

SURENIAN, EDWARDS, BUZAK & NOLAN LLC

Jeffrey R. Surenian, Esq. ▲
Email - JRS@Surenian.com

Michael J. Edwards, Esq. ►
Email - MJE@Surenian.com

Edward J. Buzak, Esq. ▼
Email - EJB@Surenian.com

Erik C. Nolan, Esq.
Email - EN@Surenian.com

Also admitted:
◀ CA ▼ DC ▲ PA ■ MA ► NY

A Limited Liability Company
Counselors at Law

311 Broadway, Suite A
Point Pleasant Beach, New Jersey 08742

Phone: (732) 612-3100

Fax: (732) 612-3101

www.Surenian.com

—
North Jersey location:

150 River Road, Suite N-4

Montville, NJ 07045

Phone: (973) 335-0600

Fax: (973) 335-1145

Keli L. Gallo, Esq. ►
Email - KLG@Surenian.com

Susan L. Crawford, Esq. ▲■
Email - SLC@Surenian.com

Nancy L. Holm, Esq. ▲
Email - NLH@Surenian.com

Jacquelin P. Gioioso, Esq.
Email - JPG@Surenian.com

William E. Olson, Esq.
Email - WEO@Surenian.com

March 12, 2026

VIA ECOURTS

Honorable Lina P. Corrison, J.S.C.

Superior Court of New Jersey
Bergen County Superior Court
10 Main Street
Hackensack, NJ 07601

RE: In the Matter of the Application of the Borough of Oradell
Docket No.: BER-L-733-25

Dear Judge Corrison,

Please be advised that this office represents the Borough of Oradell (“Borough” or “Oradell”) in the above-referenced matter. On February 17, 2026, Judge Bookbinder issued a “Program Decision Recommendation-Housing Element and Fair Share Plan”. That order provides in part as follows:

In accordance with N.J.S.A. §52:27D-304.1(f)(2)(c), on or before March 15, 2026, the Municipality adopt and file its Amended HEFSP that contains the terms of the settlement as well as the implementing ordinances and resolutions proposed within the Amended HEFSP; and

In accordance with the above provision, the Borough is submitting the amendment to its plan so that with the plan already on file the Court has amended Housing Element and Fair Share Plan. In addition, the Borough is enclosing the settlement with 445 Kinderkamack, LLC along with all the implementing ordinances and resolutions

The Planning Board for the Borough of Oradell adopted an Amendment to the Housing Element and Fair Share Plan the Board adopted and the Borough endorsed in June of 2025. (“hereinafter “Amendment”). See Exhibit 1. The Borough then endorsed the Amendment. See Exhibit 2.

The Amended Plan implements a settlement with 445 Kinderkamack LLC. See Exhibit 3.

The Borough adopted the following ordinances to implement the Housing Element and Fair Share Plan as amended:

1. 26-1 An Ordinance To Amend The Borough Code To Include A New Affordable Housing And Development Fee Ordinance, adopted March 10, 2026. See Exhibit 4. This is the extensive ordinance the Borough adopted to establish standards for all affordable projects. The New Jersey Housing and Mortgage Finance Agency (HMFA) adopted the regulations that are the basis for this ordinance on November 6, 2025 and those regulations only became available to the public on December 15, 2025, Thereafter, a prototype prepared by a group of experts was made available and after that another prototype was made available by the State. Although the Borough did its best to adopt an ordinance in an appropriate form, it has not had a reasonable time to review and analyze the various prototypes. Therefore, the Borough reserves its right to further revise this ordinance after it has an opportunity to review and analyze the prototypes.
2. 26-2 An Ordinance To Amend The Borough Code To Include A New Inclusionary Zone District For Block 716, Lots 14 & 15 In The Borough Of Oradell, Bergen County, New Jersey, adopted March 10, 2026. See Exhibit 5. This is the ordinance adopted to implement the settlement with 445 Kinderkamack.
3. 26-3 An Ordinance To Amend The Borough Code To Include A New Inclusionary Zone District For 66 Kinderkamack Road (Block 113, Lot 5) In The Borough Of Oradell, Bergen County, New Jersey, adopted March 10, 2026. See Exhibit 6.
4. 26-4 An Ordinance To Amend Sections 240-6.2, 240-6.5, 240-6.6, And 240-11.1 Of The Borough Code, adopted March 10, 2026. See Exhibit 7. This is an ordinance that, in effect, expands the overlay zone approved and adopted in Round 3.
5. 26-5 An Ordinance Of The Borough Of Oradell Amending The Borough's Code, Specifically Chapter 240-6.2, Article VI, Zones Designated; Boundaries Established, adopted March 10, 2026. See Exhibit 8. This is the ordinance that provides an overlay on the sites along the northern stretch of Kinderkamack Road.
6. 26-6 An Ordinance To Amend Sections 240-6.5M And 240-6.5O Of The Borough Code To Revise The Required Affordable Set-Aside, adopted March 10, 2026. See Exhibit 9. This ordinance establishes a flat 20 percent requirement as compared to a 15 percent set aside when the affordable units are rental units and a 20 percent set aside when the affordable units are for sale.

To further implement the amended plan, the Borough also adopted the following resolutions:

1. Resolution 26-59 Resolution Qualifying of Professional Service Vendors, adopted February 10, 2026. See Exhibit 10. The Borough appointed Triad Associates as Affordable Housing Service Agent.
2. Resolution 26-67 Resolution Appointing Municipal Housing Liaison, adopted February 15, 2026. See Exhibit 11. The Borough appointed Patrick Wilkins as the MHL.
3. Resolution 26-68 Resolution Authorizing the Planning Board to Undertake an Investigation to Determine Whether All or a Portion of Certain Properties Identified on the Tax maps of the Town as Block 807 Lot 1 Block 905 Lots 1 and 2 (690, 700 & 800 Kinderkamack Road) Constitute a Non-Condensation Area in Need of Redevelopment, adopted February 19, 2026. See Exhibit 12.
4. Resolution 26-78 Resolution Setting Forth Reasons for Adopting Ordinance No. 26-01, 26-02, 26-03, 26-04, 26-05, and 26-06, adopted March 10, 2026. See Exhibit 13.
5. Resolution 26-79 Resolution of the Borough Council of the Borough of Oradell Endorsing an Amendment to the Housing Element and Fair Share Plan Adopted by the Planning Board on March 5, 2026, adopted March 10, 2026. See Exhibit 14.
6. Resolution 26-80 Resolution of the Borough of Oradell, County of Bergen, Seeking Approval of an Updating Spending Plan, adopted March 10, 2026. See Exhibit 15.
7. Resolution 26-81 Resolution of the Borough Council of the Borough of Oradell, County of Bergen, State of New Jersey, Adopting the Affirmative Marketing Plan Prepared by Triad Associates, adopted March 10, 2026. See Exhibit 16.
8. Resolution 26-82 Resolution of the Borough Council of the Borough of Oradell of the County of Bergen, State of New Jersey, Stating Its Intent to Bond or Take Such Other Steps as May Be Necessary to Fully Find its Housing Element and Fair Share Plan, adopted March 10, 2026. See Exhibit 17.
9. Resolution 26-83 A Binding Resolution of the Borough Council of the Borough of Oradell Committing to Adopt All Outstanding Implementing Ordinances and Resolutions, adopted March 10, 2026. See Exhibit 18.

In any event, we look forward to addressing any concerns the Court may have once it reviews this package of documents. Thank you for your attention to this matter.

Respectfully submitted,

Jeffrey R. Surenian

Jeffrey R. Surenian

cc: All Attorneys of Counsel (via ecourts)

Exhibit 1

RESOLUTION NO. 166-26

RESOLUTION ADOPTING AN AMENDMENT TO THE HOUSING ELEMENT AND FAIR SHARE PLAN ADOPTED BY THE PLANNING BOARD ON JUNE 24, 2025

WHEREAS, the Borough Oradell is constitutionally obligated to address its affordable housing obligations pursuant to the *Mount Laurel* doctrine and the New Jersey Fair Housing Act as amended in March of 2024 (“FHA II”) and other applicable law; and

WHEREAS, the Municipal Land Use law requires each municipal planning board to adopt a Housing Element as part of the Borough’s Master Plan; and

WHEREAS, the Oradell Planning Board adopted a Housing Element and Fair Share Plan on June 24, 2025 and the Borough endorsed that plan on June 24, 2025; and

WHEREAS, on June 25, 2025, Oradell filed the Housing Element and Fair Share Plan with “the Program”, an entity created by FHA II, in accordance with the standards established by that Legislation; and

WHEREAS, 699 Kinderkamack Road Real Estate, LLC (“699 Kinderkamack”), Fair Share Housing Center, Inc. (FSHC), 445 Kinderkamack LLC (“445 Kinderkamack”), THG Oradell, (“TGH”), and AvalonBay Communities, Inc. (“690 and 700 Kinderkamack”) filed objections to Oradell’s efforts to secure approval of its plan; and

WHEREAS, the objections triggered a mediation process, which culminated in a Mediation Agreement between 445 Kinderkamack and the Borough, dated January 29, 2026; and

WHEREAS, over the course of mediation, the Borough agreed to take certain additional actions to address the concerns of Elizabeth McMannus, PP, AICP, who the Program Judge had stressed he will heavily rely upon; and

WHEREAS, as a result of the Mediation Agreement and the actions the Borough indicated it would take to comply, it became necessary to adopt an amendment to the Housing Element and Fair Share Plan filed on June 25, 2025; and

WHEREAS, accordingly, the Borough’s professionals prepared an Amendment to its Housing Element and Fair Share Plan (hereinafter “Amendment”) to implement the Mediation Agreement with 445 Kinderkamack and to take the actions the Borough indicated it would take in mediation; and

WHEREAS, the Planning Board has reviewed the Amendment, together with supporting documentation and the recommendations of the Borough’s planning and legal professionals; and

WHEREAS, the Planning Board conducted a duly noticed public hearing on March 5, 2026, at which the Borough’s professionals presented the Amendment and the Board received public comment; and

WHEREAS, the Planning Board finds that the Amendment is consistent with the purposes of the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq., advances sound land use planning, and continues to address the Borough's affordable housing obligations; and

WHEREAS, the Planning Board further finds that adoption of the Amendment is in the public interest and necessary to support judicial review of the Borough's affordable housing compliance.

