

**BOROUGH OF ELMWOOD PARK
BERGEN COUNTY, NEW JERSEY
RESOLUTION R-351-23**

**RESOLUTION BY: COUNCILWOMAN PELLEGRINE
SECONDED BY: COUNCILWOMAN DENNIS**

**INTRODUCE ORDINANCE #23-31
SECOND READING**

WHEREAS, a public notice has been given by the Borough Clerk that an ordinance entitled:

ORDINANCE REPEALING AND REPLACING INCONSISTENCIES FOUND IN SECTION 37-1, ET SEQ., “AFFORDABLE HOUSING OBLIGATION” OF THE MUNICIPAL CODE OF THE BOROUGH OF ELMWOOD PARK

was introduced and passed at a meeting held on Thursday, August 17, 2023 and that further consideration of this ordinance would be taken up at this meeting; and

WHEREAS, all persons interested in said ordinance were given an opportunity to be heard concerning the same;

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and Council of the Borough of Elmwood Park, that an ordinance entitled:

ORDINANCE REPEALING AND REPLACING INCONSISTENCIES FOUND IN SECTION 37-1, ET SEQ., “AFFORDABLE HOUSING OBLIGATION” OF THE MUNICIPAL CODE OF THE BOROUGH OF ELMWOOD PARK

pass on final reading.

APPROVED: September 21, 2023

Robert Colletti, Mayor

ATTEST: _____
Shanee Morris, CMR
Acting Borough Clerk

Record of Council Vote on Passage

	AYE	NAY	Abstain	Absent		AYE	NAY	Abstain	Absent
Dennis	X				Pellegrine	X			
Fasolo				X	Sheridan	X			
Golabek	X				Balistreri				X

This resolution was approved by the Mayor and Council of the Borough of Elmwood Park at a regular scheduled meeting held on the 21st day of September 2023. Signed and sealed before me.

Shanee Morris, CMR
Acting Borough Clerk

Dated

**BOROUGH OF ELMWOOD PARK
BERGEN COUNTY, NEW JERSEY
ORDINANCE NO.: 23-31**

**ORDINANCE REPEALING AND REPLACING INCONSISTENCIES
FOUND IN SECTION 37-1, ET SEQ., “AFFORDABLE HOUSING
OBLIGATION” OF THE MUNICIPAL CODE OF THE BOROUGH
OF ELMWOOD PARK**

PURPOSE

It is the intent of the Mayor and Council of the borough of Elmwood Park to establish and clarify the Borough code 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 section shall apply excerpts where inconsistent with applicable law. This chapter will implement and incorporate the Housing Element and Fair Share Plan pursuant to the Municipal Land Use Law at N.J.S.A. 40:55D-1 et seq. ("Fair Share Plan"), in accordance with the Settlement Agreement entered into between the Borough and the Fair Share Housing Center ("FSHC") on March 8, 2018 and addresses the requirements of N.J.A.C. 5:93, as may be amended and supplemented.

§ 37-1 AFFORDABLE HOUSING OBLIGATION.

§ 37-1.1 General Provisions.

- a. This section 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 section shall apply except where inconsistent with applicable law.
- b. This chapter implements and incorporates the Housing Element and Fair Share Plan pursuant to the Municipal Land Use Law at N.J.S.A. 40:55D-1 et seq. ("Fair Share Plan"), in accordance with the Settlement Agreement entered into between the Borough and the Fair Share Housing Center ("FSHC") on March 8, 2018 and addresses the requirements of N.J.A.C. 5:93, as may be amended and supplemented. The Settlement Agreement was found to be fair by the Honorable Christine A. Farrington, J.S.C. by order issued on July 30, 2018.
- c. Consistent with that Settlement Agreement, this chapter of the Borough Code sets forth regulations regarding the low- and moderate-income housing units in the Borough to fulfill the constitutional obligation to provide a realistic opportunity for the construction of its fair share of the regional need for affordable housing for low- and moderate-income households, the provisions known as the Substantive Rules of the New Jersey Council on Affordable Housing ("COAH rules"), N.J.A.C. 5:93 et seq., and the Uniform Housing Affordability Controls ("UHAC"), N.J.A.C. 5:80-26.1 et seq., except that the requirements for very-low-income affordable housing as established in P.L. 2008, c. 46 (the "Roberts Bill," codified at N.J.S.A. 52:27D-329.1) shall supersede those of the UHAC.
- d.
- e. The Borough of Elmwood Park Planning Board adopted a Third Round Housing Element and Fair Share Plan on November 9, 2022 pursuant to the Municipal Land Use Law at N.J.S.A. 40:55D-1, et seq., the Settlement Agreement with Fair Share Housing Center, the Fair Housing Act, and applicable rules promulgated by the Council on Affordable Housing (COAH). This chapter implements that Housing Element and Fair Share Plan and addresses the requirements of N.J.A.C. 5:93, as may be amended and supplemented. On or about each anniversary of the Court's filing of the Judgment of Compliance and Repose through the end of the period of Third Round Judgment of Repose (July 1, 2025), the Borough will provide annual reporting of the status of all affordable housing activity within the municipality through posting on the municipal website with a copy of such posting provided to all parties to the Borough's Court-approved settlement agreements, using forms previously developed for this purpose by

the Council on Affordable Housing or any other forms endorsed by the Special Master and FSHC. ”

