

**BOROUGH OF PEAPACK AND GLADSTONE  
COUNTY OF SOMERSET, STATE OF NEW JERSEY**

**ORDINANCE NO. 1081-2019**

**AN ORDINANCE TO AMEND AND SUPPLEMENT CHAPTER XXIII, ARTICLE IX, TITLED  
"AFFORDABLE HOUSING"**

**BE IT ORDAINED** by the Governing Body of the Borough of Peapack and Gladstone, Somerset County, New Jersey that it does hereby amend and supplement the Zoning Ordinance of the Borough as follows:

**SECTION 1.** Article IX, titled "Affordable Housing" is repealed in its entirety to be replaced with a new Article IX, of the same title "Affordable Housing."

**SECTION 2. New Article IX, AFFORDABLE HOUSING** is hereby added as follows:

**23-68 AFFORDABLE HOUSING OBLIGATION.**

- a. This Article is intended to assure that low- and moderate-income units ("affordable units") are created with controls on affordability over time and that low- and moderate-income households shall occupy these units. This Article shall apply except where inconsistent with applicable law.
- b. The Peapack and Gladstone Borough Land Use Board has adopted a Housing Element and Fair Share Plan pursuant to the Municipal Land Use Law at N.J.S.A. 40:55D-1, et seq. (hereinafter "Fair Share Plan"). The Fair Share Plan was subsequently endorsed by the governing body. The Fair Share Plan describes how the Borough of Peapack and Gladstone shall address its fair share of low- and moderate-income housing as documented in the Fair Share Plan itself, the Settlement Agreement entered into between the Borough and Fair Share Housing Center ("FSHC") on April 25, 2018 (hereinafter "FSHC Settlement Agreement"), and the Court Order approving same, after a properly noticed Fairness Hearing.
- c. This Article implements and incorporates the Fair Share Plan and addresses the requirements of N.J.A.C. 5:97, as may be amended and supplemented.

**23-69 APPLICABILITY.**

- a. 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 Peapack and Gladstone pursuant to the Borough's most recently adopted Housing Element and Fair Share Plan.

- b. 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.

## **23-70 DEFINITIONS.**

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

*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 Article, N.J.A.C. 5:96, N.J.A.C. 5:97 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* shall mean, a sales price or rent within the means of a low- or moderate-income household as defined in N.J.A.C. 5:97-9; in the case of an ownership unit, that the sales price for the unit conforms to the standards set forth in N.J.A.C. 5:80-26.6, as may be amended and supplemented, and, in the case of a rental unit, that the rent for the unit conforms to the standards set forth in N.J.A.C. 5:80-26.12, as may be amended and supplemented.

*Affordable development* shall mean a housing development all or a portion of which consists of restricted units.

*Affordable housing development* shall mean a development included in the "Housing Plan Element And Fair Share Plan", and includes, but is not limited to, an inclusionary development, a municipal construction project or a one hundred (100%) percent 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. 5:97-4, and/or funded through an affordable housing trust fund.

*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.).



*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 sixty-two (62) years or older; or 2) at least eighty (80%) percent of the units are occupied by one person that is fifty-five (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.

*Assisted living residence* shall mean 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 (4) or more adult persons unrelated to the proprietor and that offers units containing, at a minimum, one (1) unfurnished room, a private bathroom, a kitchenette and a lockable door on the unit entrance.

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

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

*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 fifty (50%) percent or less of the median household income.

*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* shall mean the median income by household size for the applicable county, as adopted annually by COAH.

*Moderate-income household* shall mean a household with a total gross annual household income in excess of fifty (50%) percent but less than eighty (80%) percent of the median household income.

*Moderate-income unit* shall mean a restricted unit that is affordable to a moderate-income household.

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

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

*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.

*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 UHROP or MONI.

*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 thirty (30%) percent or less of the median household income.



*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.

### **23-71 MONITORING AND REPORTING REQUIREMENTS.**

The Borough of Peapack and Gladstone 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:

- a. Beginning one year after the ~~entry~~ **execution of settlement agreement between** the Borough's ~~Round 3 Judgment of Compliance and Repose,~~ and **Fair Share Housing Center (FSHC) and** on every anniversary of that date through 2025, the Borough agrees to provide annual reporting of its Affordable Housing Trust Fund activity to the 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 (FSHC) and posted on the municipal website, using forms developed for this purpose by the New Jersey Department of Community Affairs (NJDCA), Council 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.
- b. Beginning one year after the ~~entry~~ **execution of settlement agreement between** of the Borough's ~~Round 3 Judgment of Compliance and Repose,~~ and **FSHC and** on every anniversary of that date through 2025, the Borough agrees to provide annual reporting of the status of all affordable housing activity within the municipality through posting on the municipal website with a copy of such posting provided to Fair Share Housing Center, using forms previously developed for this purpose by COAH, or any other forms endorsed by the Court Appointed Special Master and FSHC.
- c. The Fair Housing Act includes two provisions regarding action to be taken by the Borough during its ten-year repose period. **Pursuant to the settlement agreement with FSHC,** ~~the~~ the Borough will comply with those provisions as follows:
  1. For the midpoint realistic opportunity review due on July 2, 2020, as required pursuant to N.J.S.A. 52:27D-313, the Borough will post on its municipal website, with a copy provided to Fair Share Housing Center, 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 the mechanisms to meet unmet need

should be revised or supplemented. Such posting shall invite any interested party to submit comments to the Borough, with a copy to Fair Share Housing Center, regarding whether any sites no longer present a realistic opportunity and should be replaced and whether the 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.

2. For the review of very low income housing requirements required by N.J.S.A. 52:27D-329.1, within 30 days of the third anniversary of the entry of the Borough's Judgment of Compliance and Repose, **settlement agreement with FSHC** and every third year thereafter, the Borough will post on its municipal website, with a copy provided to Fair Share Housing Center, a status report as to its satisfaction of its very low income requirements, including the family very low income requirements referenced herein. Such posting shall invite any interested party to submit comments to the Borough and Fair Share Housing Center on the issue of whether the Borough has complied with its very low income housing obligation under the terms of this settlement.
3. In addition to the foregoing postings, the Borough may also elect to file copies of its reports with COAH or its successor agency at the State level.

**23-72 AFFORDABLE HOUSING REQUIREMENTS**

**23.72.1 Phasing Schedule for Inclusionary Development.**

In inclusionary developments the following schedule shall be followed:

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

**23-72.2 New Construction.**

- 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. At least 13 percent of all restricted rental units 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. At least 50 percent of the very low income units must be available to families.