NOW, THEREFORE, BE IT RESOLVED by the Planning Board of the Borough of Oradell, County of Bergen, State of New Jersey, as follows:

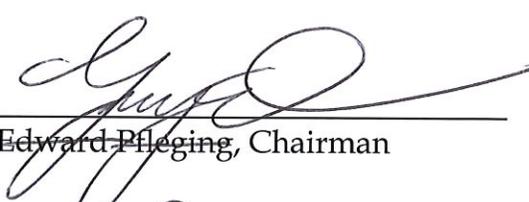
1. The Amendment, attached hereto, is hereby adopted by the Planning Board pursuant to N.J.S.A. 40:55D-28(b)(3).
2. A copy of the adopted Amended Plan shall be transmitted to the Borough Clerk and made available for public inspection as required by law.
3. The Planning Board hereby presents the Amendment to the Borough Council and requests that the Borough consider endorsing the same.
4. The Planning Board authorizes the Borough's professionals to provide supplemental information, clarifications, or certifications as may be required for judicial review.
5. The Borough's professionals are further authorized to make non-substantive or de minimis revisions necessary to effectuate the intent of this Resolution or to facilitate judicial review of the Amended Plan.
6. This Resolution shall take effect immediately.

ATTEST:



Vincent Scalcione, Secretary

ORADELL PLANNING BOARD

By: 
 Edward Pflieger, Chairman
 Gregory Derian

Master Plan Amendment Housing Plan Element and Fair Share Plan Round 4

**Borough of Oradell
Bergen County, New Jersey**

Originally Adopted:
June 24, 2025

Amendment Prepared:
February 23, 2026

Prepared for:
Borough of Oradell Planning Board

Prepared by:



T&M Associates
11 Tindall Road
Middletown, NJ 07748



Caroline Z. Reiter, PP, AICP
NJ Professional Planner: 33LI00534300



Robert E. Dare, PP, AICP
NJ Professional Planner: 33LI00596400

Amendment Adopted on March 5, 2026 by the Borough of Oradell Planning Board
Amendment Endorsed on March 10, 2026 by the Oradell Borough Council.

The original of this document has been signed and sealed in accordance with Law.

ORADELL BOROUGH

Mayor and Council

James G. Koth III, Mayor
Thomas Kelly, Council President
Michael Staff, Councilmember
Roger Tashjian, Councilmember
Jonathan Kern, Councilmember
Ted Gullo, Councilmember
Maggie Harrer, Councilmember
Councilman David Bandfield

Planning Board

Edward Pflieger, Chair
Gregory Derian, Vice Chair

James G. Koth III, Mayor
Thomas Kelly, Council Liaison
Edward Hynes, Regular Member
Min Woo Kang, Regular Member
Vincent Scalcione, Regular Member
William Snider, Regular Member
Michael Forte, Member - 1st Alt

Brian Giblin, Esq., Board Attorney
Vincent Scalcione, Secretary

Borough Officials

Edward Hynes, Borough Administrator
Sam Shin, Assistant to Administrator

Laura J. Lyons, Borough Clerk
Melissa Presta, Deputy Borough Clerk

William Bailey, Esq., Municipal Attorney
Jeffrey R. Surenian, Esq., Affordable Housing Counsel

Stephen A. Depken, Land Use Administrator
Gabrielle Ferrezza, Land Use Assistant

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Amended Housing Element and Fair Share Plan

Introduction

The Borough of Oradell (“Borough”), Bergen County, adopted a Fourth Round Housing Element and Fair Share Plan (“2025 Plan”) on June 24, 2025 as an amendment to the municipal master plan in accordance with the New Jersey Municipal Land Use Law (N.J.S.A. 40:55D-1 et seq.) and the New Jersey Fair Housing Act (N.J.S.A. 52:27D-301 et seq., as amended by P.L. 2024, c.2, hereinafter “FHA2”).

Over the course of mediation, the Borough settled with one of the objectors (445 Kinderkamack) and agreed to make additional changes to the 2025 Plan. The purpose of this amendment is to make the changes that the Borough agreed to make during mediation.

Background

As explained in the 2025 Plan, Oradell’s affordable fair share is 577 based on a Present Need of 0 and a Prospective Need of 577 for Rounds 1 through 4. Of the 577 Prospective Need, 397 is attributable to the Prospective Need for Rounds 1-3 and 180 is attributable to the Borough’s Prospective Need for Round 4. More specifically, the breakdown of the prospective need is as follows.

- Prior Round (Rounds 1 & 2, from 1987-1999) Obligation: 89 units
- Round 3 (from 1999-2025) Prospective Need Obligation: 308 Units
- Round 4 (from 2025-2035) Prospective Need Obligation: 180 Units

The 2025 Plan explains that, in Round 3, the Court approved a settlement agreement between the Borough and FSHC and entered a judgment of compliance and repose approving the Housing Element and Fair Share Plan adopted to implement that settlement and satisfy the Borough’s obligations. More specifically, Judge Farrington awarded Oradell a Conditional Judgment of Repose on July 24, 2018 in a proceeding to which FSHC was a party. After the Borough satisfied the conditions, the judge awarded the Borough a Final Judgment of Repose on September 13, 2019.

The 2025 Plan summarizes the actions the Borough took to satisfy its obligations for Rounds 1 through 3 that the Court formally approved when it entered a Judgment of Repose. The Round 3 Plan approved by the Court addressed a Prior Round obligation of 89 and the Round 3 obligation of 308 for a total Round 1-3 Prospective Need of 397. The Court also determined that the Borough’s RDP for Rounds 1-3 is seven (7) units and its Unmet Need for these three rounds was 390. The 2025 Plan explained

that the Borough did what it said it would do in its Round 3 plan and, in fact, exceeded the RDP of seven (7) that Judge Farrington had found in a proceeding where FSHC was a party.

The 2025 Plan also addressed the Borough's additional obligation for Round 4 and explained how it would satisfy that obligation. The Borough's Round 4 obligation is 180. Since the Borough lacked sufficient land to address its obligations through Rounds 1 through 3, it obviously also lacked sufficient land to address the additional 180 unit obligation imposed in Round 4. Therefore, in the 2025 Plan, the Borough asserted it was entitled to a Round 4 Vacant Land Adjustment (VLA) with a resulting RDP of three (3) units. The 2025 Plan demonstrated how the Borough would satisfy its RDP of 3 and how it would address its unmet need of 177.

Challenges to the Borough's Adopted HEFSP

Four developers and Fair Share Housing Center, Inc. (FHSC) filed objections to the Borough's application for approval of its HEFSP that was adopted on June 24, 2025. Those challenges focused on the Round 4 component of the Borough's plan and may be summarized as follows:

- 800 Kinderkamack Road, whose challenge did not include a concept plan or a description of the number of intended units.
 - Response: This site is included in a proposed overlay zone to address Unmet Need as described later in this plan.
- 690 & 700 Kinderkamack Road, whose original challenge did not include a concept plan. The original challenge included a planning report prepared by Creigh Rahenkamp & Associates, LLC, that states that AvalonBay Communities is the contract purchaser for both properties and is currently designing and inclusionary development including both lots. On December 3, 2025, Avalon made a submission in which it stated, "Avalon has prepared and submitted an inclusionary housing development proposal which incorporates 690 and 700 Kinderkamack, As set forth on that concept plan, Avalon proposes a 425-unit inclusionary development over a total lot size of 7.2 acres (313,863 SF) (the "Amended Project")." It is noted that Avalon's Amended Project of 425 units on 7.2 acres equates to a density of 59 units per acre.
 - Response: The proposed density of 59 units per acre is significantly out of character for the area as well as the entire Borough. This site also is included in a proposed overlay zone to address Unmet Need as described later in this plan.
- 699 Kinderkamack Road, whose original challenge included a planning report prepared by All Things Planning & Development. The report states,

“699 Kinderkamack wrote to the Borough in April 2025 and May 2025 offering the site for inclusionary development. The initial April 8, 2025, letter identified the site for a potential 150 unit inclusionary development, while the second May 29, 2025 letter offered to increase the project yield to a 215 units inclusionary development.” On December 3, 2025 a supplement submission was made for this property, which included a memo prepared by All Things Planning & Development. The memo states that 699 Kinderkamack approached the owner of the adjacent 705 Kinderkamack Road after the initial mediation session, and that the parties have agreed to form a joint venture, with a resulting residential inclusionary development of 125 units.

- Response: First, the addition of 705 Kinderkamack is not acceptable as it was submitted significantly later than the deadline of August 31st for filing challenges, pursuant to FHA 2. Second, 699 Kinderkamack generated RDP in Round 3 and does not generate any further RDP. The Borough successfully addressed its Round 3 RDP.
- In addition, 699 Kinderkamack is not a suitable site. As noted in the adopted HEFSP, the site “is not suitable for multifamily residential use due to the surrounding established single-family development. All sites used to address a new construction obligation must qualify as available, approvable, developable and suitable. A suitable site is a site adjacent to a compatible use. Consistent with the definition of a suitable site, COAH regulations require a consideration of the surrounding uses when attributing an RDP to a site. This site does not qualify as suitable because of the surrounding uses.” In addition, 699 Kinderkamack is formally recognized as a historic property. This is demonstrated by the fact that the NJ State Historic Preservation Officer issued a Certificate of Eligibility (COE) for the property in 2016. While not currently listed on the NJ or Federal Registers of Historic Places, the issuance of a COE signifies that the property is eligible for listing in the New Jersey Register of Historic Places.
- Finally, COAH regulations provides that if a municipality accepts an RDP for a site and then finds a way to satisfy its RDP without using the site, the municipality has every right to zone that site as it chooses. The Borough accepted an RDP for the site in Round 3 and found a way to satisfy its RDP without using the site. Therefore, the Borough asserted it had no obligation to use the site and declined to do so for the legitimate reasons summarized above.
- Fair Share Housing Center (FSHC) challenged the Borough’s plan on a broad variety of bases asserting several items. The Special Adjudicator rejected the points that FSHC asserted and the Program Judge’s decision demonstrates that he followed the position of the adjudicator on the issues.