- f. The Fair Housing Act includes two provisions regarding action to be taken by the Borough during the ten-year period of protection provided in the Borough’s agreement with FSHC. The Borough agrees to comply with those provisions as follows:
 1. At the time of a hearing for a Third Round Judgment of Compliance and Repose, the Borough may provide a realistic opportunity review consistent with the midpoint review provisions at N.J.S.A. 52:27D-313, which will consist of 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. In the event the Court determines that a site or mechanism no longer presents a realistic opportunity and should be replaced or supplemented, then the municipality shall have the first opportunity to supplement or revise its plan to correct any deficiency.
 2. Within 30 days of the third anniversary of the Judgment of Compliance and Repose, the Borough shall prepare a review of compliance with the very-low-income housing requirements required by N.J.S.A. 52:27D-329.1 and its settlement agreement with Fair Share Housing Center. The Borough will post on its municipal website, with a copy provided to FSHC, a status report as to its satisfaction of its very-low-income requirements, including the family very-low-income requirements referenced herein and in the Borough’s settlement agreement with FSHC. Such posting shall invite any interested party to submit comments to the municipality and FSHC on the issue of whether the municipality has complied with its very-low-income housing obligation.

The reports shall be available to the public at the Borough of Elmwood Park Municipal Building, Municipal Clerk’s Office, 182 Market Street, Elmwood Park, New Jersey.

§ 37-1.2 Definitions.

The following terms when used in this section shall have the meanings given in this subsection:

ACCESSORY APARTMENT

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

ACT

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

ADAPTABLE

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

ADMINISTRATIVE AGENT

Shall mean the entity responsible for the administration of affordable units in accordance with this section, N.J.A.C. 5:91, N.J.A.C. 5:93 and N.J.A.C. 5:80-26.1 et seq.

AFFIRMATIVE MARKETING

Shall mean 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

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

AFFORDABLE

A sales price or rent within the means of a low- or moderate-income household as defined in N.J.A.C. 5:93-7.4; in the case of an ownership unit, 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, 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

Shall mean a housing development all or a portion of which consists of income-restricted units which may be counted toward the satisfaction of the municipal affordable housing obligation.

AFFORDABLE HOUSING DEVELOPMENT

Shall mean 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% affordable development.

AFFORDABLE HOUSING PROGRAM(S)

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

AFFORDABLE UNIT

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

AGE-RESTRICTED UNIT

Shall mean a housing unit designed to meet the needs of, and exclusively for, the residents of an age-restricted segment of the population such that: 1) all the residents of the development where the unit is situated are 62 years or older; or 2) at least 80% of the units are occupied by one person that is 55 years or older (except that persons younger than 19 may not be permanent residents); or 3) the development has been designated by the Secretary of the U.S. Department of Housing and Urban Development as "housing for older persons" as defined in Section 807(b)(2) of the Fair Housing Act, 42 U.S.C. § 3607.

AGENCY

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

ASSISTED LIVING ARRANGEMENT

A structure in which households live in distinct bedrooms, yet share kitchen and plumbing facilities, central heat and common areas. Alternative living arrangements include, but are not limited to: transitional facilities for the homeless, Class A, B, C, D, and E boarding homes as regulated by the New Jersey Department of Community Affairs; residential health-care facilities as regulated by the New Jersey Department of Health and Senior Services; 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.

CERTIFIED HOUSEHOLD

Shall mean a household that has been certified by an Administrative Agent as a low-income household or moderate-income household.

COAH – THE COUNCIL ON AFFORDABLE HOUSING

Shall mean 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.).

DCA

Shall mean the State of New Jersey Department of Community Affairs.

DEFICIENT HOUSING UNIT

Shall mean 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

Shall mean 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

Shall mean 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.

FAIR SHARE PLAN

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

HOUSING ELEMENT

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

INCLUSIONARY DEVELOPMENT

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

LOW-INCOME HOUSEHOLD

Shall mean a household with a total gross annual household income equal to 50% or less of the median household income for the applicable COAH housing region.

LOW-INCOME UNIT

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

MAJOR SYSTEM

Shall mean 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

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

MEDIAN INCOME

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

MODERATE-INCOME HOUSEHOLD

Shall mean a household with a total gross annual household income in excess of 50% but less than 80% of the median household income for the applicable COAH housing region.

MODERATE-INCOME UNIT

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

NON-EXEMPT SALE

Any sale or transfer of ownership other than the transfer of ownership between spouses; the transfer of ownership between former spouses ordered as a result of a judicial decree of divorce or judicial separation, but not including sales to third parties; the transfer of ownership between family members as a result of inheritance; the transfer of ownership

through an executor's deed to a Class A beneficiary and the transfer of ownership by court order.

'RANDOM SELECTION PROCESS

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

REGIONAL ASSET LIMIT

The maximum housing value in each COAH housing region affordable to a four-person household with an income of at 80% of the regional median as defined by adopted/approved regional income limits.

'REHABILITATION

Shall mean the repair, renovation, alteration or reconstruction of any building or structure, pursuant to the Rehabilitation Subcode, N.J.A.C. 5:23-6, which, for purposes of affordable housing credit, involves at least one major system of the building or structure.

RENT

Shall mean 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

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

SPECIAL MASTER

An expert appointed by a Superior Court Judge to assist the Court, the municipality and any intervenors or other interested parties in applying the Mount Laurel Doctrine, including a determination of municipal fair share and an evaluation of the effectiveness of the municipality's Fair Share Plan to the extent permitted by law.

UHAC

Shall mean the Uniform Housing Affordability Controls set forth in N.J.A.C. 5:80-26.1 et seq.

VERY LOW-INCOME HOUSEHOLD

Shall mean a household with a total gross annual household income equal to 30% or less of the median household income for the applicable COAH housing region.

VERY LOW-INCOME UNIT

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

WEATHERIZATION

Shall mean 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.

§ 37-1.3 Affordable Housing Programs.