2. In each affordable development, at least 50 percent of the restricted units within each bedroom distribution shall be very low or low-income units.
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 percent of the total low- and moderate-income units;
  - b) At least 30 percent of all low- and moderate-income units shall be two bedroom units;
  - c) At least 20 percent 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.
  - 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. This 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; and
  - b) An adaptable kitchen on the first floor; and
  - c) An interior accessible route of travel on the first floor; and

- d) 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
- e) If all of the foregoing requirements in 2.(a) through 2.(d) cannot 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 2.(a) through 2.(d) above have been satisfied, then an interior accessible route of travel shall not be required between stories within an individual unit; and
- f) 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 Peapack and Gladstone has collected funds from the developer sufficient to make 10 percent 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 Peapack and Gladstone's Affordable Housing Trust Fund sufficient to install accessible entrances in 10 percent of the affordable units that have been constructed with adaptable entrances.
  - (3) The funds deposited under paragraph (f)[2] above shall be used by the Borough of Peapack and Gladstone for the sole purpose of making the adaptable entrance of an affordable unit accessible when requested to do so by a person with a disability who occupies or intends to occupy the unit and requires an accessible entrance.
  - (4) The developer of the restricted units shall submit a design plan and cost estimate to the Construction Official of the Borough of Peapack and Gladstone for the conversion of adaptable to accessible entrances.
  - (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's Affordable Housing Trust Fund in care of the Borough 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. Design:

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

d. 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, utilizing the most recently published regional weighted average of the uncapped Section 8 income limits published by HUD.
2. 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 rental units shall be affordable to households earning no more than 52 percent 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, provided that at least 13 percent of all low- and moderate-income rental units shall be affordable to very low-income households, which very low-income units shall be part of the low-income requirement.
4. 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 sales prices for each bedroom type, and low-income ownership units must be available for at least two different sales prices for each bedroom type.
5. In determining the initial sales prices and rent levels for compliance with the affordability average requirements for restricted units other than assisted living facilities and age-restricted developments, 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 sales prices and rents for compliance with the affordability average requirements for restricted units in assisted living facilities and age-restricted developments, the following standards shall be used:
- 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;  
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 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.
8. 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 size household, including an allowance for tenant paid utilities, as determined under N.J.A.C. 5:80-26.4, as may be amended and supplemented; provided, however, that the rent shall be subject to the affordability average requirement of N.J.A.C. 5:80-26.3, as may be amended and supplemented.
9. Income limits for all units that are part of the Borough's Housing Element and Fair Share Plan, and 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, shall be updated by the Borough annually within 30 days of the publication of determinations of median income by HUD as follows:



- a. The income limit for a moderate-income unit for a household of four shall be 80 percent of the HUD determination of the median income for COAH Region 4 ~~3~~ for a family of four. The income limit for a low-income unit for a household of four shall be 50 percent of the HUD determination of the median income for COAH Region 1 for a family of four. The income limit for a very low income unit for a household of four shall be 30 percent of the HUD determination of the median income for COAH Region 4 ~~3~~ 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 the previous year.
  - b. The income limits are based on carrying out the process in paragraph (a) based on HUD determination of median income for the current Fiscal Year, and shall be utilized by the Borough until new income limits are available.
10. In establishing sale prices and rents of affordable housing units, the administrative agent shall follow the procedures set forth in UHAC, utilizing the regional income limits established by the Council:
- a. 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 determined pursuant to paragraph (9). In no event shall the maximum resale price established by the administrative agent be lower than the last recorded purchase price.
  - b. The rents of very low-, low- and moderate-income units may be increased annually based on the permitted percentage increase in the Housing Consumer Price Index for the Northern New Jersey Area, upon its publication for the prior calendar year. This increase shall not exceed nine percent 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.

**23-72.3 Utilities.**

- a. Affordable units shall utilize the same type of heating source as market units within an inclusionary development.
- b. 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 the NJDCA for its Section 8 program.

**23-72.4 Occupancy Standards.**

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

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

**23-72.5 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 requirements of this Ordinance for a period of at least thirty (30) years, until Peapack and Gladstone takes action to release the unit from such requirements; prior to such action, a restricted ownership unit must remain subject to the requirements of N.J.A.C. 5:80-26.1, as may be amended and supplemented.
- 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 Borough's Administrative Agent, or an Administrative Agent appointed by a particular developer, 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.
- d. At the time of the initial sale of the unit, the initial purchaser shall execute and deliver to the Borough's Administrative Agent, or an Administrative Agent appointed by a particular developer, a recapture note obligating the purchaser (as well as the purchaser's heirs, successors and assigns) to repay, upon the first non-exempt sale after the unit's release from the restrictions set forth in this Ordinance, 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.
- e. The affordability controls set forth in this Ordinance 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 following the removal of the restrictions provided under N.J.A.C. 5:80-26.5(a), as may be amended and supplemented.

**23-72.6 Price Restrictions for Restricted Ownership Units, Homeowner Association Fees and Resale Prices.**

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

- a. The initial purchase price for a restricted ownership unit shall be approved by the Borough's Administrative Agent, or an Administrative Agent appointed by a particular developer.
- b. The Borough's Administrative Agent, or an Administrative Agent appointed by a particular developer, 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, unless the master deed for the inclusionary project was executed prior to the enactment of UHAC.
- d. The owners of restricted ownership units may apply to the Borough's Administrative Agent, or an Administrative Agent appointed by a particular developer, 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.

**23-72.7 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 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.
- b. 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 eligible monthly income.

### **23.72.8 Limitations on Indebtedness Secured by Ownership Unit; Subordination.**

- a. Prior to incurring any indebtedness to be secured by a restricted ownership unit, the owner shall apply to the Borough's Administrative Agent, or an Administrative Agent appointed by a particular developer, for a determination in writing that the proposed indebtedness complies with the provisions of this Section, and the Borough's Administrative Agent, or an Administrative Agent appointed by a particular developer, shall issue such determination prior to the owner incurring such indebtedness.
- b. With the exception of First Purchase Money Mortgages, neither an owner nor a lender shall at any time cause or permit the total indebtedness secured by a restricted ownership unit to exceed 95 percent of the maximum allowable resale price of the unit, as such price is determined by the Borough's Administrative Agent, or an Administrative Agent appointed by a particular developer, in accordance with N.J.A.C. 5:80-26.6(b).

