1. Agenda Packet 11-10-26

    Documents:

        AGENDA PACKET 11-10-26.PDF

Township of Berkeley Heights
Union County, New Jersey

Township Council Public Meeting
November 10, 2026
6:30 P.M.

Adequate notice of this meeting has been provided by forwarding a copy to the Courier News, Star Ledger and posting on the Township website, at least forty-eight hours prior to the meeting, all in accordance with the Open Public Meetings Act.

COUNCIL MEMBERS:
John Foster - President
Margaret Illis
Bill Machado
Alvaro Medeiros
Andrew Moran
Susan Poage – Vice President
Angie Devanney- Mayor

AGENDA FOR PUBLIC MEETING

I. CALL TO ORDER

II. ROLL CALL

III. FLAG SALUTE

IV. CONFERENCE SESSION

- Best Practices Inventory
- Proposed Ordinance – Amending the Sewer Connection Fee
- Proposed Ordinance – Rent Stabilization

V. REGULAR AGENDA

VI. APPROVAL OF MINUTES
Public Meetings: September 15, 2026 and October 6, 2026

VII. CITIZENS HEARING - (3) minutes per resident
Comments are welcome during the public comment period during this meeting on any matter over which the Township has jurisdiction. To make your comment, the speaker must come forward to the microphone and state his/her name and address for the record. Each speaker is limited to 3 minutes. The Mayor and/or Council President will keep time. Please promptly yield the floor when time is called and return to your seat. Your cooperation in adherence to these rules of order will ensure an orderly and respectful meeting.

VIII. NEW BUSINESS – RESOLUTIONS OFFICIAL ACTION WILL BE TAKEN ON THE FOLLOWING:

RESOLUTIONS

CONSENT AGENDA – All matters listed under Consent Agenda are considered routine by the Township Council and will be enacted upon by one motion; there will be no separate discussion of these items. If discussion is desired, that item will be removed from the Consent Agenda and will be considered separately.

Resolution No. 2026-

334. Resolution approving Bill List dated November 10, 2026, in the amount of $1,578,225.03.

335. Resolution authorizing budget transfers for the calendar year 2026.

336. Resolution authorizing the refund of tax overpayments.

337. Resolution amending Resolution 2026-194 which authorized a contract with National Water Main Cleaning for the repair of manholes & pipelines for the Township's Wastewater Treatment Plant pursuant to the BuyBoard National Purchasing Program, to amend the contract amount and the certification of funds.

338. Resolution amending Resolution 2026-323 which authorized a contract with SJC Lawncare, Inc., for Tree Planting, Watering and related services, to amend the contract to include the planting and watering of the additional 26 trees at a total cost not to exceed $11,960.00.

339. Resolution authorizing the submission of a Treatment Works Approval Application (TWA) to the NJDEP on behalf of OZ Custom Builders, LLC. for the project located at 725 Mountain Avenue – (Block 2006, Lot 32).

340. Resolution authorizing a contract with Downes Tree Service Co., Inc. for tree removal and related services as part of the Township's flood mitigation efforts, pursuant to Morris County Cooperative Pricing Contract #18, for an amount not to exceed $12,250.00.

341. Resolution authorizing a Right-of-Entry Agreement with the Board of Education for a temporary right of entry to construct ADA-compliant curb ramp and related sidewalk improvements as part of the "Walking is Fun" Snyder Avenue Safe Routes from Woodruff to Hughes Schools project.

342. Resolution moving Brandon Gyory to the inactive list of the Berkeley Heights Volunteer Fire Department.

343. Resolution moving Nicholas Papa to the inactive list of the Berkeley Heights Volunteer Fire Department.

344. Resolution authorizing the Township's participation in the use of the Union County Conservation Center for the Borough's leaf dumping and composting for the 2026-2027 program.

345. Resolution authorizing a change order for the contract with Dell-Tech Inc. for the Phase II-Exterior Restoration & Structural Stabilization Project.

346. Resolution awarding a contract to Sunset Creations, Inc. for Stream Cleaning Services for the amount not to exceed $169,000.00.

347. Resolution authorizing a contract with Heights Associates for the removal and disposal of a fallen tree at the Twin Falls Pump Station in an amount not to exceed $1,400.00.

348. Resolution authorizing the closure of Hamilton Avenue, west of Roosevelt Avenue on Saturday, November 21, 2026, from 7:00 a.m. to 4:00 p.m. to allow the Berkeley Heights Fire Department to test hoses.

349. Authorizing the sale of surplus personal property no longer needed for public use on an online auction website.

350. Resolution amending the adopted budget for additional item of revenue and offsetting appropriation for 2026 Kids Recreation Trust Fund Grant.

IX. ORDINANCES FOR INTRODUCTION

Public Hearing and Final Adoption scheduled for December 1, 2026.

Ordinance 2026-24

AN ORDINANCE AMENDING PART 18 (AFFORDABLE HOUSING) OF THE CODE OF THE TOWNSHIP OF BERKELEY HEIGHTS TO FURTHER CLARIFY THE COLLECTION PROCEDURES FOR DEVELOPMENT FEES

Ordinance 2026-25

AN ORDINANCE AMENDING THE TOWNSHIP CODE FOR THE TOWNSHIP OF BERKELEY HEIGHTS RELATED TO TREES AND THE FUNDING AND MANAGEMENT OF THE TREE TRUST

X. TOWNSHIP COUNCIL REPORTS

A. John Foster - President
B. Margaret Illis
C. Bill Machado
D. Alvaro Medeiros
E. Andrew Moran
F. Susan Poage – Vice President

ADMINISTRATION REPORTS
Mayor Devanney
Liza Viana

XI. EXECUTIVE SESSION

1. Contract Negotiations – Affordable Housing

XII. ADJOURNMENT

Angela Lazzari, Township Clerk

No. 2026-334

TOWNSHIP OF BERKELEY HEIGHTS
UNION COUNTY, NEW JERSEY

RESOLUTION

BE AND IT IS HEREBY RESOLVED by the Township Council of the Township of Berkeley Heights, County of Union, State of New Jersey, in meeting assembled, authorizes and directs the Township Treasurer to make payment of vouchers listed on the Bill List dated **11/10/2026**, in the amount of **$1,578,225.03** such vouchers having been received by the Township Council, having been satisfied that appropriate procedure has been followed in the processing of said vouchers.

Approved this 10th day of November, 2026.

ATTEST:

_____

Angela Lazzari, RMC
Township Clerk

ROLL CALL	Aye	Nay	Abstain	Absent
FOSTER				
ILLIS				
MACHADO				
MEDEIROS				
MORAN				
POAGE				
TIE:				
MAYOR DEVANNEY				

No. 2026- 335

TOWNSHIP OF BERKELEY HEIGHTS
UNION COUNTY, NEW JERSEY

RESOLUTION

A RESOLUTION AUTHORIZING BUDGET TRANSFERS FOR THE CALENDAR YEAR 2026

WHEREAS, N.J.S.A. 40A:4-58 provides that the Governing Body of a municipality may upon the concurrence of two/thirds of the full membership thereof in the last two months of the calendar year make transfers between appropriations in which funds are deemed to be in excess of the anticipated; and

NOW BE IT FURTHER RESOLVED, by the Township Council of the Township of Berkeley Heights in the County of Union, State of New Jersey, two thirds of the full membership thereof concurring that the following transfers be made in the CY 2026 appropriations for the Current Fund in accordance with N.J.S.A. 40A:4-58:

	From	To
Financial Administration O/E	10,940.00	
Tax Assessment O/E	20,000.00	
Buildings and Grounds O/E	25,500.00	
Streets and Roads S&W	50,000.00	
Sewer O/E	27,800.00	
Contingent	1,500.00	
Legal O/E		2,300.00
Fire Prevention S&W		20,600.00
Streets and Roads O/E		25,500.00
Snow Removal S&W		6,000.00
Buildings and Grounds S&W		4,000.00
Welfare O/E		1,000.00
Telephone		50,000.00
PERS		26,340.00
	135,740.00	**135,740.00**

Out of Cap

	From	To
LOSAP	6,515.00	
TAX APPEALS	32,684.00	
NJEIT LOAN - Principal & Interest		39,199.00
	39,199.00	**39,199.00**

Approved this 10th day of November, 2026.

ATTEST:

Angela Lazzari, RMC
Township Clerk

ROLL CALL	Aye	Nay	Abstain	Absent
FOSTER				
ILLIS				
MACHADO				
MEDEIROS				
MORAN				
POAGE				
TIE:				
MAYOR DEVANNEY				

No. 2026- 336

TOWNSHIP OF BERKELEY HEIGHTS
UNION COUNTY, NEW JERSEY

RESOLUTION

WHEREAS, there appears on the tax records overpayment as shown below and the Collector of Taxes recommends the refund of such overpayment.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the Township of Berkeley Heights, after proper notation on the tax account records by the Tax Collector, that the proper officers be and they are hereby authorized and directed to issue checks refunding such overpayment as shown below:

REASON:

1. Incorrect Payment
2. Duplicate Payment
3. Senior Citizen
4. Veteran Deduction
5. Homestead Rebate
6. Tax Appeal County Board
7. Tax Appeal State Tax Court
8. 100% Disabled Veteran
9. Replacement Check
10. Reduced Assessment
11. Other

Block/Lot	Property Address	Refund To	Refund Amount	Year	Reason
702/17.01	428 SPRINGFIELD AVENUE	COTALITY	$64,980.77	2026	1
2303/53	5 OECHSNER COURT	ANGELO BULONE	$4,307.11	2026	1

BE IT FURTHER RESOLVED, that a copy of this resolution be forwarded to the Tax Collector.

Approved this 10th day of November, 2026.

ATTEST:

_____

Angela Lazzari, RMC
Township Clerk

ROLL CALL	Aye	Nay	Abstain	Absent
FOSTER				
ILLIS				
MACHADO				
MEDEIROS				
MORAN				
POAGE				
TIE:				
MAYOR DEVANNEY				

No. 2026- 337

TOWNSHIP OF BERKELEY HEIGHTS
UNION COUNTY, NEW JERSEY

RESOLUTION

RESOLUTION AMENDING RESOLUTION 2026-194 WHICH AUTHORIZED A CONTRACT WITH NATIONAL WATER MAIN CLEANING FOR THE REPAIR OF MANHOLES & PIPELINES FOR THE TOWNSHIP'S WASTEWATER TREATMENT PLANT PURSUANT TO BUYBOARD NATIONAL PURCHASING PROGRAM

WHEREAS, on June 9, 2026, the Township of Berkeley Heights adopted Resolution 2026-194, authorizing a contract with National Water Main Cleaning for the rehabilitation/repair of manholes & pipelines, pursuant to BuyBoard National Purchasing Program, in an amount not to exceed $534,453.20; and

WHEREAS, Resolution 2026-194 contained errors in the contract award amount, which should have been $302,620.00, rather than $534,453.20, and in the accounts listed in the Certification of Funds; and

WHEREAS, the Township wishes to amend Resolution 2026-194 to correct the contract award amount and Certification of Funds.

NOW, THEREFORE, BE IT RESOLVED by the Township Council of the Township of Berkeley Heights, County of Union, State of New Jersey that:

1. All of the above recitals are incorporated herein as if fully set forth at length.
2. The Township Council hereby authorizes amending the contract with National Water Main Cleaning for the rehabilitation/repair of manholes & pipelines, pursuant to BuyBoard National Purchasing Program to reflect the corrected contract award amount, not to exceed **$302,620.00**.
3. The Certification of Funds is amended to reflect the Chief Finance Officer's certification that sufficient uncommitted funds are available as follows:

Account Number	Amount	Description
C-04-24-017-100	13,179.18	Ord 17-24 Wastewater Plant Improvements
C-04-25-019-E05	9,440.82	Ord 25-19 Sewer Manhole Improvements
C-04-26-007-C04	280,000.00	Ord 26-07 - Sewer - Pipes & manholes
TOTAL:	**$ 302,620.00**	

4. The Mayor and Township Clerk are hereby authorized to respectively execute and attest to all documents necessary to effectuate said agreement.
5. The Township Clerk shall publish a notice of this action pursuant to law.
6. This Resolution shall be ratified back to June 9, 2026.

Approved this 10th day of November, 2026.

ATTEST:

Angela Lazzari, RMC
Township Clerk

ROLL CALL	Aye	Nay	Abstain	Absent
FOSTER				
ILLIS				
MACHADO				
MEDEIROS				
MORAN				
POAGE				
TIE:				
MAYOR DEVANNEY				

No. 2026- 338

TOWNSHIP OF BERKELEY HEIGHTS
UNION COUNTY, NEW JERSEY

RESOLUTION

RESOLUTION AMENDING THE CONTRACT WITH SJC LAWNCARE, INC., FOR TREE PLANTING, WATERING AND RELATED SERVICES

WHEREAS, on October 6, 2026, the Township of Berkeley Heights adopted Resolution 2026-323, awarding a contract to SJC Lawncare, Inc., for Tree Planting, Watering and related services in an amount not to exceed $85,100.00 for 185 Plantings (ROW Planting) services and $20.00 per tree per watering for Watering services, for a total not to exceed $127,300.00; and

WHEREAS, the Township wishes to also include the planting and watering of the additional 26 trees consistent with the Competitive Contract Request for Proposals and response submitted by SJC Lawncare, Inc.; and

WHEREAS, the Township wishes to amend Resolution 2026-323 to reflect the planting of the additional 26 trees and an increase of $11,960.00 in the contract not to exceed amount, bringing the amended total amount not to exceed $139,260.00.

NOW THEREFORE BE IT RESOLVED by the Governing Body of the Township of Berkeley Heights, County of Union, State of New Jersey that:

1. All of the above recitals are incorporated herein as if fully set forth at length.
2. The Township Council hereby authorizes the amending of the contract with SJC Lawncare, Inc., for the provision of tree planting, watering and related services to include the planting and watering of the additional 26 trees at a total cost not to exceed **$11,960.00**.
3. The Township Clerk is authorized to respectively execute, and attest to, all documents necessary to effectuate said agreement.
4. The Township Clerk shall publish a notice of this action pursuant to law.
5. This Resolution shall be ratified back to October 6, 2026.

BE IT FURTHER RESOLVED, that the Chief Financial Officer for the Township of Berkeley Heights has certified that sufficient uncommitted funds will be available in an amount **not to exceed $11,960.00**, from account # **G-02-20-831-301, NJDEP RGGI Natural Climate Solutions.**

Approved this 10th day of November, 2026.

ATTEST:

Angela Lazzari, RMC
Township Clerk

ROLL CALL	Aye	Nay	Abstain	Absent
FOSTER				
ILLIS				
MACHADO				
MEDEIROS				
MORAN				
POAGE				
TIE:				
MAYOR DEVANNEY				

No. 2026- 339

TOWNSHIP OF BERKELEY HEIGHTS
UNION COUNTY, NEW JERSEY

RESOLUTION

WHEREAS, OZ Custom Builders, LLC. received approval for the construction of four (4) new detached single-family dwellings, and the construction of a new right-of-way ('Westminster Place'), located at 725 Mountain Avenue – (Block 2006, Lot 32); and

WHEREAS, the project includes the construction of a sanitary sewer main extension and therefore requires Treatment Works Approval (TWA) from the New Jersey Department of Environmental Protection (NJDEP); and

WHEREAS, Neglia Group has reviewed a Treatment Works Approval Application prepared by Murphy & Hollows Associates, LLC., on behalf of OZ Custom Builders, LLC.; and recommends the Township's consent to the same; and

NOW, THEREFORE, BE IT RESOLVED, that the Governing Body of the Township of Berkeley Heights, County of Union, State of New Jersey, consents to the submission of a Treatment Works Approval application to the NJDEP for the subject project and authorizes the Mayor and/or the Township Director of the Wastewater Treatment Plant to execute same, where applicable, per appropriate application section.

Approved this 10th day of November, 2026.

ATTEST:

_____

Angela Lazzari, RMC
Township Clerk

ROLL CALL	Aye	Nay	Abstain	Absent
FOSTER				
ILLIS				
MACHADO				
MEDEIROS				
MORAN				
POAGE				
TIE:				
MAYOR DEVANNEY				

No. 2026- 340

TOWNSHIP OF BERKELEY HEIGHTS
UNION COUNTY, NEW JERSEY

RESOLUTION

WHEREAS, the Local Public Contracts Law 40A: 11-4 requires that certain contracts awarded by the contracting agent for the provision or performance of any goods or services, the cost of which in the aggregate exceeds the bid threshold, shall be awarded only by resolution of the governing body; and

WHEREAS, the Morris County Cooperative Pricing Council have awarded contracts to various vendors as lowest responsible, responsive bidders for Regional Cooperative Pricing contracts; and

WHEREAS, the Township is in need of **tree trimming and related services as part of the Township's flood mitigation efforts**; and

WHEREAS, in furtherance of such purchase, the Qualified Purchasing Agent has authorized the procurement of tree removal and related services from an authorized vendor under the Morris County Cooperative Pricing System; and

WHEREAS, the Township of Berkeley Heights is a member of Morris County Cooperative Purchasing System; and

WHEREAS, Downes Tree Service Co., Inc., 65 Royal Avenue, Hawthorne, NJ 07506, has been awarded Contract #18 for District 1 as part of the Morris County Cooperative Pricing System for the provision of Tree Removal Services, for a period expiring December 31, 2027; and

WHEREAS, through this Resolution and properly executed documents, and pursuant to the Morris County Cooperative Pricing Contract #18, the Township wishes to enter into an agreement with Downes Tree Service Co., Inc. for the provision of tree removal and related services for the time period November 11, 2026 through December 31, 2027.

NOW, THEREFORE BE IT RESOLVED that the Township Council, of the Township of Berkeley Heights, County of Union, authorize a contract award to Downes Tree Service Co., Inc., for the provision of tree removal and related services, in an amount not to exceed **$12,250.00**.

BE IT FURTHER RESOLVED that the Purchasing Agent is hereby authorized to take whatever actions are necessary to implement the above-described purchase and installation and effectuate prompt payment to Downes Tree Service Co., Inc.

BE IT FURTHER RESOLVED that the Chief Finance Officer for the Township of Berkeley Heights has certified that sufficient uncommitted funds are available in an amount not to exceed **$12,250.00** from account **# C-04-26-007-A01, Ord 26-07 - DPW - Flood mitigation**.

Approved this 10th day of November, 2026.

ATTEST:

Angela Lazzari, RMC
Township Clerk

ROLL CALL	Aye	Nay	Abstain	Absent
FOSTER				
ILLIS				
MACHADO				
MEDEIROS				
MORAN				
POAGE				
TIE:				
MAYOR DEVANNEY				

No. 2026- 341

TOWNSHIP OF BERKELEY HEIGHTS
UNION COUNTY, NEW JERSEY

RESOLUTION

WHEREAS, the Berkeley Heights Board of Education owns the property commonly known as Thomas P. Hughes Elementary School, 446 Snyder Avenue, Berkeley Heights, New Jersey 07922, identified as Block 2201, Lot 15 on the Township tax map; and

WHEREAS, the Township is undertaking a grant-funded public improvement project known as the "Walking is Fun" Snyder Avenue Safe Routes from Woodruff to Hughes Schools project, funded under the 2022 Safe Routes to School Program; and

WHEREAS, the Project requires the construction of an ADA-compliant curb ramp (NJDOT Type 7) and related sidewalk improvements on or adjacent to a portion of the Property, as depicted on the project plans prepared by Neglia Engineering Associates; and

WHEREAS, the Board of Education is willing to grant the Township a temporary right of entry to construct the improvements, subject to the agreed upon terms and conditions.

