

**CITY OF ENGLEWOOD  
BERGEN COUNTY, NEW JERSEY  
ORDINANCE 23-21**

**AN ORDINANCE TO AMEND AND SUPPLEMENT CHAPTER 250, TITLED  
“LAND USE,” ARTICLE XVII ENTITLED, AFFORDABLE HOUSING**

**WHEREAS**, the New Jersey Supreme Court issued its decision In re: Adoption of N.J.A.C. 5:96 & 5:97, 221 N.J. 1 (2015) on March 10, 2015 stripping COAH of its administrative duties relating to the affordable housing certification process and thereby created a judicial process by which a municipality can file a declaratory judgement action with the court seeking a judicial determination that their housing element and fair share plan satisfied their third round affordable housing obligation; and

**WHEREAS**, pursuant to the New Jersey Supreme Court’s March 10, 2015 decision and to preserve immunity from developer remedy lawsuits, the City filed a declaratory judgment action (DJ Action) entitled In the Matter of the Application of the City of Englewood for Judgement of Compliance and Repose, County of Bergen, Docket Number BER-L- 4069-19 with the Superior Court; and

**WHEREAS**, by way of negotiations with the Fair Share Housing Center in the DJ Action the City has arrived at a Settlement Agreement (Settlement) with Fair Share Housing Center concerning the City’s obligation which was approved by the Superior Court after a fairness hearing held on January 10, 2023 and in an order entered by the Court and filed on January 20, 2023; and

**WHEREAS**, the City is required to now take certain actions including the adoption of ordinances to implement the settlement agreement with Fair Share Housing Center;

**NOW, THEREFORE, BE IT ORDAINED** by the Governing Body of the City of Englewood, Bergen County, New Jersey that it does hereby amend, modify and supplement Chapter 250, Land Use Code as follows:

**SECTION 1.** Article XVII is hereby amended to add new Article XVII entitled, AFFORDABLE HOUSING as follows:

**§ 250-118 AFFORDABLE HOUSING.**

A. The Code of the City of Englewood is hereby amended to include provisions addressing Englewood City’s constitutional obligation to provide for its fair share of very low-, low- and moderate-income housing, as directed by the Superior Court and consistent with N.J.A.C. 5:93-1, et seq., as amended and supplemented, N.J.A.C. 5:80-26.1, et seq., as amended and supplemented, and the New Jersey Fair Housing Act of 1985. This Ordinance is intended to assure that low- and moderate-income units ("affordable units") are created with controls on

affordability and that low- and moderate-income households shall occupy these units. This Ordinance shall apply except where inconsistent with applicable law.

- B. The Englewood City Planning Board has adopted a Housing Element and Fair Share Plan pursuant to the Municipal Land Use Law at N.J.S.A. 40:55D-1, et seq. and settlement agreement as approved by the Court In the Matter of the Application of the City of Englewood for Judgement of Compliance and Repose, County of Bergen, Docket Number BER-L- 4069-19 (hereinafter “Fair Share Plan”). The Fair Share Plan was subsequently endorsed by the governing body. The Fair Share Plan describes how the City of Englewood shall address its fair share of low- and moderate-income housing as documented in the Fair Share Plan itself, the settlement agreement entered into by and between the City and Fair Share Housing Center (“FSHC”) on November 2, 2022 (hereinafter “Settlement”) and the Court Order approving same dated January 20, 2023, after a properly noticed Fairness Hearing.
- C. This Article implements and incorporates the City’s Housing Element and Fair Share Plan and addresses the requirements of N.J.A.C. 5:93-1, et seq., as amended and supplemented, N.J.A.C. 5:80-26.1, et seq., as amended and supplemented, and the New Jersey Fair Housing Act of 1985.
- D. 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 City of Englewood pursuant to the City’s most recently adopted Housing Element and Fair Share Plan.
- E. Moreover, this Ordinance shall apply to all developments that contain very low-, low-and moderate-income housing units, including any currently unanticipated future developments that will provide very low-, low- and moderate-income housing units and including any developments funded with low-income housing tax credits.

## § 250-119 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 designated by the City for the administration of affordable units in accordance with this Ordinance, N.J.A.C. 5:93, and UHAC (N.J.A.C. 5:80-26)

*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 very low-, low- and moderate-income households.

