approved by HUD for the Section 8 program.

(4) Low/Moderate Split and Bedroom Distribution of Affordable Housing Units:

(a) The fair share obligation shall be divided equally between low- and moderate income units, except that where there is an odd number of affordable housing units, the extra unit shall be a low income unit. At least 13 percent of all restricted rental units within each bedroom distribution shall be very low-income units (affordable to a household earning 30 percent or less of regional median income by household size). The very low-income units shall be counted as part of the required number of low-income units within the development.

(b) In each affordable development, at least 50 percent of the restricted units within each bedroom distribution shall be low-income units.

(c) Within rental developments, of the total number of affordable rental units, at least 13 percent shall be affordable to very low-income households.

(d) Affordable developments that are not age-restricted shall be structured in conjunction with realistic market demands such that:

[1.] The combined number of efficiency and one-bedroom units shall be no greater than 20 percent of the total low- and moderate-income units;

[2.] At least 30 percent of all low- and moderate-income units shall be two bedroom units;

[3.] At least 20 percent of all low- and moderate-income units shall be three bedroom units; and

[4.] The remaining units may be allocated among two and three bedroom units at the discretion of the developer.

(e) 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.

(5) Accessibility Requirements.

(a) The first floor of all restricted townhouse dwelling units and all restricted units in all other multistory buildings shall be subject to the technical design standards of the Barrier Free Subcode, N.J.A.C. 5:23-7.

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

Municipal Treasurer who shall ensure that the funds are deposited into the affordable housing trust fund and appropriately earmarked.

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

(6) Maximum Rents and Sales Prices.

- (a) In establishing rents and sales prices of affordable housing units, the administrative agent shall follow the procedures set forth in UHAC, utilizing the most recently published regional weighted average of the uncapped Section 8 income limits published by HUD and the calculation procedures as approved by the Court.
- (b) The maximum rent for restricted rental units within each affordable development shall be affordable to households earning no more than 60 percent of median income, and the average rent for restricted low- and moderate-income units shall be affordable to households earning no more than 52 percent of median income.
- (c) The developers and/or municipal sponsors of restricted rental units shall establish at least one rent for each bedroom type for both low-income and moderate-income units, provided that at least 13 percent of all low- and moderate-income rental units shall be affordable to very low-income households earning no more than 30 percent of median income, which very low-income units shall be part of the low-income requirement.
- (d) The maximum sales price of restricted ownership units within each affordable development shall be affordable to households earning no more than 70 percent of median income, and each affordable development must achieve an affordability average of 55 percent for restricted ownership units; in achieving this affordability average, moderate-income ownership units must be available for at least three different prices for each bedroom type, and low-income ownership units must be available for at least two different prices for each bedroom type.
- (e) In determining the initial sales prices and rents for compliance with the affordability average requirements for restricted units other than assisted living facilities, the following standards shall be used:
 - [1.] A studio shall be affordable to a one-person household;
 - [2.] A one-bedroom unit shall be affordable to a one and one-half person household;
 - [3.] A two-bedroom unit shall be affordable to a three-person household;
 - [4.] A three-bedroom unit shall be affordable to a four and one-half person household; and

- [5.] A four-bedroom unit shall be affordable to a six-person household.
- (f) In determining the initial rents for compliance with the affordability average requirements for restricted units in assisted living facilities, the following standards shall be used:
- [1.] A studio shall be affordable to a one-person household;
- [2.] A one-bedroom unit shall be affordable to a one and one-half person household; and
- [3.] A two-bedroom unit shall be affordable to a two-person household or to two one-person households.
- (g) The initial purchase price for all restricted ownership units shall be calculated so that the monthly carrying cost of the unit, including principal and interest (based on a mortgage loan equal to 95 percent of the purchase price and the Federal Reserve H.15 rate of interest), taxes, homeowner and private mortgage insurance and condominium or homeowner association fees do not exceed 28 percent of the eligible monthly income of the appropriate size household as determined under N.J.A.C. 5:80-26.4, as may be amended and supplemented; provided, however, that the price shall be subject to the affordability average requirement of N.J.A.C. 5:80-26.3, as may be amended and supplemented.
- (h) The initial rent for a restricted rental unit shall be calculated so as not to exceed 30 percent of the eligible monthly income of the appropriate household size as determined under N.J.A.C. 5:80-26.4, as may be amended and supplemented; provided, however, that the rent shall be subject to the affordability average requirement of N.J.A.C. 5:80-26.3, as may be amended and supplemented.
- (i) The price of owner-occupied low- and moderate-income units may increase annually based on the percentage increase in the regional median income limit for each housing region. In no event shall the maximum resale price established by the administrative agent be lower than the last recorded purchase price.
- (j) The rent of low- and moderate-income units may be increased annually based on the permitted percentage increase in the Housing Consumer Price Index for the Northeast Urban Area. This increase shall not exceed 9 percent in any one year. Rent increases for units constructed pursuant to low- income housing tax credit regulations shall be indexed pursuant to the regulations governing low-income housing tax credits.
- (k) Tenant-paid utilities that are included in the utility allowance shall be so stated in the lease and shall be consistent with the utility allowance approved by DCA for its Section 8 program.

§85-2. Administration.

