

**COUNTY OF BERGEN
BOROUGH OF PARAMUS
ORDINANCE 16-09**

**ORDINANCE OF THE BOROUGH OF PARAMUS PROVIDING FOR
NEW INCLUSIONARY ZONING REQUIREMENTS FOR AFFORDABLE
HOUSING, AND REPEALING CHAPTER 210 OF THE PARAMUS CODE**

Section 1. Purpose and Background

(a) The purpose of this Ordinance is to address the municipal affordable housing obligation of the Borough of Paramus (“the Borough” or “Paramus”), as prescribed by the New Jersey Supreme Court in Southern Burlington County, N.A.A.C.P. v. Township of Mount Laurel, 92 N.J. 158 (1983) (“Mount Laurel II”), and Southern Burlington County N.A.A.C.P. v. Township of Mount Laurel, 67 N.J. 151, cert. denied, 423 U.S. 808 (1975) (“Mount Laurel I”), and codified in the Fair Housing Act (“the Act”), N.J.S.A. 52:27D-301 et seq., which requires that every municipality has a constitutional obligation to provide for its fair share of its region’s need for affordable housing.

(b) The Paramus Planning Board has adopted a Housing Element and Fair Share Plan pursuant to the Municipal Land Use Law, N.J.S.A. 40:55D-1, et seq. which has been endorsed by the governing body, and was pending review by the Council on Affordable Housing (“COAH”) as provided by the Act. The Fair Share Plan sets forth some of the means by which the Borough may address its affordable housing obligation as determined by COAH in its regulations. The last version of which was referred to as the “Third Round Rules.”

(c) However because the Supreme Court has invalidated the Third Round Rules in their entirety, and directed COAH to draft new rules, In the Matter of the Adoption of N.J.A.C. 5:96 and 5:97 by the New Jersey Council on Affordable Housing, 215 N.J. 578 (2013), which COAH failed to do, resulting in the decision of the Supreme Court in In the Matter of the Adoption of N.J.A.C. 5:96 and 5:97 by the New Jersey Council on Affordable Housing, 221 N.J. 1 (2015), there exists uncertainty, at least for the period during which new rules are being judicially considered, regarding the determination of the municipal affordable housing obligation generally and for Paramus particularly.

(d) Consequently the Borough has determined to address its obligation through enactment of a Borough-wide inclusionary development ordinance which requires a 10% set-aside of affordable housing for residential developments of three (3) and more units while affording compensating incentives.

(e) Any plan evaluation report of the Housing Element and Fair Share Plan and monitoring prepare by any regulatory agency shall be available to the public at the Municipal Building, Municipal Clerk’s Office, 1 Jockish Square, Paramus, New Jersey.

(f) This Ordinance shall be subject to amendment or repeal without any further action by the Borough to the extent it is, in whole or in part, inconsistent with any ruling issued by any court, or valid regulations issued by any agency with jurisdiction or any legislative enactment.

Section 2. Definitions

The following terms when used in this Ordinance shall have the meanings given in this Section. Terms not

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defined in this Section shall have the meanings, if any, provided in N.J.A.C. 5:96 and N.J.A.C. 5:97.

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

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

“Administrative agent” means the entity responsible for the administration of affordable units in accordance with this Ordinance, 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” means a regional marketing strategy designed to attract buyers and/or renters of affordable units pursuant to N.J.A.C. 5:80-26.15.

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

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

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

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

“Affordable unit” means a housing unit proposed or created pursuant to the Act, credited pursuant to N.J.A.C. 5:97-4, and/or funded through an affordable housing trust fund.

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

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

“Assisted living residence” means a facility licensed by the New Jersey Department of Health and Senior Services to provide apartment-style housing and congregating dining and to assure that assisted living services are

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available when needed for four or more adult persons unrelated to the proprietor and that offers units containing, at a minimum, one unfurnished room, a private bathroom, a kitchenette and a lockable door on the unit entrance.