*Affordable* shall mean a sales price or rent level that is within the means of a very low-, low- or moderate-income household as defined in N.J.A.C. 5:93-7.4 and 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 or approved pursuant to the "Housing Plan Element And Fair Share Plan" or otherwise intended to address the City's fair share obligation, and includes, but is not limited to, an inclusionary development, a municipal construction project or a one hundred (100%) percent affordable housing 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 and approved for crediting by the Court 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.

*Alternative Living Arrangement* shall mean a structure in which households live in distinct bedrooms, yet share kitchen and plumbing facilities, central heat and common areas. Alternative living arrangements include but are not limited to: transitional facilities for the homeless; Class A, B, C, D, and E boarding homes as regulated by the New Jersey Department of Community Affairs; residential health care facilities as regulated by the New Jersey Department of Health; group homes for the developmentally disabled and mentally ill as licensed and/or regulated by the New Jersey Department of Human Services; and congregate living arrangements.

*Assisted living residence* 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 very low-, low-income household or moderate-income household.

*COAH* shall mean the New Jersey Council on Affordable Housing 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.

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

*Equalized assessed value* shall mean the assessed value of a property divided by the current average ration of assessed to true value for the municipality in which the property is situated, as determined in accordance with Sections 1, 5, and 6 of P.L. 1973 c. 123 (N.J.S.A. 54:1-35a through 54:1-35c).

*Green Building Strategies* 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.

*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 use and the creation of new affordable units through the gut rehabilitation or 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 regional median household income by household size for the applicable housing region.

*Low-income unit* shall mean a restricted unit that is affordable to a low-income household.

*Major system* shall mean the primary structural, mechanical, plumbing, electrical, fire protection, or occupant service components of a building which include but are not limited to,

weatherization, roofing, plumbing (including wells), heating, electricity, sanitary plumbing (including septic systems), lead paint abatement or load bearing structural systems.

*Market-rate units* shall mean housing not restricted to very low-, 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 housing region, as adopted annually by COAH or a successor entity approved by the Court.

*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 regional median household income by household size for the applicable housing region.

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

*Municipal Housing Liaison* shall mean an appointed municipal employee who is responsible for oversight of the municipal affordable housing program, including overseeing the administration of affordability controls, the Affirmative Marketing Plan, monitoring and reporting, and supervising any contracted Administrative Agent.

*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 duly adopted regional income limits published annually by COAH or a successor entity approved by the Court.

*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 UHORP or MONI.

*UHAC* shall mean the Uniform Housing Affordability Controls set forth in N.J.A.C. 5:80-26. 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 regional median household income by household size for the applicable housing region.

*Very low-income unit* shall mean a restricted unit that is affordable to a very low-income household.

*Weatherization* shall mean building insulation (for attic, exterior walls and crawl space), siding to improve energy efficiency, replacement storm windows, replacement storm doors, replacement windows and replacement doors, and is considered a major system for purposes of the rehabilitation program.

## § 250-120 MONITORING AND REPORTING REQUIREMENTS.

The City of Englewood 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 Court's approval of the Spending Plan, and on every anniversary of that date through July 1, 2025, the City 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.
  - (1) Beginning one year after the Judgment of Compliance and Repose on November 1, 2023, and on every anniversary of that date through July 1, 2025, the City 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.
  - (2) The Fair Housing Act includes two provisions regarding action to be taken by the City during its ten-year repose period. Pursuant to the settlement agreement with FSHC, the City will comply with those provisions as follows:
    - (a) For the midpoint realistic opportunity review due on February 1, 2024, as required pursuant to N.J.S.A. 52:27D-313, the City 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 if there are changed circumstances whether the mechanisms to meet unmet need should be revised or supplemented. Such posting shall invite any interested party to submit

comments to the City, 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.

- (b) 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 City's agreement with FSHC, and every third year thereafter, the City 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. Such posting shall invite any interested party to submit comments to the City and Fair Share Housing Center on the issue of whether the City has complied with its very low-income housing obligation under the terms of the City's agreement with FSHC.
- (c) In addition to the foregoing postings, the City may also elect to file copies of its reports with COAH or its successor agency at the State level.

#### § 250-121 AFFORDABLE HOUSING REQUIREMENTS Alternative Living Arrangements

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

A. Set aside. For inclusionary projects in which the very low-, low- and moderate-income units are to be offered, the appropriate set-aside percentage is 20 percent whether for-sale or rent.