### **23-72.9 Capital Improvements To Ownership Units.**

- a. The owners of restricted ownership units may apply to the Borough's Administrative Agent, or an Administrative Agent appointed by a particular developer, 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.
- b. Upon the resale of a restricted ownership unit, all items of property that are permanently affixed to the unit or were included when the unit was initially restricted (for example, refrigerator, range, washer, dryer, dishwasher, wall-to-wall carpeting) shall be included in the maximum allowable resale price. Other items may be sold to the purchaser at a reasonable price that has been approved by the Borough's Administrative Agent, or an Administrative Agent appointed by a particular developer, at the time of the signing of the agreement to purchase. The purchase of central air conditioning installed subsequent to the initial sale of the unit and not included in the base price may be made a condition of the unit resale provided the price, which shall be subject to 10-year, straight-line depreciation, has been approved by the Borough's Administrative Agent, or an Administrative Agent appointed by a particular developer. Unless otherwise approved by the Borough's Administrative Agent, or an Administrative Agent appointed by a particular developer, 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.

### **23-72.10 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 requirements of this Ordinance for a period of at least 30 years, until Peapack and Gladstone takes action to release the unit from such requirements. Prior to such action, a restricted rental unit must remain subject to the requirements of N.J.A.C. 5:80-26.1, as may be amended and supplemented.
- 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 Somerset. A copy of the filed document shall be provided to the Borough's 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 Ordinance 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 on the property containing the unit.

**23-72.11 Rent Restrictions for Rental Units; Leases.**

- a. A written lease shall be required for all restricted rental units and tenants shall be responsible for security deposits and the full amount of the rent as stated on the lease. A copy of the current lease for each restricted rental unit shall be provided to the Borough's Administrative Agent, or an Administrative Agent appointed by a particular developer.
- 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 Borough's Administrative Agent, or an Administrative Agent appointed by a particular developer.
- c. 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 Developer and/or Landlord or to the Borough's Administrative Agent, or an Administrative Agent appointed by a particular developer. If the fees are paid to the Borough's Administrative Agent or an Administrative Agent appointed by a particular developer they are to be applied to the costs of administering the controls applicable to the unit as set forth in this Ordinance.

- d. 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 percent of the total number of dwelling units are restricted rental units in compliance with this Ordinance.

**23-72.12 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 percent of the regional median household income by household size.
  - 2. 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.
  - 3. 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.
- b. The Borough's Administrative Agent, or an Administrative Agent appointed by a particular developer, shall certify a household as eligible for a restricted rental unit when the household is a very low-income household, 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:
  - 1. 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;
  - 2. 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;
  - 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 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.
- c. The applicant shall file documentation sufficient to establish the existence of the circumstances in a.1. through b.5. above with the Borough's Administrative Agent, or an Administrative Agent appointed by a particular developer, who shall counsel the household on budgeting.

**23-73 MUNICIPAL HOUSING LIAISON.**

- a. The position of Municipal Housing Liaison (MHL) for the Borough of Peapack and Gladstone is established by this ordinance. The Borough 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 Peapack and Gladstone.
  2. The person appointed as the MHL must be reported to the Court and thereafter posted on the Borough's website.
  3. The MHL must meet all the requirements for qualifications, including initial and periodic training, if such training is made available by COAH or the DCA.
  4. The Municipal Housing Liaison shall be responsible for oversight and administration of the affordable housing program for the Borough of Peapack and Gladstone, including the following responsibilities which may not be contracted out to the Administrative Agent, or the Administrative Agent appointed by a specific developer:
    - 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's Fair Share Plan;
    - e) Compiling, verifying and submitting annual reports as required;

- 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 the Affordable Housing Professionals of New Jersey (AHPNJ), if such continuing education opportunities are made available by COAH or the DCA.

b. Subject to the approval of the Court, the Borough of Peapack and Gladstone 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 may be subject to approval of the Court appointed Special Master or 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).

#### **23-74 ADMINISTRATIVE AGENT**

An Administrative Agent may be either an independent entity serving under contract to and reporting to the Borough or reporting to a specific individual developer. ***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 Borough Administrative Agent shall monitor and work with any individual Administrative Agents appointed by individual developers. The Administrative Agent(s) shall perform the duties and responsibilities of an Administrative Agent as 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 of Peapack and Gladstone 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. 5:80-26.1 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;
6. Employing a random selection process as provided in the Affirmative Marketing Plan of the Borough of Peapack and Gladstone 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 Peapack and Gladstone: Fair Share Housing Center, the New Jersey State Conference of the NAACP, the Latino Action Network, Senior Citizens United Community Services (S.C.U.C.S.), and the Supportive Housing Association.

c. 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 Somerset County Register of Deeds or Somerset County Clerk's office after the termination of the affordability controls for each restricted unit;
4. Communicating with lenders regarding foreclosures; and
5. Ensuring the issuance of Continuing Certificates of Occupancy or certifications pursuant to N.J.A.C. 5:80-26.10.

d. Resales and Re-rentals:

1. Instituting and maintaining an effective means of communicating information between owners and the Borough's Administrative Agent, or any Administrative Agent appointed by a specific developer, regarding the availability of restricted units for resale or re-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.
- e. 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. Making determinations on requests by owners of restricted units for hardship waivers.
- f. Enforcement:
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 acknowledgement 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 Borough's Administrative Agent, or any Administrative Agent appointed by a specific developer;
  3. Posting annually, in all rental properties (including two-family homes), a notice as to the maximum permitted rent together with the telephone number of the



Borough's Administrative Agent, or any Administrative Agent appointed by a specific developer, 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 Borough's Affordable Housing Trust Fund; and
  6. Creating and publishing a written operating manual for each affordable housing program administered by the Borough's Administrative Agent, or any Administrative Agent appointed by a specific developer, to be approved by the Borough Council and the Court, setting forth procedures for administering the affordability controls.
- g. Additional Responsibilities:
1. The Borough's Administrative Agent shall have the authority to take all actions necessary and appropriate to carry out its responsibilities hereunder.
  2. The Borough's 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. The Borough's Administrative Agent will be responsible for collecting monitoring information from any Administrative Agents appointed by specific developers.
  3. The Borough's Administrative Agent, or any Administrative Agent appointed by a specific developer, shall attend continuing education sessions on affordability controls, compliance monitoring, and affirmative marketing at least annually and more often as needed.

## **23-75 AFFORDABLE HOUSING DEVELOPMENT FEES.**

### **23-75.1 Purpose.**

- a. In *Holmdel Builder's Ass'n v. Holmdel Borough*, 121 N.J. 550 (1990), the New Jersey Supreme Court determined that mandatory development fees are authorized by the Fair Housing Act of 1985, N.J.S.A. 52:27D-301 et seq., and the State Constitution, subject to the Council On Affordable Housing's (COAH) adoption of rules.
- b. Pursuant to P.L.2008, c.46 section 8 (C. 52:27D-329.2) and the Statewide Non-Residential Development Fee Act (C. 40:55D-8.1 through 8.7), COAH is authorized to adopt and

promulgate regulations necessary for the establishment, implementation, review, monitoring and enforcement of municipal affordable housing trust funds and corresponding spending plans. Municipalities that are under the jurisdiction of the Council or court of competent jurisdiction and have a COAH-approved spending plan may retain fees collected from non-residential development.