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

“COAH” or “Council” means the Council on Affordable Housing 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.*

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

“Developer” means any person, partnership, association, company or corporation that is the legal or beneficial owner or owners of a lot or any land proposed to be included in a proposed development including the holder of an option to contract or purchase, or other person having an enforceable proprietary interest in such land. The term “developer” shall be deemed to include a redeveloper under the Local Housing and Redevelopment Law, N.J.S.A. 40A:12A-1, *et seq.*

“Development Fee” means money paid to the Borough by a developer for the improvement of properties as permitted in N.J.A.C. 5:97-8.3.

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

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

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

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

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

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

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“Median income” means the median income by household size for the applicable county, as adopted annually by the Department.

“Moderate-income household” means a household with a total gross annual household income in excess of 50 percent but less than 80 percent of the median household income.

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

“Regional asset limit” means the maximum housing value, in each housing region, affordable to a four-person household with an income at 80 percent of the regional median as defined by the Council’s adopted Regional Income Limits as published annually by the Council.

“Rehabilitation” means the repair, renovation, alteration, weatherization or reconstruction of any building or structure, pursuant to the Rehabilitation Subcode, N.J.A.C. 5:23-6.

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

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

“UHAC” means the Uniform Housing Affordability Controls set forth in N.J.A.C. 5:80-26.1, *et seq.*

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

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

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

Section 3. Affordable Housing Obligation

The Borough has determined that every residential development in excess of two (2) units shall provide for affordable housing as set forth in this Ordinance.

Section 4. Affordable Housing Programs

(a) Rehabilitation Program. The purpose of the Borough’s rehabilitation program is to renovate deficient housing units that are occupied by low- and moderate-income households. The provisions and requirements set forth in N.J.A.C. 5:97-6.2 shall govern the Borough’s rehabilitation program.

1. The Borough’s rehabilitation program shall be designed to renovate deficient housing units

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occupied by low- and moderate-income households such that, after rehabilitation, these units will comply with the New Jersey State Housing Code pursuant to N.J.A.C. 5:28.

2. Both owner-occupied and renter-occupied units shall be eligible for rehabilitation funds.

3. All rehabilitation units shall remain affordable to low- and moderate-income households for a period of 10 years (the control period). For owner-occupied units the control period will be enforced with a lien and for renter-occupied units the control period will be enforced with a deed restriction.

4. The Borough shall dedicate a minimum of \$10,000 for each unit to be rehabilitated through this program, reflecting the minimum hard cost of rehabilitation for each unit.

5. The Borough shall adopt a resolution committing to fund any shortfall in the rehabilitation programs for the Borough.

6. The Borough shall designate, subject to the approval of COAH, one 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 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).

7. 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:

i. 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.

ii. 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.

iii. Rents in rehabilitated units may increase annually based on the standards in N.J.A.C. 5:97-9.

iv. 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.

(b) Market to Affordable Program

1. A market to affordable program is established to permit the purchase or subsidization of units through a written agreement with the property owner and sold or rented to low- and moderate-income

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households. Subject to the provisions of 2iii below, the market to affordable programs may produce both low- and moderate-income units (the program may be limited to only low- or only moderate-income units as per the Fair Share Plan).

2. The following provisions shall apply to market to affordable programs:

i. At the time they are offered for sale or rental, eligible units may be new, pre-owned or vacant.

ii. The units shall be certified to be in sound condition as a result of an inspection performed by a licensed building inspector.

iii. The municipality will provide a minimum of \$25,000 per unit to subsidize each moderate-income unit and/or \$30,000 per unit to subsidize each lot-income unit, with additional subsidy depending on the market prices or rents in a municipality.

iv. The maximum number of creditable market to affordable units shall be equal to no more than 10 for sale units and 10 rental units or a combined total of 10 percent of the fair share obligation, whichever is greater. (Additional units may be approved by OAH if the municipality demonstrates the successful completion of its initial market to affordable program.)

3. The units shall comply with N.J.A.C. 5:97-9 and UHAC with the following exceptions:

i. Bedroom distribution (N.J.A.C. 5:80-26.3(b) and (c));

ii. Low/moderate income split (N.J.A.C. 5:80-26.3(a)); and

iii. Affordability average (N.J.A.C. 5:80-26.3(d) and (e); however:

A. The maximum rent for a moderate-income unit shall be affordable to households earning no more than 60 percent of median income and the maximum rent for a low-income unit shall be affordable to households earning no more than 44 percent of median income; and

B. The maximum sales price for a moderate-income unit shall be affordable to households earning no more than 70 percent of median income and the maximum sales price for a low-income unit shall be affordable to households earning no more than 40 percent of median income.

