

ORDINANCE NO. 2026-06

AN ORDINANCE OF THE TOWNSHIP OF LITTLE EGG HARBOR, COUNTY OF OCEAN, STATE OF NEW JERSEY, AMENDING ARTICLE XX, MANDATORY DEVELOPMENT FEES, AND ARTICLE XXI, AFFORDABLE HOUSING, OF THE CHAPTER 215 LAND USE AND DEVELOPMENT OF THE TOWNSHIP OF LITTLE EGG HARBOR

WHEREAS, the State of New Jersey has a longstanding and well-established commitment to maximizing the opportunities for the development of housing affordable for very low-, low-, and moderate-income households; and

WHEREAS, this Ordinance establishes Township wide regulations and standards to govern the development of very low, low and moderate-income affordable units for multifamily for-sale and rental residential developments that may be approved by the Township or the Township Planning Board, and is designed to regulate these very low, low- and moderate-income units in a manner consistent with the FHA, UHAC, N.J.A.C. 5:99-1 et seq., and applicable New Jersey Council on Affordable Housing (COAH) regulations; and

WHEREAS, the FHA requires that this ordinance be adopted by March 15, 2026; and

WHEREAS, the Township of Little Egg Harbor has a fair share obligation consisting of a present need obligation of 32 units, a prior round obligation of 194 units, a third round need of 634 units, and a fourth round obligation of 165; and

NOW, THEREFORE, BE IT ORDAINED BE IT ORDAINED by the Township Committee of the Township of Little Egg Harbor, County of Ocean, State of New Jersey, as follows:

SECTION 1. Article XX, Mandatory Development Fee, Chapter 215, Land Use and Development (Section 215-20) is hereby repealed and replaced follows:

§ 215-20. Mandatory Development Fees

- A. Purpose –This section establishes standards for the collection, maintenance, and expenditure of development fees that are consistent with the Township’s Housing Element and Fair Share Plan approved by the governing body of the Township, the amended Fair Housing Act (P.L.2024, c.2), N.J.A.C. 5:99, and the Statewide Non-Residential Development Fee Act (C. 40:55D-8.1 through 8.7). Fees collected pursuant to this Ordinance shall be used for the sole purpose of providing very low-, low- and moderate-income housing in accordance with a Court-approved Spending Plan.
- B. Definitions
- (1) All the terms referenced under § 215-21.
 - (2) All other terms contained herein shall be as set forth in the Municipal Land Use Act, N.J.S.A. 40:55D-1 et seq. and Chapter 215, “Land Use and Development.”

C. Residential Development Fees: Amount – All developers, except for developers of the types of development specifically exempted below, of residential major subdivisions shall pay a mandatory development fee equal to one percent (1%) of the equalized assessed valuation for each residential unit constructed. This mandatory fee shall be calculated as follows: $0.01\% \times \text{equalized assessed valuation} \times \text{number of units}$.

- (1) Development fees shall also be imposed and collected when an additional dwelling unit is added to an existing residential structure; in such cases, the fee shall be calculated based on the increase in the equalized assessed value of the property due to the additional dwelling unit.
- (2) If a "d" variance is granted pursuant to N.J.S.A. 40:55D-70d(5), then additional residential units realized (above what is permitted by right under the existing zoning) will incur a bonus development fee of six percent (6%) rather than the development fee of one percent (1%). However, if the zoning on the site is changed during the two-year period preceding the filing of a "d" variance application, the density for the purposes of calculating the bonus development fee shall be the highest density permitted by right during the two (2) years preceding the filing of the "d" variance application with the Little Egg Harbor Township Zoning Board of Adjustment.
- (3) Eligible exactions, ineligible exactions and exemptions for non-residential development
 - (a) Affordable housing developments, developments where the developer is providing for the construction of affordable units elsewhere in the municipality, and developments where the developer has made an eligible payment in lieu of on-site construction of affordable units, if permitted by ordinance, or by agreement with the municipality and if approved by a municipality prior to the statutory elimination of payments in-lieu on March 20, 2024 per P.L.2024, c.2, shall be exempt from development fees.
 - (b) 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.
 - (c) No development fee shall be collected for the demolition and replacement of a residential building resulting from a fire or natural disaster.

D. Non-Residential Development Fees: Amount

- (1) Imposition of fees
 - (a) 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.
- (b) 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.
 - (c) Development fees shall be imposed and collected when an existing structure is demolished and replaced. The development fee of 2.5% shall be calculated on the difference between the equalized assessed value of the pre-existing land and improvements and the equalized assessed value of the newly improved structure; i.e., land and improvements; and such calculation shall be made at the time a final certificate of occupancy is issued. If the calculation required under this section results in a negative number, the non-residential development fee shall be zero.
- (2) If a "d" variance is granted pursuant to N.J.S.A. 40:55D-70d(4), then the additional floor area realized (above what is permitted by right under the existing zoning) will incur a bonus development fee of 6 percent rather than the development fee of one percent (1.0%) or two and half percent (2.5%). However, if the zoning on a site has changed during the two-year period preceding filing of the "d" variance application, the 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 "d" variance application.
 - (3) Development fees shall be imposed and collected when an existing structure is demolished and replaced. The development fee of 2.5% shall be calculated on the difference between the equalized assessed value of the pre-existing land and improvements and the equalized assessed value of the newly improved structure; i.e., land and improvements; and such calculation shall be made at the time a final certificate of occupancy is issued. If the calculation required under this section results in a negative number, the non-residential development fee shall be zero.
 - (4) Eligible exactions, ineligible exactions and exemptions for non-residential development
 - (a) 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.
 - (b) 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.
 - (5) 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.

(6) 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.

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

E. Collection of Fees.

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

- (8) Fifty percent (50%) of the total mandatory development fee owed to Little Egg Harbor Township, whether for residential or non-residential development, shall be paid prior to the issuance of any building permit required in connection with the development, and shall be calculated as follows:
- (a) For residential developments, the fifty percent (50%) payment required prior to the issuance of any building permit shall be calculated using an estimated equalized valuation of each residential unit as determined by the Little Egg Harbor Township Tax Assessor.
 - (b) For non-residential developments, the fifty percent (50%) payment required prior to the issuance of any building permit shall be calculated using an estimated total equalized assessed valuation of the non-residential development as determined by the Little Egg Harbor Township Tax Assessor.
 - (c) The remaining portion of the development fee shall be paid prior to the issuance of any Certificate of Occupancy for any development or any part thereof, whether residential or non-residential, and shall be calculated using the actual assessed valuation of the development as determined by the Little Egg Harbor Township Tax Assessor.
 - (d) Because the initial payment required prior to the issuance of a building permit is calculated using an estimated assessed valuation based on estimates for construction costs, the following adjustments are permitted to compensate for differences between the estimated assessed valuation and the actual assessed valuation:
 - [1] If the estimated assessed valuation used to calculate the initial fifty percent (50%) payment was over-estimated or under-estimated, causing the actual assessed valuation to be less than or greater than the estimated assessed valuation used to calculate the initial fifty percent (50%) payment, the developer's Certificate of Occupancy payment shall be equal to the difference between the actual assessed valuation and the initial fifty percent (50%) payment as determined by the Little Egg Harbor Township Tax Assessor.

F. Appeal of development fees.

(1) Appeal of development fees

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

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

G. Affordable Housing Trust Fund.

- (1) All mandatory development fees collected pursuant to this Ordinance shall be deposited in the interest bearing escrow account entitled the "Affordable Housing Trust Fund:" Mandatory Fee Account. No money shall be expended from the housing trust fund unless the expenditure conforms to a spending plan approved by COAH.
- (2) If COAH determines that Little Egg Harbor Township's spending is not in conformance with COAH's rules on development fees, COAH is authorized to direct the manner in which all development fees collected pursuant to this Ordinance shall be expended.
- (3) 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:
 - (a) Payments in lieu of on-site construction of an affordable unit, where previously permitted by ordinance or by agreement with the municipality and if approved by a municipality prior to the statutory elimination of payments in-lieu on March 20, 2024 per P.L.2024, c.2;
 - (b) Funds contributed by developers to make 10% of the adaptable entrances in a townhouse or other multistory attached dwelling unit development accessible;
 - (c) Rental income from municipally operated units;
 - (d) Repayments from affordable housing program loans;
 - (e) Recapture funds;
 - (f) Proceeds from the sale of affordable units; and
 - (g) Any other funds collected in connection with the municipal affordable housing program including but not limited to interest earned on fund deposits.
- (4) The municipality shall provide the Division with written authorization, in the form of a tri-party escrow agreement(s) between the municipality, the Division and the financial institution in which the municipal affordable housing trust fund has been established to permit the Division to direct the disbursement of the funds as provided for in N.J.A.C. 5:99-2.1 et seq.
- (5) Occurrence of any of the following deficiencies may result in the Division requiring the forfeiture of all or a portion of the funds in the municipal Affordable Housing Trust Fund:

- (a) Failure to meet deadlines for information required by the Division in its review of a development fee ordinance;
 - (b) Failure to commit or expend development fees within four years of the date of collection in accordance with N.J.A.C. 5:99-5.5;
 - (c) Failure to comply with the requirements of the Non-Residential Development Fee Act and N.J.A.C. 5:99-3;
 - (d) Failure to submit accurate monitoring reports pursuant to this subchapter within the time limits imposed by the Act, this chapter, and/or the Division;
 - (e) Expenditure of funds on activities not approved by the Superior Court or otherwise permitted by law;
 - (f) Revocation of compliance certification or a judgment of compliance and repose;
 - (g) Failure of a municipal housing liaison or administrative agent to comply with the requirements set forth at N.J.A.C. 5:99-6, 7, and 8;
 - (h) Other good cause demonstrating that municipal affordable housing funds are not being used for an approved purpose.
- (6) All interest accrued in the housing trust fund shall only be used on eligible affordable housing purposes approved by the Court.