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

### **23-75.2 Basic Requirements.**

- a. The ability to impose, collect and spend development fees is predicated on the **settlement terms and conditions entered into between the** Borough of Peapack and Gladstone's participation in COAH's substantive certification process **and FSHC and judgement of compliance and repose granted by the Court.**
- b. The Borough of Peapack and Gladstone shall not spend development fees until COAH **the Court** has approved a plan for spending such fees in conformance with N.J.A.C. 5:97-8.10 and N.J.A.C. 5:96-5.3.
- c. This section shall not be effective until COAH **the Court** has approved, and the Borough has adopted, the section pursuant to N.J.A.C. 5:96-5.1.  
(Ord. No. 917 § 1)

### **23-75.3 Definitions.**

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

*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 one hundred (100%) percent affordable development.

*COAH* or the *Council* shall mean the New Jersey Council on Affordable Housing established under the Act which has primary jurisdiction for the administration of housing obligations in accordance with sound regional planning consideration in the State.

*Development fee* shall mean money paid by a developer for the improvement of property as permitted in N.J.A.C. 5:97-8.3.



*Developer* shall mean 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* shall mean 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* shall mean 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.

(Ord. No. 917 § 1)

#### **23-75.4 Residential Development.**

- a. In accordance with N.J.A.C. 5:97-8.3 (c) of COAH's "Substantive Rules," all new development of principal and accessory residential buildings within the Borough of Peapack and Gladstone, not exempt from the collection of development fees in accordance with the provisions specified in Subsection 23-74.4c. of this ordinance hereinbelow, shall pay a fee to Peapack and Gladstone Borough equal to one and one-half (1.5%) percent of the equalized assessed value of the residential construction, provided no increased density is permitted.
- b. Notwithstanding the provisions of subsection 23-74.4a. hereinabove, if a "d" variance is granted pursuant to N.J.S.A. 40:55D-70 d.(5) for more residential units than otherwise permitted by right under the existing zoning, then the additional residential units realized as a result of the "d" variance approval shall pay a bonus development fee to Peapack and Gladstone Borough equal to six (6.0%) percent of the equalized assessed value of the residential development, rather than the one and one-half (1.5%) percent development fee otherwise required for the residential units permitted by right.
  1. However, if the zoning of a site has changed during the immediate two (2) years prior to the filing of the "d" variance application, then the base density for the purposes of calculating the bonus development fee shall be the highest density permitted by right during the two (2) year time period.
  2. In any case, these fees shall not apply to developments exempt from the collection of development fees in accordance with the provisions specified in subsection 23-74.4 c. of this section, hereinbelow.
- c. *Eligible Exactions, Ineligible Exactions and Exemptions for Residential Development.*
  1. All affordable housing developments and developments where the developer has made a payment in lieu of constructing affordable units shall be exempt from

paying development fees. All other forms of new construction shall be subject to development fees.

2. Developments that have received preliminary or final site plan approval prior to October 1, 1996 shall be exempt from development fees, unless the developer seeks a substantial change in the approval. Where a site plan approval does not apply, a zoning and/or construction permit shall be synonymous with preliminary or final site plan approval for this purpose. The fee percentage shall be vested on the date that building permits are issued.
3. In addition to the construction of new principal and/or accessory buildings, development fees shall be imposed and collected for the construction of additions or expansions to existing buildings, for the change or conversion of an existing building to accommodate a more intense use, and/or for the demolition and replacement of an existing building, provided that:
  - a) The development fee shall be calculated on the increase in the equalized assessed value of the improved building.
  - b) No development fee shall be collected for a demolition and replacement of a residential building resulting from a natural disaster.
  - c) No development fee shall be collected for the construction of an "accessory structure" which is not a "building" as these terms are defined in the Peapack and Gladstone Borough "Land Development" Ordinance.

#### **23-75.5 Nonresidential Development.**

- a. All new nonresidential development within the Borough of Peapack and Gladstone, not exempt from the collection of development fees in accordance with the provisions specified in subsection 23-74.5c. of this section hereinbelow, shall pay a fee to Peapack and Gladstone Borough equal to two and one-half (2.5%) percent of the equalized assessed value of the land and improvements for all new nonresidential construction on an unimproved lot(s) or equal to two and one-half (2.5%) percent of the increase in equalized assessed value resulting from any additions to existing structures to be used for nonresidential purposes.
- b. Development fees also shall be imposed and collected when an existing structure is demolished and replaced. The development fee of two and a half (2 1/2%) percent shall be calculated on the difference between the equalized assessed value of the pre-existing land and improvement and the equalized assessed value of the newly improved structure, i.e. land and improvement, at the time final Certificate of Occupancy is issued. If the calculation required under this section results in a negative number, the nonresidential development fee shall be zero (0).



c. *Eligible Exactions, Ineligible Exactions and Exemptions for Nonresidential Development.*

1. The nonresidential portion of a mixed-use inclusionary or market rate development shall be subject to the two and one-half (2.5%) percent development fee, unless otherwise exempted below.
2. The two and one-half (2.5%) percent fee shall not apply to an increase in equalized assessed value resulting from alterations, change in use within existing footprint, reconstruction, renovations and repairs.
3. Nonresidential projects that have received a Certificate of Occupancy or general development plan approval or have entered into a developer's agreement or a redevelopment agreement, all prior to July 17, 2008 (the effective date of P.L. 2008, c.46), shall be exempt from the payment of non-residential development fees, provided that an affordable housing fee of at least one (1%) percent of the equalized assessed value of the improvements is included in the development plan, developer's agreement or redevelopment agreement.
4. Nonresidential developments shall be exempt from the payment of nonresidential development fees in accordance with the exemptions required pursuant to P.L.2008, c.46, as specified in the Form N-RDF "State of New Jersey Non-Residential Development Certification/Exemption" Form and listed below. Any exemption claimed by a developer shall be substantiated by that developer.
  - a) All nonresidential construction of buildings or structures on property used by houses of worship, and property used for educational purposes which is tax-exempt pursuant to R.S.54:4-3.6, provided that the property continues to maintain its tax-exempt status under that statute for a period of at least three (3) years from the date of the Certificate of Occupancy;
  - b) Parking lots and parking structures, regardless of whether the parking lot or parking structure is constructed in conjunction with a nonresidential development or as a stand-alone non-residential development;
  - c) Any nonresidential development which is an amenity to be made available to the public, including, but not limited to, recreational facilities, community centers and senior centers as defined in section 35 of P.L.2008, c.46 (C.40:55D-8.4), which are developed in conjunction with or funded by a non-residential developer;
  - d) Nonresidential construction resulting from a relocation of or an on-site improvement to a nonprofit hospital or a nursing home facility;