NOW, THEREFORE, BE IT RESOLVED by the Governing Body of the Township of Berkeley Heights, County of Union, State of New Jersey that the Administrator and Clerk are hereby authorized to execute a Right of Entry Agreement with the Board of Education, in substantially the form attached hereto.

Approved this 10th day of November, 2026.

ATTEST:

_____

Angela Lazzari, RMC
Township Clerk

ROLL CALL	Aye	Nay	Abstain	Absent
FOSTER				
ILLIS				
MACHADO				
MEDEIROS				
MORAN				
POAGE				
TIE:				
MAYOR DEVANNEY				

RIGHT OF ENTRY AGREEMENT

This **Right of Entry Agreement** (the "Agreement") is made as of Oct. 29, 2026 by and between the Berkeley Heights Board of Education, with offices at 345 Plainfield Avenue, Berkeley Heights, New Jersey 07922 (the "Board"), and the Township of Berkeley Heights, with offices at 29 Park Avenue, Berkeley Heights, New Jersey 07922 (the "Township"). The Board and the Township are each a "Party" and together shall be referred to as the "Parties."

WHEREAS, the Board owns the property commonly known as Thomas P. Hughes Elementary School, 446 Snyder Avenue, Berkeley Heights, New Jersey 07922, identified as Block 2201, Lot 15 on the Township tax map (the "Property").

WHEREAS, the Township is undertaking a grant-funded public improvement project known as the "Walking is Fun" Snyder Avenue Safe Routes from Woodruff to Hughes Schools project, funded under the 2022 Safe Routes to School Program (the "Project").

WHEREAS, the Project requires the construction of an ADA-compliant curb ramp (NJDOT Type 7) and related sidewalk improvements on or adjacent to a portion of the Property, as depicted on the project plans prepared by Neglia Engineering Associates (the "Work Area").

WHEREAS, the Board is willing to grant the Township a temporary right of entry to construct the improvements, subject to the terms of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises below and other good and valuable consideration, the Parties agree as follows:

1. **Grant of Right of Entry**. The Board grants the Township, and its employees, contractors, subcontractors, and authorized representatives, a temporary, non-exclusive right to enter the Work Area for the sole purpose of performing the work described in Section 2.

2. **Scope of Work**. The work consists of the construction of an ADA-compliant curb ramp (NJDOT Type 7) and related sidewalk improvements, grading and restoration of disturbed areas, and any incidental work necessary to complete the Project in accordance with applicable engineering standards and the project plans.

3. **Term**. This Agreement takes effect on the date first written above and continues through completion of the work, anticipated during Fall 2026 or Spring 2027, subject to weather and construction conditions. It terminates automatically upon completion of the work and restoration of the Work Area.

4. **Restoration**. Upon completion of the work, the Township shall restore all disturbed areas outside the permanent public improvements to a condition substantially similar to that existing before the work.

5. **No Easement or Transfer**. This Agreement grants only a temporary right of entry. It does not transfer ownership, create a permanent easement, or convey any other interest in the Property.

6. **Insurance and Indemnification**. The Township shall require its contractor to maintain commercial general liability insurance covering the work, to name the Board as an additional insured, and to indemnify and hold the Board harmless from claims for bodily injury or property damage arising out of the contractor's performance of the work. As between the Parties, liability is otherwise governed by the New Jersey Tort Claims Act, N.J.S.A. 59:1-1, et seq.

7. **Coordination with School Operations**. The Township shall coordinate the scheduling of the work with the Board and shall use reasonable efforts to perform the work so as to minimize disruption to school operations and to maintain safe pedestrian access.

8. **Compliance with Law**. The Township shall perform, and shall require its contractor to perform, the work in compliance with all applicable federal, state, and local laws and regulations.

9. **Compensation; Voluntary Waiver.** The Parties acknowledge that the Board, as owner of the Property, may ordinarily be entitled to compensation for granting a temporary right of entry over the Work Area, including compensation for the temporary use of the Property and for any diminution in its value. The Board, having determined that the Project serves a public purpose benefiting the students and residents of Berkeley Heights, knowingly and voluntarily waives any right to compensation, consideration, damages, or other payment from the Township in connection with the grant of this right of entry, and grants the right of entry without charge. This waiver applies solely to the right of entry granted under this Agreement and does not waive any claim arising from damage to the Property or from the negligent or wrongful acts or omissions of the Township, its contractors, or their agents.

10. **Entire Agreement; Amendment**. This Agreement is the entire agreement between the Parties concerning its subject matter and may be amended only by a writing signed by both Parties. This Agreement is binding on the Parties and their successors.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

[SIGNATURES TO FOLLOW]

TOWNSHIP OF BERKELEY HEIGHTS

Attest: _____
Name: Angela Lazzari
Title: Township Clerk

Date: _____

By: _____
Name: Liza Viana
Title: Business Administrator

Date: _____

BERKELEY HEIGHTS BOARD OF EDUCATION

Attest: Jennifer Vichaska
Name:
Title: Board Secretary

Date: 10/29/26

By: Debra Jurseo
Name:
Title: Board President

Date: 10/29/26

No. 2026- 342

TOWNSHIP OF BERKELEY HEIGHTS
UNION COUNTY, NEW JERSEY

RESOLUTION

BE IT HEREBY RESOLVED by the Township Council of the Township of Berkeley Heights, Union County, New Jersey, that **Brandon Gyory** is hereby removed from the active duty roster and placed on the inactive list of the Berkeley Heights Volunteer Fire Department effective November 2, 2026.

BE IT FURTHER RESOLVED that a copy of this Resolution be forwarded to the Fire Chief.

Approved this 10th day of November, 2026.

ATTEST:

_____

Angela Lazzari, RMC
Township Clerk

ROLL CALL	Aye	Nay	Abstain	Absent
FOSTER				
ILLIS				
MACHADO				
MEDEIROS				
MORAN				
POAGE				
TIE:				
MAYOR DEVANNEY				

No. 2026- 343

TOWNSHIP OF BERKELEY HEIGHTS
UNION COUNTY, NEW JERSEY

RESOLUTION

BE IT HEREBY RESOLVED by the Township Council of the Township of Berkeley Heights, Union County, New Jersey, that **Nicholas Papa** is hereby removed from the active duty roster and placed on the inactive list of the Berkeley Heights Volunteer Fire Department effective November 2, 2026.

BE IT FURTHER RESOLVED that a copy of this Resolution be forwarded to the Fire Chief.

Approved this 10th day of November, 2026.

ATTEST:

_____

Angela Lazzari, RMC
Township Clerk

ROLL CALL	Aye	Nay	Abstain	Absent
FOSTER				
ILLIS				
MACHADO				
MEDEIROS				
MORAN				
POAGE				
TIE:				
MAYOR DEVANNEY				

No. 2026- 344

TOWNSHIP OF BERKELEY HEIGHTS
UNION COUNTY, NEW JERSEY

RESOLUTION

WHEREAS, the Union County Conservation Center provides leaf disposal and composting for participating municipalities; and

WHEREAS, the Union County Board of Commissioners has established the 2026 rates for leaf composting at the Conservation Center as follows; and

$6.00 per yard - Loose
$8.00 per yard – Compacted

WHEREAS, Vollers Excavating and Construction Inc and HVI Services LLC will oversee the Conservation Center for the purpose of composting leaves for participating municipalities; and

WHEREAS, the Township of Berkeley Heights wishes to continue its participation in the use of the Union County Conservation Center for the Borough's leaf dumping and composting for 2026-2027.

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and Council of the Township of Berkeley Heights in the County of Union, New Jersey, that the Mayor and Clerk are hereby authorized to execute a Memorandum of Understanding and Hold Harmless Agreement with the County of Union, HVI Services LLC and Vollers Excavating and Construction Inc, in substantially the form attached hereto, for its participation in the use of the Union County Conservation Center for the Borough's leaf dumping and composting for the 2026-2027 program.

BE IT FURTHER RESOLVED, that the Chief Financial Officer of the Township of Berkeley Heights has certified that sufficient uncommitted funds are available, in an amount not to exceed **$6,500.00**, in Account # **6-01-26-305-028 - SW COLL - Professional Services**.

Approved this 10th day of November, 2026.

ATTEST:

_____

Angela Lazzari, RMC
Township Clerk

ROLL CALL	Aye	Nay	Abstain	Absent
FOSTER				
ILLIS				
MACHADO				
MEDEIROS				
MORAN				
POAGE				
TIE:				
MAYOR DEVANNEY				

HVI SERVICES

Memorandum of Understating

Vollers Excavating and Construction Inc and HVI Services LLC will again oversee the Conservation Center for the purpose of composting leaves for participating municipalities. It is the intention of Vollers Excavating and Construction Inc and HVI Services LLC that this facility will be a continuing project for years to come.

1. The current rate as of 5/17/2025 established by the Union County Board of Commissioners is as follows:

$6 per yard – Loose
$8 per yard – Compacted

2. The Municipalities agree to deliver their leaves to the Conservation Center at their cost during operating hours. Current hours for acceptance of leaves are:

Monday- Friday (November 1st - March 15th 7:00am to 3:00pm
Saturdays available November 1st -March 15th (**Upon Request from Municipalities**)
No vehicles will be allowed on the premises after 3:00pm.

3. Municipalities may use biodegradable paper bags only; plastic bags will not be accepted.

4. Municipalities agree to use State and County roadways wherever possible for transporting leaves thus avoiding the use of Springfield Township's Municipal Roads.

5. Grass clippings, wood chips, brush and small tree parts will not be accepted due to space limitations. Foreign matter such as cans, paper, contaminated materials or any other debris will not be accepted. Trucks will be inspected upon arrival and upon dumping. If anything other than leaves is found in the load, we will turn trucks away or reload them to send material back.

6. Municipalities agree to follow directions and adhere to the regulations governing the operation of the Conservation Center.

7. Municipalities are required to sign the attached Hold Harmless Agreement.

PO Box 5335, North Branch, NJ 08876
T 908.704.2370 • **F** 908.704.2371 • www.hviservices.com

HVI SERVICES

Hold Harmless Agreement

The _____ (municipality) shall defend, indemnify, and hold harmless the County of Union, HVI Services LLC, Vollers Excavating and Construction Inc, its agents, servants and administrators from and against all claims or actions at law, whether for personal injury, property damage or liability, including any costs of defense incurred by the County of Union, HVI Services LLC, Vollers Excavating and Construction Inc, and any payments, recoveries and judgments against the County of Union, HVI Services LLC, Vollers Excavating and Construction Inc, which arise from any acts or omissions of the _____ (municipality), its agent's volunteers, representatives or employees arising out of or in any manner related to the work and/or duties to be performed under the attached Memorandum of Understanding.

Costs shall be deemed to include, but not limited to, reasonable attorney's fees, filing expenses, expert witness fees, reproduction costs, long-distance travel and phone expenses in connection with the defense and shall bear the prevailing interest rate, where applicable.

_____ (municipality) shall defend claims or suits arising from any acts or omissions of the _____ (municipality) its agents, volunteers, representatives or employees under the aforementioned project without expense to the County of Union, HVI Services LLC, Vollers Excavating and Construction Inc, it's agents, servants, or administrators.

Name:
Title:
X_____ Date:____/____/_____

Witness name:
Title:
X_____ Date:____/____/_____

PO Box 5335, North Branch, NJ 08876
T 908.704.2370 • **F** 908.704.2371 • www.hviservices.com

No. 2026- 345

TOWNSHIP OF BERKELEY HEIGHTS
UNION COUNTY, NEW JERSEY

RESOLUTION

AUTHORIZING A CHANGE ORDER FOR THE CONTRACT WITH DELL-TECH INC. FOR THE PHASE II-EXTERIOR RESTORATION & STRUCTURAL STABILIZATION PROJECT

WHEREAS, Resolution 2026-257 authorized The Township of Berkeley Heights ("Township") and Dell-Tech Inc. ("Contractor") to enter into a contract following a public advertisement for bids, for the Phase II-Exterior Restoration & Structural Stabilization project at the Littell-Lord Farmhouse for a total amount of $395,900.00; and

WHEREAS, on October 6, 2026, the Township adopted Resolution 2026-313, which approved additional painting at the north elevation, as described in Bulletin No. 1, in the amount of $8,808.29, bringing the amended contract amount to $404,708.29; and

WHEREAS, due to revealed or unforeseen conditions, Change Order No. 1 initiated October 7, 2026, incorporated the north elevation painting approved by Resolution 2026-313 as Item #3, along with four (4) additional work items and a credit for unused contract allowances, for a total change order amount of $26,175.85; and

WHEREAS, the Township Administrator has recommended approval of the remaining items in Change Order No. 1, consisting of Items #1, #2, #4, and #5, totaling $53,867.56, and the allowance credit in Item #6 of ($36,500.00), for a net increase of $17,367.56, a 4.29% increase over the amended contract amount, for a new contract total of $422,075.85.

NOW, THEREFORE, BE IT RESOLVED by the Township Council of the Township of Berkeley Heights, County of Union, that it hereby approves Items #1, #2, #4, #5, and #6 of Change Order No. 1, initiated October 7, 2026, for a net increase of **$17,367.56**, a 4.29% increase over the amended contract amount, for a new contract total of **$422,075.85**.

BE IT FURTHER RESOLVED, that the Chief Financial Officer of the Township of Berkeley Heights has certified that sufficient uncommitted funds are available, in an amount not to exceed **$17,367.56**, in Account # **G-02-20-175-127 - NJ Historical 2024**.

BE IT FURTHER RESOLVED, that this Resolution to take effect immediately.

Approved this 10th day of November, 2026.

ATTEST:

Angela Lazzari, RMC
Township Clerk

ROLL CALL	Aye	Nay	Abstain	Absent
FOSTER				
ILLIS				
MACHADO				
MEDEIROS				
MORAN				
POAGE				
TIE:				
MAYOR DEVANNEY				

CHANGE ORDER

PROJECT:	Phase II: Exterior Restoration Littell-Lord Farmhouse Berkeley Heights, New Jersey 07922	**CHANGE ORDER No:**	ONE
		INITIATION DATE:	7 Oct. 2026
OWNER:	Township of Berkeley Heights 29 Park Avenue Berkeley Heights, NJ 07922	**PROJECT No.**	2517C
CONTRACTOR:	Ziggy Rabiega Dell-Tech Inc. 930 New York Ave. Trenton, NJ 08638		

THIS CHANGE ORDER IS FOR THE FOLLOWING:

Due to revealed or unforeseen conditions, the Owner has indicated that the following work is necessary and shall be added to the scope of work.

1. **East Elevation – Additional Painting:** Lightly surface prepare (scrape), prime bare spots, and apply one finish coat to existing wood siding and trim at the main core of the east elevation, as described in Bulletin No. 1. — COST : $ 5,784.48
2. **West Elevation – Additional Painting:** Lightly surface prepare (scrape), prime bare spots, and apply one finish coat to existing wood siding and trim at the second-floor main core of the west elevation, above the period kitchen asphalt shingle roof, as described in Bulletin No. 1. — COST : $ 2,892.24
3. **North Elevation – Additional Painting:** Lightly surface prepare (scrape), prime bare spots, and apply one finish coat to existing wood siding and trim at the entire north (rear) elevation, as described in Bulletin No. 1. — COST : $ 8,808.29
4. **Additional Structural Framing Repairs:** Provide labor and materials for additional structural framing repairs at the west and south elevations required to address concealed deteriorated/deficient framing conditions discovered following removal of the existing siding and determined to be beyond the original Contract scope. — COST : $ 39,076.70
5. **South Elevation – Additional Siding Replacement:** Provide labor and materials for additional replacement of deteriorated wood siding at the south elevation beyond the quantity/scope included in the original Contract Work. — COST : $ 6,114.14
6. Allowances in contract. — CREDIT : ($ 36,500.00)

CHANGE ORDER

PROJECT: Phase II: Exterior Restoration
Littell-Lord Farmhouse
Berkeley Heights, New Jersey
07922

CHANGE ORDER No: ONE

INITIATION DATE: 7 Oct. 2026

TOTAL THIS CHANGE ORDER	**COST : $ 26,175.85**
The original Contract Sum was	$395,900.00
Net change by previous Change Orders	$ 0.00
The Contract Sum prior to this Change Order was	$395,900.00
The Contract Sum will be increased by this Change Order by	$ 26,175.85
The new Contract Sum including this Change Order will now be	$ 422,075.85

The Additional Contract Time required to complete this Work will be **0** calendar days

AUTHORIZATIONS:

Signature — Oct. 30, 2026 *Date*

ARCHITECT:
Thomas B. Connolly, AIA, Project Architect
Connolly & Hickey Historical Architects
PO Box 1726
Cranford, NJ 07016

Signature — 10/30/26 *Date*

CONTRACTOR:
Ziggy Rabiega, President
Dell-Tech, Inc.
930A New York Avenue
Trenton, NJ 08638

Signature — *Date*

OWNER REPRESENTATIVE:
Liza Viana
Business Administrator
Township of Berkeley Heights
29 Park Avenue
Berkeley Heights, NJ 07922

No. 2026- 346

TOWNSHIP OF BERKELEY HEIGHTS
UNION COUNTY, NEW JERSEY

RESOLUTION

WHEREAS, after the proper advertisement of same, pursuant to the Local Public Contracts Laws, N.J.S.A. 40A:11-1 et seq., the Township of Berkeley Heights received sealed bids on October 9, 2026, for the **Stream Cleaning Services** project; and

WHEREAS, the Director of the Township Department of Public Works has recommended that the lowest responsible bid be awarded to **Sunset Creations, Inc.,** 355 Route 601, Belle Mead, NJ 08502; and

WHEREAS, the Township Council has determined that it is in the best interest to accept the bid proposal and execute a contract for the **Stream Cleaning Services** project, with the lowest responsible bidder, **Sunset Creations, Inc.,** in an amount not to exceed **$169,000.00** for Base Bid; and

WHEREAS, the public advertisement, the receipt of public bids and the award of the contract to the lowest responsible bidder, pursuant to the Local Public Contracts Law, N.J.S.A. 40A:11-1, et seq., for the **Stream Cleaning Services** project, constitutes a Fair and Open Process pursuant to the Local Pay to Play Law, N.J.S.A. 19:44A:20.5, et seq.

NOW, THEREFORE, BE IT RESOLVED by the Township of Berkeley Heights, County of Union, New Jersey, that:

1. The appropriate municipal officials are hereby authorized to accept the bid submitted and execute a contract with the lowest responsible bidder, **Sunset Creations, Inc.**, for the **Stream Cleaning Services** project in the amount not to exceed **$169,000.00** for Base Bid.
2. The Township Clerk shall advertise the award of this contract in accordance with law.
3. The Chief Finance Officer for the Township of Berkeley Heights has certified that sufficient uncommitted funds are available in an amount not to exceed **$169,000.00**, from account # **C-04-26-007-A01, Ord 2026-07 – DPW – Flood Mitigation.**
4. This resolution shall take effect upon publication and pursuant to law.