The Borough of Elmwood Park has determined that it will use the following mechanisms to satisfy its affordable housing obligations:

- a. A Rehabilitation Program.
 1. The Borough of Elmwood Park's rehabilitation program shall be designed to renovate deficient housing units occupied by low- and moderate-income households such that, after rehabilitation, these units will comply with the New Jersey State Housing Code pursuant to N.J.A.C. 5:28.

2. Both owner occupied and renter occupied units shall be eligible for rehabilitation funds to the extent permitted by law.
3. All rehabilitated units shall remain affordable to low- and moderate-income households for a period of 10 years (the control period). For owner occupied units the control period will be enforced with a lien and for renter occupied units the control period will be enforced with a deed restriction.
4. The Borough of Elmwood Park shall dedicate a minimum of \$20,000 for each unit to be rehabilitated through this program, reflecting the minimum hard cost of rehabilitation for each unit.
5. The Borough of Elmwood Park shall adopt a resolution committing to fund any shortfall in the rehabilitation programs for the Borough of Elmwood Park.
6. The Borough of Elmwood Park shall designate, subject to the laws of the State of New Jersey, one or more Administrative Agents to administer the rehabilitation program in accordance with N.J.A.C. 5:91 and N.J.A.C. 5:93. The Administrative Agent(s) shall provide a rehabilitation manual for the owner occupancy rehabilitation program and a rehabilitation manual for the rental occupancy rehabilitation program to be adopted by resolution of the Governing Body. Both rehabilitation manuals shall be available for public inspection in the Office of the Municipal Clerk and in the office(s) of the Administrative Agent(s).
7. Units in a rehabilitation program shall be exempt from the Uniform Housing Affordability Controls (UHAC), but shall be administered in accordance with the following:
 - (a) If a unit is vacant, upon initial rental subsequent to rehabilitation, or if a renter-occupied unit is rerented prior to the end of controls on affordability, the deed restriction shall require the unit to be rented to a low-or moderate-income household at an affordable rent and affirmatively marketed pursuant to N.J.A.C. 5:93-11 and UHAC.
 - (b) If a unit is renter-occupied, upon completion of the rehabilitation, the maximum rate of rent shall be the lesser of the current rent or the maximum permitted rent pursuant to this Chapter and UHAC.
 - (c) Rents in rehabilitated units may increase annually based on the standards in this Chapter.
 - (d) Applicant and/or tenant households shall be certified as income-eligible in accordance with UHAC, except that households in owner occupied units shall be exempt from the regional asset limit.

§ 37-1.4 Inclusionary Zoning.

a. Borough-wide Set Aside Requirement.

1. Consistent with the requirement at Section 7.5.c of the Settlement Agreement between Elmwood Park Borough and Fair Share Housing Center, any new multi-family development (including a mixed-use project with a multi-family residential component) (a) approved by the Planning Board or Zoning Board or created through a Redevelopment or Rehabilitation Plan and (b) having a density of at least six (6) dwelling units per acre resulting in the creation of five (5) or more new units shall be required to set aside 15% (if rental) or 20% (if for-sale) of the constructed number of residential units for very-low, low-, and moderate-income households.
 - i. The Borough reserves the right to negotiate a modification to the above set-aside requirement in a redevelopment project where the designated redeveloper agrees to enter into a public-private partnership or a community benefit agreement with the Borough, the Elmwood Park Board of Education, or a local community improvement group.

2. All set-aside units shall conform to the Uniform Housing Affordability Standards at N.J.A.C. 5:80-26.1 et seq. as modified by the Settlement Agreement with Fair Share Housing Center and with this Chapter.
- b. AH-1 and AH-2 Zones: The zoning of the AH-1 and AH-2 Zone Districts provides for a 15% set-aside for restricted units, to a maximum of 16 units in the AH-1 Zone District and a maximum of eight units in the AH-2 Zone District.
1. Where an executed development agreement exists for affordable housing on a specific site or sites, list the sites below and identify the density and set-aside for each:
 - (a) Elmwood Park River Drive Development, LLC (Block 1201 Lot 3.01) has been approved to provide for a 15% set-aside for restricted units, to a maximum of 16 restricted units, and a density of 40 units per acre.
 - (b) Elmwood Park River Drive Development, LLC (Block 1201 Lot 4.01) has been approved to provide for a 15% set-aside for restricted units, to a maximum of eight restricted units, and a density of 25 units per acre and up to 18,000 square feet of commercial floor area.
- c. Phasing. Final site plan or subdivision approval for a project consisting of both market-rate and affordable housing units (inclusionary developments) shall be contingent upon the development meeting the following phasing schedule for low- and moderate-income units, whether developed in a single-phase development or in a multi-phase development:

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

- d. Design. In inclusionary developments, to the extent possible, low- and moderate-income units shall be integrated with the market units and shall be no further distant, on average, from common amenities provided in the development than market-rate units.
- e. Payments-in-Lieu and Off-Site Construction. The standards for the collection of payments in lieu of constructing affordable units or standards for constructing affordable units off site shall be in accordance with the requirements below: The base dollar amount of the payment in lieu of constructing an affordable unit at the time of adoption of this chapter shall be pursuant to COAH's regulations and/or the amount in a development pro forma on file with the Borough Clerk. This amount shall be adjusted periodically by the Borough to reflect the most current and accurate market conditions or better cover the cost to the Borough to subsidize affordable housing construction. The payment shall be imposed as a condition of development approval by the Planning Board, to the extent permitted by law.
1. During the development approval process, a developer may demonstrate to the governing body that the actual construction cost of an affordable unit less estimated capitalized revenue at the development in question is lower than the imposed payment in lieu in the preceding paragraph. At its discretion, the governing body may impose a payment in lieu amount equal or proximate to the amount estimated by the developer, along with other reasonable public health and safety impact fees and costs.

f. Utilities.