- e) Projects that are located within a specifically delineated urban transit hub, as defined pursuant to section 2 of P.L.2007, c.346 (C.34: 1 B-208);
  - f) Projects that are located within an eligible municipality, as defined under section 2 of P.L.2007, c.346 (C.34:1B-208), when a majority of the project is located within a one-half (1/2) mile radius of the midpoint of a platform area for a light rail system;
  - g) Projects determined by the New Jersey Transit Corporation to be consistent with a transit village plan developed by a transit village designated by the New Jersey State Department of Transportation; and
  - h) Commercial farms and Use Group "U" buildings and structures.
5. A developer of a nonresidential development exempted from the nonresidential development fee above shall be subject to it at such time the basis for the exemption set forth in this subsection no longer applies, and shall make the payment of the nonresidential development fee, in that event, within three (3) years after that event or after the issuance of the final Certificate of Occupancy of the nonresidential development, whichever is later.
6. If a property which was exempted from the collection of a nonresidential development fee thereafter ceases to be exempt from property taxation, the owner of the property shall remit the fees required pursuant to this section within forty-five (45) days of the termination of the property tax exemption. Unpaid nonresidential development fees under these circumstances may be enforceable by the Borough of Peapack and Gladstone as a lien against the real property of the owner.

### **23-75.6 Collection of Fees.**

Peapack and Gladstone Borough shall collect development fees for affordable housing in accordance with the following:

- a. The Land Use Board Secretary of Peapack and Gladstone Borough shall notify the Peapack and Gladstone Borough Construction Code Official whenever either a preliminary or final approval is granted to any development which is subject to the collection of a development fee.
- b. For nonresidential developments only, the developer shall also be provided with a copy of Form N-RDF "State of New Jersey Non-Residential Development Certification/Exemption," which is to be completed by the developer as per the instructions provided.



1. The Borough Construction Official shall verify the information submitted by the nonresidential developer as per the instructions provided in the Form N-RDF.
  2. The Borough Tax Assessor shall verify exemptions and prepare estimated and final assessments as per the instructions provided in Form N-RDF.
- c. The Borough 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.
- d. Within ninety (90) days of receipt of that notice, the Borough Tax Assessor, based on the plans filed, shall provide an estimate of the equalized assessed value of the development. The equalized assessed value and the required development fee shall be estimated by the Borough Tax Assessor prior to the issuance of the construction permit, with the understanding that the estimate of the equalized assessed value is not intended to establish the equalized assessed value for tax purposes.
- e. Developers shall pay fifty (50%) percent of the required development fee to Peapack and Gladstone Borough at the time of the issuance of the construction permit.
- f. Developers shall pay the remainder of the development fee to Peapack and Gladstone Borough at the time of the issuance of a Certificate of Occupancy.
1. The Borough Construction Official responsible for the issuance of a final Certificate of Occupancy notifies 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.
  2. Within ten (10) business days of a request for the scheduling of a final inspection, the Borough Tax Assessor shall confirm or modify the previously estimated equalized assessed value of the improvements of the development; calculate the development fee; and thereafter notify the developer of the amount of the fee.
  3. The equalized assessed value and the required development fee shall be re-estimated by the Borough Tax Assessor prior to the issuance of the Certificate of Occupancy, again with the understanding that the estimate of the equalized assessed value is not intended to establish the equalized assessed value for tax purposes. The developer shall be responsible for paying the difference between the development fee calculated at the time of the issuance of the Certificate of Occupancy and the amount paid at the time of the issuance of the construction permit.
  4. Should the Borough fail to determine or notify the developer of the amount of the development fee within ten (10) business days of the request for final inspection,

the developer may estimate the amount due and pay that estimated amount consistent with the dispute process set forth in subsection b. of Section 37 of P.L.2008, c.46 (C.40:55D-8.6).

5. Upon tender of the remaining development fee, provided the developer is in full compliance with all other applicable laws, the Borough shall issue a final Certificate of Occupancy for the subject property.
- g. Regardless of the time of collection of the development fee, the fee shall be based upon the percentage that applies on the date that the construction permit is issued.
- h. The Construction Code Official shall forward all collected development fees to Peapack and Gladstone Borough's Chief Financial Officer who shall deposit such fees into the established Housing Trust Fund.
- i. A developer may challenge the development fees imposed by filing a challenge with the Director of the Division of Taxation for nonresidential development and with the County Board of Taxation for residential development.
  1. Pending a review and determination by the Director or Board, as the case may be, which shall be made within forty-five (45) days of receipt of the challenge, collected fees shall be placed in an interest bearing escrow account by the Borough.
  2. Appeals from a determination of the Director or Board, as the case may be, may be made to the tax court in accordance with the provisions of the State Tax Uniform Procedure Law, R.S.54:48-1 et seq., within ninety (90) days after the date of such determination.
  3. Accrued interest earned on escrowed amounts to be returned shall also be returned to the developer.

### **23-75.7 Affordable Housing Trust Fund.**

- a. All collected development fees and any proceeds from the sale of units with extinguished controls shall be deposited by the Chief Financial Officer of the Borough of Peapack and Gladstone into a separate designated interest-bearing Housing Trust Fund, which shall be maintained by the Borough Chief Financial Officer.
  1. No money shall be expended from the Housing Trust Fund unless the expenditure conforms to the spending plan which has been approved by COAH; and
  2. In establishing the Housing Trust Fund, the Borough Council shall provide COAH with written authorization in the form of a three-party escrow agreement between



the Borough, COAH and the bank in order to permit COAH to direct the disbursement of development fee funds as provided in N.J.A.C. 5:97-8.13(b) of the "Substantive Rules" of COAH. This authorization shall be submitted to COAH within seven (7) days from the opening of the Housing Trust Fund.

- b. Additionally, the following sources of funding shall be deposited in the Housing Trust Fund and shall at all times be identifiable by source and amount:
  1. Recapture funds;
  2. Proceeds from the sale of affordable units;
  3. Rental income from municipally operated units;
  4. Payments in lieu of on-site construction of affordable units;
  5. Affordable housing enforcement fines and application fees;
  6. Developer contributed funds for barrier free affordable housing pursuant to N.J.A.C. 5:97-8.5;
  7. Repayments from affordable housing program loans; and
  8. Any other funds collected in connection with the Borough's affordable housing program.
- c. All interest accrued in the Housing Trust Fund shall only be used on eligible affordable housing activities approved by COAH.