H. Use of Funds.

- (a) The expenditure of all funds shall conform to a Spending Plan approved by Superior Court. Funds deposited in the municipal Affordable Housing Trust Fund may be used for any activity approved by the Court to address the fair share obligation and may be set up as a grant or revolving loan program. Money deposited in a housing trust fund may be used for any activity approved for addressing the Township's low and moderate income housing obligation. Such activities may include, but are not necessarily 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; the purchase of land for low and moderate income housing; extensions and/or improvements of roads and infrastructures to low and moderate income housing sites; assistance designed to render units to be more affordable to low and moderate income households; and administrative costs necessary to implement the Township's housing element; 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 municipality or activities that occurred prior to the authorization of a municipality to collect development fees.
- (3) Affordability Assistance

- (a) At least thirty percent (30%) of the revenues collected from development fees collected pursuant to this Ordinance shall be devoted to rendering existing units more affordable to very low-, low- and moderate-income households unless exempt as per N.J.A.C. 5:93-8.16(c). Examples of such activities include, but are not limited to, down payment and closing cost assistance, low interest loans, rental assistance, security deposit 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.
- (b) Affordability assistance for very low income households may include producing very low-income units or buying down the cost of low- or moderate-income units in the Township's Fair Share Plan to make them affordable to households earning 30% or less of median income.
- (4) Not more than twenty percent (20%) of the revenues collected from development fees collected pursuant to this Ordinance shall be expended on administrative expenses necessary to develop, revise or implement the housing element. Examples of eligible administrative activities include personnel, consultant services, space costs, consumable supplies and rental or purchase of equipment directly associated with plan development or plan implementation, prepare and implement a Housing Element and Fair Share Plan, administer an Affirmative Marketing Program and for compliance with the Superior Court and the Program including the costs to the municipality of resolving a challenge.

I. Monitoring

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

J. Ongoing Collection of Fees

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

- (2) If the municipality fails to renew its ability to impose and collect development fees prior to the expiration of its Judgment of Compliance, it may be subject to forfeiture of any or all funds remaining within its Affordable Housing Trust Fund. Any funds so forfeited shall be deposited into the New Jersey Affordable Housing Trust Fund established pursuant to section 20 of P.L.1985, c.222 (C. 52:27D-320).
- K. Emergent Affordable Housing Opportunities. 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 2. Article XXI, Affordable Housing, Chapter 215, Land Use and Development (Section 215-21) is hereby repealed and replaced follows:

§ 215-21. Affordable Housing Requirements

A. Purpose and Applicability

(1) Purpose.

- (a) This section sets forth regulations regarding the very low-, low- and moderate-income housing units in Little Egg Harbor Township consistent with the provisions outlined in P.L 2024, Chapter 2, including the amended Fair Housing Act ("FHA") at N.J.S.A. 52:27D-301 et seq., as well as the Department of Community Affairs, Division of Local Planning Services ("LPS") at N.J.A.C. 5:99 et seq., statutorily upheld existing regulations of the now-defunct Council on Affordable Housing ("COAH") at N.J.A.C. 5:93 and 5:97, the Uniform Housing Affordability Controls ("UHAC") at N.J.A.C. 5:80-26.1 et seq., and as reflected in the adopted Little Egg Harbor Township's Fourth Round Housing Element and Fair Share Plan ("HEFSP"). Provisions shall also include all other applicable implementing regulations and any subsequent legislative or administrative amendments, supplements, or successor governing authorities.
- (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 ("LIHTC") financed developments shall adhere to the provisions set forth below in item (2)(c) below.
- (c) Little Egg Harbor Township's Planning Board has adopted the HEFSP pursuant to the Municipal Land Use Law ("MLUL") at N.J.S.A. 40:55D-1, et seq. The Fair Share Plan describes the ways the municipality shall address its fair share of very low-, low- and moderate-income housing as approved by the Superior Court and documented in the Housing Element.

- (d) This Ordinance implements and incorporates the relevant provisions of the HEFSP and addresses the requirements of P.L. 2024, Chapter 2, the FHA, N.J.A.C. 5:99, NJ Supreme Court upheld COAH regulations at N.J.A.C. 5:93 and 5:97, and UHAC at N.J.A.C. 5:80-26.1, as may be amended and supplemented.
- (2) Applicability. The provisions of this Ordinance shall apply:
 - (a) To all affordable housing developments and affordable housing units that currently exist and that are proposed to be created pursuant to Little Egg Harbor Township's recently adopted HEFSP.
 - (b) To all developments that contain very low-, low- and moderate-income housing units included in Little Egg Harbor Township's HEFSP, including any unanticipated future developments that will provide very low-, low- and moderate-income housing units.
 - (c) Projects receiving federal LIHTC financing and are proposed for credit shall comply with the low/moderate split and bedroom distribution requirements, maximum initial rents and sales prices requirements, affirmative fair marketing requirements of UHAC at N.J.A.C. 5:80-26.16 and the length of the affordability controls applicable to such projects shall be not less than a 30-year compliance period plus a 15-year extended-use period, for a total of not less than 45 years.
 - (d) To all unanticipated future developments that will provide affordable housing for low- and moderate-income households.
 - (e) To any property in Little Egg Harbor Township that is currently zoned for nonresidential uses and that is subsequently rezoned for residential purposes, and to all approvals for residential development granted by the Little Egg Harbor Township Planning Board or Zoning Board of Adjustment, including approvals of use or density variances, site plans, or subdivisions, and redevelopment projects subject to a redevelopment plan adopted by the governing body governing the development and redevelopment of designated areas in need of rehabilitation or areas in need of redevelopment in the Township, including substantial revisions to previously approved developments, where such rezoning, approval or revision results in or increases the number of residential units by five (5) or more units.

B. Definitions. The following terms, when used in this Ordinance, shall have the following meanings:

"Act" means the Fair Housing Act of 1985, P.L. 1985, c. 222 (N.J.S.A. 52:27D-301 et seq.)

"Adaptable" means constructed in compliance with the technical design standards of the Barrier Free Subcode adopted by the Commissioner of Community Affairs pursuant to the

"State Uniform Construction Code Act," P.L. 1975, c. 217 (C.52:27D-119 et seq.) and in accordance with the provisions of section 5 of P.L. 2005, c. 350 (C.52:27D-123.15).

"Administrative agent" means the entity designated by the Township and approved by the Division pursuant to N.J.A.C. 5:99-7 to administer the affordability controls in accordance with this Ordinance, and as set forth within N.J.S.A. 52:27D-321 and UHAC (N.J.A.C. 5:80-26 et seq.).

"Affirmative marketing" means a regional marketing strategy designed to attract buyers and/or renters of affordable units pursuant to the Uniform Housing Affordability Controls (UHAC), as may be amended, supplemented or superseded.

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

"Affordable" means, a sales price or rent level that is within the economic means of a low- or moderate-income household, as defined within the Uniform Housing Affordability Controls (UHAC), in the case of an ownership unit, that the sales price for the unit conforms to the standards set forth in N.J.A.C. 5:80-26.7 and, in the case of a rental unit, that the rent for the unit conforms to the standards set forth in N.J.A.C. 5:80-26.13.

"Affordable housing development" means a development included the municipality's Housing Element and Fair Share Plan, and includes, but is not limited to, an inclusionary development, a municipally sponsored affordable housing project, or a 100 percent affordable housing development. This includes developments with affordable units on-site, off-site, or provided as a payment in-lieu of construction only if such a payment-in-lieu option has been previously approved by the Program or Superior Court as part of the HEFSP. Payments in lieu of construction were invalidated per P.L. 2024, c.2.

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

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

"Affordable 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 housing program(s)" means any mechanism in a municipal Fair Share Plan prepared or implemented to address a municipality's fair share obligation.

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

"Agency" means the New Jersey Housing and Mortgage Finance Agency established by P.L. 1983, c. 530 (N.J.S.A. 55:14K-1 through 44) and in, but not of, DCA.

"Age-restricted unit" means a housing unit designed to meet the needs of, and is intended exclusively for, the residents of an age-restricted segment of the population where the adult member of the family who is the head of the household for the purposes of determining income eligibility and rent is a minimum age of either 62 years, or 55 years and meets the provisions of 42 U.S.C. §§ 3601 through 3619, except that due to death, a surviving spouse of less than 55 years of age is permitted to continue to reside in the unit.

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

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

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

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

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

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

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

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

"Compliance certification" means the certification issued to a municipality by the Program pursuant to section 3 at P.L. 2024, c. 2, that provides a municipality immunity from exclusionary zoning litigation during the current round of present and prospective need and through July 1 of the year the next round of affordable housing obligations begins, which is also known as a "judgment of compliance" resulting in an "order for repose."
"Compliance certification" shall include a judgment of repose granted in an action filed pursuant to section 13 at P.L. 1985, c. 222 (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, P.L. 1975, c. 217 (N.J.S.A. 52:27D-119 et seq.).

"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 requires the repair or replacement of a major system. A major system includes weatherization, roofing, plumbing (including wells), heating, electricity, sanitary plumbing (including septic systems), lead paint abatement and/or load bearing structural systems.

"Developer" means the legal or beneficial owner or owners of a lot or of any land 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 use or change in the use of any building or other structure, or of any mining, excavation or landfill, and any use or change in the use of any building or other structure, or land or extension of use of land, for which permission may be required pursuant to the Municipal Land Use Law, N.J.S.A. 40:55D-1, et seq.

"Development application" means the application form and all accompanying documents required by ordinance for approval of a subdivision plat, a site plan, planned development, conditional use, zoning variance, or direction of the issuance of a permit pursuant to N.J.S.A. 40:55D-34 or 40:55D-36.

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

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

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

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

"Equalized assessed value" or "EAV" means the assessed value of a property divided by the current average ratio of assessed to true value for the municipality in which the property is situated, as determined in accordance with sections 1, 5, and 6 of P.L.1973, c.123 (C.54:1-35a 44 through C.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.

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

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

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

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

"Fair share plan" means the plan or proposal, which may readily be adopted with accompanying ordinances and resolutions, pursuant to subsection f. of section 3 at P.L. 2024, c. 2 (N.J.S.A. 52:27D-304.1) by which a municipality proposes to satisfy its obligation to create a realistic opportunity to meet its fair share of low- and moderate-income housing needs of its region and which details the affirmative measures the municipality proposes to undertake to achieve its fair share of low- and moderate-income housing, as provided in the municipal housing element, and addresses the development regulations necessary to implement the housing element, including, but not limited to, inclusionary requirements and development fees, and the elimination of unnecessary housing cost-generating features from the municipal land use ordinances and regulations.

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

"Green Building Strategies" means the strategies that minimize the impact of development on the environment, and enhance the health, safety and well-being of residents by producing durable, low-maintenance, resource-efficient housing while making optimum use of existing infrastructure and community services.