(c) Supportive and Special Needs Housing Unit Program

1. All supportive and special needs housing units shall meet the following conditions:

i. Supportive and special needs housing units shall be permitted in the R-25, R-50, R-75, R-100 and R-150 Residential One Family Residential Zones. Supportive and special needs housing includes, but is not limited to: residential health care facilities as licensed and/or regulated by DCA or the New Jersey Department of Health and Senior Services if the facility is located with, and operated by, a licensed health care facility; group homes for people with developmental disabilities and mental illness as licensed and/or regulated by the New Jersey Department of Human Services; permanent supportive housing; and supportive shared living

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housing. Long term health care facilities including nursing homes, and Class A, B, C, D and E boarding homes do not qualify as supportive and special needs housing.

ii. Supportive and special needs housing shall comply with all applicable statutes and regulations of the State of New Jersey in addition to all building codes.

iii. The following provisions shall apply to permanent supportive housing, group homes, residential health care facilities and supportive shared living housing.

1. The unit of credit shall be the unit for permanent and supportive housing, but shall be the bedroom for group homes, residential health care facilities and supportive shared living housing.

2. Housing that is age-restricted shall be included with the maximum number of units that may be age-restricted pursuant to N.J.A.C. 5:7-3.8.

3. Units/occupancy shall not be restricted to youth under 18 years of age.

4. All sites shall meet the site suitability criteria set forth in N.J.A.C. 5:97-3.13.

5. The municipality or developer/sponsor shall have site control or the ability to control the site(s).

iv. The bedrooms and/or units shall comply with N.J.A.C. 5:97-9 and UHAC with the following exceptions:

1. Affirmative marketing (N.J.A.C. 5:80-26.15); however, group homes, residential health care facilities, permanent supportive housing and supportive shared living housing shall be affirmatively marketed to individuals with special needs in accordance with a plan approved by the Council's Executive Director.

2. Affordability average and bedroom distribution (N.J.A.C. 5:80-26.3); and

3. With the exception of units established with capital funding through a 20-year operating contract with the Department of Human Services, Division of Developmental Disabilities, group homes, residential health care facilities, supportive shared living housing and permanent supportive housing shall have the appropriate controls on affordability in accordance with N.J.A.C. 5:97-9.

v. The following documentation shall be submitted prior to marketing the completed units or facility:

1. An affirmative marketing plan in accordance with section iv. above; and

2. If applicable, proof that the supportive and/or special needs housing is regulated by the New Jersey Department of Health and Senior Services, the New Jersey Department of Human Services or another State agency in accordance with the requirements of this section, which includes validation of the number of bedrooms or units in which low- or moderate-income occupants reside.

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vi. Municipal building permit fees may be waived in cases involving permanent supportive housing, group homes, residential health care facilities and supportive shared living housing development under this section.

Section 5. Inclusionary Zoning

(a) Inclusionary set-aside. To ensure realistic opportunities for the creation of affordable housing, all residential development of three (3) units or more within the Borough shall be required to provide and set aside affordable housing units at a rate of one (1) affordable unit for every nine (9) market rate units (1 10% set-aside). A fractional obligation to provide for affordable housing shall be met by a payment in lieu of construction as hereafter set forth. Due to the range of permitted uses and the variety and complexity of permitted residential densities within the Borough, the following provisions shall be applied to all residential development required to provide an affordable housing set-aside:

1. **Compensatory Benefits.** The following compensatory benefits are provided to facilitate an inclusionary project and the provision of affordable housing:

i. **Density Bonus.** Except where a density variance is granted, as set forth in (ii) of this section, a 15% residential density bonus shall be permitted for all inclusionary development projects. Where the calculated density bonus results in a fraction, the density bonus shall be rounded up to the next whole unit. For example, on a one-acre site, in a zone that permits 10 units per acre, an inclusionary developer intending to construct onsite affordable units shall be permitted to construct, two (2) additional units ($10 \times 15\% = 1.5$, rounded up to 2) or a total of 12 units. The project will provide one affordable unit ($10\% \times$ the underlying zoning of 10 units per acre = 1) and 11 market-rate units

ii. **Density Variances.** A compensatory benefit will be deemed to have been awarded, and the density bonus referred to in (i) above will not apply, where the Borough's Zoning Board of Adjustment approves an increase in residential density pursuant to N.J.S.A. 40:55D-70d(5), (known as a density variance).

iii. **Relaxation of Zoning Standards.** In all cases, the Borough's approving land use board shall consider the granting of variances and waivers including but not limited to reduced setbacks, reduced coverage, increased floor area, increased building heights and/or additional stories so as to accommodate the increased number of units and to reasonably result in an opportunity to provide affordable housing, except on any property adjoining a One-Family Residential Zone.

iv. **Additional Incentives.** Additional incentives to subsidize the creation of affordable housing available to very-low income households may be included in a developer's or redeveloper's agreement at the discretion of the Borough.

(b) Development Size Threshold. Developments of less than three (3) units shall not be subject to the required affordable housing set-aside.

(c) Developer Options for the Provision of Affordable Housing. Subject to the conditions which follow, a developer required to provide affordable housing has the option to (1) construct affordable units onsite; or (2) construct the affordable units elsewhere within the Borough ("off-site"); or (3) make a payment in lieu of

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constructing the affordable units; or (4) provide a combination of a payment in lieu and onsite or off-site construction.

1. The onsite construction option is subject to the following controls:

Developers choosing onsite construction of affordable units shall determine the number of required affordable units by dividing the permitted onsite units by ten and then adding the density bonus. For example, a site zoned for a 100-unit development shall provide 10 affordable units (10% x underlying zoning for 100 units) [and is permitted a 15% consisting of 10 affordable units and 105 market-rate units. Or, by way of further example, if a site zoned for 100 units receives a density variance allowing an additional 20 units for a total project of 120 units, 10 affordable units will be provided (10% x underlying zoning for 100 units) and 110 market rate units.]

2. Off-site construction option is subject to the following controls:

- i. Developers choosing off-site construction of affordable units shall determine the number of required affordable units in the same fashion as in the calculation of an on-site construction obligation.

- ii. All sites selected for off-site construction shall meet the site suitability criteria set forth in N.J.A.C. 5:97-3.13.

3. The payment in lieu option is subject to the following controls:

- i. The required subsidy for the payment in lieu option is \$180,000.00 per unit.

- ii. Payments in lieu of constructing affordable units may represent whole or fractional affordable units. A fractional affordable housing requirement shall not be rounded.

- iii. Developers choosing the payment in lieu option shall determine the number of required affordable units to be met by a payment in lieu by dividing the permitted onsite units by ten and then adding the density bonus. For example, a site zoned for a 100-unit development shall provide funding for 10 affordable units (10% x underlying zoning for 100 units) calculated at $10 \times \$180,000.00 = \$1,800,000.00$. [The site is permitted a 15% density bonus for an additional 15 units for a total project of 115 market-rate units.]

- iv. Payments in lieu of constructing affordable units shall be deposited into the Borough's affordable housing trust fund pursuant to N.J.A.C. 5:97-8.4 and shall be subject to the provisions thereof.

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

(e) Utilities and Community Amenities. Affordable units shall utilize the same type of heating source as market units within the affordable development and have access to all community amenities available to market-rate units.

(f) Accessibility and adaptable affordable units. Inclusionary zoning ordinances shall require that the first floor of all townhouse dwelling units and all other multistory dwelling units comply with N.J.A.C. 5:97-

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3.14.

(g) **Affordable Administration.** The affordable units shall comply with N.J.A.C. 5:97-9 and UHAC.

(h) **Phasing.** 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

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

(j) **Payments-in-lieu and off-site construction.** The standards for the collection of payments-in-lieu of constructing affordable units or standards for constructing affordable units off-site, shall be in accordance with N.J.A.C. 5:97-6.4.