**23-75.8 Use of Funds.**

- a. Funds deposited in the Housing Trust Fund may be used for any housing activity as itemized in the spending plan and approved by COAH to address the Borough's fair share obligation and may be set up as a grant or revolving loan program. Such activities include, but are not limited to:
  1. A rehabilitation program;
  2. New construction of affordable housing units and related development costs; in the case of inclusionary developments, eligible costs shall be prorated based on the proportion of affordable housing units included in the development;

3. Accessory apartment, market to affordable, or regional affordable housing partnership programs;
  4. Financial assistance designed to increase affordability;
  5. Conversion of existing nonresidential buildings to create new affordable units;
  6. Acquisition and/or improvement of land to be used for affordable housing;
  7. Purchase of existing market rate or affordable housing for the purpose of maintaining or implementing affordability controls, such as in the event of a foreclosure;
  8. Extensions or improvements of roads and infrastructure directly serving affordable housing sites; in the case of inclusionary developments, costs shall be prorated based on the proportion of affordable housing units included in the development;
  9. Green building strategies designed to be cost-saving for low and moderate income households, either for new construction that is not funded by other sources, or as part of necessary maintenance or repair of existing units, in accordance with accepted Federal or State standards or such guidance as may be provided by the New Jersey State Department of Community Affairs or the New Jersey Housing and Mortgage Finance Agency;
  10. Maintenance and repair of affordable housing units;
  11. Repayment of municipal bonds issued to finance low and moderate income housing activity;
  12. To defray the costs of structural parking; in the case of inclusionary developments, eligible costs shall be prorated based on the proportion of affordable housing units included in the development;
  13. Administration necessary for implementation of the Housing Plan Element and Fair Share Plan, in accordance with subsection 23-74.8g. below; and
  14. Any other activity as specified in the approved spending plan and as permitted pursuant to N.J.A.C. 5:97-8.7 through 8.9.
- b. The Borough also may request authorization for expenditure of Housing Trust Funds on emergent affordable housing mechanisms not included in the Borough's Fair Share Plan in the form of an amendment to the spending plan. In addition to the amendment to the spending plan, the Borough shall submit the following:



1. A resolution to COAH that includes a certification that the affordable housing opportunity addresses COAH's criteria set forth in N.J.A.C. 5:97-6 and information regarding the proposed mechanism in a format to be provided by COAH; and
  2. An amendment to its Fair Share Plan to include the mechanism at the earlier of two (2) years after COAH's approval of the spending plan amendment or the next planned amendment to the Fair Share Plan resulting from the plan evaluation review pursuant to N.J.A.C. 5:96-10.
- c. Funds shall not be expended to reimburse the Borough of Peapack and Gladstone for past housing activities.
- d. Payments in lieu of constructing affordable housing units on residential and mixed-use sites shall only be used to fund eligible affordable housing activities within the Borough.
- e. At least thirty (30%) percent of all development fees collected and interest earned shall be devoted to provide affordability assistance to low and moderate income households in affordable units included in the Housing Element and Fair Share Plan, provided and in accordance with the following:
1. One-third (1/3) of the affordability assistance portion of development fees collected shall be used to provide affordability assistance to very low income households.
  2. Affordability assistance programs may include down payment assistance, security deposit assistance, low interest loans, rental assistance, assistance with homeowners association or condominium fees and special assessments, and assistance with emergency repairs.
  3. Affordability assistance for very low income households may include buying down the cost of low or moderate income units in the third round Borough's Fair Share Plan to make them affordable to very low income households (earning thirty (30%) percent or less of median income). The use of development fees in this manner may entitle the Borough to bonus credits pursuant to N.J.A.C. 5:97-3.7.
  4. Payments in lieu of constructing affordable units on site and funds from the sale of units with extinguished controls shall be exempt from the affordability assistance requirement.
- f. The Borough of Peapack and Gladstone may contract with a private or public entity to administer any part of its Housing Plan Element and Fair Share Plan, including the requirement for affordability assistance, in accordance with N.J.A.C. 5:96-18, subject to COAH's approval.

- g. No more than twenty (20%) percent of development fee revenues collected in any given year from the development fees may be expended on administration, including, but not limited to, the salaries and benefits for Peapack and Gladstone Borough employees or consultant fees necessary to develop or implement a new affordable housing program, a Housing Element and Fair Share Plan, and/or an affirmative marketing program.
  1. In the case of a rehabilitation program, no more than twenty (20%) percent of the revenues collected from development fees shall be expended for such administrative expenses.
  2. Administrative funds may be used for income qualification of households, monitoring the turnover of sale and rental units, preserving existing affordable housing, and compliance with COAH's monitoring requirements.
  3. Legal or other fees related to litigation opposing affordable housing sites or objecting to COAH's regulations and/or action are not eligible uses of the Housing Trust Fund.

### **23-75.9 Monitoring.**

The Peapack and Gladstone Borough Municipal Housing Liaison shall coordinate with the appropriate municipal officials the completion and return to COAH of all monitoring forms included in the annual monitoring report related to the collection of development fees from residential and non-residential developers, payments in lieu of constructing affordable units on site, funds from the sale of units with extinguished controls, barrier free escrow funds, recapture funds, proceeds from the sale of affordable units, rental income, repayments from affordable housing program loans, enforcement fines and application fees, and any other funds collected in connection with the Borough's housing program, and the expenditure of revenues and implementation of the plan certified by COAH.

- a. At minimum, the monitoring shall include an accounting of any Housing Trust Fund activity, identifying the source and amount of funds collected, the amount and purpose for which any funds have been expended, and the status of the spending plan regarding the remaining balance pursuant to N.J.A.C. 5:97-8.10(a)8.
- b. All monitoring reports shall be completed on forms designed by COAH.

### **23-75.10 Ongoing Collection of Development Fees and Expiration of Section.**

The ability for the Borough of Peapack and Gladstone to impose, collect and expend development fees shall expire with its ~~Substantive Certification~~ **judgment of compliance and repose** unless Peapack and Gladstone Borough has filed an adopted Housing Element and Fair



Share Plan with COAH *or its equivalent or through the Courts*, has petitioned for Substantive Certification, and has received COAH's approval of its Development Fee Ordinance *from the appropriate governmental agency*.

- a. If the Borough of Peapack and Gladstone fails to renew its ability to impose and collect development fees prior to the date of expiration of Substantive Certification, it may be subject to forfeiture of any or all funds remaining within its municipal trust fund.
- b. 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).
- c. *The Borough of Peapack and Gladstone shall not impose a residential development fee on a development that receives preliminary or final site plan approval after the expiration of its Substantive Certification, nor shall the Borough of Peapack and Gladstone retroactively impose a development fee on such a development.*
- d. The Borough of Peapack and Gladstone shall not expend development fees after the expiration of its Substantive Certification or judgment of compliance.