B. 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

C. New Construction Requirements.

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

- (a) The fair share obligation shall be divided equally between low- and moderate-income units, except that where there is an odd number of affordable housing units, the extra unit shall be a low-income unit. At least 13 percent of all restricted units within each bedroom distribution shall be very low-income units (affordable to a household earning 30 percent or less of regional median income by household size). The very low-income units shall be counted as part of the required number of low income units within the development. At least 50 percent of the very low-income units must be available to families.
- (b) In each affordable development, at least 50 percent of the restricted units within each bedroom distribution shall be very low or low-income units.
- (c) Affordable developments that are not age-restricted shall be structured in conjunction with realistic market demands such that:
  - 1. The combined number of efficiency and one-bedroom units shall be no greater than 20 percent of the total low- and moderate-income units;
  - 2. At least 30 percent of all low- and moderate-income units shall be two-bedroom units;
  - 3. At least 20 percent of all low- and moderate-income units shall be three-bedroom units; and
  - 4. The remaining units may be allocated among two- and three-bedroom units at the discretion of the developer.
  - 5. Affordable developments that are age-restricted shall be structured such that the number of bedrooms shall equal the number of age-restricted low- and moderate-income units within the inclusionary development. This standard may be met by having all one-bedroom units or by having a two-bedroom unit for each efficiency unit.

(2) Accessibility Requirements:

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

(b) All restricted townhouse dwelling units and all restricted units in other multistory buildings in which a restricted dwelling unit is attached to at least one other dwelling unit shall have the following features:

1. An adaptable toilet and bathing facility on the first floor; and
2. An adaptable kitchen on the first floor; and
3. An interior accessible route of travel on the first floor; and
4. An adaptable room that can be used as a bedroom, with a door or the casing for the installation of a door, on the first floor; and
5. If all of the foregoing requirements in 2.(b)(1) through 2.(b)(4) 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.(b)(1) through 2.(b)(4) above have been satisfied, then an interior accessible route of travel shall not be required between stories within an individual unit; and
6. An accessible entranceway as set forth at P.L. 2005, c. 350 (N.J.S.A. 52:27D-311a, et seq.) and the Barrier Free SubCode, N.J.A.C. 5:23-7, or evidence that Englewood has collected funds from the developer sufficient to make 10 percent of the adaptable entrances in the development accessible:
  - i. 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.
  - ii. To this end, the builder of income-restricted units shall deposit funds within the City of Englewood's Affordable Housing Trust Fund sufficient to install accessible entrances in 10 percent of the affordable units that have been constructed with adaptable entrances.
  - iii. The funds deposited under paragraph (6)[ii.] above shall be used by the City of Englewood 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.
  - iv. The developer of the restricted units shall submit a design plan and cost estimate to the Construction Official of the City of Englewood for the conversion of adaptable to accessible entrances.
  - v. 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 City's Affordable

Housing Trust Fund in the care of the City Treasurer who shall ensure that the funds are deposited into the Affordable Housing Trust Fund and appropriately earmarked.

- vi. 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 and N.J.A.C. 5:97-3.14.

(3) Design:

- (a) In inclusionary developments, to the extent possible, very low-, low- and moderate-income units shall be integrated with the market units, not situated so as to be concentrated in separate building(s) or in separate area(s) or floor(s), or in less desirable locations, than the other units in the development. In buildings with multiple dwelling units, this shall mean that the very low-, low-, and moderate-income units shall be generally distributed within each building with market units.
- (b) In inclusionary developments, the residents of the affordable units shall have full and equal access to all of the amenities, common areas, and recreation areas and facilities as the residents of the market units.
- (c) In inclusionary developments, the very low-, low- and moderate-income units shall be no less than the largest minimum bedroom and unit square footages required under the DCA Balanced Housing and HMFA Low Income Housing Tax Credit program for bedroom sizes and unit sizes in affordable units of the same bedroom number.

(4) Maximum Rents and Sales Prices:

- (a) In establishing rents and sales prices of affordable housing units, the Administrative Agent shall follow the procedures set forth in UHAC, utilizing the most recently published regional weighted average of the uncapped Section 8 income limits published by HUD and the calculation procedures as approved by the Court and detailed below:
  - i. Regional income limits shall be established for the region in which the City is located (in this case, Region 1) based on the median income by household size, which shall be established by a regional weighted average of the uncapped Section 8 income limits published by HUD. To compute this regional income limit, the HUD determination of median county income for a family of four is multiplied by the estimated households within the county according to the most recent decennial census. The resulting product for each county within the housing region is summed. The sum is divided by the estimated total households from the most recent decennial census in the City’s housing region. This quotient represents the regional weighted average of median income for a household of four. The income limit for a moderate-income unit for a household of four shall be 80% of the regional weighted average median income for a family of four. The income limit for a low-income unit for a household of four

shall be 50% of the HUD determination of the regional weighted average median income for a family of four. The income limit for a very low-income unit for a household of four shall be 30% of the regional weighted average median income for a family of four. These income limits shall be adjusted by household size based on multipliers used by HUD to adjust median income by household size. In no event shall the income limits be less than those for the previous year.