A. Municipal Housing Liaison.

- (1) The position of Municipal Housing Liaison (MHL) for Harrington Park Borough is established by this Section. The MHL shall be appointed by the governing body. The Municipal Housing Liaison is responsible for overseeing the Borough's affordable housing program, including overseeing the administration of affordability controls on the affordable units and the affirmative marketing of available affordable units in accordance with the Borough's Affirmative Marketing Plan; fulfilling monitoring and reporting requirements; and supervising Administrative Agent(s). Harrington Park shall adopt a Resolution appointing the person to fulfill this position.
- (2) The MHL must be either a full-time or part-time municipal employee of Harrington Park Borough.
- (3) The Municipal Housing Liaison shall be approved by the Court and shall be duly qualified through a training program sponsored by Affordable Housing Professionals of New Jersey before assuming the duties of Municipal Housing Liaison.
- (4) The Municipal Housing Liaison shall be responsible for oversight and administration of the affordable housing program for Harrington Park Borough, including the following responsibilities which may not be contracted out to the Administrative Agent:
 - (a) Serving as the municipality's primary point of contact for all inquiries from the State, affordable housing providers, Administrative Agents and interested households;
 - (b) Monitoring the status of all restricted units in Harrington Park's Fair Share Plan;
 - (c) Compiling, verifying, submitting, and posting annual reports as required by the Superior Court and by this Ordinance;
 - (d) Coordinating meetings with affordable housing providers and Administrative Agents, as needed; and
 - (e) Attending continuing education opportunities on affordability controls, compliance monitoring and affirmative marketing at least annually and more often as needed.
- (5) Subject to the approval of the Court, the Borough of Harrington Park shall designate one or more Administrative Agent(s) to administer and to affirmatively market the affordable units constructed in the Borough in accordance with UHAC and this Ordinance. An Operating Manual for each affordable housing program shall be provided by the Administrative Agent(s) to be adopted by resolution of the governing body and subject to approval of the Court. The Operating Manual(s) shall be available for public inspection in the office of the Borough Clerk, in the office of the Municipal Housing Liaison, and in the office(s) of the Administrative

Agent(s). The Municipal Housing Liaison shall supervise the work of the Administrative Agent(s).

B. Administrative Agent.

- (1) The Borough shall designate by resolution of the Borough Committee one or more Administrative Agents to administer affordable units in accordance with State law or regulation and UHAC.
- (2) An Administrative Agent shall be an independent entity serving under contract to and reporting to the municipality. ***The fees of the Administrative Agent shall be paid by the owners of the affordable units for which the services of the Administrative Agent are required.*** The Administrative Agent shall perform the duties and responsibilities of an administrative agent as are set forth in UHAC, including those set forth in Sections 5:80-26.14, 16 and 18 thereof, which includes:

(a) Affirmative Marketing

[1] Conducting an outreach process to affirmatively market affordable housing units in accordance with the affirmative marketing plan of the Borough and the provisions of N.J.A.C. 5:80-26.15; and

[2] Providing counseling or contracting to provide counseling services to low- and moderate-income applicants on subjects such as budgeting, credit issues, mortgage qualification, rental lease requirements, and landlord-tenant law.

(b) Household Certification.

[1.] Soliciting, scheduling, conducting and following up on interviews with interested households;

[2.] Conducting interviews and obtaining sufficient documentation of gross income and assets upon which to base a determination of income eligibility for a low- or moderate-income unit;

[3.] Providing written notification to each applicant as to the determination of eligibility or non-eligibility;

[4.] Requiring that all certified applicants for restricted units execute a certificate substantially in the form, as applicable, of either the ownership or rental certificates set forth in Appendices J and K of N.J.A.C. 5:8026.1 et seq.

[5.] Creating and maintaining a referral list of eligible applicant households living in the housing region and eligible applicant households with members working in the housing region where the units are located; and

[6.] Employing the random selection process as provided in the affirmative marketing plan of the Borough when referring households for certification to affordable units; and

[7.] Notifying the following entities of the availability of affordable housing units in the Borough of Harrington Park: Fair Share Housing Center, the

New Jersey State Conference of the NAACP, the Latino Action Network, Bergen County NAACP, Urban League of Bergen County, Bergen County Housing Coalition, the New Jersey Housing Resource Center, and Supportive Housing Association.

(d) Affordability Controls.

- [1.] Furnishing to attorneys or closing agents forms of deed restrictions and mortgages for recording at the time of conveyance of title of each restricted unit;
- [2.] Creating and maintaining a file on each restricted unit for its control period, including the recorded deed with restrictions, recorded mortgage and note, as appropriate;
- [3.] Ensuring that the removal of the deed restrictions and cancellation of the mortgage note are effectuated and properly filed with the appropriate county's register of deeds or county clerk's office after the termination of the affordability controls for each restricted unit;
- [4.] Communicating with lenders regarding foreclosure; and
- [5.] Ensuring the issuance of continuing certificates of occupancy or certifications pursuant to N.J.A.C. 5:80-26.10;

(e) Records retention.

(f) Resale and re-rental.

- [1.] Instituting and maintaining an effective means of communicating information between owners and the administrative agent regarding the availability of restricted units for resale or rental; and
- [2.] Instituting and maintaining an effective means of communicating information to low- (or very low-) and moderate-income households regarding the availability of restricted units for resale or re-rental.

(g) Processing requests from unit owners.

- [1.] Reviewing and approving requests for determination from owners of restricted units who wish to take out home equity loans or refinance during the term of their ownership that the amount of indebtedness to be incurred will not violate the terms of this Ordinance;
- [2.] Reviewing and approving requests to increase sales prices from owners of restricted units who wish to make capital improvements to the units that would affect the selling price, such authorizations to be limited to those improvements resulting in additional bedrooms or bathrooms and the depreciated cost of central air conditioning systems;
- [3.] Notifying the municipality of an owner's intent to sell a restricted unit; and
- [4.] Processing requests and making determinations on requests by owners of restricted units for hardship waivers.

(h) Enforcement, though the ultimate responsibility for retaining controls on the units rests with the municipality.

[1.] Securing annually from the municipality a list of all affordable housing units for which tax bills are mailed to absentee owners, and notifying all such owners that they must either move back to their unit or sell it;

[2.] Securing from all developers and sponsors of restricted units, at the earliest point of contact in the processing of the project or development, written acknowledgment of the requirement that no restricted unit can be offered, or in any other way committed to any person, other than a household duly certified to the unit by the administrative agent;

[3.] The posting annually in all rental properties, including two-family homes, of a notice as to the maximum permitted rent together with the telephone number of the administrative agent where complaints of excess rent or other charges can be made;

[4.] Sending annual mailings to all owners of affordable dwelling units, reminding them of the notices and requirements outlined in N.J.A.C. 5:80-26.18(d)4;

[5.] Establishing a program for diverting unlawful rent payments to the municipality's affordable housing trust fund;

[6.] Establishing a rent-to-equity program;

[7.] Creating and publishing a written operating manual for each affordable housing program administered by the Administrative Agent, to be approved by the Borough Committee and the Court, setting forth procedures for administering the affordability controls; and

[8.] Proving annual reports as required.