#### **23-76 AFFORDABLE HOUSING PROGRAMS.**

The Borough of Peapack and Gladstone has determined that it will use the following mechanisms to satisfy its affordable housing obligations, as follows.

##### **23-76.1 Rehabilitation Program**

- a. Peapack and Gladstone Borough'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.
- b. Both owner occupied, and renter occupied units shall be eligible for rehabilitation funds.
- c. All rehabilitated units shall remain affordable to low- and moderate-income households for a period of ten (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.
- d. The Borough of Peapack and Gladstone shall dedicate a minimum of ten thousand (\$10,000.00) dollars for each unit to be rehabilitated through this program, reflecting the minimum hard cost of rehabilitation for each unit.
- e. The Borough of Peapack and Gladstone shall adopt a resolution committing to fund any shortfall in the rehabilitation programs for Peapack and Gladstone Borough.

- f. The Borough of Peapack and Gladstone shall designate, subject to the approval of COAH, one (1) or more Administrative Agents to administer the rehabilitation program in accordance with N.J.A.C. 5:96 and N.J.A.C. 5:97. 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 and subject to approval of COAH. 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).
- g. Units in a rehabilitation program shall be exempt from N.J.A.C. 5:97-9 and Uniform Housing Affordability Controls (UHAC), but shall be administered in accordance with the following:
  - 1. If a unit is vacant, upon initial rental subsequent to rehabilitation, or if a renter-occupied unit is re-rented 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. 5:97-9 and UHAC.
  - 2. 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 N.J.A.C. 5:97-9 and UHAC.
  - 3. Rents in rehabilitated units may increase annually based on the standards in N.J.A.C. 5:97-9.
  - 4. Applicant and/or tenant households shall be certified as income-eligible in accordance with N.J.A.C. 5:97-9 and UHAC, except that households in owner-occupied units shall be exempt from the regional asset limit.

### **23-76.2 Supportive and Special Needs Housing.**

All supportive and special needs housing, including group homes, shall conform to the provisions of N.J.A.C. 5:97-6.10.

### **23-76.3 Municipally Sponsored Affordable Developments.**

All municipally sponsored affordable housing, including group homes, shall conform to the provisions of N.J.A.C. 5:97-6.7, and all units shall comply with N.J.A.C. 5:97-9 and UHAC.

### **23-76.4 Accessory Apartment Program.**



Purpose. This Accessory Apartments Article is hereby enacted for the purpose of providing additional opportunities for low and moderate-income housing in the Borough of Peapack and Gladstone by permitting accessory apartments in certain designated zones within the Borough.

**23-76.5 Requirements.** Accessory apartments shall be permitted only in the VN and R-18 Zone as conditional use subject to site plan approval by the Planning Board. All accessory apartment units shall meet the following conditions:

- a. The area and bulk requirements of the zone in which the accessory apartment is created shall be met.
- b. Accessory apartments shall comply with all applicable statutes and regulations of the State of New Jersey in addition to all building codes.
- c. The accessory apartment shall be rented only to a household which is either a low or moderate income household at the time of initial occupancy of the unit.
- d. The accessory apartment shall, for a period of at least 30 years from the date of the issuance of a certificate of occupancy, be rented only to a low or moderate income household.
- e. Rents of accessory apartments shall be affordable to low or moderate income households as per Council on Affordable Housing (COAH) regulations and shall include a utility allowance.
- f. No more than 10 accessory apartments shall be permitted in the Borough to address the Borough's fair share obligation.
- g. There shall be a recorded deed or declaration of covenants and restrictions applied to the property upon which the accessory apartment is located running with the land and limiting its subsequent rental or sale within the requirements of Subsections c and d above.
- h. Each accessory apartment shall have living/sleeping space, cooking facilities, a kitchen sink and complete sanitary facilities for the exclusive use of its occupants. It shall consist of no less than two rooms, one of which shall be a full bathroom.
- i. The accessory apartment shall have a separate door with direct access to the outdoors.
- j. There shall be potable water supply and the apartment must be served by a central sewer collection system and may not be on septic.
- k. The accessory apartment shall be affirmatively marketed to the housing region.

- I. In the case of an accessory apartment created illegally or without proper permits which the property owner desires to legitimize as an accessory apartment under this article, all of the requirements of this article in addition to meeting COAH criteria shall apply, except that no subsidy needs to be provided by the municipality.

### **23-76.6 Administration.**

The Administrative Agent as defined by §23-74 is to administer the Accessory Apartment Program.

- a. Administrative Agent shall administer the accessory apartment program including advertising, income qualifying prospective renters, setting rents and annual rental 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;
- b. The Administrative Agent shall only deny an application for an accessory apartment if the project is not in conformance with COAH's requirements, Land Use and Development, of the Code of the Borough of Peapack and Gladstone, or this article. All denials shall be in writing with the reasons clearly stated; and
- c. In accordance with COAH requirements, the Borough of Peapack and Gladstone shall provide up to at least \$25,000 per unit to subsidize the creation of each low-income accessory apartment or \$20,000 per unit to subsidize the creation of each moderate-income accessory apartment. Subsidy may be used to fund actual construction costs and/or to provide compensation for reduced rental rates. Prior to the grant of such subsidy, the property owner shall enter into a written agreement with the Borough of Peapack and Gladstone insuring that:
  1. The subsidy shall be used to create the accessory apartment; and
  2. The apartment shall meet the requirements of this article and COAH regulations.
- d. Application requirements. Applicants for the creation of an accessory apartment shall submit to the administrative entity:
  1. A sketch of floor plan(s) showing the location, size and relationship of both the accessory apartment and the primary dwelling within the building or in another structure;
  2. Rough elevations showing the modification of any exterior building facade to which changes are proposed and
  3. A site development sketch showing the location of the existing dwelling and other existing buildings; all property lines; proposed addition if any, along with the



minimum building setback lines; the required parking spaces for both dwelling units and any man-made conditions which might affect construction.

### **23-77 AFFIRMATIVE MARKETING REQUIREMENTS.**

- a. Peapack and Gladstone Borough shall adopt by resolution an Affirmative Marketing Plan, subject to approval of COAH, compliant 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 affordable housing units which are being marketed by a developer, sponsor or owner of affordable housing. The Affirmative Marketing Plan also is 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 3 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 3 comprised of Middlesex, Somerset, and Hunterdon Counties.
- d. The Administrative Agent designated by the Borough of Peapack and Gladstone shall assure the affirmative marketing of all affordable units consistent with the Affirmative Marketing Plan for the municipality.
- 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 process for available affordable units shall begin at least four (4) months prior to the expected date of occupancy.
- g. 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 Peapack and Gladstone Borough.