- 445 Kinderkamack initially challenged the Borough's plan and sought to construct 40 units on the site. The developer and Borough engaged in mediation, which culminated in an agreement to allow the site to be developed with 25 units, in accordance with certain limitations. The Borough has introduced an ordinance to allow inclusionary development for a maximum 25 units, with a 20% affordable set-aside. The ordinance is included in Appendix C.

Amending the Fourth Round HEFSP

As a result of the mediation process, the Borough agreed to make several changes to its 2025 Plan. Although the Borough did not agree to make any changes to the manner in which it addressed its obligations in Rounds 1 through 3 that Judge Farrington approved when she entered a Judgment of Repose, the Borough did agree to make changes to the Round 4 component of its plan. More specifically, as explained below, the Borough agreed to accept a larger RDP of seven (7) units and to take additional measures to address its unmet need.

Revising the Round 4 RDP to 7 Units

In the 2025 Plan, the Borough accepted an RDP of three (3) units for Round 4 based upon how it included 445 Kinderkamack in that plan. Over the course of mediation, the Borough agreed to accept an RDP of seven (7) units for Round 4 as explained below.

445 Kinderkamack Road (Block 716, Lots 14 & 15): As detailed herein, the Borough settled with 445 Kinderkamack for a 25-unit project of which 5 will be affordable. This site will now generate an RDP of five (5) instead of three (3) as in the 2025 Plan.

66 Kinderkamack Road (Block 113, Lot 5): The second change to the RDP results from 66 Kinderkamack Road. This site had not previously generated RDP and was included in the Borough's Round 4 plan as an unmet need mechanism with an overlay zone. However, the site is now vacant. Using the standards applicable to the site in the overlay zone, ten units could be developed over a first floor nonresidential use. The ten units would yield an RDP of two (2) units.

With these plan revisions, the Borough's RDP increases from three (3) units to seven (7) units.

Addressing the 7-Unit RDP

The Borough will meet, and actually exceed, the 7-unit RDP by creating new zoning requirements for the two sites that generated the RDP. Therefore, the two unit RDP would be fully addressed on the individual sites that generated the RDP, as follows.

445 Kinderkamack Road (Block 716, Lots 14 & 15): The Borough will adopt new zoning requirements for 445 Kinderkamack Road that will permit the development of 25 total units, of which five (5) will be affordable units. It is anticipated that the affordable units would be rental units at this location. The zoning ordinance, concept plan, and settlement agreement with the developer are included in Appendix D.

The property meets the definitions of available, suitable, developable and approvable, as follows.

1. *Available site” means a site with clear title, free of encumbrances which preclude development for low- and moderate-income housing.*

The Borough is not aware of any deed restrictions, title issues, or other legal encumbrances that would preclude development of the site for low- and moderate-income housing.

2. *“Suitable site” means a site that is adjacent to compatible land uses, has access to appropriate streets and is consistent with the environmental policies delineated in N.J.A.C. 5:93-4.*

The site has direct street access and frontage on Kinderkamack Road. The site is located within an established commercial area of the Borough that will provide a variety of services and jobs to residents. The property also is within walking distance of the Borough’s train station and the NJ Transit Bus Stops along Kinderkamack Road at Oradell Avenue and Lotus Avenue that service Bus Route 165. There are no environmental constraints on the site.

3. *“Developable site” means a site that has access to appropriate water and sewer infrastructure, and is consistent with the applicable areawide water quality management plan (including the wastewater management plan) or is included in an amendment to the areawide water quality management plan submitted to and under review by DEP.*

The site has access to and is served by public water and sewer.

4. *“Approvable site” means a site that may be developed for low and moderate income housing in a manner consistent with the rules or regulations of all*

agencies with jurisdiction over the site. A site may be approvable although not currently zoned for low and moderate income housing.

The site appears to be developable consistent with the Residential Site Improvement Standards, N.J.A.C. 5:21. Additionally, the site does not have frontages along any State roadways. Any development of the site must receive site plan approval from the relevant land use review board prior to being constructed.

445 Kinderkamack is also eligible for 0.5 bonus credits per unit constructed pursuant to N.J.S.A. 52:27D-311.k(6) because it was previously developed and utilized for retail, office or commercial space, up to a maximum of one (1) unit bonus credit unit. Pursuant to N.J.S.A.52:27D-311.k, with a 7-unit RDP, the Borough is eligible for bonuses of 25% of its RDP, or one (1) unit of bonus credit (7 RDP x 0.25 = 1.75, rounded down to 1 bonus credit).

445 Kinderkamack Road is eligible for 5 units of affordable rental credit and one (1) unit of bonus credits, for a total of 6 units of credit.

66 Kinderkamack Road (Block 113, Lot 5): The Borough will adopt new zoning requirements for 66 Kinderkamack Road. The zoning regulations would use mixed use standards to allow for a total of 10 units to be developed over the underlying non-residential use. The 10 units would include two (2) affordable units. By rezoning the site in the manner that generates an RDP of two (2) units, the site will satisfy the RDP it generates. A zoning ordinance for 66 Kinderkamack is included in Appendix E.

The property meets the definitions of available, suitable, developable and approvable, as follows.

1. *“Available site” means a site with clear title, free of encumbrances which preclude development for low- and moderate-income housing.*

The Borough is not aware of any deed restrictions, title issues, or other legal encumbrances that would preclude development of the site for low- and moderate-income housing.

2. *“Suitable site” means a site that is adjacent to compatible land uses, has access to appropriate streets and is consistent with the environmental policies delineated in N.J.A.C. 5:93-4.*

The site has direct street access and frontages on Kinderkamack Road and Argyle Street. Additionally, the site is located within an established commercial area of the Borough that will provide a variety of services and employment opportunities to residents. At the corner of Kinderkamack Road

and Argyle Street, there is an NJ Transit Bus Stop that services Bus Route 165. The property also is within walking distance of Rossi Memorial Park that will provide open and recreation space to residents. There are no known naturally occurring environmental constraints on the site.

3. *“Developable site” means a site that has access to appropriate water and sewer infrastructure, and is consistent with the applicable areawide water quality management plan (including the wastewater management plan) or is included in an amendment to the areawide water quality management plan submitted to and under review by DEP.*

The site has access to and is served by public water and sewer.

4. *“Approvable site” means a site that may be developed for low and moderate income housing in a manner consistent with the rules or regulations of all agencies with jurisdiction over the site. A site may be approvable although not currently zoned for low and moderate income housing.*

The site appears to be developable consistent with the Residential Site Improvement Standards, N.J.A.C. 5:21. Additionally, the site does not have frontages along any State roadways, does not contain any historic or architecturally important structures, and is not within a historic zone. Any development of the site must receive site plan approval from the relevant land use review board prior to being constructed.

66 Kinderkamack is eligible for 2 units of affordable credit.

Bonus Credits: In addition to the RDP being fully addressed via new zoning, 25% of the obligation can be addressed via bonus credits. With a 7-unit RDP, the Borough is eligible for bonuses of 25% of its RDP pursuant to N.J.S.A.52:27D-311.k. As previously explained, the 445 Kinderkamack site is eligible for one (1) bonus because it was previously developed and utilized as retail, office or commercial space.

Following is a summary of how the Borough’s 7-unit RDP will be addressed and, due to the one bonus credit, actually exceeded:

- 5 units addressed at 445 Kinderkamack via new zoning
- 2 units addressed at 66 Kinderkamack via new zoning
- 1 bonus credit
- **Total: 8 Credits**

Addressing the Round 4 Unmet Need

Oradell has a Round 4 Prospective Need obligation of 180 units, and an RDP of seven (7) units. Therefore, the resulting Round 4 unmet need is 173 units (180 - 7 = 173). In the 2025 Plan, the Borough addressed its unmet need through an expansion of the overlay zones approved by Judge Farrington in her Judgment of Repose. This plan amendment expands how the Borough will address its unmet need as follows.

Overlay Zoning on 800,700 and 690 Kinderkamack Road

Oradell is proposing to rezone the properties known as 800, 700 and 690 Kinderkamack Road (Block 807, Lot 1 and Block 905 Lots 1 & 2), to a new overlay zone known as the B-20 Overlay Zone. Permitted uses would include multifamily residential developments with a 20% required affordable housing set-aside, as well as commercial, office and retail uses.

The three lots are all currently improved with office buildings and associated parking and other ancillary improvements. Together, they contain approximately 17.36 acres. With a permitted density of 28 units per acre, there is the potential for 486 new units to be constructed, of which 20%, or 98 units (rounded up) would be affordable. The zoning also allows for a density of 30 units per acre if a minimum of 3,500 square feet of retail and/or restaurant space is constructed onsite. This density bonus allows for a potential of 520 total units, of which 104 would be affordable.

The adopted HEFSP recognized the potential for this area as follows, “

*Presently, the Borough is preparing a Master Plan Reexamination Report. In preparing the report, the Borough is studying this area of Kinderkamack Road and considering how best to develop it in a thoughtful and comprehensive manner and within the confines of sound planning. **It is anticipated that any future development considerations in this area would include an affordable component**, as well as traffic management, parking and NJ transit station consolidation, all of which are key objectives based on sound planning principles consistent with the densities, building scale and character of Oradell. The Borough's intent to thoughtfully consider how to address 800 Kinderkamack and surrounding parcels is entirely appropriate.*

[2025 Housing Plan at 34 (emphasis added)]

Extension of the B-1 Zone with CBD Overlay

Oradell is proposing the extension of the B-1 Zone, which also then extends the CBD inclusionary overlay zone into other locations to address Round 4 unmet need. The following sites, which have a combined acreage of approximately 2.71 acres, will still be subject to the overlay: Block 103, Lot 17, Block 110, Lots 1-3, Block 113, Lots 1-4, Block 116, Lots 1-3. An ordinance rezoning these lots into the B-1 Zone is included in Appendix C.