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

"Household income" means a household's gross annual income calculated in a manner consistent with the determination of annual income pursuant to section 8 of the United

States Housing Act of 1937 (Section 8), not in accordance with the determination of gross income for Federal income tax liability.

"Housing element" means the portion of a municipality's master plan adopted in accordance with the Municipal Land Use Law (MLUL) at N.J.S.A. 40:55D-28.b(3) and the Act consisting of reports, statements, proposals, maps, diagrams, and text designed to meet the municipality's fair share of its region's present and prospective housing needs, particularly with regard to low- and moderate-income housing, which shall include the municipal present and prospective obligation for affordable housing, determined pursuant to subsection f. at N.J.S.A. 52:27D-304.1.

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

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

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

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

"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 50 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.

"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 and load bearing structural systems.

"Market-rate units" means housing within an inclusionary development, not restricted to low- and moderate-income households, that may sell at any price determined by a willing seller and a willing buyer.

"Mixed use development" means any development that includes both a non-residential development component and a residential development component, and shall include developments for which: (1) there is a common developer for both the residential development component and the non-residential development component, provided that for purposes of this definition, multiple persons and entities may be considered a common developer if there is a contractual relationship among them obligating each entity to develop at least a portion of the residential or non-residential development, or both, or otherwise to contribute resources to the development; and (2) the residential and non-

residential developments are located on the same lot or adjoining lots, including, but not limited to, lots separated by a street, a river, or another geographical feature.

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

"Moderate-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 more than 50 percent but less than 80 percent of the median gross household income for households of the same size within the housing region in which the housing is located.

"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.

"Multifamily Residential Development" means a residential development that is located in buildings that contain five (5) or more dwelling units, including, but not limited to, dwelling units that are located one over another, garden apartments, townhouse developments, multistory apartment or condominium buildings, and mixed-use developments containing a combination of non-residential and residential uses.

"Municipal affordable housing trust fund" means a separate, interest-bearing account held by a municipality for the deposit of development fees, payments in lieu of constructing affordable units on sites zoned for affordable housing, barrier-free escrow funds, recapture funds, proceeds from the sale of affordable units, rental income, repayments from affordable housing program loans, enforcement fines, unexpended RCA funds remaining from a completed RCA project, application fees, and any other funds collected by the municipality in connection with its affordable housing programs, which shall be used to address municipal low- and moderate-income housing obligations within the time frames established by the Legislature and as governed at N.J.A.C 5:99-2 et seq.

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

"Municipal housing liaison" or "MHL" means an appointed municipal employee who is responsible for oversight and/or administration of the affordable housing units created within the municipality and oversight of the authorization of individuals being provided access to the AHMS.

"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 et seq.

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

"Non-exempt sale" means any sale or transfer of ownership of a restricted unit to one's self or to another individual other than the transfer of ownership between spouses or civil union partners; the transfer of ownership between former spouses or civil union partners ordered as a result of a judicial decree of divorce or judicial separation, but not including sales to third parties; the transfer of ownership between family members as a result of inheritance; the transfer of ownership through an executor's deed to a class A beneficiary; and the transfer of ownership by court order.

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

"Non-residential development" means:

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

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

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

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

"Prospective need" means a projection of housing needs based on development and growth which is reasonably likely to occur in a region or a municipality, as the case may be, as a

result of actual determination of public and private entities. Prospective need shall be determined by the methodology set forth pursuant to sections 6 and 7 of P.L.2024, c. 2 (C.52:27D-304.2 and C.52:27D-304.3) for the fourth round and all future rounds of housing obligations.

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

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

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

"Prior round unit" means a housing unit that addresses a municipality's fair share obligation from a round prior to the fourth round of affordable housing obligations, including any unit that: (1) received substantive certification from COAH; (2) is part of a third-round settlement agreement or judgment of compliance approved by a court of competent jurisdiction, inclusive of units created pursuant to a zoning designation adopted as part of the settlement agreement or judgment of compliance to create a realistic opportunity for development; (3) is subject to a grant agreement or other contract with either the State or a political subdivision thereof entered into prior to July 1, 2025, pursuant to either item (1) or (2) above; or (4) otherwise addresses a municipality's fair share obligation from a round prior to the fourth round of affordable housing obligations. A unit created after the enactment of P.L. 2024, c. 2 (N.J.S.A. 52:27D-304.1) on March 20, 2024, is not a prior round unit unless: (1) it is created pursuant to a prior round development plan or zoning designation that received COAH or court approval on or before the cutoff date of June 30, 2025, or the date that the municipality adopts the implementing ordinances and resolutions for the fourth round of affordable housing obligations, whichever occurs sooner; and (2) its siting and creation are consistent with the form of the prior round development plan or zoning designation in effect as of the cutoff date, without any amendment or variance.

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

"Random selection process" means a 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 veteran's 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 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. 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 an ownership unit, that is subject to the affordability controls of N.J.A.C. 5:80-26.1, as amended and supplemented, but does not include a market-rate unit financed under UHORP, MONI, or CHOICE.

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

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

"Supportive housing household" means a very low-, low- or moderate-income household certified as income eligible by an administrative agent in accordance with N.J.A.C. 5:80-26.14, in which at least one member is an individual who requires supportive services to maintain housing stability and independent living and who is part of a population identified by federal or state statute, regulation, or program guidance as eligible for supportive or special needs housing. Such populations include, but are not limited to: persons with

intellectual or developmental disabilities, persons with serious mental illness, person with head injuries (as defined in Section 2 of P.L. 1977), persons with physical disabilities or chronic health conditions, persons who are homeless as defined by the U.S. Department of Housing and Urban Development at 24 C.F.R. Part 578, survivors of domestic violence, youth aging out of foster care, and other special needs populations recognized under programs administered by the U.S. Department of Housing and Urban Development, the Low-Income Housing Tax Credit Program, the McKinney-Vento Act, or the New Jersey Department of Human Services. A supportive housing household may include family members, unrelated individuals, or live-in aides, provided that the household meets the income eligibility requirements of this subchapter, except that in the case of unrelated individuals not operating as a family unit, income eligibility shall be tested on an individual basis rather than in the aggregate; the unit is leased or sold subject to the affordability controls established herein; and the supportive services available to the household are designed to promote housing stability, independent living, and community integration. The determination of whether unrelated individuals are operating as a family unit shall be made based on the applicant's self-identification of household members on the affordable housing application.

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

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

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

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

"UHAC" means the Uniform Housing Affordability Controls set forth in N.J.A.C. 5:8026, et seq.

"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 equal to 30 percent of the regional median household 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 purposes of a rehabilitation program.

C. Monitoring and Reporting Requirements

(1) The municipality shall comply with the following monitoring and reporting requirements regarding the status of the implementation of its court-approved Housing Element and Fair Share Plan:

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

(b) On or before February 15 of each year, the municipality shall provide annual reporting of its municipal Affordable Housing Trust Fund activity to the Department on the AHMS portal. The reporting shall include an accounting of all municipal Affordable Housing Trust Fund activity, including the sources and amounts of funds collected and the amounts and purposes for

which any funds have been expended, for the previous year from January 1st to December 31st.

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

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

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

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

- (3) Design. The following design requirements apply to affordable housing developments, excluding prior round units.

- (a) Design of 100 percent affordable developments:

- [1] 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.
- [2] Each bedroom in each restricted unit must have at least one window.
- [3] Restricted units must include adequate air conditioning and heating.

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

- [1] 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.
 - [2] 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.
 - [3] 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.
 - [4] Residents of restricted units must be offered the same access to communal amenities as residents of market-rate units within the same affordable development. Examples of communal amenities include, but are not limited to, community pools, fitness and recreation centers, playgrounds, common rooms and outdoor spaces, and building entrances and exits. This shall apply to prior round units.
 - [5] 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.
 - [6] Each bedroom in each restricted unit must have at least one window.
 - [7] Restricted units must be of the same unit type as market-rate units within the same building.
 - [8] Restricted units and bedrooms must be no less than 90 percent of the minimum size prescribed by the Neighborhood Preservation Balanced Housing rules.
- (c) Design of developments containing for-sale units, including those with a mix of rental and for-sale units. Restricted rental units shall meet the requirements of section (3)(b) above. Restricted sale units shall comply with the below:
- [1] 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.

- [2] Restricted units may be clustered, provided that the buildings or housing product types containing the restricted units are integrated throughout the development and are not concentrated in an undesirable location or in undesirable locations. Prior round affordable units shall be integrated with market rate units to the extent feasible.
- [3] Restricted units may be of different unit housing product types than market-rate units, provided that there is a restricted option available for each market rate housing type. Developments containing market-rate duplexes, townhomes, and/or single-family homes shall offer restricted housing options that also include duplexes, townhomes, and/or single-family homes. Penthouses and higher priced end townhouses shall be exempt from this requirement. The proper ratio for restricted to market-rate unit type shall be subject to municipal ordinance or, if not specified, shall be determined at the time of site plan approval.
- [4] 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.
- [5] Penthouse and end units may be reserved for market-rate sale, provided that the overall number, value, and distribution of affordable units across the development is not negatively impacted by such reservation(s).
- [6] Residents of restricted units must be offered the same access to communal amenities as residents of market-rate units within the same affordable development. Examples of communal amenities include, but are not limited to, community pools, fitness and recreation centers, playgrounds, common rooms and outdoor spaces, and building entrances and exits. This shall apply to prior round units.
- [7] Each bedroom in each restricted unit must have at least one window; and
- [8] Restricted units must include adequate air conditioning and heating.
- (d) Utilities.
 - [1] Affordable units shall utilize the same type of cooling and heating source as market-rate units within the affordable housing development.
 - [2] Tenant-paid utilities that are included in the utility allowance shall be so stated in the lease and shall be consistent with the utility allowance in accordance with UHAC.
- (e) Low/moderate split and bedroom distribution.

