

ORDINANCE #2026-08 – First Reading

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**AN ORDINANCE OF THE BOROUGH OF ALLENHURST,
IN THE COUNTY OF MONMOUTH, NEW JERSEY,
ESTABLISHING AFFORDABLE HOUSING PROGRAM
REQUIREMENTS AND ADOPTING REGULATIONS
GOVERNING THE ADMINISTRATION OF VERY LOW-
LOW-, AND MODERATE-INCOME HOUSING UNITS**

Offered By: Mayor Adjmi

Seconded By: Comm. Dweck

WHEREAS, the New Jersey Supreme Court declared that the discriminatory use of zoning powers was illegal and provided, as a matter of constitutional law, that each developing municipality “must, by its land use regulations, make realistically possible the opportunity for an appropriate variety and choice of housing for all categories of people who may desire to live there, of course including those of low and moderate income,” In Re Adoption of N.J.A.C. 5:96 and 5:97 by the New Jersey Council on Affordable Housing, 221 N.J. 1, 6 (2015) (“**Mount Laurel IV**”), citing S. Burlington County NAACP v. Township of Mount Laurel (“**Mount Laurel I**”), 67 N.J. 151, 179, 187, appeal dismissed and cert. denied, 423 U.S. 808, 96 S. Ct. 18, 46 L. Ed. 2d 28 (1975), and that this constitutional obligation requires municipalities must provide “a realistic opportunity for the construction of [their] fair share of the present and prospective regional need for low and moderate income housing,” Id., citing S. Burlington County NAACP v. Township of Mount Laurel (“**Mount Laurel II**”), 92 N.J. 158, 205 (1983), (together with Mount Laurel I, the “**Mount Laurel Doctrine**”); and

WHEREAS, on March 20, 2024, Governor Murphy signed P.L.2024, c.2. (“**A4**”) into law, amending the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301 to -329 (the “**FHA**”) and establishing a new framework for determining and enforcing municipalities’ affordable housing obligations under the Mount Laurel Doctrine for the years 2025 – 2035 (the “**Fourth Round**”); and

WHEREAS, the Borough engaged M. McKinley Mertz, PP, AICP, LEED (the “**Borough Planner**”) to prepare a Housing Element and Fair Share Plan for the Fourth Round (the “**Fourth Round HEFSP**”); and

WHEREAS, on June 11, 2025, after providing notice in accordance with the MLUL, specifically N.J.S.A. 40:55D-313, the Planning Board adopted the Fourth Round HEFSP; and

WHEREAS, the FHA requires the Borough Board of Commissioners to adopt a revised Affordable Housing Ordinance (the “**Ordinance**”) as well as other administrative documents, in accordance with all applicable regulations; and

WHEREAS, the Borough Board of Commissioners finds it is in the best interest of the Borough to adopt this Ordinance in furtherance of compliance with the FHA, the Directive, and all applicable statutes and regulations.

NOW THEREFORE BE IT ORDAINED by the Board of Commissioners of the Borough of Allenhurst, in the County of Monmouth, New Jersey, that:

Section 1. The foregoing recitals are hereby incorporated by reference as if fully set forth herein.

Section 2. The Affordable Housing Regulations set forth in Chapter 21 and 22 of the Code of the Borough (the “**Code**”) are hereby repealed and to be replaced with the following:

22-1 Introduction & Applicability

- a. This section of the Code establishes regulations governing very low-, low- and moderate-

income housing units in Borough of Allenhurst. These regulations are intended to be consistent with the amended Fair Housing Act, N.J.S.A. 52:27D-301 to -329 (“FHA”), as well as the Department of Community Affairs, Division of Local Planning Services Regulations, N.J.A.C. 5:99-1.1 to -9.4 (“LPS”).

To the extent applicable and not inconsistent with the FHA or binding court decisions, this section also incorporates the statutorily preserved regulations previously adopted by the now-defunct Council on Affordable Housing (“COAH”), N.J.A.C. 5:93 and 5:97, the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.1 to -26.23 (“UHAC”), and the Borough’s adopted Fourth Round Housing Element and Fair Share Plan (“HEFSP”), as well as any amendments that have been or may be adopted thereto.

