

**BOROUGH OF HO-HO-KUS  
COUNTY OF BERGEN**

**ORDINANCE # 2018-04**

**AN ORDINANCE OF THE BOROUGH OF HO-HO-KUS, COUNTY OF BERGEN AND STATE OF NEW JERSEY AMENDING CHAPTER 2 "AFFORDABLE HOUSING" OF THE CODE OF THE BOROUGH OF HO-HO-KUS TO ADDRESS THE REQUIREMENTS OF THE NJ SUPERIOR COURT**

**WHEREAS**, the Borough Council of the Borough of Ho-Ho-Kus, Bergen County, State of New Jersey ("Council") adopted an Ordinance on July 25, 2017 adding Chapter 2, entitled "Affordable Housing", to the Borough Code, as required by a Court approved Settlement Agreement between the Borough, Fair Share Housing Center, Chamberlain Developers, Inc. ("Chamberlain"), and Jonathan L. Mechanic (d.b.a. Ho-Ho-Kus Crossings) (Collectively, "Intervenors"); and

**WHEREAS**, on December 13, 2017, the Special Master to the Court In the Matter of the Application of the Borough of Ho-Ho-Kus submitted a letter to the Court recommending approval of the Borough's Adopted Housing Element and Fair Share Plan, subject to the Borough satisfying several conditions including making certain amendments to the Affordable Housing Ordinance.

**WHEREAS**, the Superior Court held a Compliance Hearing on December 18, 2017 at which time the Court conditionally approved the Borough's Adopted Housing Element and Fair Share Plan, subject to the conditions recommended in the Master's December 13, 2017 letter; and

**WHEREAS**, pursuant to the Court order entered by the Honorable Christine Farrington, J.S.C. on December 18, 2017, the Borough received a Judgment of Repose through July 1, 2025 provided the Borough complies with the Master's conditions by April 17, 2018, at which time the Borough shall submit a certification to the Master that all conditions for a Final Judgment of Compliance and Repose have been met; and

**WHEREAS** the Borough's and Planning Board's affordable housing planning consultants Mary Beth Lonergan, PP, AICP, and Daniel Hauben, PP, AICP, of Clarke Caton Hintz, PC, have amended the Affordable Housing Ordinance in accordance with the conditions of the Court Master's December 13, 2017 letter to the Court.

**THEREFORE, BE IT ORDAINED** by the Borough Council of the Borough of Ho-Ho-Kus, County of Bergen and State of New Jersey, that Chapter 2, entitled "Affordable Housing Ordinance", of the "Code of the Borough of Ho-Ho-Kus" ("Code") is hereby amended and shall read as follows.

**Section I. § 2-1, entitled "Affordable Housing Obligation", revised.** §2-1.A and B shall read as follows:

- A. This section of the Borough Code sets forth regulations regarding the low and moderate income housing units in the Borough consistent with the provisions known as the "Substantive Rules of the New Jersey Council on Affordable Housing", *N.J.A.C.* 5:93 et seq., the Uniform Housing Affordability Controls ("UHAC"), *N.J.A.C.* 5:80-26.1 et seq., except where modified by the terms of a Settlement Agreement between the Borough and Fair Share Housing Center ("FSHC") such that the statutory requirement to provide very-low income units equal to 13% of affordable units approved and constructed after July 1, 2008, to be

affordable to households at 30% of the regional median income, overrides the UHAC requirement that 10% of all low- and moderate-income units must be affordable at 35% of the regional median income, and the Borough's constitutional obligation to provide a fair share of affordable housing for low and moderate income households. In addition, this section applies requirements for very low income housing as established in P.L. 2008, c.46 (the "Roberts Bill", codified at N.J.S.A. 52:27D-329.1).

- B. This Ordinance is intended to assure that very-low, low- and moderate-income units ("affordable units") are created with controls on affordability over time and that very-low, low- and moderate-income households shall occupy these units. This Ordinance shall apply to all inclusionary developments and 100% affordable developments (including those funded with low-income housing tax credit financing) except where inconsistent with applicable law.