- ii. The income limits are the result of applying the percentages set forth in paragraph (a) above to HUD's determination of median income for the current fiscal year, and shall be utilized until the City updates the income limits after HUD has published revised determinations of median income for the next fiscal year.
- iii. The regional asset limit used in determining an applicant's eligibility for affordable housing pursuant to N.J.A.C. 5:80-26.16(b)3 shall be calculated by the City annually by taking the percentage increase of the income limits calculated pursuant to paragraph (i.) above over the previous year's income limits, and applying the same percentage increase to the Regional Asset Limit from the prior year. In no event shall the regional asset limit be less than that for the previous year.
- iv. 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 pursuant to the process defined above.
  - (1) The resale prices of owner-occupied very low-, 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 the above methodology. In no event shall the maximum resale price established by the administrative agent be lower than the last recorded purchase price.
  - (2) The rent levels of very low-, low- and moderate-income units may be increased annually based on the percentage increase in the Housing Consumer Price Index for the Northeast Urban 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.

(b) The maximum rent for restricted rental units within each affordable development shall be affordable to households earning no more than 60 percent of median income, and the average rent for restricted rental units shall be affordable to households earning no more than 52 percent of median income.

(c) The developers and/or municipal sponsors of restricted rental units shall establish at least one rent for each bedroom type for both low-income and moderate-income units, provided that at least 13 percent of all low- and moderate-income rental units shall be affordable to very low-income households earning no more than 30 percent of median income, which very low-income units shall be part of the low-income requirement.

(d) The maximum sales price of restricted ownership units within each affordable development shall be affordable to households earning no more than 70 percent of median income, and each affordable development must achieve an affordability average of 55 percent for restricted ownership units; in achieving this affordability average, moderate-income ownership units must be available for at least three different 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.

(e) 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:

- i. A studio shall be affordable to a one-person household;
- ii. A one-bedroom unit shall be affordable to a one-and-one-half person household;
- iii. A two-bedroom unit shall be affordable to a three-person household;
- iv. A three-bedroom unit shall be affordable to a four-and-one-half person household; and
- v. A four-bedroom unit shall be affordable to a six-person household.

(f) In determining the initial sales prices and rents for compliance with affordability average requirements for restricted units in assisted living facilities and age-restricted developments the following standards shall be used:

- i. A studio shall be affordable to a one-person household;
- ii. A one-bedroom unit shall be affordable to a one-and-one-half person household; and
- iii. A two-bedroom unit shall be affordable to a two-person household or to two one-person households.

(g) The initial purchase price for all restricted ownership units shall be calculated so that the monthly carrying cost of the unit, including principal and interest (based on a mortgage loan equal to 95% of the purchase price and the Federal Reserve H.15 rate of interest), taxes, homeowner and private mortgage insurance and condominium or homeowners' association fees do not exceed 28% of the eligible monthly income of the appropriate size household as determined under N.J.A.C. 5:80-26.4, as may be amended and supplemented; provided, however, that the price shall be subject to the affordability average requirement of N.J.A.C. 5:80-26.3, as may be amended and supplemented.

(h) The initial rent for a restricted rental unit shall be calculated so as not to exceed 30% of the eligible monthly income of the appropriate 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.

(i) The price of owner-occupied low- and moderate-income units may increase annually based on the percentage increase in the regional median income limit for each housing region. In no event shall the maximum resale price established by the Administrative Agent be lower than the last recorded purchase price.

(j) The rent of 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 United States. This increase shall not exceed 9% in any one year. Rents for units constructed pursuant to low-income housing tax credit regulations shall be indexed pursuant to the regulations governing low-income housing tax credits.

D. Utilities.

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

D. 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:

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

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

- (1) Control periods for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.5, as may be amended and supplemented, and each restricted ownership unit shall remain subject to the requirements of this Ordinance for a period of at least 30 years, until Englewood 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.
- (2) The affordability control period for a restricted ownership unit shall commence on the date the initial certified household takes title to the unit.
- (3) Prior to the issuance of the initial certificate of occupancy for a restricted ownership unit and upon each successive sale during the period of restricted ownership, the Administrative Agent, 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.