- b. 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 e.3. below.
- c. The Borough of Allenhurst Planning Board has adopted a HEFSP pursuant to the FHA and Municipal Land Use Law at N.J.S.A. 40:55D-1 to - 163 (“MLUL”). The Fair Share Plan, which has been approved by the Superior Court, describes the ways the Borough shall address its fair share of very low-, low-, and moderate-income housing, and is documented in the Housing Element.
- d. This Ordinance implements and incorporates the relevant provisions of the HEFSP and addresses the requirements of, the FHA, N.J.A.C. 5:99, New Jersey Supreme Court upheld COAH regulations at N.J.A.C. 5:93 and 5:97, and UHAC, as may be amended and supplemented.
- e. Applicability
 1. Except where specifically exempted hereinafter, the provisions of this Ordinance shall apply to all Affordable Housing Developments, hereinafter defined, and affordable housing units which are proposed to be created pursuant to the Borough’s HEFSP.
 2. Except where specifically exempted hereinafter, this Ordinance shall apply to all developments that contain very low-, low- and moderate-income housing units included in the HEFSP, including any unanticipated future developments that will provide very low-, low- and moderate-income housing units.
 3. Low-Income Housing Tax Credit (“LIHTC”) Units. To the extent any affordable units in the HEFSP are financed under the Federal Low-Income Housing Tax Credit program

(26 U.S.C. § 42), the affordability controls for such LIHTC units shall be governed by applicable federal law, the regulatory and recorded restrictions required by the New Jersey Housing and Mortgage Finance Agency and/or other allocating agency, and the project's recorded affordability documents. Except as expressly required by law, UHAC shall not apply to LIHTC units; provided, however, that newly constructed LIHTC units that receive credit pursuant to the FHA shall be affirmatively marketed in accordance with N.J.A.C. 5:80-26.16. In a mixed-income development containing both LIHTC units and non-LIHTC restricted units, the non-LIHTC restricted units shall comply with this Ordinance and UHAC, as applicable.

- f. To the extent this Ordinance does not expressly address a matter relating to the administration, affordability controls, affirmative marketing, income eligibility, pricing/rent setting, sales and rental procedures, or enforcement of affordable units, and except where inconsistent with applicable law, the Borough's court-approved compliance mechanism, or the recorded affordability controls applicable to a specific development (including LIHTC regulatory agreements), the provisions of UHAC, as amended and supplemented, shall govern and are hereby incorporated by reference.

22-2 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”.

“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,” N.J.S.A. 52:27D-119 to – 141, and in accordance with the provisions of N.J.S.A. 52:27D-123.15.

“Administrative Agent” means the entity approved by the Division (hereinafter defined) 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 Borough’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 the FHA.

“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 Housing Trust Fund” or “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 AHTF.

“Affordable Unit” means a housing unit proposed or developed pursuant to the FHA, 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 N.J.S.A. 55:14K-4.

“Assisted Living Residence” means a facility licensed by the New Jersey Department of Health to provide apartment-style housing and congregating 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. 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 Borough 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 FHA and that was abolished effective March 20, 2024, pursuant to 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 Borough pursuant to N.J.S.A. 52:27D-304.1, that protects the Borough 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 N.J.S.A. 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, N.J.S.A. 52:27D-119 to -141.

“County-level Housing Judge” means a judge appointed pursuant to the FHA, to resolve disputes over the compliance of municipal fair share affordable housing obligations and municipal Fair Share plans and housing elements with the FHA.

“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 to - 163.

“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 N.J.S.A. 52:27D-313.2.

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

“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 Borough in which the property is

situated, as determined in accordance with 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 Borough based on alleged noncompliance with the FHA or the Mount Laurel doctrine, which litigation shall include, but shall not be limited to, litigation seeking a Builder’s Remedy.

“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 Borough 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 Borough 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 to - 329.

“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 N.J.S.A. 55:14K-4.

“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 Borough’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 FHA consisting of reports, statements proposals, maps, diagrams, and text designed to meet the Borough’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.

“HUD” means the United States Department of Housing and Urban Development.

“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 Borough’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.

“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 Borough.

“Municipal Affordable Housing Trust Fund” means a separate, interest-bearing account held by a Borough 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, 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 Borough 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 Borough 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” means an account established pursuant to N.J.S.A. 52:27D-320.