(k) **Utilities.** Affordable units shall utilize the same type of heating source as market units within the affordable development.

Section 6. Affordable Housing Standards

All affordable housing units shall otherwise comply with the standards and requirements governing affordability controls, pricing, bedroom distribution, age restrictions, affirmative marketing, prices and rents, and unit selection, together with all related requirements as set forth in Ordinance §410-62, Affordable Housing Standards.

Section 7. Extant Development and Redevelopment Agreements

Where there is a site-specific fully-executed development or redevelopment agreement to provide for affordable housing as part of a project which has received approval from the Borough's municipal land use boards, which predates the effective date of this Ordinance, the terms and conditions of that agreement shall govern the provision of affordable housing for that project notwithstanding any requirement of this Ordinance to the contrary.

Section 8. Non-Residential Development Fees

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

(b) Nonresidential developers, except for developers of the types of development specifically exempted,

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shall also pay a fee equal to 2.5% of the increase in equalized assessed value resulting from any additions to existing structures to be used for nonresidential purposes.

(c) Development fees shall be imposed and collected when an existing structure is demolished and replaced. The development fee of 2.5% shall be calculated on the difference between the equalized assessed value of the preexisting land and improvement and the equalized assessed value of the newly improved structure, i.e., land and 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.

Section 9. Eligible Exaction, Ineligible Exaction and Exemptions

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

1. Affordable housing developments, developments where the developer is providing for the construction of affordable units elsewhere in the municipality, and developments where the developer has made a payment in lieu of on-site construction of affordable units shall be exempt from development fees.

2. Developments that have received preliminary or final site plan approval prior to the adoption of this amended article shall be required to pay development fees calculated based on the development fee ordinance in effect prior to the adoption of this amended article, unless the developer seeks a substantial change in the approval. Where a site plan approval does not apply, a zoning and/or building permit shall be synonymous with preliminary or final site plan approval for this purpose. The fee percentage shall be vested on the date that the building permit is issued.

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

4. Owner-occupied residential structures demolished and replaced as a result of a fire, flood, or natural disaster shall be exempt from paying a development fee.

5. Owner-developers of i) newly constructed one- or two-family owner-occupied dwelling units; or ii) reconstructed one- or two-family owner-occupied dwelling units; or iii) additions to one- or two-family owner-occupied dwelling units (but maintaining such units as one- or two-family owner-occupied dwelling units), shall all be exempt from paying a development fee.

(b) Eligible exactions, ineligible exactions and exemptions for nonresidential development

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

2. The two-and-a-half-percent fee shall apply to an increase in equalized assessed value resulting from additions to existing structures to be used for nonresidential purposes.

3. 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,

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State of New Jersey Non-Residential Development Certification/Exemption Form. Any exemption claimed by a developer shall be substantiated by that developer.

4. A developer of a nonresidential development exempted from the nonresidential development fee pursuant to P.L. 2008, c. 46 shall be subject to it at such time that the basis for the exemption no longer applies and shall make the payment of the nonresidential development fee, in that event, within three years after that event or after the issuance of the final certificate of occupancy of the nonresidential development, whichever is later.

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

Section 10. Collection of Fees

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

(b) For nonresidential developments only, the developer shall also be provided with a copy of Form N-RDF, State of New Jersey Non-Residential Development Certification/Exemption, to be completed as per the instructions provided. The developer of a nonresidential development shall complete Form N-RDF as per the instructions provided. The construction official shall verify the information submitted by the nonresidential developer as per the instructions provided in the Form N-RDF. The Tax Assessor shall verify exemptions and prepare estimated and final assessments as per the instructions provided in Form N-RDF.

(c) The construction official responsible for the issuance of a building permit shall notify the local tax assessor of the issuance of the first building permit for a development which is subject to a development fee.

(d) Within 90 days of receipt of that notice, the Municipal Tax Assessor, based on the plans filed, shall provide an estimate of the equalized assessed value of the development.

(e) The construction official responsible for the issuance of a final certificate of occupancy notifies the local assessor of any and all requests for the scheduling of a final inspection on property which is subject to a development fee.

(f) Within 10 business days of a request for the scheduling of a final inspection, the Municipal 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.