Approved this 10th day of November, 2026.

ATTEST:

Angela Lazzari, RMC
Township Clerk

ROLL CALL	Aye	Nay	Abstain	Absent
FOSTER				
ILLIS				
MACHADO				
MEDEIROS				
MORAN				
POAGE				
TIE:				
MAYOR DEVANNEY				

No. 2026- 347

TOWNSHIP OF BERKELEY HEIGHTS
UNION COUNTY, NEW JERSEY

RESOLUTION

RESOLUTION AUTHORIZING THE AWARD OF A GOODS AND SERVICES CONTRACT TO HEIGHTS ASSOCIATES FOR THE REMOVAL AND DISPOSAL OF A FALLEN TREE AT THE TWIN FALLS PUMP STATION

WHEREAS, a spruce tree has fallen at the Twin Falls Pump Station, which is owned and operated by the Township of Berkeley Heights ("Township") as part of its Wastewater Treatment Plant; and

WHEREAS, the fallen tree poses a hazard to the pump station, and any delay in its removal could damage pump station equipment and disrupt the operation of the Township's sewer plant, creating a risk to public health and safety; and

WHEREAS, the Township's current tree services contractor is unable to perform the removal for several weeks, and the Township cannot wait that long without risking damage to the pump station and disruption to the sewer system; and

WHEREAS, the Township obtained a quote from **Heights Associates**, P.O. Box 530, Berkeley Heights, NJ 07922, dated October 31, 2026 (No. 3179), for the removal and disposal of the fallen spruce tree at the Twin Falls Pump Station, in the total amount of $1,400.00, including disposal.

NOW THEREFORE, BE IT RESOLVED, that the Governing Body of the Township of Berkeley Heights authorizes the execution of a contract with **Heights Associates**, for the removal and disposal of the fallen spruce tree at the Twin Falls Pump Station, pursuant to their quote, in an amount not to exceed **$1,400.00**.

BE IT FURTHER RESOLVED, that the Chief Finance Officer of the Township of Berkeley Heights has certified that sufficient uncommitted funds are available in an amount not to exceed **$1,400.00** from account **#6-01-22-295-028, SEWER - Professional Services**.

Approved this 10th day of November, 2026.

ATTEST:

_____

Angela Lazzari, RMC
Township Clerk

ROLL CALL	Aye	Nay	Abstain	Absent
FOSTER				
ILLIS				
MACHADO				
MEDEIROS				
MORAN				
POAGE				
TIE:				
MAYOR DEVANNEY				

No. 2026- 348

TOWNSHIP OF BERKELEY HEIGHTS
UNION COUNTY, NEW JERSEY

RESOLUTION

WHEREAS, on October 20, 2026, the Township Council adopted Resolution 2026-326, which authorized the closure of Hamilton Avenue, west of Roosevelt Avenue, on October 27, 2026, from 7:00 a.m. to 3:00 p.m. to allow the Berkeley Heights Fire Department to test hoses; and

WHEREAS, the testing scheduled for October 27, 2026 had to be cancelled by the vendor due to a mechanical issue; and

WHEREAS, the Berkeley Heights Fire Department would like to reschedule the testing and has requested permission to close Hamilton Avenue, west of Roosevelt Avenue, on Saturday, November 21, 2026, from 7:00 a.m. to 4:00 p.m. to allow for hose testing; and

WHEREAS, the Township Council wishes to authorize this closure because it is in the best interest of the community.

NOW, THEREFORE, BE IT RESOLVED, that the Township Council of the Township of Berkeley Heights, County of Union, State of New Jersey authorizes the closure of Hamilton Avenue, west of Roosevelt Avenue, on Saturday, November 21, 2026, from 7:00 a.m. to 4:00 p.m. to allow the Berkeley Heights Fire Department to test hoses.

BE IT FURTHER RESOLVED, that this resolution is subject to the Fire Department complying with all conditions imposed by the Township Police Department and Rescue Squad.

BE IT FURTHER RESOLVED, that copies of this resolution are to be forwarded to the Police Department, Fire Department, and Rescue Squad.

Approved this 10th day of November, 2026.

ATTEST:

_____

Angela Lazzari, RMC
Township Clerk

ROLL CALL	Aye	Nay	Abstain	Absent
FOSTER				
ILLIS				
MACHADO				
MEDEIROS				
MORAN				
POAGE				
TIE:				
MAYOR DEVANNEY				

No. 2026- 349

TOWNSHIP OF BERKELEY HEIGHTS
UNION COUNTY, NEW JERSEY

RESOLUTION

AUTHORIZING THE SALE OF SURPLUS PERSONAL PROPERTY NO LONGER NEEDED FOR PUBLIC USE ON AN ONLINE AUCTION WEBSITE

WHEREAS, the Township of Berkeley Heights has determined that the property described on Schedule A attached hereto and incorporated herein is no longer needed for public use; and

WHEREAS, the Local Unit Technology Pilot Program and Study Act (P.L. 2001, c. 30) authorizes the sale of surplus personal property no longer needed for public use through the use of an online auction service; and

WHEREAS, the Township intends to utilize the online auction services of Municibid located at www.municibid.com; and

WHEREAS, Township Council finds it to be in the best interests of the Borough to authorize the sale of the surplus property identified on Schedule A by online public auction.

NOW, THEREFORE, BE IT RESOLVED that the Township Council of the Township of Berkeley Heights, County of Union, State of New Jersey, that the Township is hereby authorized to sell the surplus personal property as indicated on Schedule A on the State-approved online auction website of Municibid (www.municibidcom).

BE IT FURTHER RESOLVED that the terms and conditions of the agreement entered into between Municibid and the Township of Berkeley Heights are available at www.municibid.com and in the Township Clerk's office.

BE IT FURTHER RESOLVED that a certified copy of the within Resolution be forwarded by the Township Clerk to the New Jersey Division of Local Government Services and Municibid.

BE IT FURTHER RESOLVED that this Resolution shall take effect pursuant to law.

Approved this 10th day of November, 2026.

ATTEST:

_____

Angela Lazzari, RMC
Township Clerk

ROLL CALL	Aye	Nay	Abstain	Absent
FOSTER				
ILLIS				
MACHADO				
MEDEIROS				
MORAN				
POAGE				
TIE:				
MAYOR DEVANNEY				

SCHEDULE A

1. 14-feet by 8-feet Gray enclosed V trailer
2. 8-feet by 40-foot sea box container
3. Henderson 5-yard salt spreader
4. Hurricane ride on blower
5. 36-inch by 33-inch by 23-inch electronic equipment storage unit
6. Gasoline powered cement mixer

No. 2026- 350

TOWNSHIP OF BERKELEY HEIGHTS
UNION COUNTY, NEW JERSEY

RESOLUTION

A RESOLUTION AMENDING THE ADOPTED BUDGET FOR ADDITIONAL ITEM OF REVENUE AND OFFSETTING APPROPRIATION FOR 2026 KIDS RECREATION TRUST FUND GRANT

WHEREAS, N.J.S.A. 40A:4-87 provides that the Director of the Division of Local Government Services may approve the insertion of any special item of revenue in the budget of any Municipality when such item shall have been made available by law and the amount thereof was not determined at the time of the adoption of the budget; and

WHEREAS, said Director may also approve the insertion of any item of appropriation for equal amount.

NOW, THEREFORE, BE IT RESOLVED, by the Township Council of the Township of Berkeley Heights, County of Union, State of New Jersey, that the Township of Berkeley Heights hereby requests the Director of the Division of Local Government Services to approve the insertion of items of revenue in the budget for the year 2026 in the sum $40,000.00 of which items are now available as a revenue from:

Miscellaneous Revenues:

Special Items of General Revenue Anticipated with Prior Written Consent of the Director of the Division of Local Government Services: State and Federal Revenues Off-set with Appropriations:

2026 Kids Recreation Trust Fund Grant

BE IT FURTHER RESOLVED, that a like sum of $40,000.00 is hereby appropriated under the caption of:

General Appropriations:

(a) Operations Excluded from CAPS
State and Federal Programs Off-Set by Revenues

2026 Kids Recreation Trust Fund Grant

BE IT FURTHER RESOLVED, that the Chief Financial Officer shall file an electronic copy of this resolution with the Division of Local Government Services for approval.

Approved this 10th day of November, 2026.

ATTEST:

_____

Angela Lazzari, RMC
Township Clerk

ROLL CALL	Aye	Nay	Abstain	Absent
FOSTER				
ILLIS				
MACHADO				
MEDEIROS				
MORAN				
POAGE				
TIE:				
MAYOR DEVANNEY				

TOWNSHIP OF BERKELEY HEIGHTS
UNION COUNTY, NEW JERSEY

ORDINANCE NO. 2026-24

Affordable Housing Ordinance

AN ORDINANCE AMENDING PART 18 (AFFORDABLE HOUSING) OF THE CODE OF THE TOWNSHIP OF BERKELEY HEIGHTS TO FURTHER CLARIFY THE COLLECTION PROCEDURES FOR DEVELOPMENT FEES

WHEREAS, the Township of Berkeley Heights filed a resolution of participation with the Affordable Housing Dispute Resolution Program (the "Program") and a declaratory judgment action pursuant to N.J.S.A. 52:27D-301 et. seq. (the "Fair Housing Act"), entitled "In the Matter of the Application of the Township of Berkeley Heights," Docket No. UNN-L-340-25 on January 23, 2025 ("Fourth Round DJ Action"); and

WHEREAS, as part of the Fouth Round DJ Action, the Township of Berkeley Heights and Fair Share Housing Center entered into a conditional Fourth Round Consent Order Compliance Certification on December 8, 2025 ("Consent Order"), which was followed by a final Fourth Round Compliance Certification entered by the Court on April 1, 2026, and

WHEREAS, as per a requirement set fourth in the Consent Order, and in furtherance of the Township's Fourth Round Housing Element and Fair Share Plan, which was adopted by the Township of Berkeley Heights Planning Board on June 25, 2025 and endorsed by the Township Council by Resolution No. 2025-198 on June 26, 2025, the Township Council adopted Part 18 (Affordable Housing) of the Code of the Township of Berkeley Heights, which includes, at Section W, provisions governing the imposition, collection, and expenditure of residential and non-residential development fees; and

WHEREAS, Section W.5.h of Part 18 presently provides that fifty percent (50%) of the development fee shall be collected at the time of issuance of the construction permit, and that the remaining portion shall be collected at the time of issuance of the certificate of occupancy; and

WHEREAS, the Township Council desires to amend Section W.5.h to clarify that the initial fifty percent (50%) of the development fee is due upon issuance of the first construction permit for the development, and that the remaining balance of the fee, including any difference between the fee calculated at the time of the first construction permit and the fee as finally determined, is due upon issuance of the temporary certificate of occupancy or certificate of occupancy, whichever is issued first; and

WHEREAS, the Township Council finds that this amendment will promote the timely and consistent collection of development fees for deposit into the Municipal Affordable Housing Trust Fund before any portion of a development is occupied, consistent with the Fair Housing Act, N.J.S.A. 52:27D-301 et seq., as amended by P.L. 2024, c. 2, N.J.A.C. 5:99, and the Statewide Non-Residential Development Fee Act, N.J.S.A. 40:55D-8.1 through 8.7, and is in the best interests of the Township and its residents;

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Council of the Township of Berkeley Heights as follows:

TOWNSHIP OF BERKELEY HEIGHTS
UNION COUNTY, NEW JERSEY

SECTION 1. Part 18 (Affordable Housing) of the Code of the Township of Berkeley Heights is hereby amended as follows: [New language **bold and underlined**; deletions ~~stricken through~~.]

PART 18 AFFORDABLE HOUSING

A. Introduction & Applicability

1. This section of the Code sets forth regulations regarding the very low-, low- and moderate-income housing units in the Township of Berkeley Heights consistent with the provisions outlined in P.L 2024, Chapter 2, including the amended Fair Housing Act ("FHA") at N.J.S.A. 52:27D-301 et seq., as well as the Department of Community Affairs, Division of Local Planning Services ("LPS") at N.J.A.C. 5:99 et seq., statutorily upheld existing regulations of the now-defunct Council on Affordable Housing ("COAH") at N.J.A.C. 5:93 and 5:97, the Uniform Housing Affordability Controls ("UHAC") at N.J.A.C. 5:80-26.1 et seq., and as reflected in the adopted municipal Fourth Round Housing Element and Fair Share Plan ("HEFSP").
2. This Ordinance is intended to ensure 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 pursuant to statutory requirements. This Ordinance shall apply to all inclusionary developments, individual affordable units, and 100% affordable housing developments except where inconsistent with applicable law. Low-Income Housing Tax Credit financed developments shall adhere to the provisions set forth below in item 5.c. below.
3. The Planning Board of the Township of Berkeley Heights has adopted a HEFSP pursuant to the Municipal Land Use Law at N.J.S.A. 40:55D-1, et seq. The Fair Share Plan describes the ways the municipality shall address its fair share of very low-, low- and moderate-income housing as approved by the Superior Court and documented in the Housing Element.
4. This Ordinance implements and incorporates the relevant provisions of the HEFSP and addresses the requirements of P.L 2024, Chapter 2, the FHA, N.J.A.C. 5:99, NJ Supreme Court upheld COAH regulations at N.J.A.C. 5:93 and 5:97, and UHAC at N.J.A.C. 5:80-26.1, as may be amended and supplemented.
5. Applicability
   a. The provisions of this Ordinance shall apply to all affordable housing developments and affordable housing units that currently exist and that are proposed to be created pursuant to the municipality's most recently adopted HEFSP.
   b. This Ordinance shall apply to all developments that contain very low-, low- and moderate-income housing units included in the Municipal HEFSP, including any unanticipated future developments that will provide very low-, low- and moderate-income housing units.
   c. Projects receiving federal Low Income Housing Tax Credit financing and are proposed for credit shall comply with the low/moderate split and bedroom distribution requirements, maximum initial rents and sales prices requirements, affirmative fair marketing requirements of UHAC at N.J.A.C. 5:80-26.16 and the length of the affordability controls applicable to such projects shall be not less than a 30-year

compliance period plus a 15-year extended-use period, for a total of not less than 45 years.

B. Definitions

As used herein the following terms shall have the following meanings:

"Accessory apartments" means a residential dwelling unit that provides complete independent living facilities with a private entrance for one or more persons, consisting of provisions for living, sleeping, eating, sanitation, and cooking, including a stove and refrigerator, and is located within a proposed preexisting primary dwelling, within an existing or proposed structure that is an accessory to a dwelling on the same lot, constructed in whole or part as an extension to a proposed or existing primary dwelling, or constructed as a separate detached structure on the same lot as the existing or proposed primary dwelling. Accessory apartments are also referred to as "accessory dwelling units".

"Act" means the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301 et seq.

"Adaptable" means constructed in compliance with the technical design standards of the barrier free subcode adopted by the Commissioner of Community Affairs pursuant to the "State Uniform Construction Code Act," P.L.1975, c. 217 (C.52:27D-119 et seq.) and in accordance with the provisions of section 5 of P.L.2005, c. 350 (C.52:27D-123.15).

"Administrative agent" means the entity approved by the Division responsible for the administration of affordable units, in accordance with N.J.A.C. 5:99-7, and UHAC at N.J.A.C. 5:80-26.15.

"Affirmative marketing" means a regional marketing strategy designed to attract buyers and/or renters of affordable units pursuant to N.J.A.C. 5:80-26.16.

"Affirmative Marketing Plan" means the municipally adopted plan of strategies from which the administrative agent will choose to implement as part of the Affirmative Marketing requirements.

"Affirmative Marketing Process" or "Program" means the actual undertaking of Affirmative Marketing activities in furtherance of each project with very low- low- and moderate-income units.

"Affordability assistance" means the use of funds to render housing units more affordable to low- and moderate-income households and includes, but is not limited to, down payment assistance, security deposit assistance, low interest loans, rental assistance, assistance with homeowner's association or condominium fees and special assessments, common maintenance expenses, and assistance with emergency repairs and rehabilitation to bring deed-restricted units up to code, pursuant to N.J.A.C. 5:99-2.5.

"Affordability average" means an average of the percentage of regional median income at which restricted units in an affordable development are affordable to low- and moderate-income households.

"Affordable" means, in the case of an ownership unit, that the sales price for the unit conforms to the standards set forth at N.J.A.C. 5:80-26.7 and, in the case of a rental unit, that the rent for the unit conforms to the standards set forth at N.J.A.C. 5:80-26.13.

"Affordable housing development" means a development included in a municipality's housing element and fair share plan, and includes, but is not limited to, an inclusionary

development, a municipally sponsored affordable housing project, or a 100 percent affordable development. This includes developments with affordable units on-site, off-site, or provided as a payment in-lieu of construction only if such a payment-in-lieu option has been previously approved by the Program or Superior Court as part of the HEFSP. Payments in lieu of construction were invalidated per P.L. 2024, c.2.

"Affordable Housing Dispute Resolution Program" or "the Program" refers to the dispute resolution program established pursuant to N.J.S.A. 52:27D-313.2.

"Affordable Housing Monitoring System" or "AHMS" means the Department's cloud-based software application, which shall be the central repository for municipalities to use for reporting detailed information regarding affordable housing developments, affordable housing unit completions, and the collection and expenditures of funds deposited into the municipal affordable housing trust fund.

"Affordable unit" means a housing unit proposed or developed pursuant to the Act, including units created with municipal affordable housing trust funds.

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

"Agency" means the New Jersey Housing and Mortgage Finance Agency established by P.L.1983, c. 530 (C.55:14K-1 et seq.).

"Assisted living residence" means a facility licensed by the New Jersey Department of Health to provide apartment-style housing and congregate dining and to ensure that assisted living services are available when needed for four or more adult persons unrelated to the proprietor. Apartment units must offer, at a minimum, one unfurnished room, a private bathroom, a kitchenette, and a lockable door on the unit entrance.

"Barrier-free escrow" means the holding of funds collected to adapt affordable unit entrances to be accessible in accordance with N.J.S.A. 52:27D-311a et seq. Such funds shall be held in a municipal affordable housing trust fund pursuant to N.J.A.C. 5:99-2.6.

"Builder's remedy" means court-imposed site-specific relief for a litigant who seeks to build affordable housing for which the court requires a municipality to utilize zoning techniques, such as mandatory set-asides or density bonuses, including techniques which provide for the economic viability of a residential development by including housing that is not for low- and moderate-income households.

"Certified household" means a household that has been certified by an administrative agent as a very-low-income household, a low-income household, or a moderate-income household.

"CHOICE" means the no-longer-active Choices in Homeownership Incentives for Everyone Program, as it was authorized by the Agency.

"COAH" or the "Council" means the Council on Affordable Housing established in, but not of, DCA pursuant to the Act and that was abolished effective March 20, 2024, pursuant to section 3 at P.L. 2024, c. 2 (N.J.S.A. 52:27D-304.1).