“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 to – 321.6.

“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 Borough or an instrument of the Borough 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 to -141, 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 to -360.

“Non-residential Development Fee” means the fee authorized to be imposed pursuant to N.J.S.A. 40:55D-8.1 -8.7.

“Order for Repose” means the protection a Borough 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.

“Prospective Need” means a projection of housing needs based on development and growth which is reasonably likely to occur in a region or a Borough, 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 the FHA, N.J.S.A. 52:27D-304.2 to -304.3) for the fourth round and all future rounds of housing obligations.

“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” means a housing unit that addresses a Borough’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 Borough’s Fair Share Obligation from a round prior to the fourth round of affordable housing obligations. A unit created after the enactment of the FHA (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 Borough 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 N.J.S.A. 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.

“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.

“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, 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 N.J.S.A. 52:18A-196, 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 N.J.S.A. 52:18A-200(f).

“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 Unit” means a restricted rental unit, as defined by N.J.S.A. 34:1B-21.24, that is affordable to very low-, low- or moderate-income households and is reserved for occupancy by a supportive housing household. 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, as 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.

22-3 Monitoring and Reporting Requirements

- a. The Borough 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.
- b. The Borough shall provide electronic monitoring data with the Department pursuant to the FHA and N.J.A.C. 5:99 through the AHMS.
- c. On or before February 15 of each year, the Borough 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.
- d. 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.

22-4 Municipality-Wide Mandatory Set-Aside

- a. A development providing a minimum of five new housing units created through any municipal rezoning or Zoning Board action, use or density variance, redevelopment plan, or area in need of rehabilitation plan that provides for densities at or above six units per acre, is required to include an affordable housing set-aside of 20%.
- b. Any Affordable Units generated through such mandatory set-aside shall be subject

- to all other provisions of this Ordinance.
- c. 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 and all other applicable laws.
 - d. 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.
 - e. The mandatory set-aside requirements of this section do not give a developer the right to any rezoning, variance, or other relief, or establish any obligation on the part of the Borough to grant such rezoning, variance, or other relief.
 - f. 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.
 - g. In the event 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.

22-5 New Construction

- a. 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.
- b. The following requirements shall apply to all new or planned developments which 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.
- c. 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. In inclusionary developments, the following schedule for the issuance of certificates of occupancy for the required affordable housing units relative to the issuance of certificates of occupancy for the permitted market units shall be followed:

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

d. Design. The following design requirements apply to Affordable Housing Developments, excluding Prior Round Units.

1. Design of 100 percent Affordable Housing 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.

2. 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 rights to use

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.

- (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.
3. 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 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 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 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 shall be exempt from this requirement.
 - (iv) Restricted Units must meet the minimum square footage required for the number of inhabitants for which the Restricted 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

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 Housing 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.

22-6 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 which 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.A.C. 5:80-26.13(e).

22-7 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 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.
- 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 which are not age-restricted or supportive housing shall be structured such that:
 - 1. At a minimum, the number of bedrooms within the restricted units equals twice the number of restricted units;
 - 2. Two-bedroom and/or three-bedroom units compose at least 50 percent of all restricted units;
 - 3. 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.

4. At least 30% of all low- and moderate-income units, rounded up shall be two-bedroom units.
5. At least 20% of all low- and moderate-income units, rounded up shall be three-bedroom units.
6. The remaining units may be allocated among two- and three- bedroom units at the discretion of the developer.
7. Affordable housing developments which are age-restricted or supportive housing, except those supportive Affordable 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.

22-8 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 multi-floor 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:
 1. An adaptable toilet and bathing facility on the first floor;
 2. An adaptable kitchen on the first floor;
 3. An interior accessible route of travel however an interior accessible route of travel shall not be required between stories;
 4. 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;
5. If one or more of the foregoing requirements in a. through d. above cannot be satisfied, then an interior accessible route of travel shall be provided between stories within an individual unit; and
 6. An accessible entranceway as set forth in N.J.S.A. 52:27D-311a and -311b, and N.J.S.A. 52:27D-123.15, and the Barrier Free Subcode, N.J.A.C. 5:23-7.1 to -7.31, or evidence the Borough has collected funds from the developer sufficient to make 10% of the adaptable entrances in the development accessible: 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.
 7. To this end, the builder of Restricted Units shall deposit funds within the Affordable Housing Trust Fund sufficient to install accessible entrances in 10% of the affordable units that have been constructed with adaptable entrances.
 8. 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.
 9. 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.
 10. 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 Affordable Housing Trust Fund and earmarked appropriately.
 11. 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.