The CBD overlay does not include a density requirement and instead is governed by coverage, setback and height limitations. Therefore, it is difficult to calculate the exact number of potential units from the overlay extension. However, the CBD overlay is a Court approved overlay that has resulted in the approval of affordable units at 420 Kinderkamack Road and 387-393 Kinderkamack Road. The Borough is building on the success of the CBD overlay and extending it south along Kinderkamack Road to continue the opportunity to capture potential new affordable units.

Set-Aside Requirements Revised to 20%

The Borough will revise the mandatory set-aside ordinance, the CBD overlay, and the New Milford overlay to increase the 15% set-aside for rental units to a 20% set-aside. For-sale units currently have a 20% set-aside requirement. This change will allow for the opportunity to capture additional affordable units in inclusionary developments. Ordinances are contained in the appendices.

25% Requirement

Finally, the FHA 2 contains the following new requirement:

*Any municipality that receives an adjustment of its prospective need obligations for the fourth round or subsequent rounds based on a lack of vacant land shall as part of the process of adopting and implementing its housing element and fair share plan identify sufficient parcels likely to redevelop during the current round of obligations to address at least 25 percent of **the prospective need obligation that has been adjusted**, and adopt realistic zoning that allows for such adjusted obligation, or demonstrate why the municipality is unable to do so. (emphasis added)*

The Borough took the position that **the prospective need obligation that has been adjusted** can only mean the Realistic Development Potential for Round 4. FSHC took the position that **the prospective need obligation that has been adjusted** refers to the unmet need for Round 4. Although the Borough disputes FSHC's definition, it agreed to amend its Housing Element and Fair Share Plan to provide "realistic zoning" for 25 percent of the unmet need for Round 4 to eliminate the dispute. The unmet need for Round 4 is 173. Twenty-five percent of 173 is 43 units. The new overlay zoning on 800, 700 and 690 Kinderkamack has the potential to result in at least 43 units.

Consistency with the State Development and Redevelopment Plan

The New Jersey State Planning Commission adopted its most recent State Development and Redevelopment Plan (SDRP) in December 2025, which is after the Borough adopted its HEFSP.

As provided in the SDRP, the majority of the Borough is located in Planning Area 1, with a swath of Planning Area 5 situated in the Borough. The existing overlay zone, and the planned additions to the overlay zone, are located within Planning Area 1.

Planning Area 1 is also known as the Metropolitan Planning Area. A small portion, in the southeast corner of the property, is located in Planning Area 5. In the Metropolitan Planning Area, the SDRP's intention is to:

The 2025 SDRP identifies several state planning areas. The current State Plan Policy Map, which facilitates the implementation of the SDRP, indicates that Oradell is located within State Planning Area 1, which is known as the Metropolitan Planning Area. As outlined in the SDRP, the intent of the Metropolitan Planning Area is to:

- provide for much of the state's future growth in compact development and redevelopment;
- revitalize cities, towns and neighborhoods, and in particular overburdened neighborhoods;
- address existing legacy issues such as air pollution, urban heat islands, lead contamination, Brownfields, urban highways, and combined sewer systems;
- prevent displacement and gentrification;
- promote growth that occurs in Centers, other appropriate areas that are pedestrian friendly, and in compact transit-oriented forms;
- rebalance urbanization with natural systems;
- promote increased biodiversity and habitat restoration;
- stabilize and enhance older inner ring suburbs;
- redesign and revitalize auto oriented areas; and
- protect and enhance the character of existing stable communities.

In addition to the above, it is noted that the SDRP includes several "State Planning Goals." One of these goals relates to housing and is centered around the following principle:

Provide an adequate supply of housing for residents of all ages and incomes in communities of their choosing that meet their needs and offer ready access to the full range of supportive goods and services.

(2025 SDRP, Page 27)

Minimums & Maximums

The FHA2 stipulates certain requirements within N.J.S.A. 52:27D-311.k(10)1 which the Oradell plan meets. Oradell has a seven-unit RDP. The following is noted:

- A maximum of 30% of the affordable housing units, exclusive of any bonus credits, to address its prospective need affordable housing obligation, may be addressed with age restricted housing. The Borough's Round 4 affordable housing mechanisms do not include any age restricted units.
- A minimum of 50% of the actual affordable housing units, exclusive of bonus credits, created to address its prospective need obligation must be satisfied with the creation of housing available to families with children. The new inclusionary zone proposed for 445 Kinderkamack Road, as well as the B-1 and CBD overlay extensions, and the new 800,700 and 690 Kinderkamack Road would provide housing available to families.
- A minimum of 25% of the actual affordable housing units, exclusive of bonus credits, created to address its prospective need obligation, must be satisfied with the creation of rental housing. It is anticipated that the new inclusionary zone proposed for 445 Kinderkamack Road, as the overlay zoning would provide rental housing.

Conclusion

With this Amendment, Oradell's Housing Element and Fair Share Plan satisfies the Borough's responsibilities under applicable law.

Appendices

This report contains the following appendices.

Appendix A: Affordable Housing Ordinance. The AHO includes the mandatory set-aside requirement and the development fee ordinance.

Appendix B: Resolutions Appointing the Municipal Housing Liaison and Administrative Agent.

Appendix C: Ordinance & Map - Extension of CBD Overlay Zone

Appendix D: Ordinance & Map - Creation of New Inclusionary Zone at 445 Kinderkamack Road

Appendix E: Ordinance & Map - Creation of New Inclusionary Zone at 66 Kinderkamack Road

Appendix F: Ordinance - Creation of New Overlay Zone at 800, 700 & 690 Kinderkamack Road

Appendix G: Ordinance – Revision of Set-Aside in Overlay Zones

Appendix H: Spending Plan

**Appendix A: Affordable Housing Ordinance with Mandatory Set-Aside and
Development Fee Ordinances**

BOROUGH OF ORADELL
BERGEN COUNTY, NEW JERSEY
ORDINANCE #26-01

This ordinance published herewith was introduced and passed upon first reading at a meeting of the Borough Council of the Borough of Oradell, in the County of Bergen and State of New Jersey, held on February 19 2026 at 7:30 PM. It will be further considered for final passage after public hearing thereon, at a Public Meeting of said Borough Council to be held at 350 Prospect Avenue, in said Borough, on March 10, 2026 at 7:30 PM, and during the week prior to and up to and including the date of such meeting, copies of said ordinance will be made available at the Clerk's Office in said Borough Hall to the members of the general public who shall request the same.

LAURA J. LYONS
Municipal Clerk

ORDINANCE NO. 26-1

AN ORDINANCE TO AMEND THE BOROUGH CODE TO INCLUDE A NEW AFFORDABLE HOUSING AND DEVELOPMENT FEE ORDINANCE

WHEREAS, the State of New Jersey has adopted an Amended Fair Housing Act at P.L. 2024, c. 2 (A4) which provides new Fourth Round affordable housing fair share requirements for each municipality; and

WHEREAS, the State has adopted new Fourth Round substantive affordable housing regulations at N.J.A.C. 5:99; and

WHEREAS, The New Jersey Department of Community Affairs (DCA) and the Housing and Mortgage Finance Agency (NJHMFA) have adopted new Uniform Housing and Affordability Controls (UHAC) at N.J.A.C. 5:80-26.1 et seq; and

WHEREAS, in order to maintain compliance with said state regulations regarding affordable housing, the Borough of Oradell (the "Borough") must amend certain sections of the Borough Code; and

WHEREAS, Chapter 61, Article IX and Article IX -A all contain requirements for affordable housing provisions based on previous COAH regulations and regulations regarding affordable housing provisions and development fees; and **NOW, THEREFORE, BE IT ORDAINED**, by the Borough Council of the Borough of Oradell, County of Bergen, State of New Jersey, that Chapter 61 and Article IX and IX-A of the Borough Code are all hereby repealed and replaced as follows:

The entireties of Chapter 61 (Affordable Housing), Article IX (Affordable Housing Fees) and Article IX-A (Affordable Housing Mandatory Set-Aside) of the Borough Code are hereby removed and replaced as follows with the following Chapter 61, Affordable Housing Regulations

Chapter 61

A. Introduction & Applicability

1. This Chapter of the Code sets forth regulations regarding the creation, use, occupancy, administration and preservation of very low-, low- and moderate-income affordable housing units in the Borough of Oradell consistent with the Mount Laurel doctrine; the New Jersey Fair Housing Act, as amended by P.L. 2024, c.2, N.J.S.A. 52:27D-301 et seq., (hereinafter the “Act,” “FHA” or FHA-2”); the regulations promulgated pursuant thereto by the New Jersey Department of Community Affairs, Division of Local Planning Services (“LPS”) at N.J.A.C. 5:99 et seq., (“Affordable Housing Rules”), and the Housing and Mortgage Finance Agency’s (HMFA) Uniform Housing Affordability Controls at N.J.A.C. 5:80-26.1 et seq.; and the ; and the municipality’s Fourth Round Housing Element and Fair Share Plan (“HEFSP”).
2. This Chapter 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 in accordance with applicable statutory and regulatory requirements. This Chapter of the Code shall apply to all inclusionary developments, individual affordable units, and 100% affordable housing developments except where inconsistent with applicable law. Low-Income Housing Tax Credit-financed developments shall adhere to the provisions set forth below in item 5.c. below.
3. The Borough of Oradell Land Use Board has adopted a HEFSP pursuant to the Municipal Land Use Law at N.J.S.A. 40:55D-1, et seq. The Fair Share Plan describes the ways the municipality shall address its fair share of very low-, low- and moderate-income housing as approved by the Superior Court and documented in the Housing Element.
4. This Chapter implements and incorporates the relevant provisions of the HEFSP and addresses the requirements of the Mt. Laurel doctrine, 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, et seq., as may be amended and supplemented.