"Commissioner" means the Commissioner of the Department of Community Affairs.

"Compliance certification" means the certification obtained by a municipality pursuant to section 3 of P.L.2024, c. 2 (C.52:27D-304.1), that protects the municipality from exclusionary zoning litigation during the current round of present and prospective need and through July 1 of the year the next round begins, which is also known as a "judgment of compliance" or "judgment of repose." The term "compliance certification" shall include a judgment of repose granted in an action filed pursuant to section 13 of P.L.1985, c. 222 (C.52:27D-313).

"Construction" means new construction and additions, but does not include alterations, reconstruction, renovations, conversion, relocation, or repairs, as those terms are defined in the State Uniform Construction Code promulgated pursuant to the State Uniform Construction Code Act, P.L. 1975, c. 217(N.J.S.A. 52:27D-119 et seq.).

"County-level housing judge" means a judge appointed pursuant to section 5 at P.L. 2024, c. 2, to resolve disputes over the compliance of municipal fair share affordable housing obligations and municipal Fair Share plans and housing elements with the Act.

"DCA" and "Department" mean the State of New Jersey Department of Community Affairs.

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

"Department" means the New Jersey Department of Community Affairs.

"Developer" means the legal or beneficial owner or owners of a lot or of any land proposed to be included in a proposed development, including the holder of an option or contract to purchase, or other person having an enforceable proprietary interest in such land.

"Development" means the division of a parcel of land into two or more parcels, the construction, reconstruction, conversion, structural alteration, relocation, or enlargement 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 the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq.

"Development fee" means money paid by a developer for the improvement of residential and non-residential property as permitted pursuant to N.J.S.A. 52:27D-329.2 and 40:55D-8.1 through 40:55D-8.7 and N.J.A.C. 5:99-3.

"Dispute Resolution Program" means the Affordable Housing Dispute Resolution Program, established pursuant to section 5 at P.L. 2024, c. 2 (N.J.S.A. 52:27D-313.2).

"Division" means the Division of Local Planning Services within the Department of Community Affairs.

"Emergent opportunity" means a circumstance that has arisen whereby affordable housing will be able to be produced through a delivery mechanism not originally contemplated by or included in a fair share plan that has been the subject of a compliance certification.

"Equalized assessed value" or "EAV" means the assessed value of a property divided by the current average ratio of assessed to true value for the municipality in which the property is situated, as determined in accordance with sections 1, 5, and 6 at P.L. 1973, c. 123 (N.J.S.A. 54:1-35a, 54:1-35b,and 54:1-35c). Estimates at the time of building permit may be obtained

by the tax assessor using construction cost estimates. Final EAV shall be determined at project completion by the municipal assessor.

"Equity share amount" means the product of the price differential and the equity share, with the equity share being the whole number of years that have elapsed since the last non-exempt sale of a restricted ownership unit, divided by 100, except that the equity share may not be less than five percent and may not exceed 30 percent.

"Exit sale" means the first authorized non-exempt sale of a restricted unit following the end of the control period, which sale terminates the affordability controls on the unit.

"Exclusionary zoning litigation" means litigation challenging the fair share plan, housing element, ordinances, or resolutions that implement the fair share plan or housing element of a municipality based on alleged noncompliance with the Act or the Mount Laurel doctrine, which litigation shall include, but shall not be limited to, litigation seeking a builder's remedy.

"Extension of expiring controls" means extending the deed restriction period on units where the controls will expire in the current round of a housing obligation, so that the total years of a deed restriction is at least 60 years.

"Fair share obligation" means the total of the present need and prospective need, including prior rounds, as determined by the Affordable Housing Dispute Resolution Program, or a court of competent jurisdiction.

"Fair share plan" means the plan or proposal, with accompanying ordinances and resolutions, by which a municipality proposes to satisfy its constitutional obligation to create a realistic opportunity to meet its fair share of low- and moderate-income housing needs of its region and which details the affirmative measures the municipality proposes to undertake to achieve its fair share of low- and moderate-income housing, as provided in the municipal housing element, and which addresses the development regulations necessary to implement the housing element, including, but not limited to, inclusionary requirements and development fees, and the elimination of unnecessary housing cost-generating features from the municipal land use ordinances and regulations.

“FHA” means the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301 et seq.

“Green Building Strategies” means the 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.

"HMFA" or "the Agency" means the New Jersey Housing and Mortgage Finance Agency established pursuant to P.L. 1983, c. 530 (N.J.S.A. 55:14K-1 et seq.).

"Household income" means a household's gross annual income calculated in a manner consistent with the determination of annual income pursuant to section 8 of the United States Housing Act of 1937 (Section 8), not in accordance with the determination of gross income for Federal income tax liability.

"Housing element" means the portion of a municipality's master plan adopted in accordance with the Municipal Land Use Law (MLUL) at N.J.S.A. 40:55D-28.b(3) and the Act consisting of reports, statements proposals, maps, diagrams, and text designed to meet the municipality's fair share of its region's present and prospective housing needs, particularly with regard to low- and moderate-income housing, which shall include the municipal present

and prospective obligation for affordable housing, determined pursuant to subsection f. at N.J.S.A. 52:27D-304.1.

"Housing region" means a geographic area established pursuant to N.J.S.A. 52:27D-304.2b.

"Inclusionary development" means a residential housing development in which a substantial percentage of the housing units are provided for a reasonable income range of low- and moderate- income households.

"Judgment of compliance" or "judgment for repose" means a determination issued by the Superior Court approving a municipality's fair share plan to satisfy its affordable housing obligation for a particular 10-year round.

"Low-income household" means a household with a household income equal to 50 percent or less of the regional median income.

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

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

"Mixed use development" means any development that includes both a non-residential development component and a residential development component, and shall include developments for which: (1)there is a common developer for both the residential development component and the non-residential development component, provided that for purposes of this definition, multiple persons and entities maybe considered a common developer if there is a contractual relationship among them obligating each entity to develop at least a portion of the residential or non-residential development, or both, or otherwise to contribute resources to the development; and (2) the residential and non-residential developments are located on the same lot or adjoining lots, including, but not limited to, lots separated by a street, a river, or another geographical feature.

"Moderate-income household" means a household with a household income in excess of 50 percent but less than 80 percent of the regional median income.

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

"MONI" means the no-longer-active Market Oriented Neighborhood Investment Program, as it was authorized by the Agency.

"Municipal housing liaison" or "MHL" means an appointed municipal employee who is, pursuant to N.J.A.C. 5:99-6, responsible for oversight and/or administration of the affordable units created within the municipality.

"Municipal affordable housing trust fund" means a separate, interest-bearing account held by a municipality for the deposit of development fees, payments in lieu of constructing affordable units on sites zoned for affordable housing previously approved prior to March 20, 2024 (per P.L. 2024, c.2), barrier-free escrow funds, recapture funds, proceeds from the sale of affordable units, rental income, repayments from affordable housing program loans, enforcement fines, unexpended RCA funds remaining from a completed RCA project, application fees, and any other funds collected by the municipality in connection with its

affordable housing programs, which shall be used to address municipal low- and moderate-income housing obligations within the time frames established by the Legislature and this chapter.

"Municipal development fee ordinance" means an ordinance adopted by the governing body of a municipality that authorizes the collection of development fees.

"New construction" means the creation of a new housing unit under regulation by a code enforcement official regardless of the means by which the unit is created. Newly constructed units are evidenced by the issuance of a certificate of occupancy and may include new residences created through additions and alterations, adaptive reuse, subdivision, or conversion of existing space, and moving a structure from one location to another.

"New Jersey Affordable Housing Trust Fund" or "NJ AHTF" means that non-lapsing, revolving trust fund established in DCA pursuant to N.J.S.A. 52:27D-320 and N.J.A.C. 5:43 to be the repository of all State funds appropriated for affordable housing purposes. All references to the "Neighborhood Preservation Nonlapsing Revolving Fund" and "Balanced Housing" mean the NJ AHTF.

"New Jersey Housing Resource Center" or "Housing Resource Center" means the online affordable housing listing portal, or its successor, overseen by the Agency pursuant to N.J.S.A. 52:27D-321.3 et seq.

"95/5 restriction" means a deed restriction governing a restricted ownership unit that is part of a housing element that received substantive certification from COAH pursuant to N.J.A.C. 5:93, as it was in effect at the time of the receipt of substantive certification, before October 1, 2001, or any other deed restriction governing a restricted ownership unit with a seller repayment option requiring 95 percent of the price differential to be paid to the municipality or an instrument of the municipality at the closing of a sale at market price.

"Non-exempt sale" means any sale or transfer of ownership of a restricted unit to one's self or to another individual other than the transfer of ownership between spouses or civil union partners; the transfer of ownership between former spouses or civil union partners 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.

"Nonprofit" means an organization granted nonprofit status in accordance with section 501(c)(3) of the Internal Revenue Code.

"Non-residential development" means:

> Any building or structure, or portion thereof, including, but not limited to, any appurtenant improvements, which is designated to a use group other than a residential use group according to the State Uniform Construction Code, N.J.A.C. 5:23, promulgated to effectuate the State uniform Construction Code Act, N.J.S.A. 52:27D-119 et seq., including any subsequent amendments or revisions thereto;
>
> Hotels, motels, vacation timeshares, and child-care facilities; and
>
> The entirety of all continuing care facilities within a continuing care retirement community which is subject to the Continuing Care Retirement Community Regulation and Financial Disclosure Act, N.J.S.A.52:27D-330 et seq.

"Non-residential development fee" means the fee authorized to be imposed pursuant to N.J.S.A. 40:55D-8.1 through 40:55D-8.7.

"Order for repose" means the protection a municipality has from a builder's remedy lawsuit for a period of time from the entry of a judgment of compliance by the Superior Court. A judgment of compliance often results in an order for repose.

"Payment in lieu of constructing affordable units" means the prior approval of the payment of funds to the municipality by a developer when affordable units are were not produced on a site zoned for an inclusionary development. The statutory permission for payments in lieu of constructing affordable units was eliminated per P.L. 2024, c.2.

"Prospective need" means a projection of housing needs based on development and growth which is reasonably likely to occur in a region or a municipality, as the case may be, as a result of actual determination of public and private entities. Prospective need shall be determined by the methodology set forth pursuant to sections 6 and 7 of P.L.2024, c. 2 (C.52:27D-304.2 and C.52:27D-304.3) for the fourth round and all future rounds of housing obligations.

"Qualified Urban Aid Municipality" means a municipality that meets the criteria established pursuant to N.J.S.A. 52:27D-304.3.c(1).

"Person with a disability" means a person with a physical disability, infirmity, malformation, or disfigurement which is caused by bodily injury, birth defect, aging, or illness including epilepsy and other seizure disorders, and which shall include, but not be limited to, any degree of paralysis, amputation, lack of physical coordination, blindness or visual impairment, deafness or hearing impairment, the inability to speak or a speech impairment, or physical reliance on a service animal, wheelchair, or other remedial appliance or device.

"Price differential" means the difference between the controlled sale price of a restricted unit and the contract price at the exit sale of the unit, determined as of the date of a proposed contract of sale for the unit. If there is no proposed contract of sale, the price differential is the difference between the controlled sale price of a restricted unit and the appraised value of the unit as if it were not subject to UHAC, determined as of the date of the appraisal. If the controlled sale price exceeds the contract price or, in the absence of a contract price, the appraised value, the price differential is zero dollars.

"Prior round unit" means a housing unit that addresses a municipality's fair share obligation from a round prior to the fourth round of affordable housing obligations, including any unit that: (1) received substantive certification from COAH; (2) is part of a third-round settlement agreement or judgment of compliance approved by a court of competent jurisdiction, inclusive of units created pursuant to a zoning designation adopted as part of the settlement agreement or judgment of compliance to create a realistic opportunity for development; (3) is subject to a grant agreement or other contract with either the State or a political subdivision thereof entered into prior to July 1, 2025, pursuant to either item (1) or (2) above; or (4) otherwise addresses a municipality's fair share obligation from a round prior to the fourth round of affordable housing obligations. A unit created after the enactment of P.L. 2024, c. 2 (N.J.S.A. 52:27D-304.1) on March 20, 2024, is not a prior round unit unless: (1) it is created pursuant to a prior round development plan or zoning designation that received COAH or court approval on or before the cutoff date of June 30, 2025, or the date that the municipality adopts the implementing ordinances and resolutions for the fourth round of affordable housing obligations, whichever occurs sooner; and (2) its siting and creation are consistent

with the form of the prior round development plan or zoning designation in effect as of the cutoff date, without any amendment or variance.

"Program" means the Affordable Housing Dispute Resolution Program, established pursuant to section 5 of P.L.2024, c. 2 (C.52:27D-313.2).

"Random selection process" means a lottery process by which currently income-eligible applicant-households are selected, at random, for placement in affordable housing units such that no preference is given to one applicant over another, except in the case of a veterans' preference where such an agreement exists; for purposes of matching household income and size with an appropriately priced and sized affordable unit; or another purpose allowed pursuant to N.J.A.C. 5:80-26.7(k)3. This definition excludes any practices that would allow affordable housing units to be leased or sold on a first-come, first-served basis.

"RCA administrator" means an appointed municipal employee who is responsible for oversight and/or administration of affordable units and associated revenues and expenditures within the municipality that were funded through regional contribution agreements.

"RCA project plan" means a past application, submitted by a receiving municipality in an RCA, delineating the manner in which the receiving municipality intended to create or rehabilitate low- and moderate-income housing.

"Receiving municipality" means, for the purposes of an RCA, a municipality that contractually agreed to assume a portion of another municipality's fair share obligation.

"Reconstruction" means any project where the extent and nature of the work is such that the work area cannot be occupied while the work is in progress and where a new certificate of occupancy is required before the work area can be reoccupied, pursuant to the Rehabilitation Subcode of the uniform Construction Code, N.J.A.C. 5:23-6. Reconstruction shall not include projects comprised only of floor finish replacement, painting or wallpapering, or the replacement of equipment or furnishings. Asbestos hazard abatement and lead hazard abatement projects shall not be classified as reconstruction solely because occupancy of the work area is not permitted.

"Recreational facilities and community centers" means any indoor or outdoor buildings, spaces, structures, or improvements intended for active or passive recreation, including, but not limited to, ballfields, meeting halls, and classrooms, accommodating either organized or informal activity.

"Regional contribution agreement" or "RCA" means a contractual agreement, pursuant to the Act, into which two municipalities voluntarily entered into and was approved by COAH and/or Superior Court prior to July 18, 2008, to transfer a portion of a municipality's affordable housing obligation to another municipality within its housing region.

"Regional median income" means the median income by household size for an applicable housing region, as calculated annually in accordance with N.J.A.C. 5:80-26.3.

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

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

"Residential development fee" means money paid by a developer for the improvement of residential property as permitted pursuant to N.J.S.A. 52:27D-329.2 and N.J.A.C. 5:99-3.2.

"Restricted unit" means a dwelling unit, whether a rental unit or ownership unit, that is subject to the affordability controls of this subchapter but does not include a market-rate unit that was financed pursuant to UHORP, MONI, or CHOICE.

"Spending plan" means a method of allocating funds contained in an affordable housing trust fund account, which includes, but is not limited to, development fees collected and to be collected pursuant to an approved municipal development fee ordinance, or pursuant to N.J.S.A. 52:27D-329.1 et seq., for the purpose of meeting the housing needs of low- and moderate-income individuals.

"State Development and Redevelopment Plan" or "State Plan" means the plan prepared pursuant to sections 1 through 12 of the "State Planning Act," P.L.1985, c. 398 (C.52:18A-196 et al.), designed to represent a balance of development and conservation objectives best suited to meet the needs of the State, and for the purpose of coordinating planning activities and establishing Statewide planning objectives in the areas of land use, housing, economic development, transportation, natural resource conservation, agriculture and farmland retention, recreation, urban and suburban redevelopment, historic preservation, public facilities and services, and intergovernmental coordination pursuant to subsection f. of section 5 of P.L.1985, c. 398 (C.52:18A-200).

"Supportive housing household" means a very low-, low- or moderate-income household certified as income eligible by an administrative agent in accordance with N.J.A.C. 5:80-26.14, in which at least one member is an individual who requires supportive services to maintain housing stability and independent living and who is part of a population identified by federal or state statute, regulation, or program guidance as eligible for supportive or special needs housing. Such populations include, but are not limited to: persons with intellectual or developmental disabilities, persons with serious mental illness, person with head injuries (as defined in Section 2 of P.L. 1977), persons with physical disabilities or chronic health conditions, persons who are homeless as defined by the U.S. Department of Housing and Urban Development at 24 C.F.R. Part 578, survivors of domestic violence, youth aging out of foster care, and other special needs populations recognized under programs administered by the U.S. Department of Housing and Urban Development, the Low-Income Housing Tax Credit Program, the McKinney–Vento Act, or the New Jersey Department of Human Services. A supportive housing household may include family members, unrelated individuals, or live-in aides, provided that the household meets the income eligibility requirements of this subchapter, except that in the case of unrelated individuals not operating as a family unit, income eligibility shall be tested on an individual basis rather than in the aggregate; the unit is leased or sold subject to the affordability controls established herein; and the supportive services available to the household are designed to promote housing stability, independent living, and community integration. The determination of whether unrelated individuals are operating as a family unit shall be made based on the applicant's self-identification of household members on the affordable housing application.

"Supportive housing sponsoring program" means grant or loan program which provided financial assistance to the development of the unit.

"Supportive housing unit" means a restricted rental unit that is affordable to very low-, low- or moderate-income households and is reserved for occupancy by a supportive housing

household. A supportive housing unit is intended to provide long-term, community-based housing for individuals with intellectual or developmental disabilities, as defined at N.J.S.A. 30:6D-25(b). Such units must be leased subject to the affordability controls established herein; remain subject to Affirmative Marketing requirements, household certification, and administrative agent oversight; and may, with the approval of the municipal housing liaison and the administrative agent, be leased either by the bedroom or to a single household in the case of multi-bedroom configurations, provided such arrangement is consistent with the Federal Fair Housing Act (Title VIII of the Civil Rights Act of 1968) and the project's Affirmative Marketing Program. A supportive housing unit may, with the approval of the administrative agent, be subject to a master lease by an approved supportive housing operator, provided that all subleases are to be certified supportive housing households and remain fully subject to the affordability controls of this subchapter. Rents for supportive housing units shall not exceed the rent standards established and published by the New Jersey Department of Human Services. Supportive housing units are also referred to as permanent supportive housing units.

"Transitional housing" means temporary housing that: (1) includes, but is not limited to, single-room occupancy housing or shared living and supportive living arrangements; (2) provides access to on-site or off-site supportive services for very low-income households who have recently been homeless or lack stable housing; (3) is licensed by the department; and (4) allows households to remain for a minimum of six months.

"Treasurer" means the Treasurer of the State of New Jersey.

"UHAC" means the Uniform Housing Affordability Controls set forth at N.J.A.C. 5:80-26.

"UHORP" means the Agency's Urban Homeownership Recovery Program, as it was authorized by the Agency Board.