- [1] Affordable units shall be divided equally between low- and moderate-income units, except that where there is an odd number of affordable housing units, the extra unit shall be a low-income unit.
- [2] 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.
- [3] 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.
- [4] Affordable housing developments that are not age-restricted or supportive housing shall be structured such that:
 - [a] At a minimum, the number of bedrooms within the restricted units equals twice the number of restricted units;
 - [b] Two-bedroom and/or three-bedroom units compose at least 50 percent of all restricted units;
 - [c] 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.
 - [d] At least 30% of all low- and moderate-income units, rounded up shall be two-bedroom units. |
 - [e] At least 20% of all low- and moderate-income units, rounded up shall be three-bedroom units.
 - [f] The remaining units may be allocated among two- and three-bedroom units at the discretion of the developer in accordance with the municipality's housing element and fair share plan.
- [5] Affordable housing developments that are age-restricted or supportive housing, except those supportive housing units whose sponsoring program determines the unit arrangements, shall be structured such that, at a minimum, the number of bedrooms shall within the restricted units equals the number of restricted units. 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 five percent of those restricted units.

(f) Accessibility requirements.

[1] 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.

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

[a] An adaptable toilet and bathing facility on the first floor;

[b] An adaptable kitchen on the first floor;

[c] An interior accessible route of travel however an interior accessible route of travel shall not be required between stories;

[d] 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;

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

[f] An accessible entranceway as set forth in P.L. 2005, c. 350 (N.J.S.A. 52:27D-311a et seq.) and the Barrier Free Subcode or evidence that the municipality has collected funds from the developer sufficient to make 10% of the adaptable entrances in the development accessible:

(i) Where a unit has been constructed with an adaptable entrance, upon the request of a disabled person who is purchasing or will reside in the dwelling unit, an accessible entrance shall be installed.

(ii) To this end, the builder of 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.

- (iii) 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.
 - (iv) 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.
 - (v) 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, and that the cost estimate of such conversion is reasonable, payment shall be made to the Affordable Housing Trust Fund and earmarked appropriately.
- g. 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.

E. Affordable Housing Programs

- (1) Pursuant to amended UHAC regulations at N.J.A.C. 5:80-26.1 et seq. and, in addition, pursuant to P.L. 2024, c.2 and specifically to the amended FHA at N.J.S.A. 52:27D-311.m, "All parties shall be entitled to rely upon regulations on municipal credits, adjustments, and compliance mechanisms adopted by the Council on Affordable Housing unless those regulations are contradicted by statute, including but not limited to P.L. 2024, c.2, or binding court decisions." The following are many of the main provisions of the COAH regulations at either N.J.A.C. 5:93 or 5:97 that have been upheld by the NJ Supreme Court. Municipalities should consult the cited full COAH regulations when preparing the HEFSP for required documentation, etc. Additional compliance details may also be included in the specific municipal program manual.
- (2) Rehabilitation Programs (per N.J.A.C. 5:93-5.2 with updated provisions herein per N.J.A.C. 5:97-6.2 related to credit towards a municipal present need obligation).
 - (a) The rehabilitation program shall be designed to renovate deficient housing units occupied or intended to be occupied by very low-, low- and moderate-income households such that, after rehabilitation, these units will comply

with the New Jersey State Housing Code pursuant to N.J.A.C. 5:28-1.1 et seq or the Rehabilitation Subcode, N.J.A.C. 5:23-6 to the extent applicable.

- (b) Both ownership and rental units shall be eligible for rehabilitation funds.
- (c) All rehabilitated units shall remain affordable to very low-, low- and moderate-income households for a period of 10 years (the control period). For owner-occupied units, the control period shall be enforced with a mortgage and note and for renter-occupied units the control period will be enforced with a deed restriction.
- (d) The municipality shall dedicate a minimum average hard cost of \$10,000 for each unit to be rehabilitated through this program and in addition shall dedicate associated rehabilitation program soft costs such as case management, inspection fees and work write-ups.
- (e) The municipality shall designate, subject to the approval of the Department, one or more Administrative Agents to administer the rehabilitation program in accordance with P.L 2024, Chapter 2. The Administrative Agent(s) shall provide rehabilitation manuals for ownership and rental rehabilitation programs. Manuals shall be adopted by resolution of the governing body. Both rehabilitation manuals shall be available for public inspection in the Office of the Municipal Clerk and on the municipal affordable housing web page.
- (f) Households determined to be very low-, low-, or moderate-income may participate in a rehabilitation program. Rehabilitated units shall be exempt from the very low-income requirements, low/mod split, and bedroom distribution requirements of UHAC, but shall be administered in accordance with the following:
 - [1] If a unit is vacant at the time of rehabilitation, or if a rehabilitated unit becomes vacant and is re-rented before the expiration of the affordability controls, the deed restriction shall require that the unit be rented to a low- or moderate-income household at an affordable rent.
 - [2] If a rental unit is occupied by a tenant at the time rehabilitation is completed, the rent charged after rehabilitation shall not exceed the lesser of the tenant's current rent or the maximum rent permitted under UHAC.
 - [3] Rents in rehabilitated units may increase annually based on the standards in UHAC.
 - [4] At the time of application, applicant households and/or tenant households shall be subject to income eligibility determinations in accordance with UHAC.

F. Regional Income Limits.

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

- (2) Regional income limits are based on regional median income, which is established by a regional weighted average of the "median family incomes" published by HUD. The procedure for computing the regional median income is detailed in N.J.A.C. 5:80-26.3.
 - (3) Updated regional income limits are effective as of the effective date of the regional Section 8 income limits for the year, as published by HUD, or 45 days after HUD publishes the regional Section 8 income limits for the year, whichever comes later. The new income limits may not be less than those of the previous year.
- G. Maximum Initial Rents and Sales Prices.
- (1) In establishing rents and sales prices of affordable housing units, the Administrative Agent shall follow the procedures set forth in UHAC at N.J.A.C. 5:80-26.4.
 - (2) The average rent for all restricted units within each affordable housing development shall be affordable to households earning no more than 52 percent of regional median income.
 - (3) The maximum rent for restricted rental units within each affordable housing development shall be affordable to households earning no more than 60% of regional median income.
 - (4) The developers and/or municipal sponsors of restricted rental units shall establish at least one rent for each bedroom type for both low-income and moderate-income units, provided that at least 13% of all low- and moderate-income rental units shall be affordable to households earning no more than 30% of median income. These very low-income units shall be part of the low-income requirement and very-low-income units should be distributed between each bedroom count as proportionally as possible, to the nearest whole unit, to the total number of restricted units within each bedroom count.
 - (5) The maximum sales price of restricted ownership units within each affordable housing development shall be affordable to households earning no more than 70% of median income, and each affordable housing development must achieve an affordability average that does not exceed 55% for all restricted ownership units. In achieving this affordability average, moderate-income ownership units must be available for at least three different prices for each bedroom type, and low-income ownership units must be available for at least two different prices for each bedroom type when the number of low- and moderate-income units permits.
 - (6) The master deeds and declarations of covenants and restrictions for affordable developments may not distinguish between restricted units and market-rate units in the calculation of any condominium or homeowner association fees and special assessments to be paid by low- and moderate-income purchasers and those to be paid by market-rate purchasers. Notwithstanding the foregoing sentence, condominium units subject to a municipal ordinance adopted before December 20, 2004, which ordinance provides for condominium or homeowner association fees and/or assessments different from those provided for in this subsection are governed by the ordinance.

- (7) In determining the initial sales prices and rents for compliance with the affordability average requirements for restricted family units, the following standards shall be met:
- (a) A studio or efficiency unit shall be affordable to a one-person household;
 - (b) A one-bedroom unit shall be affordable to a one and one-half person household;
 - (c) A two-bedroom unit shall be affordable to a three-person household;
 - (d) A three-bedroom unit shall be affordable to a four and one-half person household; and
 - (e) A four-bedroom unit shall be affordable to a six-person household.
- (8) In determining the initial rents and sales prices for compliance with the affordability average requirements for restricted units in assisted living facilities and age-restricted and special needs and supportive housing developments, the following standards shall be met:
- (a) A studio or efficiency unit shall be affordable to a one-person household;
 - (b) A one-bedroom unit shall be affordable to a one and one-half person household; and
 - (c) A two-bedroom unit shall be affordable to a two-person household or to two one-person households. Where pricing is based on two one-person households, the developer shall provide a list of units so priced to the Municipal Housing Liaison and the Administrative Agent.
- (9) The initial purchase price for all restricted ownership units shall be calculated so that the monthly carrying cost of the unit, including principal and interest (based on a mortgage loan equal to 95 percent of the purchase price and the FreddieMac 30-Year Fixed Rate-Mortgage rate of interest), property taxes, homeowner and private mortgage insurance and condominium or homeowner association fees do not exceed 30 percent of the eligible monthly income of the appropriate size household as determined pursuant to N.J.A.C. 5:80-26.7, as may be amended and supplemented; provided, however, that the price shall be subject to the affordability average requirement of N.J.A.C. 5:80-26.4, as may be amended and supplemented.
- (10) The initial rent for a restricted rental unit shall be calculated so that the total monthly housing expense, including an allowance for tenant-paid utilities, does not exceed 30 percent of the gross monthly income of a household of the appropriate size whose income is targeted to the applicable percentage of median income for the unit, as determined pursuant to N.J.A.C. 5:80-26.3, as may be amended and supplemented. The rent shall also comply with the affordability average requirement of N.J.A.C. 5:80-26.4, as may be amended and supplemented. The initial rent for a restricted rental unit shall be calculated so the eligible monthly housing expenses/income, including an allowance for tenant-paid utilities does not exceed 30 percent of gross income of and the appropriate household size as determined pursuant to N.J.A.C. 5:80-26.3, as may be amended and supplemented.

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

H. Certificates of Occupancy. Certificates of occupancy for developments which include affordable housing units shall be subject to the following additional provisions:

- (2) No initial occupancy of a low- or moderate-income housing sales unit shall be permitted prior to issuance of a certificate of occupancy, and no certificate of occupancy for initial occupancy of a low- or moderate-income housing sales unit shall issue unless there is a written determination by the Administrative Agent that the unit is to be controlled by a deed restriction and mortgage lien as adopted by COAH or successor entity.
- (3) A certificate of reoccupancy for any occupancy of a low- or moderate-income housing sales unit resulting from a resale shall be required, and the Township shall not issue such certificate unless there is a written determination by the Administrative Agent that the unit is to be controlled by the deed restriction and mortgage lien required by COAH or successor entity.
- (4) The certificate of reoccupancy shall not be required where there is a written determination by the Administrative Agent that controls are allowed to expire or that the repayment option is being exercised pursuant to N.J.A.C. 5:92-12.3.

