

BOROUGH OF WOODCLIFF LAKE
Bergen County, New Jersey

ORDINANCE 16-09

**“AN ORDINANCE AMENDING CHAPTER 380: ZONING BY ADDING ARTICLE XVII
ENTITLED “UNLAWFUL RESIDENTIAL UNITS”**

Hereto introduced on the 6th day of June, 2016 at 8:00 PM did pass on first reading and that said Ordinance be further considered for final passage at a meeting to be held on the 11th day of July, 2016 at 8:00 PM or as soon thereafter as the matter can be reached at the regular meeting place of the Borough Council, and that at such time and place all persons interested be given an opportunity to be heard concerning said Ordinance, and that the Borough Clerk is hereby authorized and directed to publish said Ordinance according to law with a notice of introduction and passage on first reading and of the time and place when and where said Ordinance be further considered.

WHEREAS, The Mayor and Council hereby determines that the use and occupancy of illegal residential apartments, as set forth above, are detrimental to the general health, safety and welfare of the Borough, and that such illegal occupancies generate the utilization of Borough services, including fire, police, sanitation, public works and general administration, and further generate the use of motor vehicles which take parking spaces and create traffic, while escaping real estate taxation. The Borough finds this to be an unfair and inequitable situation; and

WHEREAS, the Mayor and Council of the Borough of Woodcliff Lake finds it to be in the best interest of the Borough and its citizens to adopt an ordinance to prohibit such units and related provisions.

NOW, THEREFORE, BE IT ORDAINED, by the Mayor and Council of the Borough of Woodcliff Lake, County of Bergen, State of New Jersey, as follows:

Section 1: Chapter 380 entitled Zoning of the Borough of Woodcliff Lake is hereby amended and revised to add and create a new Article XVII entitled, “Unlawful Residential Units” and new sub article sections beginning at §380-116 to read as follows:

ARTICLE XIV: UNLAWFUL RESIDENTIAL UNITS

§ 380-16. Rental or payment for use prohibited.

- A. No person shall charge, demand, receive or accept any rent or other payment for the use or occupancy of any residential premises within the Borough of Woodcliff Lake which is used or occupied in violation of the Zoning Ordinance of the Borough of Woodcliff Lake. Each such charge, demand, receipt or acceptance of such rent or other payment in violation hereof shall constitute a separate offense.

- B. No person, specifically including but not limited to those persons commonly known as "real estate agents," "brokers" or "salespersons," shall assist, aid or facilitate in the rental, sale, use or occupancy of any residential premises within the Borough of Woodcliff Lake which is used or occupied or intended to be used or occupied in violation of the Zoning Ordinance of the Borough of Woodcliff Lake. For purposes of this article, the acts of listing for rental or sale, advertising or otherwise offering for rent, lease or sale any residential premises within the Borough of Woodcliff Lake which are used or occupied or intended to be used or occupied in violation of the Zoning Ordinance of the Borough of Woodcliff Lake shall be deemed to constitute a violation of this article. Any person who is to receive a commission, profit or other form of remuneration or emolument as a result of a rental, lease or sale of residential premises shall have a duty to make reasonable inquiry to determine whether or not the use or occupancy or intended use or occupancy is or will be in violation of the Zoning Ordinance of the Borough of Woodcliff Lake.

§ 380-17. Notification of occupants.

Within 10 days following receipt of a notice to abate an unlawful occupancy in violation of the Zoning Ordinance of the Borough of Woodcliff Lake or within 10 days following receipt of a summons for violation of this article or the Zoning Ordinance of the Borough of Woodcliff Lake or prior to the institution of dispossess proceedings to correct an illegal occupancy, whichever first occurs, the owner of residential premises within the Borough of Woodcliff Lake shall serve upon all of the unlawful occupants using or occupying said residential premises a copy of this article and shall post a copy of this article in a common area of the premises accessible to all the occupants thereof for inspection.

§ 380-18. Violations and penalties.

- A. Any person violating any provision of this article shall be subject to a fine of not less than \$500 nor more than \$2,000 or by imprisonment for a term not exceeding 90 days, or both, for each separate violation of same.
- B. In addition to requiring reimbursement from the owner-landlord of the structure for relocation assistance paid to a displaced tenant, and notwithstanding the provisions of Subsection A of this section, the Court may impose an additional fine for zoning or housing code violation for an illegal occupancy up to an amount equal to 6 times the monthly rental paid by the displaced person to be paid to the municipality by the owner-landlord of the structure pursuant to the provisions of N.J.S.A. 2A:18-61.1g(c). Notwithstanding the penalties

provided above, a second or subsequent violation for an illegal occupancy as provided in this subsection by any owner-landlord for a second or subsequent violation, the Court may impose a fine equal to the annual tuition costs of any resident of the illegally occupied unit attending a public school, which fine shall be recovered in a civil action by a summary proceeding in the name of the municipality pursuant to Penalty Enforcement Law of 1999, (N.J.S.A. 2A:58-10 et seq.). The Municipal Court and the Superior Court shall have jurisdiction of the proceedings for the enforcement of the penalty provided by this section. The tuition costs shall be determined in the manner prescribed for nonresident pupils pursuant to N.J.S.A. 18A:38-19, and the payment of the fines shall be remitted to the appropriate school district.