(i) The Administrative Agent shall have authority to take all actions necessary and appropriate to carry out its responsibilities, hereunder.

(j). The Administrative Agent shall prepare monitoring reports for submission to the Municipal Housing Liaison in time to meet the Court-approved monitoring and reporting requirements in accordance with the deadlines set forth in this Ordinance.

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

C. Enforcement of Affordable Housing Regulations.

(1) Upon the occurrence of a breach of any of the regulations governing the affordable unit by an Owner, Developer or Tenant the municipality shall have all remedies provided at law or equity, including but not limited to foreclosure, tenant eviction, municipal fines, a requirement for household recertification, acceleration of all sums due under a mortgage, recoupment of any funds from a sale in the violation

of the regulations, injunctive relief to prevent further violation of the regulations, entry on the premises, and specific performance.

- (2) After providing written notice of a violation to an Owner, Developer or Tenant of a low- or moderate-income unit and advising the Owner, Developer or Tenant of the penalties for such violations, the municipality may take the following action(s) against the Owner, Developer or Tenant for any violation that remains uncured for a period of 60 days after service of the written notice:
 - (a) The municipality may file a court action pursuant to N.J.S.A. 2A:58-11 alleging a violation, or violations, of the regulations governing the affordable housing unit. If the Owner, Developer or Tenant is found by the court to have violated any provision of the regulations governing affordable housing units the Owner, Developer or Tenant shall be subject to one or more of the following penalties, at the discretion of the court:
 - [1.] A fine of not more than \$500 per day or imprisonment for a period not to exceed 90 days, or both, provided that each and every day that the violation continues or exists shall be considered a separate and specific violation of these provisions and not as a continuation of the initial offense;
 - [2.] In the case of an Owner who has rented his or her low- or moderate-income unit in violation of the regulations governing affordable housing units, payment into the Harrington Park Borough Affordable Housing Trust Fund of the gross amount of rent illegally collected;
 - [3.] In the case of an Owner who has rented his or her low- or moderate-income unit in violation of the regulations governing affordable housing units, payment of an innocent tenant's reasonable relocation costs, as determined by the court.
 - (b) The municipality may file a court action in the Superior Court seeking a judgment, which would result in the termination of the Owner's equity or other interest in the unit, in the nature of a mortgage foreclosure. Any judgment shall be enforceable as if the same were a judgment of default of the First Purchase Money Mortgage and shall constitute a lien against the low- and moderate-income unit.
- (3) Such judgment shall be enforceable, at the option of the municipality, by means of an execution sale by the Sheriff, at which time the low- and moderate-income unit of the violating Owner shall be sold at a sale price which is not less than the amount necessary to fully satisfy and pay off any First Purchase Money Mortgage and prior liens and the costs of the enforcement proceedings incurred by the municipality, including attorney's fees. The violating Owner shall have the right to possession terminated as well as the title conveyed pursuant to the Sheriff's sale.
- (4) The proceeds of the Sheriff's sale shall first be applied to satisfy the First Purchase Money Mortgage lien and any prior liens upon the low- and moderate-income unit. The excess, if any, shall be applied to reimburse the municipality for any and all costs and expenses incurred in connection with either the court action resulting in

the judgment of violation or the Sheriff's sale. In the event that the proceeds from the Sheriff's sale are insufficient to reimburse the municipality in full as aforesaid, the violating Owner shall be personally responsible for and to the extent of such deficiency, in addition to any and all costs incurred by the municipality in connection with collecting such deficiency. In the event that a surplus remains after satisfying all of the above, such surplus, if any, shall be placed in escrow by the municipality for the Owner and shall be held in such escrow for a maximum period of two years or until such earlier time as the Owner shall make a claim with the municipality for such. Failure of the Owner to claim such balance within the two-year period shall automatically result in a forfeiture of such balance to the municipality. Any interest accrued or earned on such balance while being held in escrow shall belong to and shall be paid to the municipality, whether such balance shall be paid to the Owner or forfeited to the municipality.

- (5) Foreclosure by the municipality due to violation of the regulations governing affordable housing units shall not extinguish the restrictions of the regulations governing affordable housing units as the same apply to the low- and moderate-income unit. Title shall be conveyed to the purchaser at the Sheriff's sale, subject to the restrictions and provisions of the regulations governing the affordable housing unit. The Owner determined to be in violation of the provisions of this plan and from whom title and possession were taken by means of the Sheriff's sale shall not be entitled to any right of redemption.
- (6) If there are no bidders at the Sheriff's sale, or if insufficient amounts are bid to satisfy the First Purchase Money Mortgage and any prior liens, the municipality may acquire title to the low- and moderate-income unit by satisfying the First Purchase Money Mortgage and any prior liens and crediting the violating owner with an amount equal to the difference between the First Purchase Money Mortgage and any prior liens and costs of the enforcement proceedings, including legal fees and the maximum resale price for which the low- and moderate-income unit could have been sold under the terms of the regulations governing affordable housing units. This excess shall be treated in the same manner as the excess which would have been realized from an actual sale as previously described.
- (7) Failure of the low- and moderate-income unit to be either sold at the Sheriff's sale or acquired by the municipality shall obligate the Owner to accept an offer to purchase from any qualified purchaser which may be referred to the Owner by the municipality, with such offer to purchase being equal to the maximum resale price of the low- and moderate-income unit as permitted by the regulations governing affordable housing units.
- (8) The Owner shall remain fully obligated, responsible and liable for complying with the terms and restrictions of governing affordable housing units until such time as title is conveyed from the Owner.

D. The Borough may contract with or authorize a consultant, authority, government or any agency charged by the Borough council, which entity shall have the responsibility of administering the affordable housing program of the Borough. If the Borough contracts

with another entity to administer all or any part of the affordable housing program, including the affordability controls and affirmative marketing plan, the municipal housing liaison shall supervise the contracting administrative agent. The administrative agent shall have authority to take all actions necessary and appropriate to carry out its responsibilities hereunder.

E. The cost for administering the affordable housing program for Harrington Park Borough, including affirmative marketing, household certification, affordability controls, resale and rentals, communicating with unit owners and enforcement, shall be the responsibility of developers or owners of affordable housing units in accordance with the following fee schedule, as may be amended from time to time.