I. Municipal Housing Liaison

- (1) The Municipal Housing Liaison shall be approved by municipal resolution.
- (2) The Municipal Housing Liaison shall be approved by the Division, or is in the process of getting approval, and fully or conditionally meets the requirements for qualifications, including initial and periodic training as set forth in N.J.A.C. 5:99-1 et seq.
- (3) The Municipal Housing Liaison shall be appointed by the governing body or letter from the chief executive and may be a full- or part-time municipal employee, who shall be identified by name and title on the municipal website.
- (4) The Municipal Housing Liaison shall be responsible for oversight and administration of the affordable housing program for Little Egg Harbor Township, including the following responsibilities, which may not be contracted out to the Administrative Agent:
- (a) Serving as Little Egg Harbor Township's primary point of contact for all inquiries from the State, affordable housing providers, Administrative Agents and interested households;
- (b) The oversight of the Affirmative Marketing Plan and affordability controls.

- (c) Overseeing the monitoring of the status of all affordable housing programs and affordable units listed in Little Egg Harbor Township's Fair Share Plan;
- (d) When applicable, overseeing and monitoring any contracting administrative agents to ensure compliance with UHAC;
- (e) Ensuring that an administrative agent is assigned to administer the sales, rentals, re-sales, and re-rentals of all deed-restricted affordable units in the municipality at all times. For units at the end of their deed-restricted control period, an administrative agent shall be available to administer the sale of all properties until such time of the first authorized non-exempt sale after controls on affordability have been in effect on the unit;
- (f) Verifying, certifying, and providing annual information within the AHMS at such time and in such form as the Division requires;
- (g) Listing, on the municipal website, contact information for the administrative agent for each completed project with an affordable component within the municipality
- (h) Coordinating meetings with affordable housing providers and administrative agents, as needed;
- (i) Attending continuing education opportunities on affordability controls, compliance monitoring, and affirmative marketing as offered or approved by the Division.
- (j) 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
- (k) Coordinating with the Administrative Agent, municipal attorney and municipal Construction Code Official to ensure that permits are not issued unless the document required in C.8. above has been duly recorded.
- (l) Listing on the municipal website contact information for the MHL and Administrative Agents.
- (m) Where applicable, providing to an administrative agent a copy of the adopted municipal operating manual(s), housing element and fair share plan, and ordinances relating to the creation and administration of the municipality's affordable housing programs and/or affordable units.
- (5) Access to AHMS shall be authorized only by the municipal housing liaison, or their designee, which shall be a municipal employee.
- (6) The municipal housing liaison may also serve as the administrative agent pursuant to N.J.A.C. 5:99-7 for some or all of the affordable units in the municipality. These duties shall be outlined in the municipal ordinance establishing the position of the municipal housing liaison. All applicable tasks not performed by the municipal housing liaison shall be contracted to an administrative agent pursuant to N.J.A.C. 5:99-7.

- (7) Information regarding specific characteristics of municipal affordable housing projects or programs and the resulting unit completions may be entered into AHMS by a contracted entity other than the municipal housing liaison with the written approval of the municipality and pursuant to the oversight of the municipal housing liaison.

J. Administrative Agent

- (1) All municipalities that have created or will create affordable housing programs and/or affordable units shall designate or approve, for each project within its HEFSP, an administrative agent to administer the affordable housing program and/or affordable housing units in accordance with the requirements of the FHA, NJAC 5:99-1 et seq. and UHAC.
- (2) Little Egg Harbor Township shall designate or approve, for each affordable housing project or program within its fair share plan, an administrative agent to administer the affordable housing program and/or affordable units in accordance with the requirements of the Amended Fair Housing Act, the Program, N.J.A.C. 5:99-1.1 et seq., and UHAC.
- (3) The administrative agent may be the municipal housing liaison, the RCA administrator, other municipal employee, or a person or entity selected pursuant to the UHAC.
- (4) The fees for administrative agents shall be paid as follows:
- (a) Administrative agent fees related to rental units shall be paid by the developer/owner.
 - (b) Administrative agent fees related to initial sale of units shall be paid by the developer.
 - (c) Administrative agent fees related to resales shall be paid by the seller of the affordable home.
 - (d) Administrative agent fees related to ongoing administration and enforcement shall be paid by the municipality.
- (5) An Operating Manual for each affordable housing program shall be provided by the Administrative Agent(s). The Operating Manual(s) shall be available for public inspection in the Office of the Clerk and in the office(s) of the Administrative Agent(s). Operating manuals shall be adopted by resolution of the Governing Body.
- (6) Subject to the role of the Administrative Agent(s), 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:
- (a) Attending continuing education opportunities on affordability controls, compliance monitoring, and affirmative marketing as offered or approved by the Division.
 - (b) Affirmative Marketing:

- [1] Conducting an outreach process to affirmatively market affordable housing units in accordance with the Affirmative Marketing Plan of Little Egg Harbor Township and the provisions of UHAC; and
 - [2] Providing counseling or contracting to provide counseling services to low- and moderate-income applicants on subjects such as budgeting, credit issues, mortgage qualification, rental lease requirements, and landlord/tenant law.
- (c) Household Certification:
- [1] Soliciting, scheduling, conducting and following up on interviews with interested households;
 - [2] Conducting interviews and obtaining sufficient documentation of gross income and assets upon which to base a determination of income eligibility for a low- or moderate-income household;
 - [3] Providing written notification to each applicant as to the determination of eligibility or non-eligibility within 5 days of the determination thereof;
 - [4] Requiring that 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 N.J.A.C. 5:80-26.1 et seq.
 - [5] Creating and maintaining a referral list of eligible applicant households living in the housing region and eligible applicant households with members working in the housing region where the units are located; and
 - [6] Employing a random selection process as provided in the Affirmative Marketing Plan when referring households for certification to affordable units.
- (d) Affordability Controls:
- [1] Furnishing to attorneys or closing agents forms of deed restrictions and mortgages for recording at the time of conveyance of title of each restricted unit;
 - [2] Subject to prior written approval from the municipal housing liaison, ensuring that the removal of deed restrictions and cancellation of mortgages are effectuated and properly filed with the county register of deeds or clerk's office after the termination of the affordability controls in this subchapter for each restricted unit;
 - [3] Communicating with lenders and the Municipal Housing Liaison regarding foreclosures; and
 - [4] Ensuring the issuance of continuing certificates of occupancy or certified statements from municipal building inspectors pursuant to the UHAC at N.J.A.C. 5:80-26.11;

- (e) Records retention.
- [1] Creating and maintaining a file on each restricted unit for its control period, including the recorded deed with restrictions, recorded mortgage and note, as appropriate;
 - [2] Records received, retained, retrieved, or transmitted in furtherance of crediting affordable units of a municipality constitute public records of the municipality as defined by N.J.S.A. 47:3-16, and are legal property of the municipality; and
 - [3] Exercising appropriate authority to discharge and release any or all instruments, as set forth in the UHAC appendices establishing afford-ability controls;
- (f) Resales and Re-rentals:
- [1] 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; and
 - [2] Instituting, maintaining, and documenting an effective means of communicating information to low- and moderate-income households regarding the availability of restricted units for resale or re-rental, inclusive of listings on the New Jersey Housing Resource Center pursuant to N.J.S.A. 52:27D-321.6;
- (g) Processing Requests from Unit Owners.
- [1] Reviewing and approving requests for determination from owners of restricted units who wish to take out home equity loans or refinance during the terms of their ownership;
 - [2] Reviewing and approving requests to increase the maximum sales prices from owners of restricted units who wish to make capital improvements that would affect the selling prices of their units. Such authorizations shall be limited to those improvements resulting in additional bedrooms or bathrooms, and the cost of a central air conditioning system installed subsequent to the initial sale of the unit;
 - [3] Notifying the municipality of an owner's intent to sell a restricted 95/5 unit, as defined in the UHAC at N.J.A.C. 5:80-26.2; and
 - [4] Making determinations on requests by owners of restricted units for hardship waivers.
- (h) Enforcement:
- [1] Securing annually from the municipality a list of all affordable housing units for which tax bills are mailed to absentee owners, and notifying all such owners that they must either move back to their unit or sell it;

- [2] 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;
- [3] The posting annually in all rental properties, including two-family homes, of a notice as to the maximum permitted rent together with the telephone number of the Administrative Agent where complaints of excess rent or other charges can be made;
- [4] Sending annual mailings to all owners of affordable dwelling units, reminding them of the notices and requirements outlined in N.J.A.C. 5:80-26.18(d)4;
- [5] Establishing a program for diverting unlawful rent payments to the municipality's Affordable Housing Trust Fund; and
- [6] The administrative agent shall create and publish in plain English and in such other languages as may be appropriate to serving their respective client base, a written operating manual, as approved by the municipal housing liaison, setting forth procedures for administering such affordability controls, including procedures for long-term control of restricted units; for enforcing the covenants set forth in the UHAC appendices, consistent with the provisions at N.J.A.C. 5:80-26.19; and for releasing restricted units promptly at the conclusion of applicable control periods. The operating manual shall have a separate and distinct chapter or section setting forth the process for identifying applicant households seeking certification to restricted units, for reviewing applicant household eligibility, and for certifying applicant households in accordance with the household certification and referral requirements set forth at N.J.A.C. 5:80-26.17.

(i) Additional Responsibilities:

- [1] Providing annual reports, including a detailed description of completed units and any other information necessary for the municipality to produce its status report as required pursuant to N.J.S.A. 52:27D-329.4, to the municipal housing liaison and the Division by February 15 of each calendar year;
- [2] Calculating initial rents or sales prices for affordable units;
- [3] Such other responsibilities as may be necessary to carry out the provisions of this subchapter.
- [4] The Administrative Agent(s) shall, as delegated by the municipality, have the authority to take all actions necessary and appropriate to carry out its/their responsibilities, herein.