"Unit type" means type of dwelling unit with various building standards including but not limited to single-family detached, single-family attached/townhouse, stacked townhouse (attached building containing 2 units each with separate entrances), duplex (detached building containing 2 units each with separate entrances), triplex (3 units each with separate entrance), quadplex (4 units each with separate entrance), multifamily / flat (2 or more units with a shared entrance). Inclusion of a garage, or not, shall not define the unit type.

"Very-low-income household" means a household with a household income less than or equal to 30 percent of the regional median income.

"Very-low-income housing" means housing affordable according to the Federal Department of Housing and Urban Development or other recognized standards for home ownership and rental costs and occupied or reserved for occupancy by households with a gross household income equal to 30 percent or less of the median gross household income for households of the same size within the housing region in which the housing is located.

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

"Veteran" means a veteran as defined at N.J.S.A. 54:4-8.10.

"Veterans' preference" means the agreement between a municipality and a developer or residential development owner that allows for low- to moderate-income veterans to be given

preference for up to 50 percent of rental units in relevant projects, as provided for at N.J.S.A. 52:27D-311.j.

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

C. Monitoring and Reporting Requirements

1. The municipality 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. The municipality shall provide electronic monitoring data with the Department pursuant to P.L 2024, Chapter 2 and N.J.A.C. 5:99 through the Affordable Housing Monitoring System (AHMS). All monitoring information required to be made public by the FHA shall be available to the public on the Department's website at https://www.nj.gov/dca/dlps/hss/MuniStatusReporting.shtml.

   b. On or before February 15 of each year, the municipality shall provide annual reporting of its municipal Affordable Housing Trust Fund activity to the Department on the AHMS portal. The reporting shall include an accounting of all municipal Affordable Housing Trust Fund activity, including the sources and amounts of funds collected and the amounts and purposes for which any funds have been expended, for the previous year from January 1st to December 31st.

   c. On or before February 15 of each year, the annual reporting of the status of all affordable housing activity shall be provided to the Department on the AHMS portal, for the previous year from January 1st to December 31st.

D. Municipality-wide Mandatory Set-Aside

1. A mandatory on-site affordable housing set-aside requirement shall apply beginning with the effective date of this article to any residential development, including the residential portion of a mixed-use project, which consists of five or more new residential units. The minimum mandatory on-site affordable housing set-aside shall be 20% for both for-sale and rental units.
2. Any affordable units generated through such mandatory set-aside shall be subject to all other provisions of this ordinance.
3. All such affordable units shall be governed by this ordinance, the controls on affordability, including bedroom distribution, and affirmatively marketed to the housing region in conformance with UHAC at N.J.A.C. 5:80-26.1 et seq., any successor regulation, and all other applicable laws.
4. No subdivision shall be permitted or approved for the purpose of avoiding compliance with this requirement. Developers cannot, for example, subdivide a project into two lots and then make each of them a number of units just below the threshold.
5. The mandatory set-aside requirements of this section do not give any developer the right to any rezoning, variance or other relief, or establish any obligation on the part of the municipality to grant such rezoning, variance or other relief.

6. This municipality-wide mandatory set-aside requirement does not apply to any sites or specific zones otherwise identified in the HEFSP, for which density and set-aside requirements shall be governed by the specific standards as set forth therein.
7. In the event that the inclusionary set-aside of 20% of the total number of residential units does not result in a full integer, the developer shall round the set-aside upward to construct a whole additional affordable unit, regardless if the fractional unit is less than 0.5. For example, if seven total units are developed at an inclusionary site, a 20% set-aside would require 1.4 affordable units. Per the requirement above, the developer shall round up the 0.4 unit to one whole affordable unit so as to construct a total of two (2) affordable housing units.

E. New Construction (per N.J.A.C. 5:93 as may be updated per various sections in N.J.A.C. 5:97 and N.J.S.A. 52:27D-301 et seq.). Per the definition of "New Construction," this section governs the creation of new affordable housing units regardless of the means by which the units are created. Newly constructed units may include new residences constructed or created through other means.

1. The following requirements shall apply to all new or planned developments that contain very low-, low- and moderate-income housing units. To the extent possible, details related to the adherence to the requirements below shall be outlined in the resolution granting municipal subdivision or site plan approval of the project to assist municipal representatives, developers and Administrative Agents.
2. Completion Schedule (previously known as phasing). Final site plan or subdivision approval shall be contingent upon the affordable housing development meeting the following completion schedule for very low-, low- and moderate-income units whether developed in a single-phase development, or in a multi-phase development:

Maximum Percentage of Market-Rate Units Issued a Temporary or Final Certificate of Occupancy	Minimum Percentage of Affordable Units Issued a Temporary or Final Certificate of Occupancy
25+1	10
50	50
75	75
90	100

3. Design. The following design requirements apply to affordable housing developments, excluding prior round units.
   a. Design of 100 percent affordable developments:
      i. Restricted units must meet the minimum square footage required for the number of inhabitants for which the unit is marketed and the minimum square footage required for each bedroom, as set forth in the Neighborhood Preservation Balanced Housing rules at N.J.A.C. 5:43-2.4.
      ii. Each bedroom in each restricted unit must have at least one window.
      iii. Restricted units must include adequate air conditioning and heating.

b. Design of developments comprising market-rate rental units and restricted rental units. The following does not apply to prior round units, unless stated otherwise.

   i. Restricted units must use the same building materials and architectural design elements (for example, plumbing, insulation, or siding) as market-rate units of the same unit type (for example, flat or townhome) within the same development, except that restricted units and market-rate units may use different interior finishes. This shall apply to prior round units.

   ii. Restricted units and market-rate units within the same affordable development must be sited such that restricted units are not concentrated in less desirable locations.

   iii. Restricted units may not be physically clustered so as to segregate restricted and market-rate units within the same development or within the same building, but must be interspersed throughout the development, except that age-restricted and supportive housing units may be physically clustered if the clustering facilitates the provision of on-site medical services or on-site social services. Prior round affordable units shall be integrated with market rate units to the extent feasible.

   iv. Residents of restricted units must be offered the same access to communal amenities as residents of market-rate units within the same affordable development. Examples of communal amenities include, but are not limited to, community pools, fitness and recreation centers, playgrounds, common rooms and outdoor spaces, and building entrances and exits. This shall apply to prior round units.

   v. Restricted units must include adequate air conditioning and heating and must use the same type of cooling and heating sources as market-rate units of the same unit type. This shall apply to prior round units.

   vi. Each bedroom in each restricted unit must have at least one window.

   vii. Restricted units must be of the same unit type as market-rate units within the same building.

   viii. Restricted units and bedrooms must be no less than 90 percent of the minimum size prescribed by the Neighborhood Preservation Balanced Housing rules at N.J.A.C. 5:43-2.4.

c. Design of developments containing for-sale units, including those with a mix of rental and for-sale units. Restricted rental units shall meet the requirements of section b above. Restricted sale units shall comply with the below:

   i. Restricted units must use the same building standards as market-rate units of the same unit type (for example, flat, townhome, or single-family home), except that restricted units and market-rate units may use different interior finishes. This shall apply to prior round units.

   ii. Restricted units may be clustered, provided that the buildings or housing product types containing the restricted units are integrated throughout the development and are not concentrated in an undesirable location or in undesirable locations. Prior round affordable units shall be integrated with market rate units to the extent feasible.

iii. Restricted units may be of different unit housing product types than market-rate units, provided that there is a restricted option available for each market rate housing type. Developments containing market-rate duplexes, townhomes, and/or single-family homes shall offer restricted housing options that also include duplexes, townhomes, and/or single-family homes. Penthouses and higher priced end townhouses may be exempt from this requirement. The proper ratio for restricted to market-rate unit type shall be subject to municipal ordinance or, if not specified, shall be determined at the time of site plan approval.

iv. Restricted units must meet the minimum square footage required for the number of inhabitants for which the unit is marketed and the minimum square footage required for each bedroom, as set forth in the Neighborhood Preservation Balanced Housing rules at N.J.A.C. 5:43-2.4.

v. Penthouse and end units may be reserved for market-rate sale, provided that the overall number, value, and distribution of affordable units across the development is not negatively impacted by such reservation(s).

vi. Residents of restricted units must be offered the same access to communal amenities as residents of market-rate units within the same affordable development. Examples of communal amenities include, but are not limited to, community pools, fitness and recreation centers, playgrounds, common rooms and outdoor spaces, and building entrances and exits. This shall apply to prior round units.

vii. Each bedroom in each restricted unit must have at least one window; and

viii. Restricted units must include adequate air conditioning and heating.

4. Utilities.

   a. Affordable units shall utilize the same type of cooling and heating source as market-rate units within the affordable housing development.

   b. Tenant-paid utilities that are included in the utility allowance shall be so stated in the lease and shall be consistent with the utility allowance in accordance with N.J.AC 5:80-26.13(e).

5. Low/moderate split and bedroom distribution.

   a. Affordable units 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.

   b. In each affordable housing development, at least 50% of the restricted units within each bedroom distribution rounded up to the nearest whole number shall be very low- or low-income units. The municipality has chosen to allow rounding.

   c. Within rental developments, of the total number of affordable rental units, at least 13%, rounded up to the nearest whole number, shall be affordable to very low-income households. The very low-income units shall be distributed between each bedroom count as proportionally as possible, to the nearest whole unit, to the total number of restricted units within each bedroom count, and counted as part of the required number of low-income units within the development.

d. Affordable housing developments that are not age-restricted or supportive housing shall be structured such that:

   i. At a minimum, the number of bedrooms within the restricted units equals twice the number of restricted units;

   ii. Two-bedroom and/or three-bedroom units compose at least 50 percent of all restricted units;

   iii. The combined number of efficiency and one-bedroom units shall be no greater than 20%, rounded down, of the total number of low- and moderate-income units. The municipality has chosen to allow rounding.

   iv. At least 30% of all low- and moderate-income units, rounded up shall be two-bedroom units. The municipality has chosen to allow rounding.

   v. At least 20% of all low- and moderate-income units, rounded up shall be three-bedroom units. The municipality has chosen to allow rounding.

   vi. The remaining units may be allocated among two- and three- bedroom units at the discretion of the developer.

e. Affordable housing developments that are age-restricted or supportive housing, except those supportive housing units whose sponsoring program determines the unit arrangements, shall be structured such that, at a minimum, the number of bedrooms shall equal the number of age-restricted or supportive housing low- and moderate-income units within the inclusionary development. Supportive housing units whose sponsoring program determines the unit arrangement shall comply with all requirements of the sponsoring program. The standard may be met by having all one-bedroom units or by having a two-bedroom unit for each efficiency unit. In affordable housing developments with 20 or more restricted units that are age-restricted or supportive housing, two-bedroom units must comprise at least 5% of those restricted units.

6. Accessibility requirements.

   a. Any new construction shall be adaptable; however, elevators shall not be required in any building or within any dwelling unit for the purpose of compliance with this section. In buildings without elevator service, only ground floor dwelling units shall be required to be constructed to conform with the technical design standards of the barrier free subcode. "Ground floor" means the first floor with a dwelling unit or portion of a dwelling unit, regardless of whether that floor is at grade. A building may have more than one ground floor.

   b. Notwithstanding the exemption for townhouse dwelling units in the barrier free subcode, the first floor of all townhouse dwelling units and of all other multifloor dwelling units that are attached to at least one other dwelling unit shall be subject to the technical design standards of the barrier free subcode and shall include the following features:

      i. An adaptable toilet and bathing facility on the first floor;

      ii. An adaptable kitchen on the first floor;

iii. An interior accessible route of travel however an interior accessible route of travel shall not be required between stories;

iv. An adaptable room that can be used as a bedroom, with a door, or the casing for the installation of a door that is compliant with the Barrier Free Subcode, on the first floor;

v. If not all of the foregoing requirements in b.i. through b.iv. can be satisfied, then an interior accessible route of travel shall be provided between stories within an individual unit; and

vi. An accessible entranceway as set forth in 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 the municipality has collected funds from the developer sufficient to make 10% of the adaptable entrances in the development accessible:

(a) 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.

(b) To this end, the builder of restricted units shall deposit funds within the municipal Affordable Housing Trust Fund sufficient to install accessible entrances in 10% of the affordable units that have been constructed with adaptable entrances.

(c) The funds deposited shall be expended 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.

(d) The developer of the restricted units shall submit to the Construction Official a design plan and cost estimate for the conversion from adaptable to accessible entrances.

(e) Once the Construction Official has determined that the design plan to convert the unit entrances from adaptable to accessible meets 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 municipal Affordable Housing Trust Fund and earmarked appropriately.

vii. Full compliance with the foregoing provisions shall not be required where an entity can demonstrate that it is "site-impracticable" to meet the requirements. If full compliance with this section would be site impracticable, compliance with this section for any portion of the dwelling shall be required to the extent that it is not site impracticable. Determinations of site impracticability shall comply with the Barrier Free Subcode at N.J.A.C. 5:23-7.

F. Affordable Housing Programs

1. Pursuant to amended UHAC regulations at N.J.A.C. 5:80-26.1 et seq. and, in addition, pursuant to P.L. 2024, c.2 and specifically to the amended FHA at N.J.S.A. 52:27D-311.m, "All parties shall be entitled to rely upon regulations on municipal credits, adjustments, and compliance mechanisms adopted by the Council on Affordable Housing unless those regulations are contradicted by statute, including but not limited to P.L. 2024,

c.2, or binding court decisions." The following are many of the main provisions of the COAH regulations at either N.J.A.C. 5:93 or 5:97 that have been upheld by the NJ Supreme Court. Municipalities should consult the cited full COAH regulations when preparing the HEFSP for required documentation, etc. Additional compliance details may also be included in the specific municipal program manual.

2. Inclusionary zoning and new construction programs shall be implemented in accordance with the Township's adopted Fourth Round Housing Element and Fair Share Plan, as amended, and consistent with the terms of the Consent Order entered between the Township and Fair Share Housing Center on December 8, 2025, and subject to the terms of any future Order from the Court.

3. Rehabilitation Programs (per N.J.A.C. 5:93-5.2 with updated provisions herein per N.J.A.C. 5:97-6.2 related to credit towards a municipal present need obligation). The Township will continue its participation in the Union County Home Improvement Program to satisfy its rehabilitation obligation.

   a. The rehabilitation program shall be designed to renovate deficient housing units occupied or intended to be 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. 5:28-1.1 et seq or the Rehabilitation Subcode, N.J.A.C. 5:23-6 to the extent applicable.

   b. Both ownership and rental units shall be eligible for rehabilitation funds.

   c. All rehabilitated units shall remain affordable to very low-, low- and moderate-income households for a period of 10 years (the control period). For owner-occupied units, the control period shall be enforced with a mortgage and note and for renter-occupied units the control period will be enforced with a deed restriction.

   d. The municipality shall dedicate a minimum average hard cost of $10,000 for each unit to be rehabilitated through this program and in addition shall dedicate associated rehabilitation program soft costs such as case management, inspection fees and work write-ups.

   e. The municipality shall designate, subject to the approval of the Department, one or more Administrative Agents to administer the rehabilitation program in accordance with P.L 2024, Chapter 2. The Administrative Agent(s) shall provide rehabilitation manuals for ownership and rental rehabilitation programs. Manuals shall be adopted by resolution of the governing body. Both rehabilitation manuals shall be available for public inspection in the Office of the Municipal Clerk and on the municipal affordable housing web page.

   f. Households determined to be very low-, low-, or moderate-income may participate in a rehabilitation program. Rehabilitated units shall be exempt from the very low-income requirements, low/mod split, and bedroom distribution requirements of UHAC, but shall be administered in accordance with the following:

      i. If a unit is vacant at the time of rehabilitation, or if a rehabilitated unit becomes vacant and is re-rented before the expiration of the affordability controls, the deed restriction shall require that the unit be rented to a low- or moderate-income household at an affordable rent.

ii. If a rental unit is occupied by a tenant at the time rehabilitation is completed, the rent charged after rehabilitation shall not exceed the lesser of the tenant's current rent or the maximum rent permitted under UHAC.

iii. Rents in rehabilitated units may increase annually based on the standards in UHAC.

iv. At the time of application, applicant households and/or tenant households shall be subject to income eligibility determinations in accordance with UHAC.

4. Extension of Controls Program (for ownership units per N.J.A.C. 5:97-6.14 and UHAC at N.J.A.C. 5:80-26.6(h) through (k) and (m); and for rental units per N.J.A.C. 5:97-6.14 and N.J.A.C. 5:80-26.12(h) through (k)).

   a. An extension of affordability controls program is established to maintain and extend the affordability of deed restricted units scheduled to come out of their affordability control period, subject to N.J.A.C. 5:97-6.14 and UHAC, including the following:

      i. The affordable unit meets the criteria for prior cycle (April 1, 1980 - December 15, 1986) or post December 15, 1986 credits set forth in N.J.A.C. 5:97.

      ii. The affordability controls for the unit are scheduled to expire in the current round; or in the next round of housing obligations if the municipal election to extend controls is made no earlier than one year before the end of the current round;

      iii. The municipality shall obtain a continuing certificate of occupancy or a certified statement from the municipal building inspector stating that the restricted unit meets all code standards.

      iv. If a unit requires repair and/or rehabilitation work in order to receive a continuing certificate of occupancy or certified statement from the municipal building inspector, the municipality shall fund and complete the work.

      v. The municipality shall adhere to the process for extending controls pursuant to UHAC for extending ownership units and rental units, either inclusionary or 100% affordable developments.

      vi. The deed restriction for the extended control period shall be filed with the County Clerk.

5. Assisted Living Residence (per N.J.A.C. 5:97-6.11).

   a. An assisted living residence is a facility licensed by the New Jersey Department of Health to provide apartment-style housing and congregate dining and to assure that assisted living services are available. All or a designated number of apartments in the facility shall be restricted to low- and moderate-income households.

   b. The unit of credit shall be the apartment. However, a two-bedroom apartment shall be eligible for two units of credit if it is restricted to two unrelated individuals.

   c. A recipient of a Medicaid waiver shall automatically qualify as a low- or moderate-income household.

   d. Assisted living units are considered age-restricted housing in a HEFSP and shall be included with the maximum number of units that may be age-restricted.

   e. Low- and moderate-income residents cannot be charged any upfront fees.

f. The units shall comply with UHAC with the following exceptions:

i. Affirmative marketing (N.J.A.C. 5:80-26.16); provided that the units are restricted to recipients of Medicaid waivers;

ii. The deed restriction may be on the facility, rather than individual apartments or rooms;

iii. Low/moderate income split and affordability average (N.J.A.C. 5:80-26.4); only if all of the affordable units are affordable to households at a maximum of 60 percent of median income; and

g. Tenant income eligibility (N.J.A.C. 5:80-26.14); up to 80 percent of an applicant's gross income may be used for rent, food and services based on occupancy type and the affordable unit must receive the same basic services as required by the Agency's underwriting guidelines and financing policies. The cost of non-housing related services shall not exceed one and two-thirds times the rent established for each unit.