- C. In those instances where a violation of this section is based on the maintenance of residential dwelling units above the number of units permitted by the Zoning Ordinance on a particular parcel of land (e.g., the maintenance of a structure with two residential dwelling units in a zoning district where single family homes are permitted), the defendant who is the owner of a property shall be required to permanently remove the kitchen, bathroom, bedroom, point of entrance/egress or any other offending illegal structure, appliance or fixture. The Borough Construction Official or his designee shall inspect the premises to insure that said removal is accomplished within 30 days of the date of the entry of the judgment of conviction by the Municipal Court.

§ 380-19. Costs of moving to be borne by violator.

- A. Any tenant who receives a notice of eviction pursuant to the provisions of N.J.S.A. 2A:18-61.2 that results from zoning or code enforcement activity for an illegal occupancy shall be considered a displaced person and shall be entitled to relocation assistance in an amount equal to six times the monthly rental paid by the displaced person. The owner-landlord of the structure shall be liable for the payment of relocation assistance pursuant to this section.
- B. The Borough of Woodcliff Lake may pay relocation assistance to any displaced person who has not received the required payment from the owner-landlord of the structure at the time of eviction pursuant to Subsection A. All relocation assistance costs incurred by a municipality pursuant to this subsection shall be repaid by the owner-landlord of the structure to the municipality in the same manner as relocation costs are billed and collected under the provisions of N.J.S.A. 20:4-4.1 and N.J.S.A. 20:4-4.2.

§ 380-20. Finder's fee authorized.

The Mayor and Council are authorized to enact, by adopting an appropriate resolution, a program whereby any person providing information which leads to the discovery of, and elimination of, a violation of § 380-16 of this article be paid a finder's fee not to exceed \$500. If such a program is established by the Mayor and Council, by duly adopted resolution, the resolution shall establish the amount of the finder's fee, which shall not exceed the amount specified in this article, as well as the terms, conditions and provisions of how same is to be paid.

§ 380-21. Restitution to Borough.

The Mayor and Council hereby determines that the use and occupancy of illegal residential apartments, as set forth above, are detrimental to the general health, safety and welfare of the Borough, and that such illegal occupancies generate the utilization of Borough services, including fire, police, sanitation, public works and general administration, and further generate the use of motor vehicles which take parking spaces and create traffic, while escaping real estate taxation. The Borough finds this to be an unfair and inequitable situation. The Borough further determines that the harm and detriment to the Borough is difficult to measure and hereby determines that the most reasonable way to calculate the damage and detriment caused to the Borough by illegal occupancies is by calculating same as a percentage of the rental payment charged by the owner to the occupant on account of the illegal occupancy. The Borough determines that a percentage of 10% of the rent to be fair and reasonable as a measure of the damage and detriment caused to the Borough, and the Mayor and Council may authorize the Borough Attorney to recover from any person who charges, demands, receives or accepts rent or payment for such an illegal occupancy to make restitution to the Borough for the damage and detriment caused to the Borough during a period of illegal occupancy.

§ 380-22. Findings and declarations.

The Mayor and Council hereby finds and declares that there has been a proliferation of what are commonly known as "illegal apartments", meaning residential dwelling units which are occupied in violation of zoning laws. Most typically, these illegal apartments manifest themselves as a second residential unit in a building in a one-family zone, and a third residential unit in a building in a two-family zone. The Mayor and Council hereby further finds and declares that such illegal units have a deleterious effect on the quality of life of Borough residents, require the provision of Borough services, generate young people who attend Borough schools, increase the utilization of Borough programs and services, contribute to the costs of the Borough by increasing the generation of refuse (garbage) and sewer flow, contribute to overcrowding, generate traffic within the Borough, generate automobiles which contribute to parking shortages throughout the Borough and lead to the maintenance of dwelling units which

often fail to meet health, safety and building code standards. By their nature, such units generally escape taxation as their maintenance and existence is normally hidden and not used for tax assessment purposes. The use and maintenance of said illegal apartments is also unfair to the vast majority of Borough residents who abide by zoning laws.

§ 380-23. *Declarations of policy.*

The Borough of Woodcliff Lake hereby declares it to be the policy of the Borough to eliminate all illegal dwelling units within the Borough of Woodcliff Lake and prevent them from reoccurring.

Section 2: The terms of this ordinance shall not be deemed and are not intended to impair the provisions and enforcement of any other chapter of this Code, which shall remain in full force and effect.

Section 3: The provisions of this Ordinance are declared to be severable and if any section, subsection, sentence, clause or phrase thereof for any reason be held to be invalid or unconstitutional, such decision shall not effect the validity of the remaining sections, subsections, sentences, clauses and phrases of this Ordinance, but shall remain in effect; it being the legislative intent that this ordinance shall stand notwithstanding the invalidity of any part.

Section 4. All Ordinances or parts thereof in conflict or inconsistent with this Ordinance are hereby repealed, but only however, to the extent of such conflict or inconsistency, it being the legislative intent that all Ordinances or part of ordinances now existing or in effect unless the same being conflict or inconsistent with any provision of this Ordinance shall remain in effect.

Section 5: This ordinance shall take effect upon passage and publication according to law.

Introduced: June 6, 2016

Attest: **DEBORAH DAKIN**
BOROUGH CLERK