K. Affirmative Marketing

- (1) Little Egg Harbor Township shall adopt by resolution an Affirmative Marketing Plan, subject to the review by the Division, that is compliant with N.J.A.C. 5:80-26.16, as may be amended and supplemented.
- (2) The Affirmative Marketing process is a regional marketing strategy intended to reach those potentially eligible persons who are least likely to apply for affordable units. It is a continuing program that directs marketing activities toward Housing Region 4 and is required to be followed throughout the period of deed restriction.
- (3) The municipality has the ultimate responsibility for adopting the Affirmative Marketing Plan and for the proper administration of the Affirmative Marketing Process, including the marketing of initial sales and rentals and resales and re-rentals. The Administrative Agent designated by the municipality shall implement the Affirmative Marketing Process to ensure the Affirmative Marketing of all affordable units, with the exception of affordable programs that are exempt from Affirmative Marketing as noted herein.
- (4) The Affirmative Marketing Plan shall provide a regional preference for all households that live and/or work in Housing Region 4, comprised of Monmouth, Mercer and Ocean Counties. The municipality has the ultimate responsibility for adopting the Affirmative Marketing Plan and for the proper administration of the Affirmative Marketing Process, including the marketing of initial sales and rentals and resales and re-rentals. The Administrative Agent designated by the Township shall implement the Affirmative Marketing Process to ensure the Affirmative Marketing of all affordable units, with the exception of affordable programs that are exempt from the Affirmative Marketing as noted herein.
- (5) The Affirmative Marketing Process shall describe the media to be used in advertising and publicizing the availability of housing. In implementing the Affirmative Marketing Process, the Administrative Agent shall consider the use of language translations where appropriate.
- (6) Applications for affordable housing or notices thereof, if offered online, shall be available in several locations, including, at a minimum, the County Administration Building and/or the County Library for each county within the housing region; the municipal administration building and municipal library in the municipality in which the units are located; and the developer's rental or sales office. The developer shall mail applications to prospective applicants upon request and shall make applications available through a secure online website address.
- (7) In addition to other Affirmative Marketing strategies, the Administrative Agent shall provide specific notice of the availability of affordable housing units on the New Jersey Housing Resource Center website. The affirmative marketing plan shall include the following community and regional organizations: FSHC, the Latino Action Network, Asbury Park (Neptune), Long Branch, Lakewood Branches of NAACP, STEPS of Lakewood, NJ. Any other entities, including developers or persons or companies retained to implement the Affirmative Marketing Process, shall comply with this paragraph.

- (8) In implementing the Affirmative Marketing Process, the Administrative Agent shall provide a list of counseling services to low- and moderate-income applicants on subjects such as budgeting, credit issues, mortgage qualification, rental lease requirements, and landlord/tenant law.
- (9) The Affirmative Marketing Process for available affordable units shall begin at least four months (120 days) prior to the expected date of occupancy.
- (10) The cost to affirmatively market the affordable units shall be the responsibility of the developer, sponsor or owner, with the exception of Affirmative Marketing for resales.

L. Occupancy Standards

- a. In referring certified households to specific restricted units, the Administrative Agent shall strive, to the extent feasible and without causing an undue delay in occupying the unit, to:
 - [1] Ensure each bedroom is occupied by at least one person, except for age-restricted 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 a unit with more than one bedroom.

M. Control Periods for Restricted Ownership Units and Enforcement Mechanisms

- (1) Each restricted ownership unit is subject to the affordability controls of N.J.A.C. 5:80-26.6, as may be amended and supplemented, for a deed-restricted control period. The minimum duration of the control period is:
 - (a) Thirty years for any ownership unit created on or after December 20, 2024;
 - (b) Thirty years for any ownership unit receiving an extension of affordability controls on or after December 20, 2024, unless the original term of affordability exceeds 30 years, in which case, the minimum control period for the extension is the number of years, not less than 20 years, that in combination with the original term results in 60 years of affordability;
 - (c) Governed by the grant of substantive certification, judgment of compliance, grant agreement, or other contract for any prior round ownership unit, including all units governed by 95/5 restrictions, sold before December 20, 2024; and
 - (d) Governed by the form of UHAC in effect as of December 20, 2004, for any unit sold between December 20, 2004 and December 20, 2024, that is not the subject of a grant of substantive certification, judgment of compliance, grant agreement, or other contract.

- (2) The control period for a restricted ownership unit commences on the date that the initial certified household takes title to the unit or, if existing affordability controls are being extended, on the effective date of the extension. The date of commencement must be identified in the deed restriction.
- (3) The control period for a restricted ownership unit continues until the end date identified in the deed restriction, or until the minimum duration has elapsed if a specific end date cannot be determined according to the terms of the deed restriction. After the end of the control period, the restricted ownership unit remains subject to the affordability controls set forth in this subchapter until the owner gives notice of their intent to make an exit sale, at which point:
- (a) If the municipality exercises the right to extend the affordability controls on the unit, no exit sale occurs and a new control period commences; or
- (b) If the municipality does not exercise the right to extend the affordability controls on the unit, the affordability controls terminate following the exit sale.
- (4) For each restricted ownership unit, at initial sale, the administrative agent shall determine a preliminary recapture amount equal to the price differential between the restricted price of the unit, based on the requirements at N.J.A.C. 5:80-26.7, and the non-restricted, fair market value of the unit, based on either an appraisal or the unit's equalized assessed value. Following this determination, the initial purchaser and each successive purchaser during the control period shall execute and deliver to the administrative agent a recapture note, secured by a recapture lien evidenced by a duly recorded mortgage on the unit, obligating the purchaser and the purchaser's heirs, successors, and assigns to repay a recapture amount at the time of the exit sale.
- (a) The recapture note and recapture lien must:
- [1] Be in favor of the Agency, if the unit was financed through UHORP, MONI, or CHOICE, in favor of the State if State funds other than UHORP, MONI, or CHOICE contributed to the financing of the unit, in favor of the nonprofit if the unit was developed by a qualified nonprofit entity without Agency or State funding, and, in all other cases, in favor of the municipality in which the unit is located;
- [2] Be in the applicable forms prescribed at N.J.A.C. 5:80-26 Appendices D-2, L, M, N, O, and Q, incorporated herein by reference;
- [3] In addition to the preliminary recapture amount calculated at initial sale, include the restricted price and the non-restricted, fair market value of the unit at the time of initial sale; and
- [4] Provide that the actual recapture amount will be determined upon exit sale and will be equal to the price differential minus the equity share amount, or another amount determined by an ordinance of the municipal governing body, which must be less than the price differential minus the equity share amount.

- (b) The recapture lien must provide that:
- [1] The recapture amount be reduced by the cumulative dollar value of capital improvements made after the last non-exempt sale during the control period for improvements and/or upgrades to the unit, as may be approved by the administrative agent, excluding capital improvements paid for by the entity favored on the recapture note and recapture lien;
 - [2] The lien will remain a lien on the property until it is satisfied and the administrative agent files a discharge; and
 - [3] A municipality that exercises the option to purchase the restricted ownership unit is not required to satisfy the recapture lien.
- (5) At the time of the initial sale of the unit, the initial purchaser shall execute and deliver to the Administrative Agent a recapture note obligating the purchaser (as well as the purchaser's heirs, successors and assigns) to repay, upon the first non-exempt sale after the unit's release from the restrictions set forth in this Ordinance, an amount equal to the difference between the unit's non-restricted fair market value and its restricted price, and the recapture note shall be secured by a recapture lien evidenced by a duly recorded mortgage on the unit.
- (6) The affordability controls set forth in this Ordinance shall remain in effect despite the entry and enforcement of any judgment of foreclosure with respect to restricted ownership units.
- (7) A restricted ownership unit shall be required to obtain a Continuing Certificate of Occupancy or a certified statement from the Construction Official stating that the unit meets all Code standards upon the first transfer of title following the removal of the restrictions provided under N.J.A.C. 5:80-26.5(a), as may be amended and supplemented.
- N. Price Restrictions for Restricted Ownership Units
- A. Price restrictions for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.7, as may be amended and supplemented, including:
- (a) The administrative agent shall set the initial purchase price for a restricted ownership unit. If the unit is receiving assistance pursuant to the AHTF, the price must be consistent with the AHTF grant agreement.
 - (b) The initial purchase price for all restricted ownership units is calculated so that the monthly carrying costs of the unit, including principal and interest (based on a mortgage loan equal to 95 percent of the purchase price and the FreddieMac 30-Year Fixed Rate-Mortgage rate of interest), tax-es, homeowner and private mortgage insurance, and realistic condominium or homeowner association fees, do not exceed 30 percent of the eligible monthly income of an appropriate household size as determined pursuant to N.J.A.C. 5:80-26.4; provided, however, that the price is subject to the affordability average requirement at N.J.A.C. 5:80-26.4.

- (c) The Administrative Agent shall approve all resale prices, in writing and in advance of the resale, to assure compliance with the foregoing standards set forth in N.J.A.C 5:80-26.7:
- [1] The maximum resale price for a restricted ownership unit, if the resale occurs prior to the one-year anniversary of the date on which title to the unit was first transferred to a certified household, is the initial purchase price.
 - [2] If the resale occurs on or after such anniversary date, the maximum resale price is the most recent non-exempt purchase price increase to reflect the cumulative annual percentage increases to the regional median income, effective as of the same date as the regional median income calculated pursuant to N.J.A.C. 5:80-26.3.
- (d) 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:
- [1] those that render the unit suitable for a larger household or the addition of a bathroom.
 - [2] 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);
- (e) 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.
- (f) The administrative agent shall approve all resale prices, in writing, and in advance of the resale, to ensure compliance with the foregoing standards. The administrative agent may approve an actual resale price that is lower than the maximum resale price for reasons including, but not limited to, home disrepair and market decline, and shall not calculate a resale price lower than the last recorded purchase price unless they determine that the decreased price is a result of such reasons.
- (g) The master deeds and declarations of covenants and restrictions for affordable developments may not distinguish between restricted units and market-rate units in the calculation of any condominium or homeowner association fees and special assessments paid by low- and moderate-income purchasers and those paid by market purchasers. Notwithstanding the foregoing sentence, condominium units subject to a municipal ordinance adopted before December 20, 2004, which ordinance provides for

condominium or homeowner association fees and/or assessments different from those provided for in this subsection are governed by the ordinance.