6. Supportive Housing and Group Homes (per N.J.A.C. 5:97-6.10).

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

i. The unit of credit shall be the bedroom. However, the unit of credit shall be the unit if occupied by a single person or household.

ii. Housing that is age-restricted shall be included with the maximum number of units that may be age-restricted pursuant to the Act.

iii. Occupancy shall not be restricted to youth under 18 years of age.

iv. In affordable developments with 20 or more restricted units that are supportive housing, two-bedroom units must compose at least five percent of those restricted units.

v. The bedrooms and/or units shall comply with UHAC with the following exceptions:

(a) Affirmative marketing; however, group homes, residential health care facilities, permanent supportive housing and supportive shared living housing shall be affirmatively marketed to broadest possible population of qualified individuals with special needs in accordance with a plan approved by the sponsoring program;

(b) Affordability average and bedroom distribution (N.J.A.C. 5:80-26.4).

vi. With the exception of units established with capital funding through a 20-year operating contract with the Department of Human Services, Division of Developmental Disabilities, group homes, residential health care facilities, supportive shared living housing and permanent supportive housing shall have the appropriate controls on affordability in accordance with the Act. In the event that a supportive housing provider is unable to record or execute a long-term deed restriction, the units shall be subject to annual recertification by the Municipal Housing Liaison to confirm continued occupancy and compliance with this Section.

vii. Objective standards shall be applied in the selection of tenants for supportive housing units and shall be designed to ensure that individuals are not excluded in an arbitrary or capricious manner.

viii. The following documentation shall be submitted by the sponsor to the municipality prior to marketing the completed units or facility:

(a) An Affirmative Marketing Plan in accordance with I.1 below; and

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

ix. The sponsor/owner shall complete annual monitoring as directed by the MHL.

x. The section 'Zoning for Inclusionary Development' at N.J.A.C. 5:97-6.4 details the standards for municipalities to rezone specific sites through the establishment of an inclusionary zoning district in the municipal code, but not necessarily to be included in with these affordable housing provisions to administer affordable units. Any new inclusionary zoning districts should also reference adherence with the municipal affordable housing provisions found herein. In addition, the FHA was amended per P.L. 2024, c.2 to eliminate N.J.S.A 52:27D-329.3 which had been the statutory authority for payments in-lieu of constructing affordable units.

xi. The section 'Redevelopment' at N.J.A.C. 5:97-6.6 details the standards for municipalities to include formally designated redevelopment sites in their HEFSP. Any redevelopment sites should also reference adherence with the municipal affordable housing provisions found herein.

xii. The section 'Municipally sponsored and 100 percent affordable developments' at N.J.A.C. 5:97-6.7 details the standards for municipalities to include 100% affordable housing sites in their HEFSP. Any such sites should also reference adherence with the municipal affordable housing provisions found herein to the extent such provisions are not superseded by state or federally funded affordable housing programs per the applicability section of UHAC at N.J.A.C. 5:80-26.1.

G. Regional Income Limits.

1. Administrative agents shall use the current regional income limits for the purpose of pricing affordable units and determining income eligibility of households.

2. Regional income limits are based on regional median income, which is established by a regional weighted average of the "median family incomes" published by HUD. The procedure for computing the regional median income is detailed in N.J.A.C. 5:80-26.3.

3. Updated regional income limits are effective as of the effective date of the regional Section 8 income limits for the year, as published by HUD, or 45 days after HUD publishes the regional Section 8 income limits for the year, whichever comes later. The new income limits may not be less than those of the previous year.

H. Maximum Initial Rents And Sales Prices.

1. In establishing rents and sales prices of affordable housing units, the Administrative Agent shall follow the procedures set forth in UHAC N.J.A.C. 5:80-26.4.
2. The average rent for all restricted units within each affordable housing development shall be affordable to households earning no more than 52 percent of regional median income.
3. The maximum rent for restricted rental units within each affordable housing development shall be affordable to households earning no more than 60% of regional median income. The maximum rent may be increased to no more than 70 percent of regional median income for moderate-income units within affordable developments where very-low-income units compose at least 13 percent of the restricted units; however, the number of units with rent affordable to households earning 70 percent of regional median income may not exceed the number of very-low-income units in excess of 13 percent (rounded up) of the restricted units.
4. 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% of all low- and moderate-income rental units shall be affordable to households earning no more than 30% of median income. These very low-income units shall be part of the low-income requirement and very-low-income units should be distributed between each bedroom count as proportionally as possible, to the nearest whole unit, to the total number of restricted units within each bedroom count.
5. The maximum sales price of restricted ownership units within each affordable housing development shall be affordable to households earning no more than 70% of median income, and each affordable housing development must achieve an affordability average that does not exceed 55% for all restricted ownership units. In achieving this affordability average, moderate-income ownership units must be available for at least three different prices for each bedroom type, and low-income ownership units must be available for at least two different prices for each bedroom type when the number of low- and moderate-income units permits.
6. The master deeds and declarations of covenants and restrictions for affordable developments
   may not distinguish between restricted units and market-rate units in the calculation of any
   condominium or homeowner association fees and special assessments to be paid by low- and
   moderate-income purchasers and those to be paid by market-rate purchasers. Notwithstanding the foregoing sentence, condominium units subject to a municipal ordinance adopted before December 20, 2004, which ordinance provides for condominium or homeowner association fees and/or assessments different from those provided for in this subsection are governed by the ordinance.
7. In determining the initial sales prices and rents for compliance with the affordability average requirements for restricted family units, the following standards shall be met:
   a. A studio or efficiency unit shall be affordable to a one-person household;
   b. A one-bedroom unit shall be affordable to a one and one-half person household;
   c. A two-bedroom unit shall be affordable to a three-person household;

d. A three-bedroom unit shall be affordable to a four and one-half person household; and

e. A four-bedroom unit shall be affordable to a six-person household.

8. In determining the initial rents and sales prices for compliance with the affordability average requirements for restricted units in assisted living facilities and age-restricted and special needs and supportive housing developments, the following standards shall be met:

   a. A studio or efficiency unit shall be affordable to a one-person household;

   b. A one-bedroom unit shall be affordable to a one and one-half person household; and

   c. A two-bedroom unit shall be affordable to a two-person household or to two one-person households. Where pricing is based on two one-person households, the developer shall provide a list of units so priced to the Municipal Housing Liaison and the Administrative Agent.

9. The initial purchase price for all restricted ownership units shall be calculated so that the monthly carrying cost of the unit, including principal and interest (based on a mortgage loan equal to 95 percent of the purchase price and the FreddieMac 30-Year Fixed Rate-Mortgage rate of interest), property taxes, homeowner and private mortgage insurance and condominium or homeowner association fees do not exceed 30 percent of the eligible monthly income of the appropriate size household as determined pursuant to N.J.A.C. 5:80-26.7, as may be amended and supplemented; provided, however, that the price shall be subject to the affordability average requirement of N.J.A.C. 5:80-26.4, as may be amended and supplemented.

10. The initial rent for a restricted rental unit shall be calculated so that the total monthly housing expense, including an allowance for tenant-paid utilities, does not exceed 30 percent of the gross monthly income of a household of the appropriate size whose income is targeted to the applicable percentage of median income for the unit, as determined pursuant to N.J.A.C. 5:80-26.3, as may be amended and supplemented. The rent shall also comply with the affordability average requirement of N.J.A.C. 5:80-26.4, as may be amended and supplemented. The initial rent for a restricted rental unit shall be calculated so the eligible monthly housing expenses/income, including an allowance for tenant-paid utilities does not exceed 30 percent of gross income of and the appropriate household size as determined pursuant to N.J.A.C. 5:80-26.3, as may be amended and supplemented.

11. At the anniversary date of the tenancy of the certified household occupying a restricted rental unit, following proper notice provided to the occupant household pursuant to N.J.S.A. 2A:18-61.1.f, the rent may be increased to an amount commensurate with the annual percentage increase in the Consumer Price Index for All Urban Consumers (CPI-U), specifically U.S. Bureau of Labor Statistics Series CUUR0100SAH, titled "Housing in Northeast urban, all urban consumers, not seasonally adjusted." Rent increases for units constructed pursuant to Low-Income Housing Tax Credit regulations shall be indexed pursuant to the regulations governing Low-Income Housing Tax Credits.

I. Affirmative Marketing.

1. The municipality shall adopt, by resolution, an Affirmative Marketing Plan, subject to approval of the Superior Court, compliant with N.J.A.C. 5:80-26.16, as may be amended and supplemented.

2. 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 housing units which are being marketed by a developer, sponsor or owner of affordable housing. The Affirmative Marketing Plan 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 2 and is required to be followed throughout the period of deed restriction.

3. The Affirmative Marketing Plan provides the following preferences, provided that units that remain unoccupied after these preferences are exhausted may be offered to households without regard to these preferences.

   a. Where the municipality has entered into an agreement with a developer or residential development owner to provide a preference for very-low-,low-, and moderate-income veterans who served in time of war or other emergency, pursuant to N.J.S.A. 52:27D-311.j, there shall be a preference for veterans for up to 50 percent of the restricted rental units in a particular project.

   b. There shall be a regional preference for all households that live and/or work in Housing Region 2 comprising Essex, Morris, Warren, and Union Counties.

   c. Subordinate to the regional preference, there shall be a preference for households that live and/or work in New Jersey.

   d. With respect to existing restricted units undergoing approved rehabilitation for the purpose of preservation or to restricted units newly created to replace existing restricted units undergoing demolition, a preference for the very-low-, low-, and moderate-income households that are displaced by the rehabilitation or demolition and replacement.

4. The municipality has the ultimate responsibility for adopting the Affirmative Marketing Plan and for the proper administration of the Affirmative Marketing Process, including the marketing of initial sales and rentals and resales and re-rentals. The Administrative Agent designated by the municipality shall implement the Affirmative Marketing Process to ensure the Affirmative Marketing of all affordable units, with the exception of affordable programs that are exempt from Affirmative Marketing as noted herein.

5. The Affirmative Marketing Process shall describe the media to be used in advertising and publicizing the availability of housing. In implementing the Affirmative Marketing Process, the Administrative Agent shall consider the use of language translations where appropriate.

6. Applications for affordable housing or notices thereof, if offered online, 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 municipal library in the municipality in which the units are located; and the developer's rental or sales office. The developer shall mail applications to prospective applicants upon request and shall make applications available through a secure online website address.

7. In addition to other Affirmative Marketing strategies, the Administrative Agent shall provide specific notice of the availability of affordable housing units on the New Jersey Housing Resource Center website. Any other entities, including developers or persons or companies retained to implement the Affirmative Marketing Process, shall comply with this paragraph.
8. In implementing the Affirmative Marketing Process, the Administrative Agent shall provide a list of counseling services to low- and moderate-income applicants on subjects such as budgeting, credit issues, mortgage qualification, rental lease requirements, and landlord/tenant law.
9. The Affirmative Marketing Process for available affordable units shall begin at least four months (120 days) prior to the expected date of occupancy.
10. The cost to affirmatively market the affordable units shall be the responsibility of the developer, sponsor or owner, with the exception of Affirmative Marketing for resales.

J. Selection of Occupants of Affordable Housing Units.

1. The Administrative Agent shall use a random selection process to select occupants of very low-, low- and moderate-income housing.
2. A pool of interested households will be maintained in accordance with the provisions of N.J.A.C. 5:80-26.16.

K. Occupancy Standards.

1. 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:
   a. Ensure each bedroom is occupied by at least one person, except for age-restricted and supportive and special needs housing units;
   b. Provide a bedroom for every two adult occupants;
   c. With regard to occupants under the age of 18, accommodate the household's requested arrangement, except that such arrangement may not result in more than two occupants under the age of 18 occupying any bedroom; and
   d. Avoid placing a one-person household into a unit with more than one bedroom.

L. 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. 5:80-26.6, as may be amended and supplemented, and each restricted ownership unit shall remain subject to the controls on affordability for a period of at least 30 years subject to the requirements of N.J.A.C. 5:80-26.6, as may be amended and supplemented.
2. Rehabilitated housing units that are improved to code standards shall be subject to affordability controls for a period of not less than 10 years (crediting towards present need only).
3. The affordability control period for a restricted ownership unit shall commence on the date the initial certified household takes title to the unit. The date of commencement shall be identified in the deed restriction.

4. If existing affordability controls are being extended, the extended control period for a restricted ownership unit commences on the effective date of the extension, which is the end of the original control period.
5. After the end of any control period, the restricted ownership unit remains subject to the affordability controls set forth in this subchapter until the owner gives notice of their intent to make an exit sale, at which point:
    a. If the municipality exercises the right to extend the affordability controls on the unit, no exit sale occurs and a new control period commences; or
    b. If the municipality does not exercise the right to extend the affordability controls on the unit, the affordability controls terminate following the exit sale.
6. Prior to the issuance of any building permit for the construction/rehabilitation of restricted ownership units, the developer/owner and the municipality shall record a preliminary instrument provided by the Administrative Agent.
7. 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 shall determine the restricted price for the unit and shall also determine the nonrestricted, fair market value of the unit based on either an appraisal or the unit's equalized assessed value without the restrictions in place.
8. At the time of the initial sale of the unit and upon each successive price-restricted sale, the initial purchaser shall execute and deliver to the Administrative Agent a recapture note obliging 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.
9. 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 price-restricted ownership units.

M. Price Restrictions for Restricted Ownership Units and Resale Prices.

1. Price restrictions for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.7, as may be amended and supplemented, including:
    a. The initial purchase price and affordability percentage for a restricted ownership unit shall be set by the Administrative Agent.
    b. The Administrative Agent shall approve all resale prices, in writing and in advance of the resale, to assure compliance with the standards set forth in N.J.A.C 5:80-26.7.
        i. If the resale occurs prior to the one-year anniversary of the date on which title to the unit was transferred to a certified household, the maximum resale price for a is the most recent non-exempt purchase price.
        ii. If the resale occurs on or after such anniversary date, the maximum resale price is the most recent non-exempt purchase price increased to reflect the cumulative annual percentage increases to the regional median income, effective as of the

same date as the regional median income calculated pursuant to N.J.A.C. 5:80-26.3

c. The owners of restricted ownership units may apply to the Administrative Agent to increase the maximum sales price for the unit on the basis of anticipated capital improvements. Eligible capital improvements shall be:

i. those that render the unit suitable for a larger household or the addition of a bathroom.

ii. The maximum resale price may be further increased by an amount up to the cumulative dollar value of approved capital improvements made after the last non-exempt sale for improvements and/or upgrades to the unit, excluding capital improvements paid for by the entity favored on the recapture note and recapture lien described at N.J.A.C. 5:80-26.6(d);

d. No increase for capital improvements is permitted if the maximum resale price prior to adjusting for capital improvements already exceeds whatever initial purchase price the unit would have if it were being offered for purchase for the first time at the initial affordability percentage. All adjustments for capital improvements are subject to 10-year, straight-line depreciation.

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 at the time of the signing of the agreement to purchase but shall be separate and apart from any contract of sale for the underlying real estate. 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 of the air conditioning equipment, which shall be subject to 10-year, straight-line depreciation, has been approved by the Administrative Agent. Unless otherwise approved by the Administrative Agent, the purchase of any property other than central air conditioning shall not be made a condition of the unit resale. The seller 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.

N. Buyer Income Eligibility.

1. Buyer income eligibility for restricted ownership units shall be established pursuant to N.J.A.C. 5:80-26.17, as may be amended and supplemented, such that very low-income ownership units shall be reserved for occupancy by households with a gross household income less than or equal to 30% of median income, low-income ownership units shall be reserved for occupancy by households with a gross household income less than or equal to 50% of median income and moderate-income ownership units shall be reserved for occupancy by households with a gross household income less than 80% of median income.

2. Notwithstanding the foregoing, the Administrative Agent may, upon approval by the municipality, and subject to the Division'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. Similarly, the administrative agent may permit low-income purchasers to buy very-low-income units in housing markets where, as determined by the Division, units are reserved for very-low-income purchasers, but there is an insufficient number of very-low-income purchasers to permit prompt occupancy of the units. In such instances, the purchased unit must be maintained as a very-low-income unit and sold at a very-low-income price point such that on the next resale the unit will still be affordable to very-low-income households and able to be purchased by a very-low-income household. A very-low-income unit that is seeking bonus credit pursuant to N.J.S.A. 52:27D-311.k(9) must first be advertised exclusively as a very-low-income unit according to the Affirmative Marketing requirements at N.J.A.C. 5:80-26.16, then advertised as a very-low-income or low-income unit for at least 30 additional days prior to referring any low-income household to the 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 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, property taxes, homeowner and private mortgage insurance and condominium or homeowner association fees, as applicable) does not exceed 35 percent of the household's eligible monthly income; 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% (40% for households eligible for age-restricted units) of its gross household income for housing expenses, and the proposed housing expenses will reduce its housing costs;

   b. The household has consistently paid more than 35% (40% for households eligible for age-restricted units) of eligible monthly income for housing expenses in the past and has proven its ability to pay; or

   c. The household is currently in substandard or overcrowded living conditions;

   d. The household documents the existence of assets, within the asset limitation otherwise applicable, with which the household proposes to supplement the rent payments

O. 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 for a determination in writing that the proposed indebtedness complies with the provisions of this Section, and the Administrative Agent shall issue such determination prior to the owner incurring such indebtedness.

2. With the exception of original purchase money mortgages, neither an owner nor a lender shall at any time during the control period cause or permit the total indebtedness secured by a restricted ownership unit to exceed 95% of the maximum allowable resale price of that unit, as such price is determined by the Administrative Agent in accordance with N.J.A.C. 5:80-26.7(c).

P. Control Periods for Restricted Rental Units.

1. Control periods for units that meet the definition of prior round units shall be pursuant to the 2001 UHAC rules originally adopted October 1, 2001, 33 N.J.R. 3432 and shall remain subject to the requirements of this ordinance for a period of at least 30 years as applicable unless otherwise indicated.
2. Other than for prior round units, control periods for restricted rental units shall be in accordance with N.J.A.C. 5:80-26.12, 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 40 years. Restricted rental units created as part of developments receiving 9% Low-Income Housing Tax Credits must comply with a control period of not less than a 30-year compliance period plus a 15-year extended use period for a total of 45 years.
3. The affordability control period for a restricted rental unit shall commence on the first date that a unit is issued a certificate of occupancy following the execution of the deed restriction or, if affordability controls are being extended, on the effective date of the extension, which is the end of the original control period.
4. Rehabilitated renter-occupied housing units that are improved to code standards shall be subject to affordability controls for a period of not less than 10 years.
5. Prior to the issuance of any building permit for the construction/rehabilitation of restricted rental units, the developer/owner and the municipality shall record a preliminary instrument provided by the Administrative Agent.
6. 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. The deed restriction shall be recorded by the developer with the county records office, and provided as filed and recorded, to the Administrative Agent within 30 days of the receipt of a certificate of occupancy.
7. 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;
   c. The entry and enforcement of any judgment of foreclosure on the property containing the unit; or
   d. The end of the control period, until the occupant household vacates the unit, or is certified as over-income and the controls are released in accordance with UHAC.