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

§ 37-1.5 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.

a. Low-Moderate Split and Bedroom Distribution of Affordable Housing Units.

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

Within rental developments, of the total number of affordable rental units, at least 13% shall be affordable to very-low-income households. 2. In each affordable development, at least 50% of the restricted units within each bedroom distribution shall be low-income units, including at least 13% very-low income.

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

b. Accessibility Requirements.

1. The first floor of all restricted townhouse dwelling units and all restricted units in all other multistory buildings shall be subject to the technical design standards of the Barrier Free Subcode, N.J.A.C. 5:23-7.
2. All restricted townhouse dwelling units and all restricted units in other multistory buildings in which a restricted dwelling unit is attached to at least one other dwelling unit shall have the following features:
 - (a) An adaptable toilet and bathing facility on the first floor;
 - (b) An adaptable kitchen on the first floor;
 - (c) An interior accessible route of travel on the first floor;
 - (d) An interior accessible route of travel shall not be required between stories within an individual unit;
 - (e) An adaptable room that can be used as a bedroom, with a door or the casing for the installation of a door, on the first floor; and

- (f) An accessible entranceway as set forth at P.L. 2005, c. 350 (N.J.S.A. 52:27D-31 la et seq.) and the Barrier Free Subcode, N.J.A.C. 5:23-7, or evidence that the Borough of Elmwood Park has collected funds from the developer sufficient to make 10% of the adaptable entrances in the development accessible:
- (1) Where a unit has been constructed with an adaptable entrance, upon the request of a disabled person who is purchasing or will reside in the dwelling unit, an accessible entrance shall be installed.
 - (2) To this end, the builder of restricted units shall deposit funds within the Borough of Elmwood Park's affordable housing trust fund sufficient to install accessible entrances in 10% of the affordable units that have been constructed with adaptable entrances.
 - (3) The funds deposited under paragraph (2) above shall be used by the Borough of Elmwood Park for the sole purpose of making the adaptable entrance of any affordable unit accessible when requested to do so by a person with a disability who occupies or intends to occupy the unit and requires an accessible entrance.
 - (4) The developer of the restricted units shall submit a design plan and cost estimate for the conversion from adaptable to accessible entrances to the Construction Official of the Borough of Elmwood Park.
 - (5) Once the Construction Official has determined that the design plan to convert the unit entrances from adaptable to accessible meet the requirements of the Barrier Free Subcode, N.J.A.C. 5:23-7, and that the cost estimate of such conversion is reasonable, payment shall be made to the Borough of Elmwood 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.
 - (6) Full compliance with the foregoing provisions shall not be required where an entity can demonstrate that it is site impracticable to meet the requirements. Determinations of site impracticability shall be in compliance with the Barrier Free Subcode, N.J.A.C. 5:23-7.

c. Maximum Rents and Sales Prices.

1. In establishing rents and sales prices of affordable housing units, the Administrative Agent shall follow the procedures set forth in UHAC and by the Superior Court or other relevant authority, utilizing the approved regional income limits .
2. The maximum rent for restricted rental units within each affordable development shall be affordable to households earning no more than 60% of median income, and the average rent for restricted low- and moderate-income units shall be affordable to households earning no more than 52% of median income.
3. The developers and/or municipal sponsors of restricted rental units shall establish at least one rent for each bedroom type for both low-income and moderate-income units.
 - (a) At least 13% of all low-and moderate-income rental units shall be affordable to households earning no more than 30% of median income.
4. The maximum sales price of restricted ownership units within each affordable development shall be affordable to households earning no more than 70% of median income, and each affordable development must achieve an affordability average of 55% for restricted ownership units; in achieving this affordability average, moderate-income ownership units must be available for at least three different prices for each bedroom type, and low-income ownership units must be available for at least two different prices for each bedroom type.
5. In determining the initial sales prices and rents for compliance with the affordability average requirements for restricted units other than assisted living facilities, the

following standards shall be used:

- (a) A studio shall be affordable to a one-person household;
 - (b) A one-bedroom unit shall be affordable to a one and one-half- person household;
 - (c) A two-bedroom unit shall be affordable to a three-person household;
 - (d) A three-bedroom unit shall be affordable to a four and one-half- person household; and
 - (e) A four-bedroom unit shall be affordable to a six-person household.
6. In determining the initial rents for compliance with the affordability average requirements for restricted units in assisted living facilities, the following standards shall be used:
- (a) A studio or efficiency unit shall be affordable to a one-person household;
 - (b) A one-bedroom unit shall be affordable to a one and one-half- person household; and
 - (c) A two-bedroom unit shall be affordable to a two-person household or to two one-person households.
7. The initial purchase price for all restricted ownership units shall be calculated so that the monthly carrying cost of the unit, including principal and interest (based on a mortgage loan equal to 95% of the purchase price and the Federal Reserve H.15 rate of interest), taxes, homeowner and private mortgage insurance and condominium or homeowners' association fees do not exceed 28% of the eligible monthly income of the appropriate size household as determined under N.J.A.C. 5:80-26.4, as may be amended and supplemented; provided, however, that the price shall be subject to the affordability average requirement of N.J.A.C. 5:80-26.3, as may be amended and supplemented.
8. The initial rent for a restricted rental unit shall be calculated so as not to exceed 30% of the eligible monthly income of the appropriate household size as determined under N.J.A.C. 5:80-26.4, as may be amended and supplemented; provided, however, that the rent shall be subject to the affordability average requirement of N.J.A.C. 5:80-26.3, as may be amended and supplemented.
9. The price of owner-occupied low- and moderate-income units may increase annually based on the percentage increase in the regional median income limit for each housing region. In no event shall the maximum resale price, established by the Administrative Agent be lower than the last recorded purchase price.
10. Income limits for all units for which income limits are not already established through a federal program exempted from the Uniform Housing Affordability Controls pursuant to N.J.A.C. 5:80-26.1 et seq. shall be applicable within 30 days of the annual publication of determinations of median income by HUD as follows:
- (a) Regional income limits shall be established for the Region 1 based on the median income by household size, which shall be established by a regional weighted average of the uncapped Section 8 income limits published by HUD. To compute this regional income limit, the HUD determination of median county income for a family of four is multiplied by the estimated households within the county according to the most recent decennial Census. The resulting product for each county within the housing region is summed. The sum is divided by the estimated total households from the most recent decennial census in Region 1. This quotient represents the regional weighted average of median income for a household of four. The income limit for a moderate-income unit for a household of four shall be 80% of the regional weighted average median income for a family of four. The income limit for a low-income unit for a household of four shall be 50% of the HUD determination of the regional weighted average median income for a family