O. Buyer Income Eligibility

- (1) Buyer income eligibility for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.8, as may be amended and supplemented, such that very low-income ownership units shall be reserved for occupancy by households with a gross household income less than or equal to 30% of median income, low-income ownership units shall be reserved for occupancy by households with a gross household income less than or equal to 50 percent of median income and moderate-income ownership units shall be reserved for occupancy by households with a gross household income less than 80 percent of median income.
- (2) Notwithstanding the foregoing, however, the Administrative Agent may, as determined by the Division, permit moderate-income purchasers to buy low-income units in housing markets if the Administrative Agent determines that there is an insufficient number of eligible low-income purchasers to permit prompt occupancy of the units. All such low-income units to be sold to moderate-income households shall retain the required pricing and pricing restrictions for low-income units.
- (3) Similarly, the administrative agent may permit low-income purchasers to buy very-low-income units in housing markets where, as determined by the Division, units are reserved for very-low-income purchasers, but there is an insufficient number of very-low-income purchasers to permit prompt occupancy of the units. In such instances, the purchased unit must be maintained as a very-low-income unit and sold at a very-low-income price point such that on the next resale the unit will still be affordable to very-low-income households and able to be purchased by a very-low-income household. A very-low-income unit that is seeking bonus credit pursuant to N.J.S.A. 52:27D-311.k(9) must first be advertised exclusively as a very-low-income unit according to the affirmative marketing requirements at N.J.A.C. 5:80-26.16, then advertised as a very-low-income or low-income unit for at least 30 additional days prior to referring any low-income household to the unit.
- (4) A certified household that purchases a restricted ownership unit must occupy it as the certified household's principal residence and shall not lease the unit; provided, however, that the Administrative Agent may permit the owner of a restricted ownership unit, upon showing of hardship, to lease the restricted unit to another certified household for a period not to exceed one year.
- (5) 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, taxes, homeowner and private mortgage insurance and realistic condominium or homeowner association fees, as applicable) does not exceed 35 percent of the household's eligible monthly income. The Administrative Agent, however, may exercise its discretion to certify a low- or moderate-income household as eligible despite the fact that the unit's monthly housing cost would exceed the 35 percent level, if the household obtains

a firm mortgage loan commitment at the higher level from a licensed financial institution, under terms consistent with the requirements of the New Jersey Home Ownership Security Act of 2002, N.J.S.A. 46:10B-22 through 35, including certification from a nonprofit counselor approved by HUD or the New Jersey Department of Banking and Insurance that the borrower has received counseling on the advisability of the loan transaction.

P. Limitations on Indebtedness Secured by Ownership Unit; Subordination

- (1) Prior to incurring any indebtedness to be secured by a restricted ownership unit, the owner shall apply to the Administrative Agent a notice of intent to incur such indebtedness (for example, a home equity loan or solar loan), in such form and with such documentary support as determined by the administrative agent, and the owner may not incur any such indebtedness unless and until the administrative agent has determined and confirmed, in writing, that the proposed indebtedness complies with the provisions of this section.
- (2) With the exception of original purchase money mortgages, during a control period, neither an owner nor a lender shall at any time cause or permit the total indebtedness secured by a restricted ownership unit to exceed 95 percent of the maximum allowable resale price of the unit, as such price is determined by the Administrative Agent in accordance with N.J.A.C.5:80-26.7(c).

Q. Capital Improvements to Ownership Units

- (1) The owner of a restricted ownership unit may apply to the Administrative Agent to recalculate the maximum sales price for the unit to reflect eligible capital improvements made since the purchase of the unit. Eligible capital improvements are limited to those that make the unit suitable for a larger household, that is adding bedrooms and/or bathrooms. However, the maximum sale price of an improved housing unit may not exceed the limits of affordability for the larger household.
- (2) Upon the resale of a restricted ownership unit, all items of property that are permanently affixed to the unit or were included when the unit was initially restricted (e.g., refrigerator, range, washer, dryer, dishwasher, or flooring) are 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. 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, 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 owner and the purchaser must personally certify at the time of closing that no unapproved transfer of funds for the purpose of selling and receiving property has taken place at resale.
- (3) Capital improvements, 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), approved, in writing, by the administrative agent for non-cosmetic replacement of

existing items of property or non-cosmetic improvement to the property (for example, replacement of a leaky roof, installation of a solar energy system owned by the homeowner, installation of energy-efficient windows, or replacement of broken appliances with ENERGY STAR-labeled products) shall not cause the maximum sale price to be recalculated, but will be factored into calculating reductions to the recapture amount pursuant to N.J.A.C. 5:80-26.6(d)2i and into calculating adjustments to the maximum sale price pursuant to N.J.A.C. 5:80-26.7(c). Capital improvements are subject to 10-year, straight-line depreciation.

R. Control Periods for Restricted Rental Units

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

- (d) The end of the control period, until the occupant household vacates the unit, or is certified as over-income and the controls are released in accordance with UHAC.

S. Rent Restrictions for Rental Units; Leases

- (1) The initial rent for a restricted rental unit shall be set by the Administrative Agent.
- (2) A written lease shall be required for all restricted rental units, except for units in an assisted living residence, and tenants shall be responsible for security deposits and the full amount of the rent as stated on the lease. A copy of the current lease for each restricted rental unit shall be retained on file by the Administrative Agent.
- (3) No additional fees, operating costs, or charges shall be added to the approved rent (except, in the case of units in an assisted living residence, for the customary charges for food and services) without the express written approval of the Administrative Agent.
 - (a) Operating costs for the purposes of this section include certificate of occupancy fees, move-in fees, move-out fees, mandatory internet fees, mandatory cable fees, mandatory utility submetering fees, and for developments with more than one and a half off-street parking spaces per unit, parking fees for one parking space per household.
- (4) Any fee structure that would remove or limit affordable renters' access to any amenities or services that are required or included for market-rate renters is prohibited. Application fees (including the charge for any credit check) shall not exceed five percent of the monthly rent of the applicable restricted unit and shall be payable to the Administrative Agent to be applied to the costs of administering the controls applicable to the unit as set forth in this Ordinance.
- (5) Fees for truly optional, unit-specific, non-communal items that are charged to market-rate 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 be charged to affordable tenants, if applicable.
- (6) Pet fees may not exceed \$30.00 per month and associated one-time payments for optional fees pertaining to pets, such as a pet cleaning fee, are prohibited. Fees for other optional, unit-specific, non-communal items may not exceed the amounts charged to market-rate tenants.
- (7) 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.

T. Tenant Income Eligibility

- (1) Tenant income eligibility shall be in accordance with N.J.A.C. 5:80-26.14, as may be amended and supplemented, and shall be determined, as follows:

- (a) Very low-income rental units shall be reserved for households with household income less than or equal to 30 percent of regional median income;
 - (b) Low-income rental units shall be reserved for households with household income less than or equal to 50 percent of regional median income; and,
 - (c) Moderate-income rental units shall be reserved for households with household income less than or equal to 80 percent of regional median income.
- (2) The Administrative Agent shall certify a household as eligible for a restricted rental unit when the household is a very low-income household, low-income household or a moderate-income household, as applicable to the unit, and the rent proposed for the unit does not exceed 35 percent (40 percent for age-restricted units) of the household's eligible monthly income as determined pursuant to N.J.A.C. 5:80-26.17, as may be exceeded if one or more of the following circumstances exists:
- (a) The household currently pays more than 35 percent (40 percent for households eligible for age-restricted units) of its gross household income for rent, and the proposed rent will reduce its housing costs;
 - (b) The household has consistently paid more than 35 percent (40 percent for households eligible for age-restricted units) of eligible monthly income for rent in the past and has proven its ability to pay;
 - (c) The household is currently in substandard or overcrowded living conditions;
 - (d) The household documents the existence of assets with which the household proposes to supplement the rent payments; or
 - (e) The household documents proposed third-party assistance from an outside source, such as a family member, in a form acceptable to the Administrative Agent and the owner of the unit.
- (3) The applicant shall file documentation sufficient to establish the existence of the circumstances at (2) above with the Administrative Agent, who shall counsel the household on budgeting.

U. Enforcement of Affordable Housing Regulations

- (1) Upon the occurrence of a breach of any of the regulations governing the affordable unit by an Owner, Developer or Tenant, the municipality shall have all remedies provided at law or equity, including but not limited to foreclosure, tenant eviction, a requirement for household recertification, acceleration of all sums due under a mortgage, recuperation of any funds from a sale in violation of the regulations, injunctive relief to prevent further violation of the regulations, entry on the premises, and specific performance.
- (2) After providing written notice of a violation to an Owner, Developer or Tenant of a low- or moderate-income unit and advising the Owner, Developer or Tenant of

the penalties for such violations, the municipality may take the following action(s) against the Owner, Developer or Tenant for any violation that remains uncured for a period of 60 days after service of the written notice:

- (a) The municipality may file a court action pursuant to N.J.S.A. 2A:58-11alleging a violation, or violations of the regulations governing the affordable housing unit. If the Owner, Developer or Tenant is adjudged by the Court to have violated any provision of the regulations governing affordable housing units the Owner, Developer or Tenant shall be subject to one or more of the following penalties, at the discretion of the Court:
 - [1] A fine of not more than \$500.00 per day or imprisonment for a period not to exceed 90 days, or both, provided that each and every day that the violation continues or exists shall be considered a separate and specific violation of these provisions and not a continuation of the initial offense;
 - [2] In the case of an Owner who has rented a low- or moderate-income unit in violation of the regulations governing affordable housing units, payment into the Little Egg Harbor Township Affordable Housing Trust Fund of the gross amount of rent illegally collected;
 - [3] In the case of an Owner who has rented a low- or moderate-income unit in violation of the regulations governing affordable housing units, payment of an innocent tenant's reasonable relocation costs, as determined by the Court.
- (b) The municipality shall have the authority to levy fines against the owner of the development for instances of noncompliance with NJHRC advertising requirements (N.J.S.A. 52:27D-321.6.e.(2)), following written notice to the owner. The fine for the first offense of noncompliance shall be \$5,000, the fine for the second offense of noncompliance shall be \$10,000, and the fine for each subsequent offense of noncompliance shall be \$15,000.
- (c) The municipality may file a court action in the Superior Court seeking a judgment that would result in the termination of the Owner's equity or other interest in the unit, in the nature of a mortgage foreclosure. Any such judgment shall be enforceable as if the same were a judgment of default of the First Purchase Money Mortgage and shall constitute a lien against the low- or moderate-income unit.
 - [1] The judgment shall be enforceable, at the option of the municipality, by means of an execution sale by the Sheriff, at which time the low- and moderate-income unit of the violating Owner shall be sold at a sale price which is not less than the amount necessary to fully satisfy and pay off any First Purchase Money Mortgage and prior liens and the costs of the enforcement proceedings incurred by the municipality, including attorney's fees. The violating Owner shall have his right to possession terminated as well as his title conveyed pursuant to the Sheriff's sale.