Annual fee for consulting, list maintenance inquiries	\$50.00 per affordable unit	and responding to
Re-Sales of existing affordable housing units certification (payable by seller upon transfer of title)	\$1,000	per re-sale
Re-rentals of existing affordable housing units certification (payable by landlord upon occupancy of new tenant)	\$550	pre re-occupancy
Sale of new affordable housing units	\$200 per unit setup, plus \$1000 per unit certification fee, plus \$3,000 minimum project fee (payable at least 180 days prior to the issuance of a temporary or permanent certificate of occupancy, which first occurs)	
Rental of new affordable housing units	\$400 per unit setup, plus \$500 per unit certification fee, plus \$3,000 minimum project fee (payable at least 180 days prior to the issuance of a temporary or permanent certificate of occupancy, whichever first occurs)	

Refinancing \$200 to be paid by unit owner

Lien satisfaction no charge

Other programs The cost to provide compliance services for programs, such as accessory apartments, market to affordable, etc., are subject to the number of units and the scope of services required for each.

Additional Services In the event additional services are requested or required to comply with the affirmative marketing requirements, the rate for such services shall be determined prior to implementation.

Reimbursement of expenses In addition to the foregoing fees, cost of postage, printing of notices, copying costs, and advertising shall be paid by the developer or owner.

§85-3. Affirmative Marketing within Inclusionary Development.

A. Adoption of an Affirmative Marketing Plan.

- (1) Harington Park Borough hereby adopts the within an Affirmative Marketing Plan in compliance with N.J.A.C. 5:80-26.15, as may be amended and supplemented.
- (2) The affirmative marketing plan is a regional marketing strategy designed to attract buyers and/or renters of all majority and minority groups, regardless of race, creed, color, national origin, ancestry, marital or familial status, gender, affectional or sexual orientation, disability, age or number of children to housing units which are being marketed by a developer, sponsor or owner of affordable housing. The affirmative marketing plan is also intended to target those potentially eligible persons who are least likely to apply for affordable units in that region. It is a continuing program that directs all marketing activities toward COAH Housing Region 1 and is required to be followed throughout the period of restriction.

B. The affirmative marketing plan shall provide a regional preference for all households that live and/or work in COAH Housing Region 1 comprised of Bergen, Hudson, Passaic, and Sussex Counties.

C. The Administrative Agent designated by Harrington Park Borough shall assure the affirmative marketing of all affordable units consistent with the Affirmative Marketing Plan for the municipality.

- (1) All newspaper articles, announcements and requests for applications for low- and moderate-income units will appear in the following newspapers/publications: The Star-Ledger, The Record, Northern Valley Suburbanite, Bergen News, and Avance (Spanish).
- (2) The primary marketing will take the form of at least one press release sent to the above publications and a paid display advertisement in each of the above newspapers. Additional advertising and publicity will be on an as needed basis.
- (3) The advertisement will include:
 - (a) The street address and location of units;
 - (b) Directions to the housing units;
 - (c) The size, as measured in the number of bedrooms, of the housing units;
 - (d) A range of prices/rents for the housing units;
 - (e) The maximum income permitted to qualify for the housing units
 - (f) The location of applications for the housing units;
 - (g) The business hours when interested households may obtain an application for a housing unit.
 - (h) The name of the rental manager and/or sales agent for the housing units.
- (4) All newspaper articles, announcements and requests for applications for low- and moderate-income housing will appear in publications circulated within the housing region that are likely to be read by low and moderate income households, such as neighborhood oriented weekly newspaper, religious publications and organizational newsletters.
- (5) Regional radio and/or cable television station(s) will also be used.
- (6) Applications, brochure(s), sign(s) and/or poster(s) used as part of the affirmative marketing program will be provided to specific employment centers within the region and to the municipal clerks of all municipalities in the region.
- (7) Applications for low and moderate income housing shall be available in several convenient locations within the Borough of Harrington Park, including, at a minimum, Borough Hall, the Harrington Park Public Library, and the developer's sales/rental office. The following is a listing of community contact persons and/or organizations in Harrington Park that will administer the program and will aid in the affirmative marketing program, with particular emphasis on contacts that will reach out to groups that are least likely to apply for housing within the region: the Fair Share

Housing Center, New Jersey State Conference of the NAACP, the Latino Action Network, Bergen County NAACP, Urban League of Bergen County, Bergen County Housing Coalition, the New Jersey Housing Resource Center, and Supportive Housing Association.

- (8) Quarterly flyers and applications will be sent to each of the following agencies for publication in their journals and for circulation among their members: Board of Realtors in Bergen, Hudson, Passaic and Sussex Counties.
- (9) Applications will be mailed to prospective applicants upon request. Additionally, quarterly informational circulars and applications will be sent to the chief administrative employees of each of the following agencies in the counties the Borough of Harrington Park's region: Welfare or Social Service Board, Rental Assistance Office (local office of DCA), Office on Aging, libraries and housing agency or authority.
- (10) The affirmative marketing program will meet the following requirements:
 - (a) The affirmative marketing process for available affordable units shall begin at least four months prior to the expected date of occupancy.
 - (b) A random selection method will be used to select occupants of low- and moderate-income housing.
 - (c) Low- and moderate-income households who live or work in the housing region in which the Borough of Harrington Park is located shall be given preference for sales and rental units constructed within the Borough of Harrington Park. Applicants living outside the housing region will have an equal opportunity for units after regional applicants have been initially serviced.
 - (d) Low- and moderate-income households residing or working within the Borough of Harrington Park shall be provided a preference for low- and moderate-income units created within the Borough of Harrington Park that respond to Harrington Park's rehabilitation component.
 - (e) All developers of low- and moderate-income housing units will be required to assist in the marketing of the affordable units in their respective developments.
 - (f) The cost of advertising and administrating low- and moderate-income units shall be the responsibility of the developer and/or owner of low and moderate income housing units within the Borough of Harrington Park.
 - (g) The marketing program will commence at least 120 days before the issuance of either temporary or permanent certificates of occupancy. The marketing program will continue until all low- and moderate income housing units are initially occupied and for as long as affordable units are deed restricted and occupancy or reoccupancy of units continues to be necessary.
 - (h) Households that apply for low- and moderate-income housing shall be screened for preliminary income eligibility by comparing their total

income to the low and moderate income limits pursuant to State law and regulations. Applicants shall be notified as to their eligibility status.