- (4) At the time of the initial sale of the unit, the initial purchaser shall execute and deliver to the 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.
- (5) 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.
- (6) A restricted ownership unit shall be required to obtain a Continuing Certificate of Occupancy or a certified statement from the Construction Official stating that the unit meets all Code standards upon the first transfer of title following the removal of the restrictions provided under N.J.A.C. 5:80-26.5(a), as may be amended and supplemented.

#### F. 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:

- (1) The initial purchase price for a restricted ownership unit shall be approved by the Administrative Agent, or an Administrative Agent appointed by a particular developer.
- (2) The 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.
- (3) 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.
- (4) The owners of restricted ownership units may apply to the 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.

#### G. Buyer Income Eligibility.

- (1) Buyer income eligibility for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.1, as may be amended and supplemented, such that low-income ownership units

shall be reserved for households with a gross household income less than or equal to 50 percent of median income and moderate-income ownership units shall be reserved for households with a gross household income less than 80 percent of median income. Very low-income units shall be reserved for households with a gross household income of less than 30 percent of median income.

- (2) Notwithstanding the foregoing, the Administrative Agent may, upon approval by the City Council, and subject to the Court's approval, permit a moderate-income purchaser to buy a low-income unit if and only if the Administrative Agent can demonstrate that there is an insufficient number of eligible low-income purchasers in the housing region to permit prompt occupancy of the unit and all other reasonable efforts to attract a low-income purchaser, including pricing and financing incentives, have failed. Any such low-income unit that is sold to a moderate-income household shall retain the required pricing and pricing restrictions for a low-income unit.
- (3) A certified household that purchases a restricted ownership unit must occupy it as the certified household's principal residence and shall not lease the unit; provided, however, that the Administrative Agent may permit the owner of a restricted ownership unit, upon application and a showing of hardship, to lease the restricted unit to another certified household for a period not to exceed one year.
- (4) The Administrative Agent shall certify a household as eligible for a restricted ownership unit when the household is a very low-income household, 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.

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

- (1) Prior to incurring any indebtedness to be secured by a restricted ownership unit, the owner shall apply to the Administrative Agent, 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 Administrative Agent, or an Administrative Agent appointed by a particular developer, shall issue such determination prior to the owner incurring such indebtedness.
- (2) 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 Administrative Agent, or an Administrative Agent appointed by a particular developer, in accordance with N.J.A.C. 5:80-26.6(b).

#### **I. Capital Improvements To Ownership Units.**

- (1) The owners of restricted ownership units may apply to the 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.
- (2) Upon the resale of a restricted ownership unit, all items of property that are permanently affixed to the unit or were included when the unit was initially restricted (for example, refrigerator, range, washer, dryer, dishwasher, wall-to-wall carpeting) shall be included in the maximum allowable resale price. Other items may be sold to the purchaser at a reasonable price that has been approved by the Administrative Agent, 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 Administrative Agent, or an Administrative Agent appointed by a particular developer. Unless otherwise approved by the 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.

#### J. Control Periods for Restricted Rental Units.

- (1) Control periods for restricted rental units shall be in accordance with N.J.A.C. 5:80-26.11, as may be amended and supplemented, and each restricted rental unit shall remain subject to the requirements of this Ordinance for a period of at least 30 years, until Englewood 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.
- (2) Deeds of all real property that include restricted rental units shall contain deed restriction language. The deed restriction shall have priority over all mortgages on the property, and the deed restriction shall be recorded by the developer or seller with the records office of the County of Bergen. A copy of the filed, recorded document shall be provided to the Administrative Agent within 30 days of the receipt of a Certificate of Occupancy.
- (3) A restricted rental unit shall remain subject to the affordability controls of this Ordinance despite the occurrence of any of the following events:
  - (a) Sublease or assignment of the lease of the unit;
  - (b) Sale or other voluntary transfer of the ownership of the unit; or

- (c) The entry and enforcement of any judgment of foreclosure on the property containing the unit.