- [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- and moderate-income unit. The excess, if any, shall be applied to reimburse the municipality for any and all costs and expenses incurred in connection with either the court action resulting in the judgment of violation or the Sheriff's sale. In the event that the proceeds from the Sheriff's sale are insufficient to reimburse the municipality in full as aforesaid, the violating Owner shall be personally responsible for the full extent of such deficiency, in addition to any and all costs incurred by the municipality in connection with collecting such deficiency. In the event that a surplus remains after satisfying all of the above, such surplus, if any, shall be placed in escrow by the municipality for the Owner and shall be held in such escrow for a maximum period of two (2) years or until such earlier time as the Owner shall make a claim with the municipality for such. Failure of the Owner to claim such balance within the two-year period shall automatically result in a forfeiture of such balance to the municipality. Any interest accrued or earned on such balance while being held in escrow shall belong to and shall be paid to the municipality, whether such balance shall be paid to the Owner or forfeited to the municipality.
- [3] Foreclosure by the municipality due to violation of the regulations governing affordable housing units shall not extinguish the restrictions of the regulations governing affordable housing units as the same apply to the low- and moderate-income unit. Title shall be conveyed to the purchaser at the Sheriff's sale, subject to the restrictions and provisions of the regulations governing the affordable housing unit. The Owner determined to be in violation of the provisions of this plan and from whom title and possession were taken by means of the Sheriff's sale shall not be entitled to any right of redemption.
- [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 municipality may acquire title to the low- and moderate-income unit by satisfying the First Purchase Money Mortgage and any prior liens and crediting the violating owner with an amount equal to the difference between the First Purchase Money Mortgage and any prior liens and costs of the enforcement proceedings, including legal fees and the maximum resale price for which the low- and moderate-income unit could have been sold under the terms of the regulations governing affordable housing units. This excess shall be treated in the same manner as the excess which would have been realized from an actual sale as previously described.

- [5] Failure of the low- and moderate-income unit to be either sold at the Sheriff's sale or acquired by the municipality shall obligate the Owner to accept an offer to purchase from any qualified purchaser which may be referred to the Owner by the municipality, with such offer to purchase being equal to the maximum resale price of the low- and moderate-income unit as permitted by the regulations governing affordable housing units.
 - [6] The Owner shall remain fully obligated, responsible and liable for complying with the terms and restrictions of governing affordable housing units until such time as title is conveyed from the Owner.
- (3) It is the responsibility of the municipal housing liaison and the administrative agent(s) to ensure that affordable housing units are administered properly. All affordable units must be occupied within a reasonable amount of time and be released within a reasonable amount of time upon the vacating of the unit by a tenant. If an administrative agent or municipal housing liaison becomes aware of or suspects that a developer, landlord, or property manager has not complied with these regulations, it shall report this activity to the Division. The Division must notify the developer, landlord, or property manager, in writing, of any violation of these regulations and provide a 30-day cure period. If, after the 30-day cure period, the developer, landlord, or property manager remains in violation of any terms of this subchapter, including by keeping a unit vacant, the developer, landlord, or property manager may be fined up to the amount required to construct a comparable affordable unit of the same size and the deed-restricted control period will be extended for the length of the time the unit was out of compliance, in addition to the remedies provided for in this section. For the purposes of this subsection, a reasonable amount of time shall presumptively be 60 days, unless a longer period of time is required due to demonstrable market conditions and/or failure of the municipal housing liaison or the administrative agent to refer a certified tenant.
 - (4) 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.
 - (5) 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.

V. Appeals

- (1) 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.

SECTION 3. Article XXI, Affordable Housing, Chapter 215, Land Use and Development (Section 215-21.1) is hereby repealed and replaced follows:

§ 215-21.1 Mandatory Affordable Housing Set-Aside

- A. Purpose. A development, other than single-family detached, providing five (5) or more units that become permissible through any municipal rezoning or Zoning Board action, use or density variance, redevelopment plan, or rehabilitation plan that provides for densities at or above six units per acre, is required to provide an affordable housing set-aside as follows:
- (1) Twenty percent (20%) of the residential units shall be residential units shall be restricted to low- and moderate-income households. Fractions of .49 or less may be rounded down; fractions of .50 or more shall be rounded up.
 - (2) Any affordable units generated through such mandatory set-aside shall be subject to all other provisions of this ordinance.
 - (3) All affordable housing units shall comply with the Township's affordable housing regulations in its Affordable Housing Ordinance, as well as the NJ Fair Housing Act (N.J.S.A. 52:27D-301 et seq.), and the Uniform Housing Affordability Control Rules (N.J.A.C. 5:80-26.1 et seq.). This shall include but is not limited to:
 - (a) The requirement that at least thirteen percent (13%) of the affordable units within each bedroom distribution shall be required to be for very low-income households earning thirty percent (30%) or less of the median income.
 - (b) Appropriate bedroom distribution of 1-, 2-, and 3-bedroom units.
 - (c) Recording of appropriate affordability controls of not less than forty (40) years for rental units and not less than thirty (30) years for sale units, and
 - (d) Minimum unit sizes by square footage for affordable housing units.
 - (e) The affordable units shall be affirmatively marketed in accordance with UHAC and applicable law. The affirmative marketing shall include the community and regional organizations identified by the Township, and it shall also include posting of all affordable units on the New Jersey Housing Resource Center website in accordance with applicable law.
 - (4) The affordable units shall be integrated with the market-rate units, and the affordable units shall not be concentrated in separate building(s) or in separate area(s) or floor(s) from the market-rate units. In buildings with multiple dwelling units of similar tenure, this shall mean that the affordable units shall be generally distributed within each building with market units. The residents of the affordable units shall have full and equal access to all of the amenities, common areas, and recreation areas and facilities as the residents of the market-rate units. The affordable units shall be

the same type of housing unit as the market rate units, meaning that a market rate building available to families shall not be developed to provide age-restricted units.

- (5) 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.
- (6) The mandatory set-aside requirements of this section do not give any developer the right to any rezoning, variance or other relief, or establish any obligation on the part of the municipality to grant such rezoning, variance or other relief.
- (7) 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.

B. Affordable housing units may be provided on-site or off-site within the Township and are subject to the provisions of the Township's Affordable Housing Ordinance.

SECTION 4. After introduction of this ordinance, the Township Clerk shall send a copy of this ordinance to the Township Planning Board for its review and comment. The Township shall send a copy of the ordinance to the Ocean County Planning Board pursuant to N.J.S.A. 40:55D-16.

SECTION 5. This ordinance shall take effect after second reading and publication as required by law and the filing of the adopted ordinance with the Ocean County Planning Board.

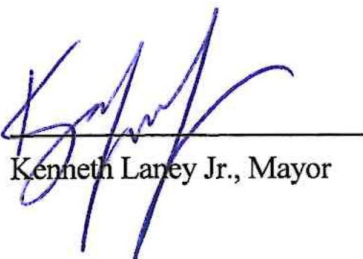
SECTION 6. All ordinances or parts of ordinances inconsistent herewith are hereby repealed.

SECTION 7. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions hereof.

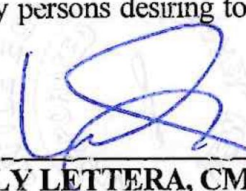
SECTION 8. This ordinance shall take effect after second reading and publication as required by law.

NOTICE

NOTICE IS HEREBY GIVEN that the foregoing ordinance was introduced and passed by the Township Committee on first reading at a meeting of the Township Committee of the Township of Little Egg Harbor held on the 19th day of **February, 2026**, and will be considered for second and final passage at a meeting of the Township Committee to be held on the 12th day of **March, 2026**, at 7:30 p.m. at the Municipal Building located at 665 Radio Road, Little Egg Harbor, New Jersey, at which time and place any persons desiring to be heard upon the same will be given the opportunity to be so heard.



Kenneth Laney Jr., Mayor



KELLY LETTERA, CMC, RMC
Township Clerk
Township of Little Egg Harbor

**REPORT ON LAND USE CODE AMENDMENT
ORDINANCE NO. 2026-06
AMENDING ARTICLE IV OF THE
LAND USE & DEVELOPMENT CODE
(Mandatory Development Fees & Affordable
Housing Regulations)**

**RESOLUTION OF APPROVAL 2026-08
PLANNING BOARD, TOWNSHIP OF LITTLE EGG HARBOR**

WHEREAS, the Township of Little Egg Harbor has conducted a comprehensive study of its land use ordinances in connection with the periodic review of its Master Plan; and

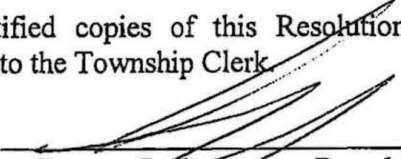
WHEREAS, on February 19, 2026, the Mayor and Township Committee have passed, on first reading, Land Use and Development Ordinance No. 2026-06 (incorporated herein by reference) which amends and supplements Articles XX & XXI of Chapter 215, specifically §215-20 regarding Mandatory Development Fees, §215-21 regarding Affordable Housing Requirements and §215-21.1 regarding Mandatory Affordable Housing Set-Aside; and

WHEREAS, Land Use and Development Ordinance No. 2026-06 has been referred to the Planning Board of Little Egg Harbor Township, in accordance with the referral powers provided by N.J.S.A. 40:55D-26 and 64; and

WHEREAS, the Planning Board has fully examined Township Ordinance No. 2026-07 and recommends it be adopted by the Township of Little Egg Harbor as being consistent with the Master Plan.

NOW, THEREFORE, BE IT RESOLVED, by the Little Egg Harbor Township Planning Board that Land Use and Development Ordinance No. 2026-06 be and hereby is recommended for adoption by the governing body of the Township of Little Egg Harbor, without further comment.

BE IT FURTHER RESOLVED, that certified copies of this Resolution shall be forwarded to the Mayor and Township Committee, and to the Township Clerk.


George Garburavage, Board Chairman

CERTIFICATION

I, **Robin Schilling**, Secretary of the Little Egg Harbor Township Planning Board, certify that the foregoing Resolution was duly adopted at a meeting held on March 5, 2026, a quorum being present and voting in the majority.


Robin Schilling, Board Secretary