of four. The income limit for a very-low-income unit for a household of four shall be 30% of the regional weighted average median income for a family of four. These income limits shall be adjusted by household size based on multipliers used by HUD to adjust median income by household size. In no event shall the income limits be less than those for the previous year.

- (b) The income limits calculated each year shall be the result of applying the percentages set forth in Subsection (a) above to HUD's determination of median income for the relevant fiscal year, and shall be utilized until the Borough updates the income limits after HUD has published revised determinations of median income for the next fiscal year.
 - (c) The regional asset limit used in determining an applicant's eligibility for affordable housing pursuant to N.J.A.C. 5:80-26.16(b)3 shall be calculated by the Borough annually by taking the percentage increase of the income limits calculated pursuant to Subsection (a) above over the previous year's income limits, and applying the same percentage increase to the regional asset limit from the prior year. In no event shall the regional asset limit be less than that for the previous year.
11. The rent of very-low, low- and moderate-income units may be increased annually based on the percentage increase in the Housing Consumer Price Index for the for the Northeast Urban Area. This increase shall not exceed 9% in any one year. Rents for units constructed pursuant to low-income housing tax credit regulations shall be indexed pursuant to the regulations governing low-income housing tax credits.
 12. Utilities. 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.

§ 37-1.6 Affirmative Marketing Requirements.

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

- a. The Borough of Elmwood Park shall adopt by resolution an Affirmative Marketing Plan, subject to approval of the Superior Court or other relevant authority, in accordance with with N.J.A.C. 5:80-26.15, as may be amended and supplemented.
- b. The Affirmative Marketing Plan is a regional marketing strategy designed to attract buyers and/or renters of all majority and minority groups, regardless of race, creed, color, national origin, ancestry, marital or familial status, gender, affectional or sexual orientation, disability, age or number of children to housing units which are being marketed by a developer, sponsor or owner of affordable housing. The Affirmative Marketing Plan is 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 covers the period of deed restriction.
- c. 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.
- 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.
- e. The Administrative Agent designated by the Borough of Elmwood Park shall assure the affirmative marketing of all affordable units consistent with the Affirmative Marketing Plan for the municipality.
- f. In implementing the Affirmative Marketing Plan, the Administrative Agent shall provide a list of counseling services to very-low, low-, and moderate-income applicants on subjects such as budgeting, credit issues, mortgage qualification, rental lease requirements, and

landlord/tenant law.

- g. 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.
- h. The affirmative marketing process for available affordable units shall begin at least four months (120 days) prior to the expected date of occupancy.
- i. The costs of advertising and affirmative marketing of the affordable units shall be the responsibility of the developer, sponsor or owner, unless otherwise determined or agreed to by the Borough of Elmwood Park.
- j. 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 written request.

§ 37-1.7 Occupancy Standards.

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

§ 37-1.8. Selection of occupants of affordable housing units.

- a. The administrative agent shall use a random selection process to select occupants of low- and moderate-income housing.
- a. A waiting list of all eligible candidates will be maintained in accordance with the provisions of N.J.A.C. 5:80-26.1 et seq.

§ 37-1.9 Control Periods for Restricted Ownership Units and Enforcement Mechanisms.

- a. Control periods for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.5, as may be amended and supplemented, and each restricted ownership unit shall remain subject to the controls on affordability for a period of at least 30 years and until the municipality takes action thereafter to release the controls on affordability.
- b. The affordability control period for a restricted ownership unit shall commence on the date the initial certified household takes title to the unit.
- c. Prior to the issuance of the initial Certificate of Occupancy for a restricted ownership unit and upon each successive sale during the period of restricted ownership, the administrative agent shall determine the restricted price for the unit and shall also determine the nonrestricted, fair market value of the unit based on either an appraisal or the unit's equalized assessed value.
- d. 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 nonrestricted fair market value and its restricted price, and the recapture note shall be secured by a recapture lien evidenced by a duly recorded mortgage on the unit.

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

§ 37-1.10 Price Restrictions for Restricted Ownership Units, Homeowners' Association Fees and Resale Prices.