Q. Rent Restrictions for Rental Units; Leases and Fees.

1. The initial rent for a restricted rental unit shall be set by the Administrative Agent.

2. A written lease shall be required for all restricted rental units, except for units in an assisted living residence, 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 retained on file by the Administrative Agent.
3. No additional fees, operating costs, 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.
    a. Operating costs, for the purposes of this section, include certificate of occupancy fees, move-in fees, move-out fees, mandatory internet fees, mandatory cable fees, mandatory utility submetering fees, and for developments with more than one and a half off-street parking spaces per unit, parking fees for one parking space per household.
4. Any fee structure that would remove or limit affordable unit occupant access to any amenities or services that are required or included for market-rate unit occupants is prohibited. Application fees (including the charge for any credit check) shall not exceed 5% of the monthly rent of the applicable restricted unit to be applied to the costs of administering the controls applicable to the unit as set forth in this Ordinance.
5. Fees for unit-specific, non-communal items that are charged to market-rate unit tenants on an optional basis, such as pet fees for tenants with pets, storage spaces, bicycle-share programs, or one-time rentals of party or media rooms, may also be charged to affordable unit tenants, if applicable.
6. Pet fees may not exceed $30.00 per month and associated one-time payments for optional fees pertaining to pets, such as a pet cleaning fee, are prohibited.
7. Fees charged to affordable unit tenants for other optional, unit-specific, non-communal items shall not exceed the amounts charged to market-rate tenants.
8. For any prior round rental unit leased before December 20, 2024, elements of the existing fee structure that are consistent with prior rules, but inconsistent with 5:80-26.13(c)1, may continue until the occupant household's current lease term expires or that occupant household vacates the unit, whichever occurs later.

R. Tenant Income Eligibility.

1. Tenant income eligibility shall be determined pursuant to N.J.A.C. 5:80-26.14, 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% of the regional median 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% of the regional median income by household size.
    c. Moderate-income rental units shall be reserved for households with a gross household income less than 80% of the regional median income by household size.
2. The Administrative Agent shall certify a household as eligible for a restricted rental unit when the household is a very low-income, low-income or moderate-income household, as applicable to the unit, and the rent proposed for the unit does not exceed 35% (40% for age-restricted units) of the household's eligible monthly income as determined pursuant

to N.J.A.C. 5:80-26.17, 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% (40% 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% (40% for households eligible for age-restricted units) of eligible monthly income for rent in the past and has proven its 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.

3. The applicant shall file documentation sufficient to establish the existence of any of the circumstances in 2.a. through 2.e. above with the Administrative Agent, who shall counsel the household on budgeting.

S. Municipal Housing Liaison.

1. The Municipal Housing Liaison shall be approved by municipal resolution.

2. The Municipal Housing Liaison shall be approved by the Division, or is in the process of getting approval, and fully or conditionally meets the requirements for qualifications, including initial and periodic training as set forth in in N.J.A.C. 5:99-1 et seq.

3. The Municipal Housing Liaison shall be responsible for oversight and administration of the affordable housing program, including the following responsibilities, which may not be contracted out to the Administrative Agent:

a. Serving as the primary point of contact for all inquiries from the Affordable Housing Dispute Resolution Program, the State, affordable housing providers, administrative agents and interested households.

b. The oversight of the Affirmative Marketing Plan and affordability controls.

c. When applicable, overseeing and monitoring any contracting Administrative Agent.

d. Overseeing the monitoring of the status of all restricted units listed in the Fair Share Plan.

e. Verifying, certifying and providing annual information within AHMS at such time and in such form as required by the Division.

f. Coordinating meetings with affordable housing providers and administrative agents, as needed.

g. Attending continuing education opportunities on affordability controls, compliance monitoring, and affirmative marketing as offered or approved by the Division.

h. Overseeing the recording of a preliminary instrument in the form set forth at N.J.A.C. 5:80-26.1 for each affordable housing development.

i. Coordinating with the Administrative Agent, municipal attorney and municipal Construction Code Official to ensure that permits are not issued unless the document required in S.3.h. above has been duly recorded.

j. Listing on the municipal website contact information for the MHL and Administrative Agents.

T. Administrative Agent.

1. All municipalities that have created or will create affordable housing programs and/or affordable units shall designate or approve, for each project within its HEFSP, an administrative agent to administer the affordable housing program and/or affordable housing units in accordance with the requirements of the FHA, NJAC 5:99-1 et seq. and UHAC.

2. The fees for administrative agents shall be paid as follows:

   a. Administrative agent fees related to rental units shall be paid by the developer/owner.

   b. Administrative agent fees related to initial sale of units shall be paid by the developer.

   c. Administrative agent fees related to resales shall be paid by the seller of the affordable home.

   d. Administrative agent fees related to ongoing administration and enforcement shall be paid by the municipality.

3. An Operating Manual for each affordable housing program shall be provided by the Administrative Agent(s). The Operating Manual(s) shall be available for public inspection in the Office of the Clerk and in the office(s) of the Administrative Agent(s). Operating manuals shall be adopted by resolution of the Governing Body.

4. Subject to the role of the Administrative Agent(s), the duties and responsibilities as are set forth in N.J.A.C. 5:99-7and which are described in full detail in the Operating Manual, including those set forth in UHAC, include:

   a. Attending continuing education opportunities on affordability controls, compliance monitoring, and affirmative marketing as offered or approved by the Division;

   b. Affirmative marketing:

      i. Conducting an outreach process to affirmatively market affordable housing units in accordance with the Affirmative Marketing Plan of the municipality and the provisions of N.J.A.C. 5:80-26.16.

      ii. Providing counseling, or contracting to provide counseling services, to low- and moderate-income applicants on subjects such as budgeting, credit issues, mortgage qualification, rental lease requirements; and landlord/tenant law.

   c. Household certification.

      i. Soliciting, scheduling, conducting and following up on interviews with interested households.

      ii. Conducting interviews and obtaining sufficient documentation of gross income and assets upon which to base a determination of income eligibility for a low- or moderate-income unit;

iii. Providing written notification to each applicant as to the determination of eligibility or non-eligibility within 5 days of the determination thereof.

iv. Requiring that all certified applicants for restricted units execute a certificate substantially in the firm, as applicable, of either the ownership or rental certificates set forth in the Appendices J and K of N.J.A.C. 5:80-26.1 et seq.

v. Creating and maintaining a referral list of eligible applicant households living in the housing region, and eligible applicant households with members working in the housing region, where the units are located.

vi. Employing a random selection process as provided in the Affirmative Marketing Plan when referring households for certification to affordable units.

d. Affordability controls.

i. Furnishing to attorneys or closing agents forms of deed restrictions and mortgages for the recording at the time of conveyance of title of each restricted unit.

ii. Ensuring that the removal of the deed restrictions and cancellation of the mortgage note are effectuated and filed properly with the County Register of Deeds or County Clerk's office after the termination of the affordability controls for each restricted unit in accordance with UHAC.

iii. Communicating with lenders and the Municipal Housing Liaison regarding foreclosures.

iv. Ensuring the issuance of Continuing Certificates of Occupancy or certifications pursuant to N.J.A.C. 5:80-26.11.

e. Records retention.

i. Creating and maintaining a file on each restricted unit for its control period, including the recorded deed with restrictions, recorded recapture mortgage, and note, as appropriate.

ii. Records received, retained, retrieved, or transmitted in furtherance of crediting affordable units of a municipality constitute public records of the municipality as defined by N.J.S.A. 47:3-16, and are legal property of the municipality.

f. Resales and re-rentals.

i. Instituting and maintaining an effective means of communicating information between owners and the Administrative Agent regarding the availability of restricted units for resale or re-rental.

ii. Instituting and maintaining an effective means of communicating information to very low-, low-, or moderate-income households regarding the availability of restricted units for resale or re-rental.

g. Processing requests from unit owners.

i. Reviewing and approving requests from owners of restricted units who wish to refinance or take out home equity loans during the term of their ownership to determine that the amount of indebtedness to be incurred will not violate the terms of this ordinance.

ii. Reviewing and approving requests to increase sales prices from owners of restricted units who wish to make capital improvements to the units that would affect the selling price, such authorizations to be limited to those improvements resulting in additional bedrooms or bathrooms and the depreciated cost of central air conditioning systems.

iii. Notifying the municipality of an owner's intent to sell a restricted unit.

iv. Making determinations on requests by owners of restricted units for hardship waivers.

h. Enforcement.

i. Securing annually from the municipality a list of all affordable ownership units for which property tax bills are mailed to absentee owners, and notifying all such owners that they must either move back to their unit or sell it;

ii. Securing from all developers and sponsors of restricted units, at the earliest point of contact in the processing of the project or development, written acknowledgement of the requirement that no restricted unit can be offered, or in any other way committed, to any person, other than a household duly certified to the unit by the Administrative Agent;

iii. Sending annual mailings to all owners of affordable dwelling units reminding them of the notices and requirements outlined in N.J.A.C. 5:80-26.19(d)4;

iv. Establishing a program for diverting unlawful rent payments to the municipal Affordable Housing Trust Fund; and

v. Creating and publishing a written operating manual for each affordable housing program administered by the Administrative Agent setting forth procedures for administering the affordability controls.

i. The Administrative Agent(s) shall, as delegated by the municipality, have the authority to take all actions necessary and appropriate to carry out its/their responsibilities, herein.

U. Responsibilities of The Owner of a development containing affordable units.

1. The owner of all developments containing affordable units subject to this subchapter or the assigned management company thereof shall provide to the administrative agent:

a. Site plan, architectural plan, or other plan that identifies the location of each affordable unit, if subject to the site plan approval, settlement agreement, or other applicable document regulating the location of affordable units. The administrative agent shall determine the location of affordable units if not set forth in the site plan approval, settlement agreement, or other applicable document.

b. The total number of units in the project and the number of affordable units.

c. The breakdown of the affordable units by or identification of affordable unit locations by bedroom count and income level, including street addresses / unit numbers, if subject to the site plan approval, settlement agreement, or other applicable document regulating the breakdown of affordable units. The administrative agent shall determine the bedroom and income distribution if not set forth in the site plan approval, settlement agreement, or other applicable document.

d. Floor plans of all affordable units, including complete and accurate identification of all rooms and the dimensions thereof.

e. A projected construction schedule.

f. The location of any common areas and elevators.

g. The name of the person who will be responsible for official contact with the administrative agent for the duration of the project, which must be updated if the contact changes.

2. In addition to the items in U.1. above, the owner of rental developments containing affordable rental units subject to this subchapter or the assigned management company thereof shall:

a. Send to all current tenants in all restricted rental units an annual mailing containing a notice as to the maximum permitted rent and a reminder of the requirement that the unit must remain their principal place of residence, which is defined as residing in the unit at least 260 days out of each calendar year, together with the telephone number, mailing address, and email address of the administrative agent to whom complaints of excess rent can be issued.

b. Provide to the administrative agent a description of any applicable fees.

c. Provide to the administrative agent a description of the types of utilities and which utilities will be included in the rent.

d. Agree and ensure that the utility configuration established at the start of the rent-up process not be altered at any time throughout the restricted period.

e. Provide to the administrative agent a proposed form of lease for any rental units.

f. Ensure that the tenant selection criteria for the applicants for affordable units not be more restrictive that the tenant selection criteria for applicants for non-restricted units.

g. Strive to maintain the continued occupancy of the affordable units during the entire restricted period.

3. In addition to the items in U.1. above, the owner of affordable for-sale developments containing affordable for-sale units subject to this subchapter or the assigned management company thereof shall provide the administrative agent:

a. Proposed pricing for all units, including any purchaser options and add-on items.

b. Condominium or homeowner association fees and any other applicable fees.

c. Estimated real property taxes.

d. Sewer, water, trash disposal, and any other utility assessments.

e. Flood insurance requirement, if applicable.

f. The State-approved planned real estate development public offering statement and/or master deed, where applicable, as well as the full build-out budget.

V. Enforcement of Affordable Housing Regulations

1. Upon the occurrence of a breach of any of the regulations governing the 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, municipal fines, a requirement for household recertification, acceleration of all sums due under a mortgage, recoupment of any funds from a sale in the violation of the regulations, injunctive relief to prevent further violation of the regulations, entry on the premises, and specific performance.

2. After providing written notice of a violation to an owner, developer or tenant of an affordable unit and advising the owner, developer or tenant of the penalties for such violations, the municipality may take the following action against the owner, developer or tenant for any violation that remains uncured for a period of 60 days after service of the written notice:

   a. 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 found 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:

      i. A fine of not more than $10,000 or imprisonment for a period not to exceed 90 days, or both, unless otherwise specified below, 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;

      ii. In the case of an owner who has rented his or her low- or moderate-income unit in violation of the regulations governing affordable housing units, payment into the municipal Affordable Housing Trust Fund of the gross amount of rent illegally collected;

      iii. In the case of an owner who has rented his or her affordable unit in violation of the regulations governing affordable housing units, payment of an innocent tenant's reasonable relocation costs, as determined by the Court.

3. The municipality shall have the authority to levy fines against the owner of the development for instances of noncompliance with NJHRC advertising requirements (N.J.S.A. 52:27D-321.6.e.(2)), following written notice to the owner. The fine for the first offense of noncompliance shall be $5,000, the fine for the second offense of noncompliance shall be $10,000, and the fine for each subsequent offense of noncompliance shall be $15,000.

4. The municipality may file a court action in the Superior Court seeking a judgment, which would result in the termination of the owner's equity or other interest in the unit, in the nature of a mortgage foreclosure. Any judgment shall be enforceable as if the same were a judgment of default of the first purchase money mortgage and shall constitute a lien against the low- or moderate-income unit.

   a. Such judgment shall be enforceable, at the option of the municipality, by means of an execution sale by the Sheriff, at which time the affordable 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 the right to possession terminated as well as the title conveyed pursuant to the Sheriff's sale.

b. The proceeds of the Sheriff's sale shall first be applied to satisfy the first purchase money mortgage lien and any prior liens upon the low- or 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 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 due to violation of the regulations governing affordable housing units shall not extinguish the restrictions of the regulations governing affordable housing units as they apply to the low- and moderate-income unit. Title shall be conveyed to the purchaser at the Sheriff's sale, subject to the restrictions and provisions of the regulations governing the affordable housing unit. The owner determined to be in violation of the provisions of this plan and from whom title and possession were taken by means of the Sheriff's sale shall not be entitled to any right of redemption.

d. If there are no bidders at the Sheriff's sale, or if insufficient amounts are bid to satisfy the first purchase money mortgage and any prior liens, the municipality may acquire title to the affordable 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 affordable 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 that would have been realized from an actual sale as previously described.

e. Failure of the low- or 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 that may be referred to the owner by the municipality, with such offer to purchase being equal to the maximum resale price of the low- or moderate-income unit as permitted by the regulations governing affordable housing units.

f. The affordable unit owner shall remain fully obligated, responsible and liable for complying with the terms and restrictions of governing affordable housing units until such time as title is conveyed from the owner.

5. It is the responsibility of the municipal housing liaison and the administrative agent(s) to ensure that affordable housing units are administered properly. All affordable units must be occupied within a reasonable amount of time and be re-leased within a reasonable amount of time upon the vacating of the unit by a tenant. If an administrative agent or municipal housing liaison becomes aware of or suspects that a developer, landlord, or property manager has not complied with these regulations, it shall report this activity to the Division. The Division must notify the developer, landlord, or property manager, in writing, of any violation of these regulations and provide a 30-day cure period. If, after the 30-day cure period, the developer, landlord, or property manager remains in violation of any terms of this subchapter, including by keeping a unit vacant, the developer, landlord, or property manager may be fined up to the amount required to construct a comparable affordable unit of the same size and the deed-restricted control period will be extended for the length of the time the unit was out of compliance, in addition to the remedies provided for in this section. For the purposes of this subsection, a reasonable amount of time shall presumptively be 60 days, unless a longer period of time is required due to demonstrable market conditions and/or failure of the municipal housing liaison or the administrative agent to refer a certified tenant.
6. Banks and other lending institutions are prohibited from issuing any loan secured by owner occupied real property subject to the affordability controls set forth in this subchapter if such loan would be in excess of amounts permitted by the restriction documents recorded in the deed or mortgage book in the county in which the property is located. Any loan issued in violation of this subsection is void as against public policy.
7. The Agency and the Department hereby reserve, for themselves and for each administrative agent appointed pursuant to this subchapter, all of the rights and remedies available at law and in equity for the enforcement of this subchapter, including, but not limited to, fines, evictions, and foreclosures as approved by a county-level housing judge.
8. Appeals
    a. Appeals from all decisions of an administrative agent appointed pursuant to this subchapter must be filed, in writing, with the municipal housing liaison. A decision by the municipal housing liaison may be appealed to the Division. A written decision of the Division Director upholding, modifying, or reversing an administrative agent's decision is a final administrative action.

W. Development Fees.

1. Purpose
    a. This section establishes standards for the collection, maintenance, and expenditure of development fees that are consistent with the amended Fair Housing Act (P.L.2024, c.2), N.J.A.C. 5:99, and the Statewide Non-Residential Development Fee Act (C. 40:55D-8.1 through 8.7). Fees collected pursuant to this Ordinance shall be used for the sole purpose of providing very low-, low- and moderate-income housing in accordance with a Court-approved Spending Plan.
2. Basic Requirements
    a. The municipality previously adopted a development fee ordinance, which established the Municipal Affordable Housing Trust Fund.

b. The municipality shall not spend development fees until the court has approved a plan for spending such fees.

3. Residential Development Fees

a. Imposed fees

i. Residential developers, except for developers of the types of development specifically exempted below, shall pay a fee of 1.5% of the equalized assessed value for residential development, provided no increased density is permitted. Development fees shall also be imposed and collected when an additional dwelling unit is added to an existing residential structure; in such cases, the fee shall be calculated based on the increase in the equalized assessed value of the property due to the additional dwelling unit.

ii. When an increase in residential density is permitted pursuant to a "d" variance granted under N.J.S.A. 40:55D-70d(5), developers shall be required to pay a "bonus" development fee of 6.0% of the equalized assessed value for each additional unit that may be realized, except that this provision shall not be applicable to a development that will include affordable housing. If the zoning on a site has changed during the two-year period preceding the filing of such a variance application, the base density for the purposes of calculating the bonus development fee shall be the highest density permitted by right during the two-year period preceding the filing of the variance application.

Example: If an approval allows four units to be constructed on a site that was zoned for two units, the fees could equal 1.5% of the equalized assessed value on the first two units; and the specified higher percentage of 6% of the equalized assessed value for the two additional units, provided zoning on the site has not changed during the two-year period preceding the filing of such a variance application.

b. Eligible exactions, ineligible exactions and exemptions for residential development

i. Affordable housing developments, developments where the developer is providing for the construction of affordable units elsewhere in the municipality, and developments where the developer has made an eligible payment in lieu of on-site construction of affordable units, if permitted by ordinance, or by agreement with the municipality and if approved by a municipality prior to the statutory elimination of payments in-lieu on March 20, 2024 per P.L.2024, c.2, shall be exempt from development fees.

ii. Developments that have received preliminary or final site plan approval prior to the adoption of this ordinance and any preceding ordinance permitting the collection of development fees shall be exempt from the payment of development fees, unless the developer seeks a substantial change in the original approval. Where a site plan approval does not apply, the issuance of a zoning and/or building permit shall be synonymous with preliminary or final site plan approval for the purpose of determining the right to an exemption. In all cases, the applicable fee percentage shall be determined based upon the development fee ordinance in effect on the date that the construction permit is issued.