5. Applicability

- a. Except where specifically exempted hereinafter, the provisions of this Chapter shall apply to all affordable housing developments and affordable housing units that currently exist and that are proposed to be created pursuant to the municipality's most recently adopted HEFSP.
- b. Except where specifically exempted hereinafter, this Chapter shall apply to all developments that contain very low-, low- and moderate-income housing units included in the Municipal HEFSP, as well as any unanticipated future development or redevelopment projects that will include, are proposed to provide or required by the municipality to provide very low-, low- and moderate-income housing units.
- c. Projects receiving federal Low Income Housing Tax Credit financing shall be required to follow the UHAC unless exempt pursuant to N.J.A.C. 5:80-26.1, including but not limited to developments with anticipated funding from the Federal Low-Income Housing Tax Credit (LIHTC) pursuant to Section 42 of the Internal Revenue Code. Developers, landlords and program sponsors shall be required to comply with administration and affirmative marketing of the affordable units within such developments.
- d. A waiver from any provision of this Chapter may be granted by the County-level Mount Laurel Judge, the Program or any trial court if it would advance the interests of low- and moderate-income households or if strict compliance would cause an unreasonable result.

6. The UHAC standards shall not apply to the exclusions referenced in N.J.A.C.5:80-26.1

7. Nothing herein is intended to modify the Borough's right "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" in accordance with N.J.S.A. 52:27D-311.m.

8. Interpretation

- a. In the event of any ambiguity, the provisions of this Chapter shall be interpreted and liberally construed in favor of the Municipality.
- b. For any subject matter that is not otherwise addressed hereinafter, or is not otherwise covered by the Act, the Affordable Housing Rules or the UHAC, the Municipality may rely upon the provisions of COAH's prior round regulations at N.J.A.C. 5:93 and 5:97 that were deemed valid by binding Court precedent and that are most favorable to the municipality.
- c. The provisions of the Mount Laurel doctrine; the Act; the regulations promulgated pursuant thereto by the New Jersey Department of Community Affairs, LPS; the Affordable Housing Rules; the HMFA Uniform Housing Affordability Controls at N.J.A.C. 5:80-26.1 et seq.; and the municipality's Fourth Round HEFSP, as set forth

in Subsection A 1 above shall supersede and take precedence over the provisions of this Chapter.

B. Definitions

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

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

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

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

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

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

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

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

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

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

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

“Affordable housing development” means a development included in a municipality’s housing element and fair share plan, and includes, but is not limited to, an inclusionary development, a municipally sponsored affordable housing project, or a 100 percent affordable development. This includes developments with affordable units on-site, off-site, or provided as a payment in-lieu of construction only if such a payment-in-lieu option has been previously approved by the Program or Superior Court as part of the HEFSP.

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

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

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

“Affordable unit” means a housing unit proposed or developed pursuant to the Act, including, but not limited to, units created with municipal affordable housing trust funds.

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

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

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

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

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

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

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

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

“Commissioner” means the Commissioner of the Department of Community Affairs.

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

"Compliant municipality" means a municipality that is in the process of seeking compliance certification pursuant to the directives issued by the Administrative Office of the Courts, has obtained compliance certification, or who has filed for, or has obtained, a Judgment of Compliance, Order for Repose, or other court approval pursuant to the Act.

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

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

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

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

“Department” means the New Jersey Department of Community Affairs.

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

“Development” means the division of a parcel of land into two or more parcels, the construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any building or other structure, or of any mining, excavation, or landfill, and any use or change in the use of any building or other structure, or land or extension of use of land, for which permission may be required pursuant to the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq.

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

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

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

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

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

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

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

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

“Extension of expiring controls” means extending the deed restriction period on units where the controls on the deed restriction imposed at the closing of the first purchaser of the affordable unit will expire in the current round of a housing obligation, so that the total years of a deed restriction is at least 60 years.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

lot or adjoining lots, including, but not limited to, lots separated by a street, a river, or another geographical feature.

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

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

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

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

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

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

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

“New Jersey Affordable Housing Trust Fund” 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:

Any building or structure, or portion thereof, including, but not limited to, any appurtenant improvements, which is designated to a use group other than a residential use group according to the State Uniform Construction Code, N.J.A.C. 5:23, promulgated to effectuate the State uniform Construction Code Act, N.J.S.A. 52:27D-119 et seq., including any subsequent amendments or revisions thereto;

Hotels, motels, vacation timeshares, and child-care facilities; and

The entirety of all continuing care facilities within a continuing care retirement community which is subject to the Continuing Care Retirement Community Regulation and Financial Disclosure Act, N.J.S.A.52:27D-330 et seq.

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

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

“Payment in lieu of constructing affordable units” means the prior approval of the payment of funds to the municipality by a developer when affordable units are were not produced on a site zoned for an inclusionary development.

“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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“Supportive housing household” means a very low-, low- or moderate-income household certified as income eligible by an administrative agent in accordance with N.J.A.C. 5:80-26.14, in which at least one member is an individual who requires supportive services to maintain housing stability and independent living and who is part of a population identified by federal or state statute, regulation, or program guidance as eligible for supportive or special needs housing. Such populations include, but are not limited to: persons with intellectual or developmental disabilities, persons with serious mental illness, person with head injuries (as defined in Section 2 of P.L. 1977), persons with physical disabilities or chronic health

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

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

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

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

“Treasurer” means the Treasurer of the State of New Jersey.

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

“UHORP” means the Agency’s Urban Homeownership Recovery Program, as it was authorized by the Agency Board.

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

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

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

“Very-low-income unit” means a restricted unit that is affordable to a very-low-income household. Very-low-income units are a subset of low-income units.

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

“Veterans’ preference” means the agreement between a municipality and a developer or residential development owner that allows for low- to moderate-income veterans to be given preference for up to 50 percent of rental units in relevant projects, as provided for at N.J.S.A. 52:27D-311.j.

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

C. Monitoring and Reporting Requirements

1. The municipality shall comply with the following monitoring and reporting requirements regarding the status of the implementation of its court-approved Housing Element and Fair Share Plan:
 - a. The municipality shall provide electronic monitoring data with the Department pursuant to P.L 2024, Chapter 2 and N.J.A.C. 5:99 through the Affordable Housing Monitoring System (AHMS). All monitoring information required to be made public by the FHA shall be available to the public on the Department’s website at <https://www.nj.gov/dca/dlps/hss/MuniStatusReporting.shtml>.
 - b. On or before February 15 of each year, the municipality shall provide annual reporting of its municipal Affordable Housing Trust Fund activity to the Department on the AHMS portal. The reporting shall include an accounting of all municipal Affordable Housing Trust Fund activity, including the sources and amounts of funds collected and the amounts and purposes for which any funds have been expended, for the previous year from January 1st to December 31st.
 - c. On or before February 15 of each year, the annual reporting of the status of all affordable housing activity shall be provided to the Department on the AHMS portal, for the previous year from January 1st to December 31st.

D. Borough-wide Mandatory Set-Aside

1. A development, other than single-family detached, providing a minimum of five new housing units created 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 include an affordable housing set-aside of 20 percent. In any situation where the 20% set-aside results in a fraction, the required set-aside shall be rounded upward to the next full integer.
2. Any affordable units generated through such mandatory set-aside shall be subject to all other provisions of this ordinance.
3. All such affordable units shall be governed by this ordinance the controls on affordability, including bedroom distribution, and affirmatively marketed to the housing region in conformance with UHAC at N.J.A.C. 5:80-26.1 et seq., any successor regulation, and all other applicable laws.
4. No subdivision shall be permitted or approved for the purpose of avoiding compliance with this requirement. Developers cannot, for example, subdivide a project into two lots and then make each of them a number of units just below the threshold.
5. The mandatory set-aside requirements of this section do not give any developer the right to any rezoning, variance or other relief, or establish any obligation on the part of the municipality to grant such rezoning, variance or other relief.
6. This municipality-wide mandatory set-aside requirement does not apply to any sites or specific zones otherwise identified in the HEFSP, for which density and set-aside requirements shall be governed by the specific standards as set forth therein.

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.

F. New Construction Programs

1. The following requirements shall apply to all new or planned developments that contain very low-, low- and moderate-income housing units. To the extent possible, details related to the adherence to the requirements below shall be outlined in the resolution granting municipal subdivision or site plan approval of the project to assist municipal representatives, developers and Administrative Agents.

2. Completion Schedule (previously known as phasing). Final site plan or subdivision approval shall be contingent upon the affordable housing development meeting the following completion schedule for very low-, low- and moderate-income units whether developed in a single-phase development, or in a multi-phase development:

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

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

a. Design of 100 percent affordable developments:

- i. Restricted units must meet the minimum square footage required for the number of inhabitants for which the unit is marketed and the minimum square footage required for each bedroom, as set forth in the Neighborhood Preservation Balanced Housing rules at N.J.A.C. 5:43-2.4.
- ii. Each bedroom in each restricted unit must have at least one window.
- iii. Restricted units must include adequate air conditioning and heating.

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

- i. Restricted units must use the same building materials and architectural design elements (for example, plumbing, insulation, or siding) as market-rate units of the same unit type (for example, flat or townhome) within the same development, except that restricted units and market-rate units may use different interior finishes. This shall apply to prior round units.
- ii. Restricted units and market-rate units within the same affordable development must be sited such that restricted units are not concentrated in less desirable locations.
- iii. Restricted units may not be physically clustered so as to segregate restricted and market-rate units within the same development or within the same building, but must be interspersed throughout the development, except that age-restricted and supportive housing units may be physically clustered if the clustering facilitates the provision of on-site medical services or on-site social services. Prior round affordable units shall be integrated with market rate units to the extent feasible.
- iv. Residents of restricted units must be offered the same access to communal amenities as residents of market-rate units within the same affordable development. Examples of communal amenities include, but are not limited to, community pools,

- fitness and recreation centers, playgrounds, common rooms and outdoor spaces, and building entrances and exits. This shall apply to prior round units.
- v. Restricted units must include adequate air conditioning and heating and must use the same type of cooling and heating sources as market-rate units of the same unit type. This shall apply to prior round units.
 - vi. Each bedroom in each restricted unit must have at least one window.
 - vii. Restricted units must be of the same unit type as market-rate units within the same building.
 - viii. Restricted units and bedrooms must be no less than 90 percent of the minimum size prescribed by the Neighborhood Preservation Balanced Housing rules at N.J.A.C. 5:43-2.4.
- c. Design of developments containing for-sale units, including those with a mix of rental and for-sale units. Restricted rental units shall meet the requirements of section b above. Restricted sale units shall comply with the below:
- i. Restricted units must use the same building standards as market-rate units of the same unit type (for example, flat, townhome, or single-family home), except that restricted units and market-rate units may use different interior finishes. This shall apply to prior round units.
 - ii. Restricted units may be clustered, provided that the buildings or housing product types containing the restricted units are integrated throughout the development and are not concentrated in an undesirable location or in undesirable locations. Prior round affordable units shall be integrated with market rate units to the extent feasible.
 - iii. Restricted units may be of different unit housing product types than market-rate units, provided that there is a restricted option available for each market rate housing type. Developments containing market-rate duplexes, townhomes, and/or single-family homes shall offer restricted housing options that also include duplexes, townhomes, and/or single-family homes. Penthouses and higher priced end townhouses may be exempt from this requirement. The proper ratio for restricted to market-rate unit type shall be subject to municipal ordinance or, if not specified, shall be determined at the time of site plan approval.
 - iv. Restricted units must meet the minimum square footage required for the number of inhabitants for which the unit is marketed and the minimum square footage required for each bedroom, as set forth in the Neighborhood Preservation Balanced Housing rules at N.J.A.C. 5:43-2.4.
 - v. Penthouse and end units may be reserved for market-rate sale, provided that the overall number, value, and distribution of affordable units across the development is not negatively impacted by such reservation(s).
 - vi. Residents of restricted units must be offered the same access to communal amenities as residents of market-rate units within the same affordable development. Examples of communal amenities include, but are not limited to, community pools,

fitness and recreation centers, playgrounds, common rooms and outdoor spaces, and building entrances and exits. This shall apply to prior round units.