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

- a. The initial purchase price for a restricted ownership unit shall be approved by the Administrative Agent.
- b. The Administrative Agent shall approve all resale prices, in writing and in advance of the resale, to assure compliance with the foregoing standards.
- c. The method used to determine the condominium association fee amounts and special assessments shall be indistinguishable between the low- and moderate-income unit owners and the market unit owners.
- d. The owners of restricted ownership units may apply to the Administrative Agent to increase the maximum sales price for the unit on the basis of capital improvements. Eligible capital improvements shall be those that render the unit suitable for a larger household or the addition of a bathroom.
- e. Upon the resale of a restricted ownership unit, all items of property that are permanently affixed to the unit or were included when the unit was initially restricted (for example, refrigerator, range, washer, dryer, dishwasher, wall-to-wall carpeting) shall be included in the maximum allowable resale price. Other items may be sold to the purchaser at a reasonable price that has been approved by the administrative agent at the time of the signing of the agreement to purchase. The purchase of central air conditioning installed subsequent to the initial sale of the unit and not included in the base price may be made a condition of the unit resale, provided the price, which shall be subject to ten-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.

§ 37-1.11 Buyer Income Eligibility.

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

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

§ 37-1.12 Limitations on Indebtedness Secured by Ownership Unit; Subordination.
[Ord. No. 10-16 § 11]

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

§ 37-1.13 Control Periods for Restricted Rental Units.

- a. Control periods for restricted rental units shall be in accordance with N.J.A.C. 5:80-26.11, as may be amended and supplemented, and each restricted rental unit shall remain subject to the controls on affordability for a period of at least 30 years, until the municipality takes action to release the controls on affordability. 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, for at least 30 years.
1. Restricted rental units created as part of developments receiving 9% low-income-housing tax credits must comply with a control period of not less than a thirty-year compliance period plus a fifteen-year extended use period. b. 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.
- c. A restricted rental unit shall remain subject to the affordability controls of this section, despite the occurrence of any of the following events:
 1. Sublease or assignment of the lease of the unit;
 2. Sale or other voluntary transfer of the ownership of the unit; or
 3. The entry and enforcement of any judgment of foreclosure.

§ 37-1.14 Price Restrictions for Rental Units; Leases.

- a. A written lease shall be required for all restricted rental units, except for units in an assisted living residence, and tenants shall be responsible for security deposits and the full amount of the rent as stated on the lease. A copy of the current lease for each restricted rental unit shall be provided to the Administrative Agent.
- b. No additional fees or charges shall be added to the approved rent (except, in the case of units in an assisted living residence, to cover the customary charges for food and services) without the express written approval of the Administrative Agent.
- c. Application fees (including the charge for any credit check) shall not exceed 5% of the monthly rent of the applicable restricted unit and shall be payable to the Administrative Agent to be applied to the costs of administering the controls applicable to the unit as set forth in this section.

§ 37-1.15 Tenant Income Eligibility.

- a. Tenant income eligibility shall be in accordance with N.J.A.C. 5:80-26.13, as may be amended and supplemented, and shall be determined as follows:
 1. Very low-income rental units shall be reserved for households with a gross household income less than or equal to 30% of median income.
 2. Low-income rental units shall be reserved for households with a gross household income less than or equal to 50% of median income.
 3. Moderate-income rental units shall be reserved for households with a gross household income less than 80% of median income.
- b. The Administrative Agent shall certify a household as eligible for a restricted rental unit when the household is a very low-income, low-income household or a moderate-income household, as applicable to the unit, and the rent proposed for the unit does not exceed 35% (40% for age-restricted units) of the household's eligible monthly income as determined pursuant to N.J.A.C. 5:80-26.16, as may be amended and supplemented; provided, however, that this limit may be exceeded if one or more of the following circumstances exists:
 1. The household currently pays more than 35% 40% for households eligible for age-restricted units) of its gross household income for rent, and the proposed rent will reduce its housing costs;
 2. The household has consistently paid more than 35% (40% for households eligible for age-restricted units) of eligible monthly income for rent in the past and has proven its ability to pay;
 3. The household is currently in substandard or overcrowded living conditions;
 4. The household documents the existence of assets with which the household proposes to supplement the rent payments; or
 5. The household documents proposed third-party assistance from an outside source such as a family member in a form acceptable to the Administrative Agent and the owner of the unit.
- c. The applicant shall file documentation sufficient to establish the existence of the circumstances in paragraphs b1 through b5 above with the Administrative Agent, who shall counsel the household on budgeting.

§ 37-1.16 Conversions.

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

§ 37-1.17 Alternative living arrangements.

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

agent for the purposes of administering the affirmative marketing and affordability requirements for the alternative living arrangement.

§ 37-1.18 Administration.