### **23-78 AFFORDABLE HOUSING MANDATORY SET-ASIDE.**

Purpose. This Ordinance is intended to ensure that any site that benefits from a rezoning, variance or redevelopment plan approved by the Borough or Land Use Board that results in multi-family residential development of five (5) dwelling units or more produces affordable housing at a set-aside rate of twenty percent (20%) for affordable for-sale units and at a set-

aside rate of fifteen percent (15%) for affordable rental units. This Ordinance shall apply except where inconsistent with applicable law.

### **23-78.1 Mandatory Set-Aside Requirement**

- a. If the Borough or the Borough Planning Board permits the construction of multi-family or single-family attached residential development that is "approvable" and "developable," as defined at N.J.A.C. 5:93-1.3, the Borough or the Borough's Land Use Board shall require that an appropriate percentage of the residential units be set aside for low and moderate-income households.
- b. This requirement shall apply beginning with the effective date of this Ordinance to any multi-family or single-family attached residential development, including the residential portion of a mixed-use project, which consists of five (5) or more new residential units at a density of six (6) dwelling units or more per acre, whether permitted by a zoning amendment, a use variance granted by the Borough's Planning Board acting as a Board of Adjustment, or adoption of a Redevelopment Plan or amended Redevelopment Plan in areas in need of redevelopment or rehabilitation.
- c. For any such development for which the Borough's land use ordinances already permitted residential development as of the effective date of this Ordinance, this requirement shall only apply if the Borough permits an increase in approvable and developable gross residential density to at least twice the permitted approvable and developable gross residential density as of the effective date of this Ordinance.
- d. Nothing in this section precludes the Borough or the Borough's Planning Board from imposing an affordable housing set-aside in a development not required to have a set-aside pursuant to this section consistent with N.J.S.A. 52:27D-311(h) and other applicable law.
- e. For inclusionary projects in which the low and moderate units are to be offered for sale, the appropriate set-aside percentage is twenty percent (20%); for projects in which the low and moderate-income units are to be offered for rent, the appropriate set-aside percentage is fifteen percent (15%). Where the set-aside percentage results in a fractional unit, the total set-aside requirement shall be rounded upwards to the next whole number.
- f. This requirement does not create any entitlement for a property owner or applicant for a zoning amendment, variance, or adoption of a Redevelopment Plan or amended Redevelopment Plan in areas in need of redevelopment or rehabilitation, or for approval of any particular proposed project.
- g. This requirement does not apply to any sites or specific zones otherwise identified in the Borough's Settlement Agreement with Fair Share Housing Center ("FSHC") dated



August 25, 2017, or in the Borough's 2018 Housing Element and Fair Share Plan, for which density and set-aside standards shall be governed by the specific standards set forth therein.

- h. Furthermore, this requirement shall not apply to developments containing four (4) or less dwelling units.
- i. Where a developer demolishes existing dwelling units and builds new dwelling units on the same site, the provisions of this section shall apply only if the net number of dwelling units is five (5) or more.
- j. All subdivision and site plan approvals of qualifying residential developments shall be conditioned upon compliance with the provisions of this section.
- k. All affordable units to be produced pursuant to this section the Uniform Housing Affordability Controls rules (N.J.A.C. 5:80-26.1 et seq.), as may be amended from time to time.

**23-79 ENFORCEMENT.**

- a. Upon the occurrence of a breach of any of the regulations governing an 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, a requirement for household recertification, acceleration of all sums due under a mortgage, recoupment of any funds from a sale in 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(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:
  - 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 adjudged 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:
  - 2. A fine of not more than \$2,000.00 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 a continuation of the initial offense;

3. In the case of an Owner who has rented a low- or moderate-income unit in violation of the regulations governing affordable housing units, payment into the Borough of Peapack Gladstone Affordable Housing Trust Fund of the gross amount of rent illegally collected;
4. In the case of an Owner who has rented a 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.
5. The municipality may file a court action in the Superior Court seeking a judgment that would result in the termination of the Owner's equity or other interest in the unit, in the nature of a mortgage foreclosure. Any such 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- or moderate-income unit.
  - a) The 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 his right to possession terminated as well as his title conveyed pursuant to the Sheriff's sale.
  - b) 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 the full 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.

- c) 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.
- d) 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.
- e) 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.

- f) 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.

### **23-80 Appeals.**

Appeals from all decisions of an Administrative Agent appointed pursuant to this Ordinance shall be filed in writing with the Superior Court or other agency as provided for by law.

### **23-81 - 23-83 RESERVED.**

**SECTION 3.** The Borough Clerk is directed to give notice at least ten (10) days prior to a hearing on the adoption of this Ordinance to the Somerset County Planning Board and to all other persons or entities entitled thereto pursuant to N.J.S.A. 40:55D-15 and 40:55D-62.1. The Borough Clerk shall execute any necessary Proofs of Service of the notices required by this section, and shall keep any such proofs on file along with the Proof of Publication of the notice of the required public hearing on the proposed change.

**SECTION 4.** After introduction, the Borough Clerk is hereby directed to submit a copy of the within Ordinance to the Land Use Board of the Borough of Peapack for its review in accordance with N.J.S.A. 40:55D-26 and N.J.S.A. 40:55D-64. The Land Use Board, acting in its capacity as Planning Board, is directed to make and transmit to the Borough Council, within thirty-five (35) days after referral, a report including identification of any provision in the proposed Ordinance which are inconsistent with the Master Plan and recommendations concerning any inconsistencies and any other matter as the Board deems appropriate.

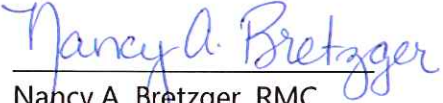
**SECTION 5.** If any paragraph, subdivision, clause or provision of this Ordinance shall be adjudged invalid, such adjudication shall apply only to the section, paragraph, subdivision, clause or provision so adjudged and the remainder of the Ordinance shall be deemed valid and effective.

**SECTION 6.** All ordinances or parts of ordinances inconsistent with or in conflict with this Ordinance are hereby repealed to the extent of such inconsistency.

**SECTION 7.** This ordinance shall take effect immediately upon: (i) adoption; and (ii) publication in accordance with the laws of the State of New Jersey.



Introduced: October 8, 2019  
Adopted: November 12, 2019

  
Nancy A. Bretzger, RMC  
Municipal Clerk

  
Gregory Skinner  
Mayor