- (i) Having screened applicants for preliminary income eligibility, the Borough may analyze the income and household sizes of applicants to determine which applicants have the assets and/or income necessary to purchase or rent each available low- or moderate-income unit.
- (j) The Borough shall conduct a process and interview each applicant to verify the applicant's income and household size; determine the applicant's asset availability; and review the applicant's credit history. Applicants shall be required to submit income verification for each household member 18 years or older. This process shall be utilized in establishing the final certified applicant group.
- (k) The process described in (j) through (l) above may begin no sooner than one month after the advertising program begins. Households shall be selected to proceed through the process described in (j) through (l) above through a method of random selection. Households shall be certified for low- and moderate-income units. The process described in (j) through (l) shall be continued until all the low- and moderate income units are occupied.
- (l) Continuing marketing activities shall be undertaken after the completion of initial occupancy of sales and rental units in order to fill vacancies resulting from normal turnover which shall include:
 - [1.] Insuring a sufficient supply of income eligible applicants by continuing to implement the marketing plan throughout the housing region. At a minimum, the Borough shall maintain a current pool of at least five income eligible applicants for each low and moderate income unit.
 - [2.] Contacting each income eligible applicant annually to request updated information regarding income and family size.
 - [3.] As units become available, the municipal entity shall select eligible applicants for the units until the units are occupied by low and moderate income households.

D. The municipality has the ultimate responsibility for adopting the Affirmative Marketing Plan and for the proper administration of the Affirmative Marketing Program, including initial sales and rentals and resales and re-rentals. The Administrative Agent designated by the Borough of Harrington Park shall implement the Affirmative Marketing Plan to assure the affirmative marketing of all affordable units.

E. In implementing the affirmative marketing plan, the Administrative Agent shall provide a list of counseling services to low- and moderate-income applicants on subjects such as budgeting, credit issues, mortgage qualification, rental lease requirements, and landlord/tenant law.

F. The Affirmative Marketing Plan shall describe the media to be used in advertising and publicizing the availability of housing. In implementing the Affirmative Marketing

Plan, the Administrative Agent shall consider the use of language translations where appropriate.

G. The affirmative marketing process for available affordable units shall begin as least four months (120 days) prior to the expected date of occupancy.

H. Applications for affordable housing shall be available in several locations, including, at a minimum, the County Administration Building and/or the County Library for each county within the housing region; the municipal administration building and the municipal library in the municipality in which the units are located; and the developer's rental office. Applications shall be mailed to prospective applicants upon request.

I. In addition to other affirmative marketing strategies, the Administrative Agent shall provide specific notice of the availability of affordable housing units in Harrington Park, and copies of the application forms, to the following entities: Fair Share Housing Center, the New Jersey State Conference of the NAACP, the Latino Action Network, Bergen County NAACP, Urban League of Bergen County, Bergen County Housing Coalition, the New Jersey Housing Resource Center, and the Supportive Housing Association.

J. The costs of advertising and affirmative marketing of the affordable units shall be the responsibility of the developer, sponsor or owner.

§85-4. Affordable Unit Controls and Requirements.

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

A. Occupancy Standards.

- (1) 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:
 - (a) Provide an occupant for each bedroom;
 - (b) Provide children of different genders with separate bedrooms;
 - (c) Provide separate bedrooms for parents and children; and
 - (d) Prevent more than two persons from occupying a single bedroom.

B. Selection of Occupants of Affordable Housing Units.

- (1) The administrative agent shall use a random selection process to select occupants of low- and moderate-income housing.
- (2) 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.

C. Control Periods for Restricted Ownership Units and Enforcement Mechanisms.

- (1) Control periods for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.5, as may be amended and supplemented, and each restricted ownership unit shall remain subject to the requirements of this Section until Harrington Park

Borough elects to release the unit from such requirements however, and prior to such an election, a restricted ownership unit must remain subject to the requirements of N.J.A.C. 5:80-26.1, as may be amended and supplemented, for at least 30 years.

- (2) The affordability control period for a restricted ownership unit shall commence on the date the initial certified household takes title to the unit.
- (3) Prior to the issuance of the initial certificate of occupancy for a restricted ownership unit and upon each successive sale during the period of restricted ownership, the administrative agent shall determine the restricted price for the unit and shall also determine the non-restricted, fair market value of the unit based on either an appraisal or the unit's equalized assessed value without the restrictions in place.
- (4) At the time of the first sale of the unit, the purchaser shall execute and deliver to the Administrative Agent a recapture note obligating the purchaser (as well as the purchaser's heirs, successors and assigns) to repay, upon the first non-exempt sale after the unit's release from the requirements of this Section, an amount equal to the difference between the unit's non-restricted fair market value and its restricted price, and the recapture note shall be secured by a recapture lien evidenced by a duly recorded mortgage on the unit.
- (5) The affordability controls set forth in this Section shall remain in effect despite the entry and enforcement of any judgment of foreclosure with respect to restricted ownership units.
- (6) A restricted ownership unit shall be required to obtain a Continuing Certificate of Occupancy or a certified statement from the Construction Official stating that the unit meets all code standards upon the first transfer of title following the removal of the restrictions provided under N.J.A.C. 5:80-26.5(a), as may be amended and supplemented.
- (7) Deeds of all real property that include restricted ownership units shall contain deed restriction language. The deed restriction shall have priority over all mortgages on the property, and the deed restriction shall be filed by the developer or seller with the records office of the County of Bergen. A copy of the filed document shall be provided to the Administrative Agent within 30 days of the receipt of a Certificate of Occupancy. The deed restriction shall be subject to the approval of the Administrative Agent and shall be substantially in the form set forth in Schedule B, annexed hereto and made part of this Chapter.

D. Price Restrictions for Restricted Ownership Units, Homeowner Association Fees and Resale Prices.

- (1) Price restrictions for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.1, as may be amended and supplemented, including:
 - (a) The initial purchase price for a restricted ownership unit shall be approved by the Administrative Agent.