#### K. Rent Restrictions for Rental Units; Leases.

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

#### L. Tenant Income Eligibility.

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

- (a) The household currently pays more than 35 percent (40 percent for households eligible for age-restricted units) of its gross household income for rent, and the proposed rent will reduce its housing costs;
- (b) The household has consistently paid more than 35 percent (40 percent for households eligible for age-restricted units) of eligible monthly income for rent in the past and has proven its continuing ability to pay;
- (c) The household is currently in substandard or overcrowded living conditions;
- (d) The household documents the existence of assets with which the household proposes to supplement the rent payments; or
- (e) The household documents reliable anticipated third-party assistance from an outside source such as a family member in a form acceptable to the Administrative Agent and the owner of the unit.
- (f) The applicant shall file documentation sufficient to establish the existence of the circumstances in (2)(a) through (2)(e) above with the Administrative Agent, or an Administrative Agent appointed by a particular developer, who shall counsel the household on budgeting.

## § 250-122 AFFORDABLE HOUSING PROGRAMS.

The City of Englewood has determined that it will use the following mechanisms to satisfy its affordable housing obligations, as follows.

### A. Rehabilitation Program

- (1) Englewood City's rehabilitation program shall be designed to renovate deficient housing units occupied by very low-, 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 rehabilitated units shall remain affordable to very low-, 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.
- (4) The City of Englewood 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.

- (5) The City of Englewood shall designate one (1) or more Administrative Agents to administer the rehabilitation program. 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 the Court. 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).
- (6) Units in a rehabilitation program shall be administered in accordance with the following:
  - (a) If a unit is vacant, upon initial rental subsequent to rehabilitation, or if a renter-occupied unit is re-rented prior to the end of controls on affordability, the deed restriction shall require the unit to be rented to a very low-, low- or moderate-income household at an affordable rent and affirmatively marketed pursuant to N.J.A.C. 5:93-9 and UHAC.
  - (b) If a unit is renter-occupied, upon completion of the rehabilitation, the maximum rate of rent shall be the lesser of the current rent or the maximum permitted rent pursuant to N.J.A.C. 5:93-9 and UHAC.
  - (c) Rents in rehabilitated units may increase annually based on the standards in N.J.A.C. 5:93-9 or the standards issued by a New Jersey administrative agency with proper authority to issue such standards.
  - (d) Applicant and/or tenant households shall be certified as income-eligible in accordance with N.J.A.C. 5:93-9 and UHAC, except that households in owner-occupied units shall be exempt from the regional asset limit.

#### § 250-123 AFFIRMATIVE MARKETING REQUIREMENTS.

- A. Englewood City shall adopt by resolution an Affirmative Marketing Plan, subject to approval of Court, compliant with N.J.A.C. 5:80-26.15 and the FHA, as may be amended and supplemented. The initial Affirmative Marketing Plan shall include the following community and regional organizations: Fair Share Housing Center, the New Jersey State Conference of the NAACP, Bergen County NAACP, Jersey City NAACP, Paterson NAACP, Passaic NAACP, Hoboken NAACP, the Latino Action Network, the Bergen County Housing Authority, Northeast New Jersey Legal Services, Bergen Urban League, Garden State Episcopal CDC, Mount Olive Baptist Church, Urban League of Affordable Housing & CDC, Bergen County Housing Coalition, Fair Housing Council of Northern NJ, New Jersey Community Development, Advance Housing, Paterson Habitat for Humanity, Family Promise of Bergen County, Saint Paul's Community Development Corp., Supportive Housing Association of New Jersey, Islamic Center of New Jersey, Monarch Housing Associates and the New Jersey Housing Resource Center.