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

iv. No development fee shall be collected for the demolition and replacement of a residential building resulting from a fire or natural disaster.

v. (Reserved)

4. Non-Residential Development Fees

a. Imposition of fees

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

ii. Within all zoning districts, non-residential developers, except for developers of the types of development specifically exempted, shall also pay a fee equal to 2.5% of the increase in equalized assessed value resulting from any additions to existing structures to be used for non-residential purposes.

iii. Development fees shall be imposed and collected when an existing structure is demolished and replaced. The development fee of 2.5% shall be calculated on the difference between the equalized assessed value of the pre-existing land and improvements and the equalized assessed value of the newly improved structure; i.e., land and improvements; and such calculation shall be made at the time a final certificate of occupancy is issued. If the calculation required under this section results in a negative number, the non-residential development fee shall be zero.

b. Eligible exactions, ineligible exactions and exemptions for non-residential development

i. The non-residential portion of a mixed-use inclusionary or market-rate development shall be subject to a 2.5% development fee, unless otherwise exempted below.

ii. The 2.5% fee shall not apply to an increase in equalized assessed value resulting from alterations, change in use within existing footprint, reconstruction, renovations and repairs.

c. Non-residential developments shall be exempt from the payment of non-residential development fees in accordance with the exemptions required pursuant to the Statewide Non-Residential Development Fee Act (N.J.S.A. 40:55D-8.1 through 8.7), as specified in Form N-RDF "State of New Jersey Non-Residential Development Certification/Exemption." Any exemption claimed by a developer shall be substantiated by that developer.

d. A developer of a non-residential development exempted from the non-residential development fee pursuant to the Statewide Non-Residential Development Fee Act shall be subject to the fee at such time as the basis for the exemption no longer applies, and shall make the payment of the non-residential development fee, in that event,

within three years after that event or after the issuance of the final certificate of occupancy of the non-residential development, whichever is later.

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

5. Collection Procedures

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

b. For non-residential developments only, the developer shall also be provided with a copy of Form N-RDF, "State of New Jersey Non-Residential Development Certification/Exemption," to be completed by the developer as per the instructions provided in the Form N-RDF. The construction official shall verify the information submitted by the non-residential developer as per the instructions provided on Form N-RDF. The tax assessor shall verify exemptions and prepare estimated and final assessments as per the instructions provided in Form N-RDF.

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

d. Within 90 days of receipt of that notice, the tax assessor shall provide an estimate, based on the plans filed, of the equalized assessed value of the development.

e. The construction official responsible for the issuance of a final certificate of occupancy shall notify the tax assessor of any and all requests for the scheduling of a final inspection on property that is subject to a development fee.

f. Within 10 business days of a request for the scheduling of a final inspection, the tax assessor shall confirm or modify the previously estimated equalized assessed value of the improvements associated with the development; calculate the development fee; and thereafter notify the developer of the amount of the fee.

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

h. Fifty percent (50%) of the development fee shall be collected at the time of issuance of the **first** construction permit. The remaining portion**, based on the tax assessor's then-current estimate of the equalized assessed value,** shall be collected **prior to** ~~at~~ the ~~time of~~ issuance of the **first temporary** certificate of occupancy**, or certificate of occupancy for the development, whichever is issued first**. **Upon the final calculation under paragraph f.,** ~~T~~the developer shall **pay** any ~~be responsible for paying the~~ difference between the **amounts previously paid and the final**

development fee, and no final certificate of occupancy shall be issued until that difference has been paid. Any overpayment shall be refunded to the developer.~~fee calculated at the time of issuance of the construction permit and that determined at the time of issuance of certificate of occupancy.~~

6. Appeal of development fees

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

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

7. Municipal Affordable Housing Trust Fund

   a. A separate, interest-bearing Municipal Affordable Housing Trust Fund shall be maintained by the chief financial officer of the municipality for the purpose of depositing development fees collected from residential and non-residential developers and proceeds from the sale of units with extinguished controls.

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

      i. Payments in lieu of on-site construction of an affordable unit, where previously permitted by ordinance or by agreement with the municipality and if approved by a municipality prior to the statutory elimination of payments in-lieu on March 20, 2024 per P.L.2024, c.2;

      ii. Funds contributed by developers to make 10% of the adaptable entrances in a townhouse or other multistory attached dwelling unit development accessible;

      iii. Rental income from municipally operated units;

      iv. Repayments from affordable housing program loans;

      v. Recapture funds;

      vi. Proceeds from the sale of affordable units; and

      vii. Any other funds collected in connection with the municipal affordable housing program including but not limited to interest earned on fund deposits.

   c. The municipality shall provide the Division with written authorization, in the form of a tri-party escrow agreement(s) between the municipality, the Division and the financial institution in which the municipal affordable housing trust fund has been

established to permit the Division to direct the disbursement of the funds as provided for in N.J.A.C. 5:99-2.1 et seq.

d. Occurrence of any of the following deficiencies may result in the Division requiring the forfeiture of all or a portion of the funds in the municipal Affordable Housing Trust Fund:

   i. Failure to meet deadlines for information required by the Division in its review of a development fee ordinance;

   ii. Failure to commit or expend development fees within four years of the date of collection in accordance with N.J.A.C. 5:99-5.5;

   iii. Failure to comply with the requirements of the Non-Residential Development Fee Act and N.J.A.C. 5:99-3;

   iv. Failure to submit accurate monitoring reports pursuant to this subchapter within the time limits imposed by the Act, this chapter, and/or the Division;

   v. Expenditure of funds on activities not approved by the Superior Court or otherwise permitted by law;

   vi. Revocation of compliance certification or a judgment of compliance and repose;

   vii. Failure of a municipal housing liaison or administrative agent to comply with the requirements set forth at N.J.A.C. 5:99-6, 7, and 8;

   viii. Other good cause demonstrating that municipal affordable housing funds are not being used for an approved purpose.

e. All interest accrued in the municipal affordable housing trust fund shall only be used on eligible affordable housing purposes approved by the Court.

8. Use of Funds

   a. The expenditure of all funds shall conform to a Spending Plan approved by Superior Court. Funds deposited in the municipal Affordable Housing Trust Fund may be used for any activity approved by the Court to address the fair share obligation and may be set up as a grant or revolving loan program. Such activities include, but are not limited to: preservation or purchase of housing for the purpose of maintaining or implementing affordability controls; housing rehabilitation; new construction of affordable housing units and related costs; accessory apartments; a market-to-affordable program; conversion of existing non-residential buildings to create new affordable units; green building strategies designed to be cost-saving and in accordance with accepted national or state standards; purchase of land for affordable housing; improvement of land to be used for affordable housing; extensions or improvements of roads and infrastructure to affordable housing sites; financial assistance designed to increase affordability; administration necessary for implementation of the Housing Element and Fair Share Plan; and/or any other activity permitted by Superior Court and specified in the approved Spending Plan.

   b. Funds shall not be expended to reimburse the municipality or activities that occurred prior to the authorization of a municipality to collect development fees.

   c. At least a portion of all development fees collected and interest earned shall be used to provide affordability assistance to very low-, low- and moderate-income

households in affordable units included in the municipal Fair Share Plan. A portion of the development fees which provide affordability assistance shall be used to provide affordability assistance to very low-income households.

i. Affordability assistance programs may include down payment assistance, security deposit assistance, low-interest loans, rental assistance, assistance with homeowners association or condominium fees and special assessments, infrastructure assistance, and assistance with emergency repairs. The specific programs to be used for affordability assistance shall be identified and described within the Spending Plan.

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

d. No more than 20% of all municipal affordable housing trust funds, exclusive of those collected to fund an RCA prior to July 17, 2008, shall be expended on administration, including, but not limited to, salaries and benefits for municipal employees or consultants' fees necessary to develop or implement a new construction program, prepare and implement a Housing Element and Fair Share Plan, administer an Affirmative Marketing Program and for compliance with the Superior Court and the Program including the costs to the municipality of resolving a challenge.

9. Monitoring

a. On or before February 15 of each year, the municipality shall provide annual electronic data reporting of trust fund activity for the previous year from January 1st to December 31st through the AHMS Reporting System. This reporting shall include an accounting of all Municipal Affordable Housing Trust Fund activity, including the sources and amounts of all funds collected and the amounts and purposes for which any funds have been expended. Such reporting shall include an accounting of development fees collected from residential and non-residential developers, previously eligible payments in lieu of constructing affordable units on site (if permitted by ordinance or by agreement with the municipality prior to the March 20, 2024 statutory elimination per P.L. 2024, c.4), funds from the sale of units with extinguished controls, barrier-free escrow funds, rental income from municipally-owned affordable housing units, repayments from affordable housing program loans, interest and any other funds collected in connection with municipal housing programs, as well as an accounting of the expenditures of revenues and implementation of the Spending Plan approved by the Court.

10. Ongoing Collection of Fees

a. The ability to impose, collect and expend development fees shall continue so long as the municipality retains authorization from the Court in the form of Compliance Certification or the good faith effort to obtain it.

b. If the municipality fails to renew its ability to impose and collect development fees prior to the expiration of its Judgment of Compliance, it may be subject to forfeiture of any or all funds remaining within its municipal Affordable Housing Trust Fund.

Any funds so forfeited shall be deposited into the New Jersey Affordable Housing Trust Fund established pursuant to section 20 of P.L.1985, c.222 (C. 52:27D-320).

11. Emergent Affordable Housing Opportunities. Requests to expend municipal affordable housing trust funds on emergent affordable housing opportunities not included in the municipal fair share plan shall be made to the Division and shall be in the form of a governing body resolution. Any request shall be consistent with N.J.A.C. 5:99-4.1.

SECTION 2. Repealer

All ordinances or code provisions or parts thereof inconsistent with this Ordinance are hereby repealed to the extent of such inconsistency.

SECTION 3. 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 4. Effective Date

This ordinance shall take effect upon its passage and publication, as required by law.

_____
Angie Devanney, Mayor

Introduction						Councilperson	Final Adoption					
Moved	Sec.	Aye	Nay	Abs.	NP		Moved	Sec.	Aye	Nay	Abs.	NP
						John Foster						
						Margaret Illis						
						Bill Machado						
						Alvaro Medeiros						
						Andrew Moran						
						Susan Poage						

Introduced:
November 10, 2026

Final Adoption:
December 1, 2026

I hereby certify the above ordinance was adopted by the Township Council of the Township of Berkeley Heights, County of Union, State of New Jersey on the aforementioned date.

_____
Angela Lazzari, Township Clerk

TOWNSHIP OF BERKELEY HEIGHTS

NOTICE OF INTRODUCTION
ORDINANCE 2026-24

PUBLIC NOTICE is hereby given that the Ordinance entitled

AN ORDINANCE AMENDING PART 18 (AFFORDABLE HOUSING) OF THE CODE OF THE TOWNSHIP OF BERKELEY HEIGHTS TO FURTHER CLARIFY THE COLLECTION PROCEDURES FOR DEVELOPMENT FEES

was introduced and passed on First Reading at the Regular Meeting of the Township Council of the Township of Berkeley Heights, County of Union, State of New Jersey, held on **November 10, 2026 at 6:30 p.m.** The within Ordinance will be further considered for Final Passage, after public hearing thereon, at the Regular Meeting of the Township Council to be held in the Council Chamber at the Berkeley Heights Municipal Complex, 29 Park Avenue, Berkeley Heights, NJ, on **December 1, 2026** at **6:30 p.m.**, or as soon thereafter, as said matter can be reached. At which time and place, all persons who are interested therein will be given an opportunity to be heard and ask questions concerning the same.

During the week prior to and up to the time of Public Hearing, copies of said Ordinance will be available at no cost in the Municipal Clerk's office in said Municipal Complex, 29 Park Avenue, Berkeley Heights, NJ 07974, and to the members of the general public who shall request the same.

Angela Lazzari
Township Clerk

TOWNSHIP OF BERKELEY HEIGHTS
UNION COUNTY, NEW JERSEY

ORDINANCE NO. 2026-25

AN ORDINANCE AMENDING THE TOWNSHIP CODE FOR THE TOWNSHIP OF BERKELEY HEIGHTS RELATED TO TREES AND THE FUNDING AND MANAGEMENT OF THE TREE TRUST

WHEREAS, the Township Code for the Township of Berkeley Heights currently sets forth certain requirements for trees; and

WHEREAS, the Mayor and Council for the Township of Berkeley Heights desire to update the Township Code related to trees; and

NOW, THEREFORE, BE IT ORDAINED , by the Mayor and Council of the Township of Berkeley Heights, County of Union, State of New Jersey as follows:

SECTION I. Section 12.16.060, "Application of Process and Fees" of Chapter 12.16, "Trees," of Title 12, "STREETS, SIDEWALKS AND PUBLIC PLACES," of the Township Code shall be amended as follows: [New language **bold and underlined**; deletions ~~stricken through~~.]

12.16.060 - Application Process and Fees.

A Tree Removal Permit application can be found online on the township website or at the tree inspector's office in the municipal building. Within fifteen (15) business days after the submission of an application for a permit, the tree inspector shall review the application, inspect the site and either grant or deny the permit or extend the review period for an additional ten (10) business days. If no action is taken by the tree inspector within the review period, the applicant may apply directly to the Township Administrator, or their designee, who will render a decision within fifteen (15) business days.

A. The applicant shall pay **the** ~~an application~~ fee**s** as follows:

1. Evaluation Fee:

An evaluation fee of $25 per tree will be charged for Township Tree Inspections. This fee is non-refundable and applies even when no Tree Permit is issued.

2. Permit Approval Fee:

If a permit is to be issued, the applicant shall pay the fees as follows:

Per tree, for up to three trees in a calendar year $25.00

Per tree, for four to ten (10) trees in a calendar year $75.00

Per tree, for more than ten (10) trees removed in a calendar year $250.00

B. Exemption waivers, including hazard trees and emergency removals, are detailed in section 12.16.160 Exemptions, and may be requested with Tree Removal Permit application.

C. A tree removal permit is valid for six months from the date of issue.

D. **All** ~~Two-thirds of the~~ permit fees collected shall be deposited to the Tree Trust Fund~~, and one-third shall be deposited to the Township general fund~~.

SECTION II. Section 12.16.080, "Replacement Alternatives" of Chapter 12.16, "Trees," of Title 12, "STREETS, SIDEWALKS AND PUBLIC PLACES," of the Township Code shall be amended as follows:

12.16.080 - Replacement Alternatives.

If the municipality determines that some or all required replacement trees cannot be planted on the property where the tree removal activity occurred, then the applicant shall: ~~do one of the following:~~

A. ~~Plant replacement trees in a separate area(s) approved by the municipality.~~
B. Pay into Tree Trust Fund an amount equal to the number of replacements determined by the table in section 12.16.070.B.
    1. First two trees in a calendar year: Two hundred dollars ($200.00) per tree.
    2. Each additional tree in a calendar year will be at the annual tree replacement cost.

    If the required replacement trees cannot be planted on the applicant's site pursuant to the table in section 12.6.070(B), an escrow contribution shall be submitted to the Township's Tree Trust Fund. The amount of the contribution shall equal the number of replacement trees (that cannot be planted on the applicant's site) and the cost of each replacement tree shall be based upon the current rate the Township is paying for equivalent replacement trees. The funds shall be used for trees to be planted in the Township.
C. ~~Tree replacement cost will be published with the township list of recommended trees, prepared by the Environmental Commission. The list is available on the township website.~~ **The list of Township recommended trees, prepared with the Environmnetal Commission, is available on the township website under the "Zoning & Tree Inspection" section.**

SECTION III. Section 12.16.110, "Tree Trust Fund" of Chapter 12.16, "Trees," of Title 12, "STREETS, SIDEWALKS AND PUBLIC PLACES," of the Township Code shall be amended as follows:

12.16.110 - Tree Trust Fund.

The Tree Trust Fund is an account established by the Township and dedicated by rider under N.J.S.A. 40A:5-29. **The Township Council, in consultation with** ~~T~~the Environmental Commission holds and manages the account for the benefit of the residents of Berkeley Heights. A**ll** ~~portion~~ of the permit fees and Tree replacement payments per table 12.16.080.**(B)** collected shall be

TOWNSHIP OF BERKELEY HEIGHTS
UNION COUNTY, NEW JERSEY

ORDINANCE NO. 2026-25

deposited into the Tree Trust Fund to plant **trees,** ~~and~~ care for trees, **conserve the canopy, and maintain trees, including the pruning, trimming, or removal of hazardous trees** ~~but not to remove trees~~ on public property.

SECTION IV. All ordinances or parts of ordinances in conflict or inconsistent with any part of this Ordinance are hereby repealed to the extent that they are in conflict or inconsistent.

SECTION V. If any section, provision, or part of provision of this Ordinance shall be held to be unenforceable or invalid by any court, such holding shall not affect the validity of this Ordinance, or any part thereof, other than the part so held unenforceable or invalid.

SECTION VI. This Ordinance shall take effect after passage and publication in the manner provided by law.

_____
Angie Devanney, Mayor

Introduction						Councilperson	Final Adoption					
Moved	Sec.	Aye	Nay	Abs.	NP		Moved	Sec.	Aye	Nay	Abs.	NP
						John Foster						
						Margaret Illis						
						Bill Machado						
						Alvaro Medeiros						
						Andrew Moran						
						Susan Poage						

Introduced:
November 10, 2026

Final Adoption:
December 1, 2026

I hereby certify the above ordinance was adopted by the Township Council of the Township of Berkeley Heights, County of Union, State of New Jersey on the aforementioned date.

_____
Angela Lazzari, Township Clerk

TOWNSHIP OF BERKELEY HEIGHTS

NOTICE OF INTRODUCTION
ORDINANCE 2026-25

PUBLIC NOTICE is hereby given that the Ordinance entitled

AN ORDINANCE AMENDING THE TOWNSHIP CODE FOR THE TOWNSHIP OF BERKELEY HEIGHTS RELATED TO TREES AND THE FUNDING AND MANAGEMENT OF THE TREE TRUST

was introduced and passed on First Reading at the Regular Meeting of the Township Council of the Township of Berkeley Heights, County of Union, State of New Jersey, held on **November 10, 2026 at 6:30 p.m.** The within Ordinance will be further considered for Final Passage, after public hearing thereon, at the Regular Meeting of the Township Council to be held in the Council Chamber at the Berkeley Heights Municipal Complex, 29 Park Avenue, Berkeley Heights, NJ, on **December 1, 2026** at **6:30 p.m.**, or as soon thereafter, as said matter can be reached. At which time and place, all persons who are interested therein will be given an opportunity to be heard and ask questions concerning the same.

During the week prior to and up to the time of Public Hearing, copies of said Ordinance will be available at no cost in the Municipal Clerk's office in said Municipal Complex, 29 Park Avenue, Berkeley Heights, NJ 07974, and to the members of the general public who shall request the same.

Angela Lazzari
Township Clerk