22-9 Regional Income Limits.

- a. Administrative Agents shall use the regional income limits most recently established by the DCA for the purpose of pricing Affordable Units and determining income eligibility of households.
- b. 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.
- c. 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.

22-10 Maximum Initial Rents and Sales Prices.

- a. In establishing rents and sales prices of Affordable Units, the Administrative Agent shall follow the procedures set forth in N.J.A.C. 5:80-26.4, as may be amended and supplemented.

22-11 Affirmative Marketing.

- a. The Borough shall adopt, by resolution, an Affirmative Marketing Plan compliant with N.J.A.C. 5:80-26.16, as may be amended and supplemented.
- b. The Affirmative Marketing Plan is a regional marketing strategy designed to attract buyers and/or renters of all majority and minority groups, regardless of race, creed, color, national origin, ancestry, marital or familial status, gender, affectional, or sexual orientation, disability, age, or number of children, to Affordable 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 the region. It is a continuing program which directs all marketing activities toward Housing Region 4 and is required to be followed throughout the period of deed restriction.

22-12 Selection of Occupants of Affordable Units.

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

22-13 Occupancy Standards.

- a. In referring Certified Households to specific Restricted Units, to the extent feasible, and without causing an undue delay in occupying the unit, the Administrative Agent shall strive to:
 1. Ensure each bedroom is occupied by at least one person, except for age-restricted, supportive, and special needs housing units;
 2. Provide a bedroom for every two adult occupants;
 3. 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
 4. Avoid placing a one-person household into an Affordable Unit with more than one bedroom.

22-14 Control Periods for Restricted Ownership Units and Enforcement Mechanisms.

- a. The initial control periods for restricted ownership on all new Affordable Units shall be for a period of at least thirty (30) years and in accordance with UHAC, as may be amended and supplemented, with the Borough reserving the right to extend the affordability control period for an additional period of time thereafter.
- b. Rehabilitated housing units which are improved to code standards shall be subject to

affordability controls for a period of at least ten (10) years.

- c. The affordability control period for a restricted ownership unit shall commence on the date the initial Certified Household takes title to the unit.
- d. 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.
- e. 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:
 1. If the Borough exercises the right to extend the affordability controls on the unit, no exit sale occurs and a new control period commences; or
 2. If the Borough does not exercise the right to extend the affordability controls on the unit, the affordability controls terminate following the exit sale.
- f. Prior to the issuance of any building permit for the construction/rehabilitation of restricted ownership units, the developer/owner and the Borough shall record a preliminary instrument provided by the Administrative Agent.
- g. 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.
- h. 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.
- i. 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.

22-15 Price Restrictions for Restricted Ownership Units and Resale Prices.

- a. Price restrictions for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.7.
 1. 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:
 2. those that render the unit suitable for a larger household or the addition of a bathroom.
 3. 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);

4. 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.
5. Upon the resale of a restricted ownership unit, all items of property which are permanently affixed to the Affordable Unit or were included when the Affordable 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.

22-16 Buyer Income Eligibility.

- a. 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.
- b. Notwithstanding the foregoing, the Administrative Agent may, upon approval by the Borough, 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, Affordable 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 Affordable 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.

- c. A Certified Household which 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.
- d. 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:
 - 1. 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;
 - 2. 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
 - 3. The household is currently in substandard or overcrowded living conditions;
 - 4. The household documents the existence of assets, within the asset limitation otherwise applicable, with which the household proposes to supplement the rent payments

22-17 Limitations on Indebtedness Secured by Ownership Unit; Subordination.

- a. 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.
- b. 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).

22-18 Control Periods for Restricted Rental Units.