**Additionally, the following is hereby added after §2-1.E:**

- F. On or about January 12 of each year through the end of the period of Third Round Judgment of Repose, the Borough will provide annual reporting of the status of all affordable housing activity within the municipality through posting on the municipal website with a copy of such posting provided to all parties to the Borough's Court-approved Settlement Agreements, using forms previously developed for this purpose by the Council on Affordable Housing or any other forms endorsed by the Special Master and Fair Share Housing Center ("FSHC").
- G. The Fair Housing Act includes two provisions regarding action to be taken by the Borough during the ten-year period of protection provided in the Borough's agreement with FSHC. The Borough agrees to comply with those provisions as follows:
  - 1. By July 1, 2020, the Borough must prepare a midpoint realistic opportunity review, as required pursuant to N.J.S.A. 52:27D-313, which the Borough will post on its municipal website, with a copy provided to FSHC and the Intervenors, 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. Such posting shall invite any interested party to submit comments to the municipality, with a copy to FSHC and the Intervenors, regarding whether any sites no longer present a realistic opportunity and should be replaced and whether any mechanisms to meet unmet need should be revised or supplemented. Any interested party may by motion request a hearing before the Court regarding these issues. In the event the Court determines that a site or mechanism no longer presents a realistic opportunity and should be replaced or supplemented, then the municipality shall have the opportunity to supplement or revise its plan to correct any deficiency.
  - 2. Within 30 days of January 12, 2020 and January 12, 2023 the Borough shall prepare a review of compliance with the very low income housing requirements required by N.J.S.A. 52:27D-329.1 and its Settlement Agreement with Fair Share Housing Center. The Borough will post on its municipal website, with a copy provided to FSHC and the Intervenors, a status report as to its satisfaction of its very low income requirements,

including the family very low income requirements referenced herein and in the Borough's Settlement Agreement with FSHC. Such posting shall invite any interested party to submit comments to the municipality and FSHC and the Intervenors on the issue of whether the municipality has complied with its very low income housing obligation.

**Section II. §2-3, Entitled, "Borough-wide Mandatory Set-Aside".** §2.3.C is hereby added, and shall read as follows:

- C. In the event that the inclusionary set-aside percentage (15% or 20%) of the total number of residential units does not result in a full integer, the developer may choose one of two options of addressing the fractional unit:
1. The developer shall round the set-aside upward to construct a whole additional affordable unit; or
  2. If the set-aside includes a fractional unit equal to 0.49 or less, the developer may round the set-aside downward and construct the lesser whole number of affordable units, but must also make a payment in-lieu of constructing the fractional additional unit ("fractional payment in-lieu").
    - a. The fractional payment in-lieu amount shall be calculated as the fractional unit multiplied by the base payment in-lieu dollar amount established in §2-4.C.1 of the Borough Code.
  3. For Example: If seven (7) total units are developed at an inclusionary site, a 20% set-aside would require 1.4 affordable units. Per the requirements above:
    - a. The developer shall round up the 0.4 unit to one (1) whole affordable unit so as to construct a total of two (2) affordable housing units, in accordance with §2-3.C.1; or
    - b. In accordance with §2-3.C.2, the developer shall round the set-aside downward so as to construct only (1) affordable unit AND shall pay into the Borough's affordable housing trust fund a fractional in-lieu payment equal to the dollar amount established in §2-4.C.1 multiplied by 0.4 units.

**Section III. § 2-4 Entitled "New Construction".** §2-4.C is amended and §2-4.C.1 is hereby added.

- C. Payments-in-lieu and off-site construction. The standards for the collection of payments-in-lieu of constructing affordable units or standards for constructing affordable units off-site, shall be in accordance with the requirements below:
1. The base dollar amount of the payment in-lieu of constructing an affordable unit at the time of adoption of this Ordinance shall be \$180,267<sup>1</sup>. This amount shall be adjusted periodically by the Borough to reflect the most current and accurate market conditions or better cover the cost to the

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<sup>1</sup> As set forth in N.J.A.C. 5:97-6.4(c)3

Borough to subsidize affordable housing construction. The payment shall be imposed as a condition of development approval by the Planning Board.