- a. The position of Municipal Housing Liaison (MHL) for the Borough of Elmwood Park is established by this section. The Borough Committee shall make the actual appointment of the MHL by means of a resolution.
 1. The MHL must be either a full-time or part-time employee of the Borough of Elmwood Park.
 2. The person appointed as the MHL must be reported to the Superior Court or other relevant authority for approval.
 3. The MHL must meet all COAH requirements for qualifications, including initial and periodic training.
 4. The Municipal Housing Liaison shall be responsible for oversight and administration of the affordable housing program for the Borough of Elmwood Park, including the following responsibilities which may not be contracted out to the Administrative Agent:
 - (a) Serving as the municipality's primary point of contact for all inquiries from the State, affordable housing providers, Administrative Agents and interested households;
 - (b) The implementation of the Affirmative Marketing Plan and affordability controls;
 - (c) When applicable, supervising any contracting Administrative Agent;
 - (d) Monitoring the status of all restricted units in the Borough of Elmwood Park's Fair Share Plan;
 - (e) Compiling, verifying and submitting annual reports as required by the Superior Court or other relevant authority;
 - (f) Coordinating meetings with affordable housing providers and Administrative Agents, as applicable; and
 - (g) Attending continuing education opportunities on affordability controls, compliance monitoring and affirmative marketing as offered or approved by COAH, the Superior Court, or other relevant authority.
 - (h) Ensuring that the persons or entities conducting affirmative marketing of any affordable housing units in the Borough are notifying the entities at Paragraph 7.8 of the Settlement Agreement with Fair Share Housing Center of all available affordable housing units, as required by that same Paragraph.
- b. The Borough of Elmwood Park shall designate by resolution of the Borough Council, subject to the approval of the Superior Court, one or more Administrative Agents to administer newly constructed affordable units in accordance with N.J.A.C. 5:91, N.J.A.C. 5:93 and UHAC.
- c. An Operating Manual shall be provided by the Administrative Agent(s) to be adopted by resolution of the Governing Body and subject to approval of the Superior Court or other relevant authority. The Operating Manuals shall be available for public inspection in the Office of the Municipal Clerk and in the office(s) of the Administrative Agent(s).
- d. The Administrative Agent shall perform the duties and responsibilities of an administrative agent as are set forth in UHAC and which are described in full detail in the Operating Manual, including those set forth in N.J.A.C. 5:80-26.14, 16 and 18 thereof, which includes:
 1. Attending continuing education opportunities on affordability controls, compliance monitoring, and affirmative marketing as offered or approved by COAH, the Superior Court, or other relevant authority;

2. Affirmative Marketing;

- (a) Conducting an outreach process to ensure affirmative marketing of affordable housing units in accordance with the affirmative marketing plan of Verona and the provisions of N.J.A.C. 5:80-26.15.

Providing counseling or contracting to provide counseling services to low- and moderate-income applicants on subjects such as budgeting, credit issues, mortgage qualification, rental lease requirements, and landlord/tenant law.³ Household Certification;

- (a) Soliciting, scheduling, conducting and following up on interviews with interested households;
- (b) Conducting interviews and obtaining sufficient documentation of gross income and assets upon which to base a determination of income eligibility for a very-low, low-, or moderate-income unit;
- (c) Providing written notification to each applicant as to the determination of eligibility or non-eligibility;
- (d) Requiring that all certified applicants for restricted units execute a certificate substantially in the form, as applicable, of either the ownership or rental certificates set forth in Appendixes J and K of N.J.A.C. 5:80-26.1 et seq.;
- (e) Creating and maintaining a referral list of eligible applicant households living in the housing region and eligible applicant households with members working in the housing region where the units are located; and
- (f) Employing the random selection process as provided in the affirmative marketing plan of Verona when referring households for certification to affordable units.
- (g) Notifying the following entities of the availability of affordable housing units in the Borough of Elmwood Park: the Fair Share Housing Center, the New Jersey State Conference of the NAACP, the Latino Action Network, the Bergen County NAACP, the Urban League of Bergen County, and the Supportive Housing Association.

4. Affordability Controls;

- (a) Furnishing to attorneys or closing agents forms of deed restrictions and mortgages for recording at the time of conveyance of title of each restricted unit;
- (b) Creating and maintaining a file on each restricted unit for its control period, including the recorded deed with restrictions, recorded mortgage and note, as appropriate;
- (c) Ensuring that the removal of the deed restrictions and cancellation of the mortgage note are effectuated and properly filed with the appropriate county's register of deeds or County Clerk's office after the termination of the affordability controls for each restricted unit;
- (d) Communicating with lenders regarding foreclosures; and

Ensuring the issuance of continuing certificates of occupancy or certificates pursuant to N.J.A.C. 5:80-26.10. 5. Records retention;

6. Resale and rental;

- (a) Instituting and maintaining an effective means of communicating information between owners and the administrative agent regarding the availability of restricted units for resale or rental; and
- (b) Instituting and maintaining an effective means of communicating information to very-low, low-, and moderate-income households regarding the availability of

restricted units for resale or re-rental.

7. Processing requests from unit owners;
 - (a) Reviewing and approving requests for determination from owners of restricted units who wish to take out home equity loans or refinance during the term of their ownership so that the amount of indebtedness to be incurred will not violate the terms of this chapter;;
 - (b) Reviewing and approving requests to increase sales prices from owners of restricted units who wish to make capital improvements to the units that would affect the selling price, such authorizations to be limited to those improvements resulting in additional bedrooms or bathrooms and the depreciated cost of central air-conditioning systems;
8. Enforcement, though the ultimate responsibility for retaining controls on the units rests with the municipality.
 - (a) Ensure that all restricted units are identified as affordable within the Tax Assessor's office and any municipal utility authority (MUA) and upon notification to the administrative agent of change in billing address, payment delinquency of two consecutive billing cycles, transfer of title, or institution of a writ of foreclosure on all affordable units, notifying all such owners that they must either move back to their unit or sell it;
 - (b) Securing from all developers and sponsors of restricted units, at the earliest point of contact in the processing of the project or development, written acknowledgment of the requirement that no restricted unit can be offered, or in any other way committed, to any person, other than a household duly certified to the unit by the administrative agent;
 - (c) 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 can be made;
 - (d) Sending annual mailings to all owners of affordable dwelling units, reminding them of the notices and requirements outlined in N.J.A.C. 5:80-26.18(d)4;
 - (e) Establishing a program for diverting unlawful rent payments to the municipality's affordable housing trust fund or other appropriate municipal fund approved by the DCA;
 - (f) Establishing a rent-to-equity program;
 - (g) Establishing a program for diverting unlawful rent payments to the municipality's affordable housing trust fund
 - (h) Creating and publishing a written operating manual, as approved by the Borough Committee and COAH, its successor agency, or Court of competent jurisdiction, setting forth procedures for administering such affordability controls; and
 - (i) Providing annual reports to COAH, its successor agency, or Court of competent jurisdiction as required.
9. The Administrative Agent shall have authority to take all actions necessary and appropriate to carry out its responsibilities, hereunder.