- 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 Housing Region 1, comprising of the counties of Bergen, Hudson, Passaic, and Sussex, and is required to be followed throughout the period of deed restriction.
- C. The Affirmative Marketing Plan shall provide a regional preference for all households that live and/or work in Housing Region 1 comprised of Bergen, Hudson, Passaic and Sussex Counties.
- D. The City shall add to the list of community and regional organizations in its affirmative marketing plan, pursuant to N.J.A.C. 5:80-26.15(f)(5): Fair Share Housing Center, the New Jersey State Conference of the NAACP, the Latino Action Network, the Bergen County NAACP, Jersey City NAACP, Paterson NAACP, Passaic NAACP, Hoboken NAACP, the Bergen County Housing Authority, Northeast New Jersey Legal Services, Bergen Urban League, Garden State Episcopal CDC, Bergen County Housing Coalition, Fair Housing Council of Northern NJ, New Jersey Community Development, Advance Housing, Paterson Habitat for Humanity, Family Promise of Bergen County, Saint Paul's Community Development Corp., the Supportive Housing Association of New Jersey, Islamic Center of New Jersey, Monarch Housing Associates, and the New Jersey Housing Resource Center, in accordance with applicable law, and shall, as part of its regional affirmative marketing strategies during its implementation of this plan, provide notice to those organizations of all available affordable housing units. The Administrative Agent designated by the City of Englewood, or the Administrative Agent appointed by a particular developer, shall assure the affirmative marketing of all affordable units consistent with the Affirmative Marketing Plan for the municipality.
- E. The municipality has the ultimate responsibility for adopting the Affirmative Marketing Plan and for the proper administration of the Affirmative Marketing Program, including initial sales and rentals and resales and rerentals. The Administrative Agent designated by the City of Englewood shall implement the Affirmative Marketing Plan to assure the affirmative marketing of all affordable units.
- F. In implementing the Affirmative Marketing Plan, the Administrative Agent shall provide a list of counseling services to very low-, low- and moderate-income applicants on subjects such as budgeting, credit issues, mortgage qualification, rental lease requirements, and landlord/tenant law.
- G. The Affirmative Marketing Plan shall describe the media to be used in advertising and publicizing the availability of housing. In implementing the Affirmative Marketing Plan, the Administrative Agent shall consider the use of language translations where appropriate.

- H. The affirmative marketing process for available affordable units shall begin at least four (4) months (120 days) prior to the expected date of occupancy.
- I. Application for affordable housing shall be available in several locations, including, at a minimum, the County Administration Building and/or the County Library for each county within the housing region; the municipal administration building and the municipal library in the municipality in which the units are located; and the developer's rental office. Applications shall be mailed to prospective applicants upon request. The costs of advertising and affirmative marketing of the affordable units shall be the responsibility of the developer, sponsor or owner.
- J. 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 Englewood City.

#### § 250-124 AFFORDABLE HOUSING MANDATORY SET-ASIDE.

A. Affordable Housing Set-Aside. A mandatory affordable housing set-aside requirement shall apply beginning with the effective date of this ordinance to any new multifamily and single-family attached residential development, including the residential portion of a mixed-use project, which consists of five (5) or more new residential units which results, in whole or in part, from: (i) a municipal rezoning or zoning amendment adopted after the effective date of this Ordinance; (ii) any variance pursuant to N.J.S.A. 40:55D- 70(d), including but not limited to any use variance or a density variance increasing the permissible density; and (iii) the adoption of a new or amended redevelopment plan or rehabilitation plan. The set-aside shall be twenty percent (20%) for both sales and rental units. For any such development for which the City's land use ordinances (e.g., zoning or an adopted Redevelopment Plan) already permitted residential development as of the effective date of this Ordinance, this requirement shall only apply if the City permits an increase in gross residential density.

(1) All affordable housing controls and standards are subject to the rules of the Council on Affordable Housing ("COAH") or any subsequent state agency, or as approved by the Court. The development, marketing and sale of the affordable units shall be pursuant to applicable state regulations and the applicable provisions of this chapter, and any subsequent amendments thereto.

(2) This requirement shall not impose any obligation on a development, or the nonresidential portion of a mixed-use development, that is subject to the Statewide Non-Residential Development Fee Act, N.J.S.A. 40:55D-8.1 et seq.

(1) All subdivision and site plan approvals of qualifying developments shall be conditioned upon compliance with the provisions of the mandatory affordable housing set-aside.

(4) No subdivision shall be permitted or approved for the purpose of avoiding compliance with the mandatory affordable housing set-aside. A developer may not, for example, subdivide a project into two lots and then plan each of them to produce a number of units below the threshold. The approving authority may impose any reasonable conditions to ensure such compliance.

(5) The mandatory affordable housing set-aside shall not give any developer the right to any rezoning, variance, redevelopment designation or redevelopment or rehabilitation plan approval, or any other such relief, or establish any obligation on the part of the municipality to grant such rezoning, variance, redevelopment designation, redevelopment or rehabilitation plan approval, or other such or further relief.

B. This section shall not apply to any sites or specific zones otherwise identified in the City's Settlement Agreement with FSHC dated November 1, 2022, approved by Court Order dated January 20, 2023, or in the City's Housing Element and Fair Share Plan, for which density and set-aside standards shall be governed by the specific standards set forth therein.

C. The requirements of this section shall not apply to residential expansions, additions, renovations, replacements, or any other type of residential development that does not result in a net increase in the number of dwellings of five (5) or more.