- vii. Each bedroom in each restricted unit must have at least one window; and
- viii. Restricted units must include adequate air conditioning and heating.

4. Utilities.

- a. Affordable units shall utilize the same type of cooling and heating source as market-rate units within the affordable housing development.
- b. Tenant-paid utilities that are included in the utility allowance shall be so stated in the lease and shall be consistent with the utility allowance in accordance with N.J.AC 5:80-26.13(e).

5. Low/moderate split and bedroom distribution.

- a. Affordable units shall be divided equally between low- and moderate-income units, except that where there is an odd number of affordable housing units, the extra unit shall be a low-income unit.
- b. In each affordable housing development, at least 50% of the restricted units within each bedroom distribution, rounded up to the nearest whole number, shall be required to be for low-income households earning 50 percent or less of the regional median income, including 13 percent of the affordable units within each bedroom distribution shall be required to be for very low income households earning 30 percent or less of the regional median income.
- c. Within rental developments, of the total number of affordable rental units, at least 13 percent, rounded up to the nearest whole number, shall be affordable to very low-income households. The very low-income units shall be distributed between each bedroom count as proportionally as possible, to the nearest whole unit, to the total number of restricted units within each bedroom count, and counted as part of the required number of low-income units within the development
- d. Affordable housing developments that are not age-restricted or supportive housing shall be structured such that:
 - i. At a minimum, the number of bedrooms within the restricted units equals twice the number of restricted units;
 - ii. Two-bedroom and/or three-bedroom units compose at least 50 percent of all restricted units;
 - iii. The combined number of efficiency and one-bedroom units shall be no greater than 20%, rounded down, of the total number of low- and moderate-income units.
 - iv. At least 30% of all low- and moderate-income units, rounded up to the nearest whole integer, shall be two-bedroom units.
 - v. At least 20% of all low- and moderate-income units, rounded to the nearest whole number, shall be three-bedroom units.
 - vi. The remaining units may be allocated among two- and three- bedroom units at the discretion of the developer.

- e. Affordable housing developments that are age-restricted or supportive housing, except those supportive housing units whose sponsoring program determines the unit arrangements, shall be structured such that, at a minimum, the number of bedrooms shall equal the number of age-restricted or supportive housing low- and moderate-income units within the inclusionary development. Supportive housing units whose sponsoring program determines the unit arrangement shall comply with all requirements of the sponsoring program. The standard may be met by having all one-bedroom units or by having a two-bedroom unit for each efficiency unit. In affordable housing developments with 20 or more restricted units that are age-restricted or supportive housing, two-bedroom units must comprise at least five percent of those restricted units.
6. Accessibility requirements.
- a. Any new construction shall be adaptable; however, elevators shall not be required in any building or within any dwelling unit for the purpose of compliance with this section. In buildings without elevator service, only ground floor dwelling units shall be required to be constructed to conform with the technical design standards of the barrier free subcode. "Ground floor" means the first floor with a dwelling unit or portion of a dwelling unit, regardless of whether that floor is at grade. A building may have more than one ground floor.
 - b. Notwithstanding the exemption for townhouse dwelling units in the barrier free subcode, the first floor of all townhouse dwelling units and of all other multifloor dwelling units that are attached to at least one other dwelling unit shall be subject to the technical design standards of the barrier free subcode and shall include the following features:
 - i. An adaptable toilet and bathing facility on the first floor;
 - ii. An adaptable kitchen on the first floor;
 - iii. An interior accessible route of travel however an interior accessible route of travel shall not be required between stories;
 - iv. An adaptable room that can be used as a bedroom, with a door, or the casing for the installation of a door that is compliant with the Barrier Free Subcode, on the first floor;
 - v. If not all of the foregoing requirements in b.i. through b.iv. can be satisfied, then an interior accessible route of travel shall be provided between stories within an individual unit; and
 - vi. An accessible entranceway as set forth in P.L. 2005, c. 350 (N.J.S.A. 52:27D-311a et seq.) and the Barrier Free Subcode, N.J.A.C. 5:23-7, or evidence that the municipality has collected funds from the developer sufficient to make 10 percent of the adaptable entrances in the development accessible:
 - (a) Where a unit has been constructed with an adaptable entrance, upon the request of a disabled person who is purchasing or will reside in the dwelling unit, an accessible entrance shall be installed.

- (b) To this end, the builder of restricted units shall deposit funds within the Affordable Housing Trust Fund sufficient to install accessible entrances in 10 percent of the affordable units that have been constructed with adaptable entrances.
- (c) The funds deposited shall be expended for the sole purpose of making the adaptable entrance of an affordable unit accessible when requested to do so by a person with a disability who occupies or intends to occupy the unit and requires an accessible entrance.
- (d) The developer of the restricted units shall submit to the Construction Official a design plan and cost estimate for the conversion from adaptable to accessible entrances.
- (e) Once the Construction Official has determined that the design plan to convert the unit entrances from adaptable to accessible meets the requirements of the Barrier Free Subcode, N.J.A.C. 5:23-7, and that the cost estimate of such conversion is reasonable, payment shall be made to the Affordable Housing Trust Fund and earmarked appropriately.

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

7. Market to Affordable program (per N.J.A.C. 5:97-6.9).

- a. The market to affordable program permits the purchase or subsidization of unrestricted units through a mortgage write-down provided to an income-certified buyer or through a sale or rental as a low- or moderate-income unit to an income-eligible household. The market to affordable program may produce both low- and moderate-income units.
- b. At the time they are offered for sale or rental, eligible units may be new, pre-owned or vacant.
- c. The units shall be certified to be in sound condition as a result of an inspection performed by a licensed building inspector.
- d. A minimum subsidy of \$25,000 per moderate-income unit and/or \$30,000 per low-income unit shall be provided, with additional subsidy depending on the market prices or rents in a municipality.
- e. The units shall comply with UHAC with the following exceptions:
 - i. Bedroom distribution (N.J.A.C. 5:80-26.4).
 - ii. Low/moderate income split (N.J.A.C. 5:80-26.4).
- f. Affordability average (N.J.A.C. 5:80-26.4); however:
 - i. The maximum rent for a moderate-income unit shall be affordable to households earning no more than 60 percent of median income and the maximum rent for a

low-income unit shall be affordable to households earning no more than 44 percent of median income; and

- ii. The maximum sales price for a moderate-income unit shall be affordable to households earning no more than 70 percent of median income and the maximum sales price for a low-income unit shall be affordable to households earning no more than 40 percent of median income.
8. Extension of Controls Program
- a. An extension of affordability controls program is established to maintain and extend the affordability of deed restricted units scheduled to come out of their affordability control period, subject to UHAC, including the following:
 - i. The affordable unit meets the criteria for prior cycle (April 1, 1980 - December 15, 1986) or post December 15, 1986 credits set forth in N.J.A.C. 5:97.
 - ii. The affordability controls for the unit are scheduled to expire in the current round; or in the next round of housing obligations if the municipal election to extend controls is made no earlier than one year before the end of the current round;
 - iii. The municipality shall obtain a continuing certificate of occupancy or a certified statement from the municipal building inspector stating that the restricted unit meets all code standards.
 - iv. If a unit requires repair and/or rehabilitation work in order to receive a continuing certificate of occupancy or certified statement from the municipal building inspector, the municipality shall fund and complete the work.
 - v. The municipality shall adhere to the process for extending controls pursuant to UHAC for extending ownership units and rental units, either inclusionary or 100 percent affordable developments.
 - vi. The deed restriction for the extended control period shall be filed with the County Clerk.
9. Assisted Living Residence (per N.J.A.C. 5:97-6.11).
- a. An assisted living residence is a facility licensed by the New Jersey Department of Health to provide apartment-style housing and congregate dining and to assure that assisted living services are available. All or a designated number of apartments in the facility shall be restricted to low- and moderate-income households.
 - b. The unit of credit shall be the apartment. However, a two-bedroom apartment shall be eligible for two units of credit if it is restricted to two unrelated individuals.
 - c. A recipient of a Medicaid waiver shall automatically qualify as a low- or moderate-income household.
 - d. Assisted living units are considered age-restricted housing in a HEFSP and shall be included with the maximum number of units that may be age-restricted.
 - e. Low- and moderate-income residents cannot be charged any upfront fees.
 - f. The units shall comply with UHAC with the following exceptions:

- i. Affirmative marketing (N.J.A.C. 5:80-26.16); provided that the units are restricted to recipients of Medicaid waivers;
 - ii. The deed restriction may be on the facility, rather than individual apartments or rooms;
 - iii. Low/moderate income split and affordability average (N.J.A.C. 5:80-26.4); only if all of the affordable units are affordable to households at a maximum of 60 percent of median income; and
 - g. Tenant income eligibility (N.J.A.C. 5:80-26.14); up to 80 percent of an applicant's gross income may be used for rent, food and services based on occupancy type and the affordable unit must receive the same basic services as required by the Agency's underwriting guidelines and financing policies. The cost of non-housing related services shall not exceed one and two-thirds times the rent established for each unit.
10. Supportive Housing and Group Homes (per N.J.A.C. 5:97-6.10).
- a. The following provisions shall apply to group homes, residential health care facilities, and supportive shared living housing:
 - i. The unit of credit shall be the bedroom. However, the unit of credit shall be the unit if occupied by a single person or household.
 - ii. Housing that is age-restricted shall be included with the maximum number of units that may be age-restricted pursuant to the Act.
 - iii. Occupancy shall not be restricted to youth under 18 years of age.
 - iv. In affordable developments with 20 or more restricted units that are supportive housing, two-bedroom units must compose at least five percent of those restricted units.
 - v. The bedrooms and/or units shall comply with UHAC with the following exceptions:
 - (a) Affirmative marketing; however, group homes, residential health care facilities, permanent supportive housing and supportive shared living housing shall be affirmatively marketed to broadest possible population of qualified individuals with special needs in accordance with a plan, if applicable, approved by the sponsoring program;
 - (b) Affordability average and bedroom distribution (N.J.A.C. 5:80-26.4).
 - vi. With the exception of units established with capital funding through a 20-year operating contract with the Department of Human Services, Division of Developmental Disabilities, group homes, residential health care facilities, supportive shared living housing and permanent supportive housing shall have the appropriate controls on affordability in accordance with the Act. In the event that a supportive housing provider is unable to record or execute a long-term deed restriction, the units shall be subject to annual recertification by the Municipal Housing Liaison to confirm continued occupancy and compliance with this Section.

- vii. Objective standards shall be applied in the selection of tenants for supportive housing units and shall be designed to ensure that individuals are not excluded in an arbitrary or capricious manner.
- viii. The following documentation shall be submitted by the sponsor to the municipality prior to marketing the completed units or facility:
 - (a) An Affirmative Marketing Plan in accordance with D1 above; and
 - (b) If applicable, proof that the supportive and/or special needs housing is regulated by the New Jersey Department of Health and Senior Services, the New Jersey Department of Human Services or another State agency in accordance with the requirements of this section, which includes validation of the number of bedrooms or units in which low- or moderate-income occupants reside.
- ix. The sponsor/owner shall complete annual monitoring as directed by the MHL.

G. Regional Income Limits.

1. Administrative agents shall use the current regional income limits for the purpose of pricing affordable units and determining income eligibility of households.
2. Regional income limits are based on regional median income, which is established by a regional weighted average of the “median family incomes” published by HUD. The procedure for computing the regional median income is detailed in N.J.A.C. 5:80-26.3.
3. Updated regional income limits are effective as of the effective date of the regional Section 8 income limits for the year, as published by HUD, or 45 days after HUD publishes the regional Section 8 income limits for the year, whichever comes later. The new income limits may not be less than those of the previous year.

H. Maximum Initial Rents And Sales Prices.

1. In establishing rents and sales prices of affordable housing units, the Administrative Agent shall follow the procedures set forth in UHAC N.J.A.C. 5:80-26.4.
2. The average rent for all restricted units within each affordable housing development shall be affordable to households earning no more than 52 percent of regional median income.
3. The maximum rent for restricted rental units within each affordable housing development shall be affordable to households earning no more than 60 percent 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. Very low-income units, if required, should be distributed between each bedroom count as proportionally as possible to the total number of restricted units within each bedroom count, and shall be part of the low-income requirement.
5. The maximum sales price of restricted ownership units within each affordable housing development shall be affordable to households earning no more than 70 percent of median income, and each affordable housing development must achieve an affordability average that does not exceed 55 percent 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.

11. At the anniversary date of the tenancy of the certified household occupying a restricted rental unit, following a minimum 90-day notice provided to the occupant household, 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.” The maximum allowable rent increase for the year will be effective as of the same date as the regional median income limits determined pursuant to N.J.A.C. 5:80-26.3 and published by the Agency. This rent increase may not exceed five percent in any one year and notice thereof must be filed with the administrative agent. If the landlord has charged a tenant less than the initial maximum allowable rent for a restricted unit, the landlord may, with the approval of the administrative agent, use the maximum allowable rent instead of the current rent in performing this multiplication to establish the rent for the next tenant under a new lease. LIHTC units are not governed by the provisions of this section, but rather by the provisions of the State’s Qualified Allocation Plan, N.J.A.C. 5:80-33.1 through 33.40.

I. Affirmative Marketing.

1. The municipality shall adopt, by resolution, an Affirmative Marketing Plan, subject to approval of the Superior Court, compliant with N.J.A.C. 5:80-26.16, as may be amended and supplemented.
2. The Affirmative Marketing Plan is a regional marketing strategy designed to attract buyers and/or renters of all majority and minority groups, regardless of race, creed, color, national origin, ancestry, English-speaking ability, marital or familial status, gender, affectional or sexual orientation, disability, age (except for “housing for older persons” as defined at N.J.S.A. 10:5-1 et seq., and age-restricted units as permitted pursuant to 42 U.S.C. §§ 3601 et seq.), number of children, source of lawful income, or any other characteristic described in the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 through 50, to housing units which are being marketed by a developer, sponsor or owner of affordable housing. The Affirmative Marketing Plan is intended to target those potentially eligible persons who are least likely to apply for affordable units in that region. It is a continuing program that directs all marketing activities toward Housing Region 1 and is required to be followed throughout the period of deed restriction.
3. The Affirmative Marketing Plan provides the following preferences, provided that units that remain unoccupied after these preferences are exhausted may be offered to households without regard to these preferences
 - a. Where the municipality has entered into an agreement with a developer or residential development owner to provide a preference for very-low-, low-, and moderate-income veterans who served in time of war or other emergency, pursuant to N.J.S.A. 52:27D-311.j, there shall be a preference for veterans for up to 50 percent of the restricted rental units in a particular project.

- b. There shall be a regional preference for all households that live and/or work in Housing Region 1 comprising Bergen, Hudson, Passaic and Sussex Counties.
 - c. Subordinate to the regional preference, there shall be a preference for households that live and/or work in New Jersey.
 - d. With respect to existing restricted units undergoing approved rehabilitation for the purpose of preservation or to restricted units newly created to replace existing restricted units undergoing demolition, a preference for the very-low-, low-, and moderate-income households that are displaced by the rehabilitation or demolition and replacement.
4. The municipality has the ultimate responsibility for adopting the Affirmative Marketing Plan and for the proper administration of the Affirmative Marketing Process, including the marketing of initial sales and rentals and resales and re-rentals. The Administrative Agent designated by the municipality shall implement the Affirmative Marketing Process to ensure the Affirmative Marketing of all affordable units, with the exception of affordable programs that are exempt from Affirmative Marketing as noted herein.
 5. The Affirmative Marketing Process shall describe the media to be used in advertising and publicizing the availability of housing. In implementing the Affirmative Marketing Process, the Administrative Agent should 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, including the Fair Share Housing Center, the Latino Action Network, the New Jersey State Conference of the NAACP, the Bergen County NAACP, the Bergen Urban League, and the Bergen County Housing Coalition. 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 HUD-certified housing counselors or otherwise experienced entities approved by the Division providing counseling services 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 and may begin before construction commences. For owner-occupied units, affirmative marketing advertising and outreach activities must continue until all of the marketed units have been sold, except that paid advertising may cease when the number of applications received is at least three times the number of units to be sold. For rental units, affirmative marketing advertising and

outreach activities must continue, as long as applications are being accepted, except that paid advertising may cease when the number of applications received is at least three times the number of units to be filled.

10. Applications must be accepted for no less than 45 days following the initial advertisement on the New Jersey Housing Resource Center, except for the resale of owner-occupied units, in which case, applications must be accepted for no less than 30 days.
11. The cost to affirmatively market the affordable units shall be the responsibility of the developer, sponsor or owner, with the exception of Affirmative Marketing for resales.

J. Selection of Occupants of Affordable Housing Units.

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

K. Occupancy Standards.

1. In referring certified households to specific restricted units, to the extent feasible, and without causing an undue delay in occupying the unit, the Administrative Agent shall strive to:
 - a. Ensure each bedroom is occupied by at least one person, except for age-restricted and supportive and special needs housing units;
 - b. Provide a bedroom for every two adult occupants;
 - c. With regard to occupants under the age of 18, accommodate the household's requested arrangement, except that such arrangement may not result in more than two occupants under the age of 18 occupying any bedroom; and
 - d. Avoid placing a one-person household into a unit with more than one bedroom.

L. Control Periods for Restricted Ownership Units and Enforcement Mechanisms.

1. The initial control periods for restricted ownership units shall be for a period of at least 30 years and in accordance with the UHAC , as may be amended and supplemented, with the Township reserving the right to extend the affordability control period for an additional period of time thereafter.
2. Rehabilitated housing units that are improved to code standards shall be subject to affordability controls for a period of not less than 10 years (crediting towards present need only).
3. The affordability control period for a restricted ownership unit shall commence on the date the initial certified household takes title to the unit. The date of commencement shall be identified in the deed restriction.
4. If existing affordability controls are being extended, the extended control period for a restricted ownership unit commences on the effective date of the extension, which is the end of the original control period.