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

E. Buyer Income Eligibility.

- (1) Buyer income eligibility for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.1, as may be amended and supplemented, such that low-income ownership units shall be reserved for households with a gross household income less than or equal to 50 percent of median income and moderate-income ownership units shall be reserved for households with a gross household income less than 80 percent of median income.
- (2) Notwithstanding the foregoing, the Administrative Agent may, upon approval by the Borough Committee, and subject to the Court's approval, permit a moderate-income purchaser to buy a low-income unit if and only if the Administrative Agent can demonstrate that there is an insufficient number of eligible low-income purchasers in the housing region to permit prompt occupancy of the unit and all other reasonable efforts to attract a low income purchaser, including pricing and financing incentives, have failed. Any such low-income unit that is sold to a moderate-income household shall retain the required pricing and pricing restrictions for a low-income unit.
- (3) A certified household that purchases a restricted ownership unit must occupy it as the certified household's principal residence and shall not lease the unit, provided, however, that the Administrative Agent may permit the owner of a restricted ownership unit, upon application and a showing of hardship, to lease the restricted unit to another certified household for a period not to exceed one year.
- (4) The Administrative Agent shall certify a household as eligible for a restricted ownership unit when the household is a low-income household or a moderate-income household, as applicable to the unit, and the estimated monthly housing cost for the particular unit (including principal, interest, taxes, homeowner and private mortgage insurance and condominium or homeowner association fees, as applicable) does not exceed 33 percent of the household's certified monthly income.

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

- (1) Prior to incurring any indebtedness to be secured by a restricted ownership unit, the owner shall apply to the administrative agent for a determination in writing that the

proposed indebtedness complies with the provisions of this Ordinance, and the Administrative Agent shall issue such determination prior to the owner incurring such indebtedness.

- (2) With the exception of first 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 a restricted ownership unit to exceed 95 percent 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).

F. Capital Improvements to Ownership Units

- (1) The owners of restricted ownership units may apply to the Administrative Agent to increase the maximum sales price for the unit on the basis of capital improvements made since the purchase of the unit. Eligible capital improvements shall be those that render the unit suitable for a larger household or that add an additional bathroom. In no event shall the maximum sales price of an improved housing unit exceed the limits of affordability for the larger household.

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

G. Control Periods for Restricted Rental Units.

- (1) Control periods for restricted rental units shall be in accordance with N.J.A.C. 5:80-26.11, as may be amended and supplemented, and each restricted rental unit shall remain subject to the requirements of this Section for a period of at least 30 years, until the Borough of Harrington Park elects to release the unit from such requirements pursuant to action taken in compliance with N.J.A.C. 5:80-26.1, as may be amended and supplemented, and prior to such an election, a restricted rental unit must remain subject to the requirements of N.J.A.C. 5:80-26.1, as may be amended and supplemented.

- (2) Deeds of all real property that include restricted rental units shall contain deed restriction language. The deed restriction shall have priority over all mortgages on the property, and the deed restriction shall be filed by the developer or seller with the records office of the County of Bergen. A copy of the filed document shall be

provided to the Administrative Agent within 30 days of the receipt of a Certificate of Occupancy. The deed restriction shall be subject to the approval of the Administrative Agent and shall be substantially in the form set forth in Schedule B, annexed hereto and made part of this Chapter.

- (3) A restricted rental unit shall remain subject to the affordability controls of this Section, despite the occurrence of any of the following events:
 - (a) Sublease or assignment of the lease of the unit;
 - (b) Sale or other voluntary transfer of the ownership of the unit; or
 - (c) The entry and enforcement of any judgment of foreclosure on the property containing the unit.

H. Rent Restrictions for Rental Units; Leases.

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

I. Tenant Income Eligibility.

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

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

Appeals

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

§85-5 Affordable Housing Development Fees

A. Purpose.

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, N.J.S.A. 52:27D-301 et seq., and the State Constitution, subject to COAH developing rules as amended from time to time and/or in accordance with the enacted legislation and/or in accordance with directives from the Courts. The purpose of this Section is to establish standards for the collection, maintenance and expenditure of development fees pursuant to the above. Fees collected pursuant to this Section shall be used for the sole purpose of providing low- and moderate-income housing.

B. Basic Requirements

- (1) This Ordinance shall not be effective until approved by the Court.

(2) The Borough of Harrington Park shall not spend development fees until the Court has approved a plan for spending such fees (Spending Plan).

C. Definitions

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

“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.

“COAH” or the “Council” means the New Jersey Council on Affordable Housing established under the Fair Housing Act.

“Development fee” means money paid by a developer for the improvement of property as authorized by *Holmdel Builder’s Association v. Holmdel Township*, 121 N.J. 550 (1990) and the Fair Housing Act of 1985, N.J.S.A. 52:27d-301, et seq., and regulated by applicable COAH Rules.

“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.

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

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

B. Development Fees.

(1) Residential Development Fees.

(a) Imposition of Fees

[1.] Within the Borough of Harrington Park, 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.

[2.] When an increase in residential density has been permitted pursuant to N.J.S.A. 40:55D-70d (known as a "d" variance) or pursuant to Zoning Amendment or pursuant to the adoption of a Redevelopment Plan pursuant to New Jersey Local Redevelopment and Housing Law (NJSA 40A-12-1 et.

seq.), developers shall be required to pay a “bonus” residential development fee six percent (6%) of the equalized assessed value for each additional unit that may be realized, except that this provision shall not be applicable to a development that will include affordable housing. If the zoning on a site has changed during the two-year period preceding the filing of such a variance application, the base density for the purposes of calculating the bonus development fee shall be the highest density permitted by right during the two-year period preceding the filing of the variance application.

(b) Eligible Exactions, Ineligible Exactions and Exemptions for Residential Developments

[1.] Affordable housing developments and/or residential 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 Harrington Park, shall be exempt from the payment of residential development fees.

[2.] Residential Developments that have received preliminary or final site plan approval prior to the adoption of this Ordinance and any preceding Ordinance permitting the collection of development fees shall be exempt from the payment of residential development fees, unless the developer seeks a substantial change in the original approval or the developer has accepted responsibility to pay a residential development fee. Where site plan approval does not apply, the issuance of a zoning and/or building permit shall be synonymous with preliminary or final site plan approval for the purpose of determining the right to an exemption. In all cases, the applicable fee percentage shall be determined based upon the Development Fee Ordinance in effect on the date that the Construction Permit is issued.