#### § 250-125 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, recuperation 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 very low-, 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:

- (a) A fine of not more than 1,250.00 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;
- (b) In the case of an Owner who has rented a very low-, low- or moderate-income unit in violation of the regulations governing affordable housing units, payment into the City of Englewood Affordable Housing Trust Fund of the gross amount of rent illegally collected;

- (c) In the case of an Owner who has rented a very low-, low- or moderate-income unit in violation of the regulations governing affordable housing units, payment of an innocent tenant's reasonable relocation costs, as determined by the Court.

(2) The municipality may file a court action in the Superior Court seeking a judgment 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 very low-, 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 very low-, 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 very low-, 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 very low-, 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 very low-, 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 very low-, 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 very low-, 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 very low-, 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 governing affordable housing units until such time as title is conveyed from the Owner.

**APPEALS.**

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

**SECTION 2.** §250-159 Mandatory Affordable Housing Set-Aside is repealed in its entirety.

**SECTION 3.** The City Clerk is directed to give notice at least ten (10) days prior to a hearing on the adoption of this Ordinance to the Bergen 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 City 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 City Clerk is hereby directed to submit a copy of the within Ordinance to the Planning Board for its review in accordance with N.J.S.A. 40:55D-26 and N.J.S.A. 40:55D-64. The Planning Board is directed to make and transmit to the City 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.

**ORDINANCE #23-21**

**AN ORDINANCE TO AMEND AND SUPPLEMENT CHAPTER 250, TITLED  
“LAND USE,” ARTICLE XVII ENTITLED, AFFORDABLE HOUSING**

**RECORD OF VOTE**

FIRST READING DATE: June 13, 2023

COUNCIL	MOTION	VOTE
Cobb		Y
Maron		Y
Rosenzweig	X	Y
Wilson		Y
Wisotsky		Y

DATE PUBLISHED IN THE RECORD:

DATES PUBLIC HEARINGS HELD: July 11, 2023

DATE SECOND READING HELD: July 11, 2023

COUNCIL	MOTION	OPEN	MOTION	CLOSE	MOTION	ADOPT
Cobb						
Maron						
Rosenzweig						
Wilson						
Wisotsky						

Y=YES

N=OPPOSED

A=ABSTAINED

AB=ABSENT

PRESENTED TO MAYOR:

APPROVED \_\_\_\_\_

REJECTED \_\_\_\_\_ (VETO)

\_\_\_\_\_  
MAYOR MICHAEL WILDES

I do hereby certify that the foregoing is a true and exact copy of an Ordinance adopted and approved by the Mayor and Council of the City of Englewood.

\_\_\_\_\_  
Yancy Wazirmas, RMC  
City Clerk

**CITY OF ENGLEWOOD**  
**NOTICE OF ORDINANCE INTRODUCTION/PUBLIC HEARING**

**ORDINANCE 23-21**

**AN ORDINANCE TO AMEND AND SUPPLEMENT CHAPTER 250, TITLED  
“LAND USE,” ARTICLE XVII ENTITLED, AFFORDABLE HOUSING**

**NOTICE IS HEREBY GIVEN** that the above ordinance was introduced and passed at a Regular Meeting of the City Council of the City of Englewood on June 13, 2023 and that said ordinance will be further considered for final passage at a meeting of the City Council to be held at the Municipal Court Room, 73 S. Van Brunt Street, Englewood, Bergen County, New Jersey, on July 11, 2023 at 7:30 pm, or as soon thereafter as the matter can be reached, at which time and place all persons who may be interested will be given an opportunity to be heard concerning said ordinance. A copy of the ordinance in full may be requested at no charge from the City Clerk’s Office during regular business hours and can also be found on the City’s website at [www.cityofenglewood.org](http://www.cityofenglewood.org).

The purpose of the above Ordinance is to update the affordable housing regulations set forth in Article XVII of Part 4, Zoning, of Chapter 250, Land Use, of the Code of the City of Englewood as directed by the Superior Court and consistent with Uniform Housing Affordability Control rules (N.J.A.C. 5:80-26.1), COAH’s substantive rules (N.J.A.C. 5:93), and the Fair Housing Act (N.J.S.A. 52:27D-301. et seq.). and to provide assurances that very-low, low- and moderate-income units are created with controls on affordability so that very-low, low- and moderate-income households occupy those units.

Yancy Wazirmas, RMC  
City Clerk