- a. Control periods for units that meet the definition of Prior Round Units shall meet the 2001 UHAC rules originally adopted October 1, 2001, 33 N.J.R. 3432, and amended December 20, 2004, 36 N.J.R. 5713 and shall remain subject to the requirements of this Ordinance for a period of at least thirty (30) years as applicable unless otherwise indicated.
- b. 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 forty (40) years. Restricted rental units created as part of developments receiving 9% LIHTC must comply with a control period of not less than a thirty (30) year compliance

period plus a fifteen (15) year extended use period for a total of forty-five (45) years.

- c. The Affordability Control Period for a restricted rental unit shall commence on the first date that an Affordable 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.
- d. Rehabilitated renter-occupied Affordable Units which are improved to code standards shall be subject to affordability controls for a period of not less than ten (10) years.
- e. Prior to the issuance of any building permit for the construction/rehabilitation of restricted rental units, the developer/owner and the Borough shall record a preliminary instrument provided by the Administrative Agent.
- f. 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.
- g. A restricted rental unit shall remain subject to the affordability controls of this Ordinance despite the occurrence of any of the following events:
 - 1. Sublease or assignment of the lease of the unit;
 - 2. Sale or other voluntary transfer of the ownership of the unit;
 - 3. The entry and enforcement of any judgment of foreclosure on the property containing the unit; or
 - 4. 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.

22-19 Rent Restrictions for Rental Units; Leases and Fees.

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

- e. 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.
- f. 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.
- g. Fees charged to affordable unit tenants for other optional, unit-specific, non-communal items shall not exceed the amounts charged to market-rate tenants.
- h. 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.

21-20 Tenant Income Eligibility.

- a. 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:
 - 1. 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.
 - 2. 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.
 - 3. 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.
- b. 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:
 - 1. 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;
 - 2. 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;

3. The household is currently in substandard or overcrowded living conditions;
 4. The household documents the existence of assets with which the household proposes to supplement the rent payments; or
 5. 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.
- c. The applicant shall file documentation sufficient to establish the existence of any of the circumstances in 2.i. through 2.v. above with the Administrative Agent, who shall counsel the household on budgeting.

22-21 Municipal Housing Liaison.

- a. The Municipal Housing Liaison shall be approved by resolution.
- b. The Municipal Housing Liaison shall meet the requirements for qualifications, including initial and periodic training, as set forth in N.J.A.C. 5:99-6.3 and -6.4, and N.J.A.C. 5:99-9.1 to -9.3.
- c. The Municipal Housing Liaison shall be responsible for oversight and administration of the affordable housing plan, including the following responsibilities, which may not be contracted out to the Administrative Agent:
 1. Serving as the primary point of contact for all inquiries from the Program, the State, affordable housing providers, Administrative Agent, and interested households.
 2. The oversight of the Affirmative Marketing Plan and affordability controls.
 3. When applicable, overseeing and monitoring any contracting Administrative Agent.
 4. Overseeing the monitoring of the status of all restricted units listed in the Fair Share Plan.
 5. Verifying, certifying, and providing annual information within AHMS at such time and in such form as required by the Division.
 6. Coordinating meetings with affordable housing providers and Administrative Agents, as needed.
 7. Attending continuing education opportunities on affordability controls, compliance monitoring, and affirmative marketing as offered or approved by the Division.
 8. 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.
 9. Coordinating with the Administrative Agent, municipal attorney and municipal Construction Code Official to ensure that permits are not issued unless the document required has been duly recorded.
 10. Listing on the Borough's website contact information for the MHL and

Administrative Agents.

22-22 Administrative Agent.