[3.] Any repair, reconstruction or improvement of a structure, the cost of which is less than 50% of the market value of the structure before the improvement or repair is started shall be exempt from the payment of development fees. For purpose 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 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, floor 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:

(a) Any project for improvement of a structure to comply with existing state or local building, fire, health, sanitary or safety code specifications which are solely necessary to assure safe living conditions; or

(b) Any alteration of a structure listed on the National Register of Historic Places or a state inventory of historic places but a development fee shall be charged for any new dwelling constructed as a replacement for a previously existing dwelling on the same lot that was or will be demolished, unless the owner resided in the 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 assess value of the new structure as compared to the previous structure.

[4.] Structural alterations that do no increase gross floor area of a building or structure or increase the equalized assessed value of a property shall be exempted from paying a development fee.

[5.] Nonprofit organizations constructing residential projects which have received tax-exempt status pursuant to Section 501(c)(3) of the Internal Revenue Code, providing current evidence of that status is submitted to the Municipal Clerk, together with a certification that services of the organization are provided at reduced rates to those who establish an inability to pay existing charges, shall be exempted from paying a development fee.

[6.] Federal, state, county and local governments shall be exempted from paying a development fee.

[7.] Homes replaced as a result of a natural disaster, fire or flood shall be exempt from the payment of a development fee. (This exemption applies only for the owner of record at the time of the fire, flood, or natural disaster.)

(2) Nonresidential development fees.

(a) Imposition of Fees

[1.] Within all zoning districts, nonresidential developers, except for developers of the types of development specifically exempted below, shall pay a nonresidential development 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.] Within all zoning districts, nonresidential developers, except for developers of the types of development specifically exempted below, shall also pay a nonresidential development 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 ad a half percent (2.5%) shall be calculated on the difference between the equalized assessed value of the

pre-existing land and improvements and the equalized assessed value of the newly improved structure, i.e. land and improvements, and such calculation shall be made at the time a final certificate of occupancy is issued. If the calculation required under this Section results in a negative number, the non-residential development fee shall be zero.

(b) Eligible Exactions, Ineligible Exactions and Exemptions for Non-residential 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 the existing footprint, reconstruction, renovations and repairs.

[3.] Non-residential developments shall be exempt from the payment of non-residential development fees in accordance with the exemptions required pursuant to the Statewide Non-Residential Development Fee Act (N.J.S.A. 40:55D-8.1 through 8.7), as specified in Form N-RDF "State of New Jersey Non-Residential Development Certification/Exemption". Any exemption claimed by a developer shall be substantiated by that developer.

[4.] A developer of a nonresidential development exempted from the nonresidential development fee pursuant to the Statewide Non-Residential Development Fee Act shall be subject to it 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 years after that event or after the issuance of the final certificate of occupancy for the nonresidential development, whichever is later.

[5.] If a property which was exempted from the collection of a nonresidential development fee thereafter ceases to be exempt from property taxation, the owner of the property shall remit the fees required pursuant to this Section within 45 days of the termination of the property tax exemption. Unpaid nonresidential development fees under these circumstances may be enforceable by the Borough of Harrington Park as a lien against the real property of the owner.

[6.] Federal, state, county and local governments of nonresidential development shall be exempted from paying a development fee.

(c) Collection procedures.

[1.] Upon the granting of a preliminary, final or other applicable approval for a development, the 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.] The Construction Official responsible for the issuance of a building permit shall notify the Borough Tax Assessor of the issuance of the first building permit for a development which is subject to a development fee.

[4.] 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.

[5.] The Construction Official responsible for the issuance of a final certificate of occupancy shall notify the Borough Tax Assessor of any and all requests for the scheduling of a final inspection on property which is subject to a development fee.

[6.] Within 10 business days of a request for the scheduling of a final inspection, the Municipal Tax Assessor shall confirm or modify the previously estimated equalized assessed value of the improvements associated with the development, calculate the development fee and thereafter notify the developer of the amount of the fee.

[7.] Should the Borough of Harrington Park fail to determine or notify the developer of the amount of the development fee within 10 business days of the request for final inspection, the developer may estimate the amount due and pay that estimated amount consistent with the dispute process set forth in Subsection b of Section 37 of P.L. 2008, c. 46 (N.J.S.A. 40:55D-8.6). Upon tender of the estimated non-residential development fee, provided the developer is in full compliance with all other applicable laws, the municipality shall issue a final certificate of occupancy for the subject property.

[8.] Except as provided hereinabove, fifty percent (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 time of issuance of the certificate of occupancy. The developer shall be responsible for paying the difference between the fee calculated at the time of issuance of the building permit and that determined at the time of issuance of the certificate of occupancy.

(d) Appeal of Development Fees.

- (a) 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 Harrington Park. 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, R.S. 54:48-1 et seq., within 90 days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.

- (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 45 days of receipt of the challenge, collected fees shall be placed in an interest-bearing escrow account by the Borough of Harrington Park. 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, R.S. 54:48-1 et seq., within 90 days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.

C. Housing trust fund.

- (1) There is hereby created a separate interest-bearing affordable housing trust fund to be maintained by the Borough's 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.
- (2) The following additional 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 a fraction of an affordable unit, where permitted by Ordinance or by Agreement with the Borough of Harrington Park
 - (b) Developer-contributed funds to make 10 percent of the adaptable entrances in a townhouse or other multistory attached dwelling unit 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 the Borough of Harrington Park's affordable housing program.
- (3) In the event of a failure by the Borough of Harrington Park to comply with trust fund monitoring and reporting requirements or to submit accurate monitoring reports; or a failure to comply with the conditions of the judgment of compliance or a revocation of the judgment of compliance; or a failure to implement the approved Spending Plan and to expend funds within the applicable required time period as set forth in In re Tp. of Monroe, 442 N.J. Super. 565 (Law Div. 2015) (aff'd 442 N.J. Super. 563); or for other good cause demonstrating the unapproved use(s) of funds, the Court may authorize the State of New Jersey, Department of

Community Affairs, Division of Local Government Services (LGS), to direct the manner in which the funds in the Affordable Housing Trust Fund shall be expended, provided that all such funds shall, to the extent practicable, be utilized for affordable housing programs within the Borough of Harrington Park, or, if not practicable, then within the County or Housing Region.