**§ 37-1.20 Enforcement of Affordable Housing Regulations.
[Ord. No. 10-16 § 16]**

- a. Upon the occurrence of a breach of any of the regulations governing the affordable unit by an owner, developer or tenant the municipality shall have all remedies provided at law or equity, including but not limited to foreclosure, tenant eviction, municipal fines, a requirement for household recertification, acceleration of all sums due under a mortgage,

recoupment of any funds from a sale in the violation of the regulations, injunctive relief to prevent further violation of the regulations, entry on the premises, and specific performance.

- b. After providing written notice of a violation to an owner, developer or tenant of a low- or moderate-income unit and advising the owner, developer or tenant of the penalties for such violations, the municipality may take the following action against the owner, developer or tenant for any violation that remains uncured for a period of 60 days after service of the written notice:
 1. The municipality may file a court action pursuant to N.J.S.A. 2A:58-11 alleging a violation, or violations, of the regulations governing the affordable housing unit. If the owner, developer or tenant is found by the court to have violated any provision of the regulations governing affordable housing units the owner, developer or tenant shall be subject to one or more of the following penalties, at the discretion of the court:
 - (a) A fine of not more than the penalty provided for in Chapter 1, Section 1-5, or imprisonment for a period not to exceed 90 days, or both. Each and every day that the violation continues or exists shall be considered a separate and specific violation of these provisions and not as a continuing offense;
 - (b) In the case of an owner who has rented his or her low- or moderate-income unit in violation of the regulations governing affordable housing units, payment into the Borough of Elmwood Park Affordable Housing Trust Fund of the gross amount of rent illegally collected;
 - (c) In the case of an owner who has rented his or her low- or moderate-income unit in violation of the regulations governing affordable housing units, payment of an innocent tenant's reasonable relocation costs, as determined by the court.
 2. The municipality may file a court action in the Superior Court seeking a judgment, which would result in the termination of the owner's equity or other interest in the unit, in the nature of a mortgage foreclosure. Any judgment shall be enforceable as if the same were a judgment of default of the First Purchase Money Mortgage and shall constitute a lien against the low- and moderate-income unit.
- c. Such judgment shall be enforceable, at the option of the municipality, by means of an execution sale by the Sheriff, at which time the low- and moderate-income unit of the violating owner shall be sold at a sale price which is not less than the amount necessary to fully satisfy and pay off any First Purchase Money Mortgage and prior liens and the costs of the enforcement proceedings incurred by the municipality, including attorney's fees. The violating owner shall have the right to possession terminated as well as the title conveyed pursuant to the Sheriff's sale.
- d. The proceeds of the Sheriff's sale shall first be applied to satisfy the First Purchase Money Mortgage lien and any prior liens upon the low- and moderate-income unit. The excess, if any, shall be applied to reimburse the municipality for any and all costs and expenses incurred in connection with either the court action resulting in the judgment of violation or the Sheriff's sale. In the event that the proceeds from the Sheriff's sale are insufficient to reimburse the municipality in full as aforesaid, the violating owner shall be personally responsible for and to the extent of such deficiency, in addition to any and all costs incurred by the municipality in connection with collecting such deficiency. In the event that a surplus remains after satisfying all of the above, such surplus, if any, shall be placed in escrow by the municipality for the owner and shall be held in such escrow for a maximum period of two years or until such earlier time as the owner shall make a claim with the municipality for such. Failure of the owner to claim such balance within the two-year period shall automatically result in a forfeiture of such balance to the municipality. Any interest accrued or earned on such balance while being held in escrow shall belong to and shall be paid to the municipality, whether such balance shall be paid to the owner or forfeited to the municipality.
- e. Foreclosure by the municipality due to violation of the regulations governing affordable housing units shall not extinguish the restrictions of the regulations governing affordable housing units as the same apply to the low- and moderate-income unit. Title shall be

conveyed to the purchaser at the Sheriffs 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 Sheriffs sale shall not be entitled to any right of redemption.

- f. If there are no bidders at the Sheriffs sale, or if insufficient amounts are bid to satisfy the First Purchase Money Mortgage and any prior liens, the municipality may acquire title to the low- and moderate-income unit by satisfying the First Purchase Money Mortgage and any prior liens and crediting the violating owner with an amount equal to the difference between the First Purchase Money Mortgage and any prior liens and costs of the enforcement proceedings, including legal fees and the maximum resale price for which the low- and moderate-income unit could have been sold under the terms of the regulations governing affordable housing units. This excess shall be treated in the same manner as the excess which would have been realized from an actual sale as previously described.
- g. Failure of the low- and moderate-income unit to be either sold at the Sheriffs sale or acquired by the municipality shall obligate the owner to accept an offer to purchase from any qualified purchaser which may be referred to the owner by the municipality, with such offer to purchase being equal to the maximum resale price of the low- and moderate-income unit as permitted by the regulations governing affordable housing units.
- h. The owner shall remain fully obligated, responsible and liable for complying with the terms and restrictions of governing affordable housing units until such time as title is conveyed from the owner.

§ 37-1.21 Appeals.

Appeals from all decisions of an Administrative Agent designated pursuant to this section shall be filed in writing with the Borough Clerk of the Borough of Elmwood Park.

ATTEST: _____

Shanee Morris, CMR
Acting Borough Clerk

APPROVED: _____

Robert Colletti, Mayor

Introduced: August 17, 2023

Adopted: September 21, 2023