- a. The Borough shall appoint an Administrative Agent to administer the affordable housing program and/or Affordable Units in accordance with the requirements of the FHA, N.J.A.C. 5:99, and UHAC.
- b. The fees for the Administrative Agent shall be paid as follows:
 1. Administrative Agent fees related to rental units shall be paid by the developer/owner.
 2. Administrative Agent fees related to initial sale of units shall be paid by the developer.
 3. Administrative Agent fees related to resales, refinancing, and providing any other service or analysis at the request of the homeowner shall be paid by the owner of the affordable home.
 4. Administrative Agent fees related to ongoing administration and enforcement shall be paid by the Borough.
- c. An Operating Manual for each affordable housing program shall be provided by the Administrative Agent. The Operating Manual shall be available for public inspection in the Office of the Clerk and in the office of the Administrative Agent. Operating manuals shall be adopted by resolution of the Governing Body.
- d. Subject to the role of the Administrative Agent, the duties and responsibilities as are set forth in N.J.A.C. 5:99-7 and which are described in full detail in the Operating Manual, including those set forth in UHAC, include:
 1. Attending continuing education opportunities on affordability controls, compliance monitoring, and affirmative marketing as offered or approved by the Division;
 2. Affirmative Marketing:
 - i. Conducting an outreach process to affirmatively market Affordable Units in accordance with the Affirmative Marketing Plan of the Borough 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.
 3. 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 very-low, low-, or moderate-income unit;
 - iii. Providing written notification to each applicant as to the determination of eligibility or non-eligibility within five (5) days of the determination thereof.

- iv. Requiring all certified applicants for Restricted Units execute a certificate substantially in the form, as applicable, of either the ownership or rental certificates set forth in the Appendices J and K of UHAC
 - 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 Affordable units are located.
 - vi. Employing a Random Selection Process as provided in the Affirmative Marketing Plan when referring households for certification to Affordable Units.
4. 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 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.
5. 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 Borough constitute public records of the Borough as defined by N.J.S.A. 47:3-16, and are legal property of the Borough.
6. 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.

7. Processing Requests from Affordable 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 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 which 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 Borough of an owner's intent to sell a Restricted Unit.
 - iv. Making determinations on requests by owners of Restricted Units for hardship waivers.
8. Enforcement.
 - i. Securing annually from the Borough 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 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.

- vi. The Administrative Agent shall, as delegated by the Borough, have the authority to take all actions necessary and appropriate to carry out its/their responsibilities, herein.

22-23 Responsibilities of the Owner of a development containing Affordable Units.

- a. The owner of all developments containing Affordable Units subject to this subchapter or the assigned management company thereof shall provide to the Administrative Agent:
 1. 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.
 2. The total number of units in the project and the number of Affordable Units.
 3. 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.
 4. Floor plans of all Affordable Units, including complete and accurate identification of all rooms and the dimensions thereof.
 5. A projected construction schedule.
 6. The location of any common areas and elevators.
 7. 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.
- b. In addition to a. above, the owner of rental developments containing affordable rental units subject to this subchapter or the assigned management company thereof shall:
 1. 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 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.
 2. Provide to the Administrative Agent a description of any applicable fees.
 3. Provide to the Administrative Agent a description of the types of utilities and which utilities

will be included in the rent.

4. Agree and ensure the utility configuration established at the start of the rent-up process not be altered at any time throughout the restricted period.
 5. Provide to the Administrative Agent a proposed form of lease for any rental units.
 6. Ensure that the tenant selection criteria for the applicants for Affordable Units not be more restrictive than the tenant selection criteria for applicants for non-restricted units.
 7. Strive to maintain the continued occupancy of the Affordable Units during the entire restricted period.
- c. In addition to the 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:
1. Proposed pricing for all units, including any purchaser options and add-on items;
 2. Condominium or homeowner association fees and any other applicable fees;
 3. Estimated real property taxes;
 4. Sewer, water, trash disposal, and any other utility assessments;
 5. Flood insurance requirement, if applicable; and
 6. The State-approved planned real estate development public offering statement and/or master deed, where applicable, as well as the full build-out budget.

22-24 Enforcement of Affordable Housing Regulations

- a. Upon the occurrence of a breach of any of the regulations governing the Affordable Unit by an owner, developer, or tenant, the Borough 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/or specific performance.
- b. 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 Borough may take the following action against the owner, developer, or tenant for any violation which remains uncured for a period of sixty (60) days after service of the written notice:
 1. The Borough 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 Unit. If the owner, developer, or tenant is found by a court of competent jurisdiction to have violated any provision of the