Any party may bring a motion before the Superior Court presenting evidence of such condition(s), and the Court may, after considering the evidence and providing the municipality a reasonable opportunity to respond and/or to remedy the non-compliant condition(s), and upon a finding of continuing and deliberate non-compliance, determine to authorize LGS to direct the expenditure of funds in the Trust Fund or impose such other remedies as may be reasonable and appropriate to the circumstances.

- (4) Interest accrued in the Affordable Housing Trust Fund shall only be used to fund eligible affordable housing activities approved by the Court.

D. Use of Funds

- (a) The expenditure of funds shall conform to a Spending Plan approved by the Court. Money deposited in the affordable housing trust fund may be used for any activity approved for addressing the Borough of Harrington Park's low- and moderate-income housing obligation and may be set up as a grant or revolving loan program. Such activities may include, but are not limited to: housing rehabilitation; new construction of affordable housing units and related costs; the purchase of land for low- and moderate-income housing; preservation or purchase of housing for the purpose of maintaining or implementing affordability controls, including the extension of controls, accessory apartment, market to affordable, or regional housing partnership programs, conversion of existing nonresidential buildings to create new affordable units, extensions and/or improvements of roads and infrastructure to low- and moderate-income housing sites; assistance designed to render units to be more affordable to low- and moderate-income households; and administrative costs necessary to implement the Borough of Harrington Park's Housing Element and Fair Share Plan; and/or any other activity permitted by the Court and specified in the approved Spending Plan. The expenditure of all money shall conform to a spending plan approved by the Courts.
- (b) Funds shall not be expended to reimburse the Borough of Harrington Park for past housing activities.
- (c) At least 30 percent 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 Housing Element and Fair Share Plan. One-third of the affordability assistance portion of development fees collected shall be used to provide affordability assistance to very low-income households earning 30 percent or less of regional median

income by household size for housing region 1, in which Harrington Park is located.

[1.] Affordability assistance programs may include down payment assistance, security deposit assistance, low-interest loans, rental assistance, assistance with homeowners' association or condominium fees and special assessments, and assistance with emergency repairs. The specific programs to be used for affordability assistance shall be identified and described within the Spending Plan.

[2.] Affordability assistance to households earning 30 percent or less of the regional median household income by household size may include buying down the cost of low- or moderate-income units in the municipal Fair Share Plan to make them affordable to households earning 30 percent or less of median income. The specific programs to be used for very low-income affordability assistance shall be identified and described within the Spending Plan.

[3.] Payments in lieu of constructing affordable units on site, if permitted by Ordinance or by Agreement with the Borough of Harrington Park, and funds from the sale of units with extinguished controls shall be exempt from the affordability assistance requirement.

(d) The Borough of Harrington Park 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.

(e) No more than 20 percent 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, prepare a Housing Element and Fair Share Plan, and/or administer an affirmative marketing program or a rehabilitation program. In the case of a rehabilitation program, the administrative costs of the rehabilitation program shall be included as part of the 20 percent collected development fees that may be expended on administration. Administrative funds may be used for income qualification of households, monitoring the turnover of sale and rental units, and compliance with the Court's monitoring requirements. Legal or other fees related to litigation opposing affordable housing sites or related to securing or appealing a judgment from the Court are not eligible uses of the Affordable Housing Trust Fund.

E. Monitoring. The Borough of Harrington Park shall provide annual reporting of Affordable Housing Trust Fund activity to the State of New Jersey, Department of Community Affairs, Council on Affordable Housing or Local Government Services or other entity designated by the State of New Jersey, with a copy provided to Fair Share Housing Center and posted on the municipal website, using forms developed for this purpose by the New Jersey Department of Community Affairs, Council on Affordable

Housing or Local Government Services. The reporting shall include an accounting of all Affordable Housing Trust Fund activity, including the sources and amounts of funds collected and the amounts and purposes for which any funds have been expended. Such reporting shall include an accounting of development fees from residential and nonresidential developers, payments in lieu of constructing affordable units on site (if permitted by Ordinance or by Agreement with the Borough), funds from the sale of units with extinguished controls, barrier-free escrow funds, rental income from Borough owned affordable housing units, repayments from affordable housing program loans, and any other funds collected in connection with the Borough of Harrington Park's affordable housing programs, as well as an accounting of the expenditure of revenues and implementation of the spending plan approved by the Court. F. Ongoing Collection of Fees

(1) The ability for the Borough of Harrington Park 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 has first filed an adopted Housing Element and Fair Share Plan with the Court or with a designated State administrative agency, has petitioned for a Judgment of Compliance from the Court or for Substantive Certification or its equivalent from a State administrative agency authorized to approve and administer municipal affordable housing 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.

(2) If the Borough of Harrington Park 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 (C. 52:27D-320).

(3) The Borough of Harrington Park shall not impose a residential development fee on a development that receives preliminary or final site plan approval after the expiration of its Judgment of Compliance, nor shall the Borough retroactively impose a development fee on such a development. The Borough also shall not expend any of its collected development fees after the expiration of its Judgment of Compliance.

This Section is intended to be interpreted and applied consistent with the Statewide Non-Residential Development Fee Act (N.J.S.A. 40:55D-8.1 et seq.). In the event of any inconsistency, this Section shall be read so as to comply with the Act.

SECTION 2. Inconsistency. All ordinances or parts thereof inconsistent herewith are hereby repealed to the extent of such inconsistency.

SECTION 3. Severability. If any sentence, section, clause, or other portion of this ordinance, or the application thereof to any person or circumstance, shall for any reason be

adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or repeal the remainder of this ordinance.

SECTION 4. Effective Date. This ordinance shall take effect twenty (20) days following passage and publication, or as otherwise required by law, and upon filing with the Planning Board of the County of Bergen.

Paul Hoelscher, Mayor

ATTEST:

Leena Abaza, RMC
Borough Clerk

Introduced: February 21, 2023
Adopted: _____