(g) Should the Borough fail to determine or notify the developer of the amount of the development fee within 10 business days of the request for final inspection, the developer may estimate the amount due and pay that estimated amount consistent with the dispute process set forth in Subsection b of § 37 of P.L. 2008, c. 46 (N.J.S.A. 40:55D-8.6).

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(h) Fifty percent of the development fee shall be collected at the time of issuance of the building permit. The remaining portion shall be collected at the issuance of the certificate of occupancy. The developer shall be responsible for paying the difference between the fee calculated at building permit and that determined at issuance of certificate of occupancy.

(i) Appeal of development fees

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

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

Section 11. Housing Trust Fund

(a) There is hereby created a separate, interest-bearing housing trust fund to be maintained by the Chief Financial Officer for the purpose of depositing development fees collected from residential and nonresidential developers.

(b) The following additional funds shall be deposited in the Affordable Housing Trust Fund and shall at all times be identifiable by source and amount:

1. Payments in lieu of on-site construction of affordable units;
2. Developer-contributed funds to make 10% of the adaptable entrances in a townhouse or other multistory attached development accessible;
3. Rental income from municipally operated units;
4. Repayments from affordable housing program loans;
5. Recapture funds;
6. Proceeds from the sale of affordable units; and
7. Any other funds collected in connection with the Borough of Paramus' affordable housing program.

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(c) All interest accrued in the Housing Trust Fund shall only be used on eligible affordable housing activities approved by COAH.

Section 12. Use of Funds

(a) The expenditure of all funds shall conform to a spending plan in furtherance of the fulfillment of the Borough's affordable housing obligation. No money deposited in the Housing Trust Fund may be used for any activity unless for that purpose. Such activities include, but are not limited to: preservation or purchase of housing for the purpose of maintaining or implementing affordability controls, rehabilitation, new construction of affordable housing units and related costs, market to affordable, conversion of existing nonresidential buildings to create new affordable units, green building strategies designed to be cost saving and in accordance with accepted national or state standards, purchase of land for affordable housing, improvement of land to be used for affordable housing, extensions or improvements of roads and infrastructure to affordable housing sites, financial assistance designed to increase affordability, administration necessary for implementation of the Housing Element and Fair Share Plan, or any other activity as permitted pursuant to N.J.A.C. 5:97-8.7 through 5:97-8.9 and specified in the approved spending plan.

(b) At least 30% of all development fees collected and interest earned shall be used to provide affordability assistance to low- and moderate-income households in affordable units included in the municipal Fair Share Plan. One-third of the affordability assistance portion of development fees collected shall be used to provide affordability assistance to those households earning 30% or less of median income by region.

1. Affordability assistance programs may include down payment assistance, security deposit assistance, low-interest loans, rental assistance, assistance with homeowners' association or condominium fees and special assessments, and assistance with emergency repairs.

2. Affordability assistance to households earning 30% or less of median income may include buying down the cost of low- or moderate-income units in the municipal Fair Share Plan to make them affordable to households earning 30% or less of median income.

3. 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.

(c) The Borough may contract with a private or public entity to administer any part of its Housing Element and Fair Share Plan, including the requirement for affordability assistance, in accordance with N.J.A.C. 5:96-18.

Section 13. Repealer

(a) The provisions of the Borough's Affordable Housing Development Fee Ordinance, Chapter 210 of the Paramus Code is hereby repealed in its entirety and replaced by this Ordinance.

(b) All Ordinances or part of Ordinances inconsistent with this Ordinance are hereby repealed as to any such inconsistencies.

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Section 14. Ordinance Subject to Subsequent Enactments or Judicial Rulings

This Ordinance shall be subject to amendment or repeal without any further action by the Borough to the extent it is, in whole or in part, inconsistent with any ruling issued by any court, valid regulations issued by any agency with jurisdiction or any legislative enactment.

Section 15. Severability

If any section, sub-section, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

Section 16. Effective Date

This Ordinance shall take effect upon the passage and publication as provided by law.



ANNEMARIE KSURZNIS
Borough Clerk



RICHARD LaBARBIERA
Mayor

Introduced: March 22, 2016
Final: May 9, 2016