- a. During the development approval process, a developer may demonstrate to the Governing Body that the actual construction cost of an affordable unit less estimated capitalized revenue at the development in question is lower than the imposed payment in-lieu in §2-4.C.1. At its discretion, the Governing Body may impose a lower payment in-lieu amount equal or proximate to the amount estimated by the developer.

**Additionally, §2-4.G.9 and 10, shall read as follows:**

9. The price of owner-occupied low- and moderate-income units may increase annually based on the percentage increase in the regional median income limit for each housing region. In no event shall the maximum resale price established by the administrative agent be lower than the last recorded purchase price. Income limits for all units for which income limits are not already established through a federal program exempted from the Uniform Housing Affordability Controls pursuant to N.J.A.C. 5:80-26.1 shall be updated by the Borough annually within 30 days of the publication of determinations of median income by HUD as follows:

- a. Regional income limits shall be established for the Region 1 based on the median income by household size, which shall be established by a regional weighted average of the uncapped Section 8 income limits published by HUD. To compute this regional income limit, the HUD determination of median county income for a family of four is multiplied by the estimated households within the county according to the most recent decennial Census. The resulting product for each county within the housing region is summed. The sum is divided by the estimated total households from the most recent decennial Census in Region 1. This quotient represents the regional weighted average of median income for a household of four. The income limit for a moderate-income unit for a household of four shall be 80 percent 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 percent 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 percent of the regional weighted average median income for a family of four. These income limits shall be adjusted by household size based on multipliers used by HUD to adjust median income by household size. In no event shall the income limits be less than those for the previous year.
- b. The income limits calculated each year shall be the result of applying the percentages set forth in paragraph (a) above to HUD's determination of median income for the relevant fiscal year, and shall be utilized until the Borough updates the income limits after HUD has published revised determinations of median income for the next fiscal year.

- c. The Regional Asset Limit used in determining an applicant's eligibility for affordable housing pursuant to N.J.A.C. 5:80-26.16(b)3 shall be calculated by the Borough annually by taking the percentage increase of the income limits calculated pursuant to paragraph (a) above over the previous year's income limits, and applying the same percentage increase to the Regional Asset Limit from the prior year. In no event shall the Regional Asset Limit be less than that for the previous year.
10. 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.

**Section III. §2-12 “Occupancy Standards”.** §2-12.A shall be amended to read as follows:

- A. In referring certified households to specific restricted units, to the extent feasible, and without causing an undue delay in occupying the unit, the Administrative Agent shall strive to:
  - 1. Provide an occupant for each bedroom;
  - 2. Provide separate bedrooms for parents and children;
  - 3. Provide children of different sexes with separate bedrooms; and
  - 4. Prevent more than two persons from occupying a single bedroom.

**Section IV. § 2-14, Entitled “Control Periods for Restricted Ownership Units and Enforcement Mechanisms”.** §2-14.A and B shall be amended to read as follows:

- A. Control periods for restricted ownership units shall be in accordance with *N.J.A.C.* 5:80-26.5, and each restricted ownership unit shall remain subject to the controls on affordability for a period of at least 30 years, until the municipality takes action to release the controls on affordability.
- B. Rehabilitated owner-occupied housing units that are improved to code standards shall be subject to affordability controls for a period of 10 years.

**Section V. § 2-18, “Control Periods for Restricted Rental Units”.** §2-18. A shall be amended to read as follows:

- A. Control periods for restricted rental units shall be in accordance with *N.J.A.C.* 5:80-26.11, and each restricted rental unit shall remain subject to the controls on affordability for a period of at least 30 years, until the municipality takes action to release the controls on affordability.

**Section VI. Repealer.** All ordinances or Code provisions or parts thereof inconsistent with this Ordinance are hereby repealed to the extent of such inconsistency.

**Section VII. Severability.** If any section, subsection, paragraph, sentence or any other part of this ordinance is adjudged unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remainder of this ordinance.

**Section VIII. Effective Date.** This ordinance shall take effect upon its passage and publication, as required by law.

Adopted March 27, 2018