regulations governing Affordable Units, the owner, developer, and/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 \$500 or imprisonment for a period not to exceed ninety (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 Affordable Unit in violation of the regulations governing Affordable Units, payment into the Affordable Housing Trust Fund of the gross amount of rent illegally collected;
 - iii. In the case of an owner who has rented its Affordable Unit in violation of the regulations governing Affordable Units, payment of an innocent tenant's reasonable relocation costs, as determined by the Court.
- c. The Borough shall have the authority to levy fines against the owner of the development for instances of noncompliance with New Jersey Housing Resource Center 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.
- d. The Borough 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 Affordable 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.
1. Such judgment shall be enforceable, at the option of the Borough, 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 Borough, 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.
 2. 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 Borough 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 Borough 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 Borough in connection with collecting such deficiency. In the event a surplus remains after satisfying all of the above, such surplus shall be placed in escrow by the Borough 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 Borough 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 Borough. Any interest accrued or earned on such balance

while being held in escrow shall belong to and shall be paid to the Borough, whether such balance shall be paid to the owner or forfeited to the Borough.

3. Foreclosure due to violation of the regulations governing Affordable Units shall not extinguish the restrictions of the regulations governing Affordable Units as they apply to the very-low, low-, and moderate-income units. Title shall be conveyed to the purchaser at the Sheriff's sale, subject to the restrictions and provisions of the regulations governing the Affordable Unit. The owner determined to be in violation of the provisions of this Ordinance or any applicable regulation and from whom title and possession were taken by means of the Sheriff's sale shall not be entitled to any right of redemption.
 4. 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 Borough 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 Units. This excess shall be treated in the same manner as the excess would have been realized from an actual sale as previously described.
 5. Failure of the very-low, low-, or moderate-income unit to be either sold at the Sheriff's sale or acquired by the Borough shall obligate the owner to accept an offer to purchase from any qualified purchaser that may be referred to the owner by the Borough, with such offer to purchase being equal to the maximum resale price of the very-low, low-, or moderate-income unit as permitted by the regulations governing Affordable Units.
 6. The Affordable Unit owner shall remain fully obligated, responsible, and liable for complying with the terms and restrictions of governing Affordable Units until such time as title is conveyed from the owner.
- e. It is the responsibility of the Municipal Housing Liaison and the Administrative Agent to ensure Affordable 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 Affordable Unit by a tenant. If the 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.

- f. 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.
- g. 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.

22-25 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.

22-26 Development Fees.

- a. Purpose
 - 1. This section establishes standards for the collection, maintenance, and expenditure of development fees that are consistent with the FHA, N.J.A.C. 5:99, and the Statewide Non-Residential Development Fee Act, N.J.S.A. 40:55D-8.1 to -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.
- b. Basic Requirements
 - 1. The Borough previously adopted a Development Fee Ordinance, which established the Municipal Affordable Housing Trust Fund.
 - 2. The Borough shall not spend Development Fees until the Superior Court has approved a plan for spending such fees.
- c. Residential Development Fees
 - 1. Imposed fees
 - i. Development fees shall be imposed and collected when an existing residential structure undergoes a change to a more intense use, is demolished and replaced, when the number of bedrooms increases, the livable space is expanded (e.g. through the conversion of an unhabitable/unfinished basement, attic, garage etc. to livable space, pursuant to the definition found in Section 26-2.1 of the Borough Municipal Code), and/or when the square footage of the structure is increased in a way that 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.
 - 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 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.

2. 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 Borough, 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 Borough and if approved by a Borough prior to the statutory elimination of payments in-lieu on March 20, 2024 per the FHA, 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 an owner-occupied residential building resulting from a fire or natural disaster.

d. Non-Residential Development Fees

1. 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 residential structure undergoes a change to a more intense use, including but not limited to an increase in the number of bedrooms; an increase in livable space (including, by way of example,

- the conversion of previously non-habitable space such as a basement, attic, or garage to habitable/livable space); an increase in gross floor area or square footage; when an additional dwelling unit is added to an existing residential structure; when an existing structure is demolished and replaced; or when an existing structure is expanded (unless 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 attributable to the change, addition, replacement, or expansion.
2. 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.
 3. 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.
 4. 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.
 5. 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 Borough as a lien against the real property of the owner.
- e. Collection Procedures
1. 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.
 2. 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.
 3. 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.

4. 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.
5. 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.
6. 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.
7. Should the Borough fail to determine or notify the developer of the amount of the Development Fee within ten (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 N.J.S.A. 40:55D-8.6(5)(b).
8. Fifty percent (50%) of the Development Fee shall be collected at the time of issuance of the construction permit. The remaining portion shall be collected at the time of issuance of the certificate of occupancy. The developer shall be responsible for paying the difference between the fee calculated at the time of issuance of the construction permit and that determined at the time of issuance of certificate of occupancy.

f. Appeal of Development Fees

1. A developer may challenge residential development fees by filing a challenge with the County Board of Taxation. Pending review and determination by the County Board, collected fees shall be placed by the Borough in an interest-bearing escrow account. Imposed and collected development fees that are challenged must be escrowed, and if any portion is returned, accrued interest on the returned amount must also be returned. N.J.A.C. 5:97-8.3(g).

Appeals from a determination of the County Board may be made to the Tax Court in accordance with the State Uniform Tax Procedure Law, N.J.S.A. 54:48-1 to -49-18, within ninety (90) days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.

2. A developer may challenge 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 Borough. Appeals from a determination of the Director may be made to the Tax Court within 90 days after the date of such determination, in accordance with the State Uniform Tax Procedure Law. Interest earned on amounts escrowed shall be credited to the prevailing party. N.J.S.A. 40:55D-8.6(b).

g. Affordable Housing Trust Fund

1. A separate, interest-bearing Municipal Affordable Housing Trust Fund shall be maintained by the chief financial officer of the Borough for the purpose of depositing development

fees collected from residential and non-residential developers and proceeds from the sale of units with extinguished controls.

2. 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 Borough and if approved by a Borough prior to the statutory elimination of payments in-lieu on March 20, 2024 per the FHA;
 - 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.

h. Use of Funds

1. 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.
2. Funds shall not be expended to reimburse the Borough or activities that occurred prior to the authorization of a Borough to collect development fees.

3. 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. Affordability Assistance Program Manual, which shall be prepared by the Administrative Agent and kept on file with the Municipal Clerk.
4. No more than 20% of all 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 Borough of resolving a challenge.
 - i. Monitoring
 1. On or before February 15 of each year, the Borough 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 Borough prior to the March 20, 2024 statutory elimination per the FHA), 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.
 - j. Ongoing Collection of Fees
 1. The ability to impose, collect and expend development fees shall continue so long as the Borough retains authorization from the Court in the form of Compliance Certification or the good faith effort to obtain it.
 - k. Emergent Affordable Housing Opportunities

1. Requests to expend 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 4. Pursuant to N.J.S.A. 40:55D-26, upon passage of this Ordinance on first reading, the Borough Board of Commissioners hereby refers the Ordinance to the Planning Board for the Planning Board's review. The Planning Board shall prepare a report containing the Planning Board's recommendation concerning the Ordinance, including an identification of any provisions in the Ordinance which are inconsistent with the Borough's Master Plan, if any, and recommendations concerning those inconsistencies, if any, and any other matters the Planning Board deems appropriate, and submit same to the Borough Board of Commissioners within 35 days after referral, as required by the Municipal Land Use Law.

Section 5. All ordinances or parts thereof inconsistent with the provisions of this Ordinance are hereby repealed.

Section 6. Each section, subsection, sentence, clause, and phrase of this Ordinance is declared to be an independent section, subsection, sentence, clause, and phrase and the finding or holding of any such portion of this Ordinance to be unconstitutional, void, or ineffective for any cause, or reason, shall not affect any other portion of this Ordinance.

Section 7. Except as amended by this Ordinance, all other provision of the Borough's Code of Ordinances shall remain in full force and effect.

Section 8. The Borough Clerk is hereby directed, upon adoption of this Ordinance after public hearing thereon, to publish notice of the passage thereof.

Section 9. This Ordinance shall be in full force and effect from and after its adoption and any publication according to law.

VOTE: Comm. Santoro-AYE; Comm. Dweck-AYE; Mayor Adjmi-AYE

APPROVED: February 24, 2026

ADOPTED: March 16, 2026

CERTIFICATION

I, Donna M. Campagna, Borough Clerk/Administrator, do hereby certify this to be a true and exact copy of an Ordinance adopted by the Board of Commissioners of the Borough of Allenhurst, County of Monmouth, State of New Jersey, at a meeting held on March 16, 2026.

Donna M. Campagna, RMC
Borough Clerk/Administrator