5. After the end of any control period, the restricted ownership unit remains subject to the affordability controls set forth in this subchapter until the owner gives notice of their intent to make an exit sale, at which point:
 - a. If the municipality exercises the right to extend the affordability controls on the unit, no exit sale occurs and a new control period commences; or
 - b. If the municipality does not exercise the right to extend the affordability controls on the unit, the affordability controls terminate following the exit sale.
 - c. Notwithstanding the foregoing, nothing herein is intended to eliminate the right of a municipality with a 95/5 unit, which rights include (a) permitting the unit to be sold at fair market value and to capturing 95 percent of the differential between the fair market value of the unit unrestricted and the maximum restricted resale price and (b) using those proceeds (the differential) for affordable housing purposes.
6. Prior to the issuance of any building permit for the construction/rehabilitation of restricted ownership units, the developer/owner and the municipality shall record a preliminary instrument provided by the Administrative Agent.
7. Prior to the issuance of the initial certificate of occupancy for a restricted ownership unit and upon each successive sale during the period of restricted ownership, the Administrative Agent shall determine the restricted price for the unit and shall also determine the nonrestricted, fair market value of the unit based on either an appraisal or the unit's equalized assessed value without the restrictions in place.
8. At the time of the initial sale of the unit and upon each successive price-restricted sale, the initial purchaser shall execute and deliver to the Administrative Agent a recapture note obliging the purchaser, as well as the purchaser's heirs, successors, and assigns, to repay, upon the first non-exempt sale after the unit's release from the restrictions set forth in this Ordinance, an amount equal to the difference between the unit's non-restricted fair market value and its restricted price, and the recapture note shall be secured by a recapture lien evidenced by a duly recorded mortgage on the unit.
9. The affordability controls set forth in this Ordinance shall remain in effect despite the entry and enforcement of any judgment of foreclosure with respect to price-restricted ownership units.

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

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

- ii. If the resale occurs on or after such anniversary date, the maximum resale price is the most recent non-exempt purchase price increased to reflect the cumulative annual percentage increases to the regional median income, effective as of the same date as the regional median income calculated pursuant to N.J.A.C. 5:80-26.3
 - c. The owners of restricted ownership units may apply to the Administrative Agent to increase the maximum sales price for the unit on the basis of anticipated capital improvements. Eligible capital improvements shall be:
 - i. those that render the unit suitable for a larger household or the addition of a bathroom.
 - ii. The maximum resale price may be further increased by an amount up to the cumulative dollar value of approved capital improvements made after the last non-exempt sale for improvements and/or upgrades to the unit, excluding capital improvements paid for by the entity favored on the recapture note and recapture lien described at N.J.A.C. 5:80-26.6(d);
 - d. No increase for capital improvements is permitted if the maximum resale price prior to adjusting for capital improvements already exceeds whatever initial purchase price the unit would have if it were being offered for purchase for the first time at the initial affordability percentage. All adjustments for capital improvements are subject to 10-year, straight-line depreciation.
2. Upon the resale of a restricted ownership unit, all items of property that are permanently affixed to the unit or were included when the unit was initially restricted (for example, refrigerator, range, washer, dryer, dishwasher, wall-to-wall carpeting) shall be included in the maximum allowable resale price. Other items may be sold to the purchaser at a reasonable price that has been approved by the Administrative Agent at the time of the signing of the agreement to purchase but shall be separate and apart from any contract of sale for the underlying real estate. The purchase of central air conditioning installed subsequent to the initial sale of the unit and not included in the base price may be made a condition of the unit resale provided the price of the air conditioning equipment, which shall be subject to 10-year, straight-line depreciation, has been approved by the Administrative Agent. Unless otherwise approved by the Administrative Agent, the purchase of any property other than central air conditioning shall not be made a condition of the unit resale. The seller and the purchaser must personally certify at the time of closing that no unapproved transfer of funds for the purpose of selling and receiving property has taken place at the time of or as a condition of resale.

N. Buyer Income Eligibility.

1. Buyer income eligibility for restricted ownership units shall be established pursuant to N.J.A.C. 5:80-26.17, as may be amended and supplemented, such that very low-income ownership units shall be reserved for occupancy by households with a gross household income less than or equal to 30 percent 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, the Administrative Agent may, upon approval by the municipality, and subject to the Division's approval, permit a moderate-income purchaser to buy a low-income unit if and only if the Administrative Agent can demonstrate that there is an insufficient number of eligible low-income purchasers in the housing region to permit prompt occupancy of the unit and all other reasonable efforts to attract a low-income purchaser, including pricing and financing incentives, have failed. Any such low-income unit that is sold to a moderate-income household shall retain the required pricing and pricing restrictions for a low-income unit. Similarly, the administrative agent may permit low-income purchasers to buy very-low-income units in housing markets where, as determined by the Division, units are reserved for very-low-income purchasers, but there is an insufficient number of very-low-income purchasers to permit prompt occupancy of the units. In such instances, the purchased unit must be maintained as a very-low-income unit and sold at a very-low-income price point such that on the next resale the unit will still be affordable to very-low-income households and able to be purchased by a very-low-income household. A very-low-income unit that is seeking bonus credit pursuant to N.J.S.A. 52:27D-311.k(9) must first be advertised exclusively as a very-low-income unit according to the Affirmative Marketing requirements at N.J.A.C. 5:80-26.16, then advertised as a very-low-income or low-income unit for at least 30 additional days prior to referring any low-income household to the unit.
3. A certified household that purchases a restricted ownership unit must occupy it as the certified household's principal residence and shall not lease the unit; provided, however, that the Administrative Agent may permit the owner of a restricted ownership unit, upon application and a showing of hardship, to lease the restricted unit to another certified household for a period not to exceed one year.
4. The Administrative Agent shall certify a household as eligible for a restricted ownership unit when the household is a low-income household or a moderate-income household, as applicable to the unit, and the estimated monthly housing cost for the particular unit (including principal, interest, property taxes, homeowner and private mortgage insurance and condominium or homeowner association fees, as applicable) does not exceed 35 percent of the household's eligible monthly income; provided, however, that this limit may be exceeded if one or more of the following circumstances exists:
 - a. The household currently pays more than 35 percent (40 percent for households eligible for age-restricted units) of its gross household income for housing expenses, and the proposed housing expenses will reduce its housing costs;
 - b. The household has consistently paid more than 35 percent (40 percent for households eligible for age-restricted units) of eligible monthly income for housing expenses in the past and has proven its ability to pay; or
 - c. The household is currently in substandard or overcrowded living conditions;
 - d. The household documents the existence of assets, within the asset limitation otherwise applicable, with which the household proposes to supplement the rent payments

O. Limitations on Indebtedness Secured by Ownership Unit; Subordination.

1. Prior to incurring any indebtedness to be secured by a restricted ownership unit, the owner shall apply to the Administrative Agent for a determination in writing that the proposed

indebtedness complies with the provisions of this Section, and the Administrative Agent shall issue such determination prior to the owner incurring such indebtedness.

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

P. Control Periods for Restricted Rental Units.

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

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

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

1. The initial rent for a restricted rental unit shall be set by the Administrative Agent.
2. A written lease shall be required for all restricted rental units, except for units in an assisted living residence, and tenants shall be responsible for security deposits and the full amount of the rent as stated on the lease. A copy of the current lease for each restricted rental unit shall be retained on file by the Administrative Agent.
3. No additional fees, operating costs, or charges shall be added to the approved rent (except, in the case of units in an assisted living residence, to cover the customary charges for food and services) without the express written approval of the Administrative Agent.
 - a. Operating costs, for the purposes of this section, include certificate of occupancy fees, move-in fees, move-out fees, mandatory internet fees, mandatory cable fees, mandatory utility submetering fees, and for developments with more than one and a half off-street parking spaces per unit, parking fees for one parking space per household.
4. Any fee structure that would remove or limit affordable unit occupant access to any amenities or services that are required or included for market-rate unit occupants is prohibited. Application fees (including the charge for any credit check) shall not exceed five percent of the monthly rent of the applicable restricted unit to be applied to the costs of administering the controls applicable to the unit as set forth in this Ordinance.
5. Fees for unit-specific, non-communal items that are charged to market-rate unit tenants on an optional basis, such as pet fees for tenants with pets, storage spaces, bicycle-share programs, or one-time rentals of party or media rooms, may also be charged to affordable unit tenants, if applicable.
6. Pet fees may not exceed \$30.00 per month and associated one-time payments for optional fees pertaining to pets, such as a pet cleaning fee, are prohibited.
7. Fees charged to affordable unit tenants for other optional, unit-specific, non-communal items shall not exceed the amounts charged to market-rate tenants.
8. For any prior round rental unit leased before December 20, 2024, elements of the existing fee structure that are consistent with prior rules, but inconsistent with 5:80-26.13(c)1, may continue until the occupant household's current lease term expires or that occupant household vacates the unit, whichever occurs later.

R. Tenant Income Eligibility.

1. Tenant income eligibility shall be determined pursuant to N.J.A.C. 5:80-26.14, as may be amended and supplemented, and shall be determined as follows:
 - a. Very low-income rental units shall be reserved for households with a gross household income less than or equal to 30 percent of the regional median income by household size.

- b. Low-income rental units shall be reserved for households with a gross household income less than or equal to 50 percent of the regional median income by household size.
 - c. Moderate-income rental units shall be reserved for households with a gross household income less than 80 percent of the regional median income by household size.
2. The Administrative Agent shall certify a household as eligible for a restricted rental unit when the household is a very low-income, low-income or moderate-income household, as applicable to the unit, and the rent proposed for the unit does not exceed 35 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 amended and supplemented; provided, however, that this limit may be exceeded if one or more of the following circumstances exists:
- a. The household currently pays more than 35 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 reliable anticipated third-party assistance from an outside source such as a family member in a form acceptable to the Administrative Agent and the owner of the unit.
3. The applicant shall file documentation sufficient to establish the existence of any of the circumstances in 2.a. through 2.e. above with the Administrative Agent, who shall counsel the household on budgeting.

S. Municipal Housing Liaison.

- 1. The Municipal Housing Liaison shall be approved by municipal resolution.
- 2. The Municipal Housing Liaison shall be approved by the Division, or is in the process of getting approval, and fully or conditionally meets the requirements for qualifications, including initial and periodic training as set forth in in N.J.A.C. 5:99-1 et seq.
- 3. The Municipal Housing Liaison shall be responsible for oversight and administration of the affordable housing program, including the following responsibilities, which may not be contracted out to the Administrative Agent:
 - a. Serving as the primary point of contact for all inquiries from the Affordable Housing Dispute Resolution Program, the State, affordable housing providers, administrative agents and interested households.
 - b. The oversight of the Affirmative Marketing Plan and affordability controls.
 - c. When applicable, overseeing and monitoring any contracting Administrative Agent.

- d. Overseeing the monitoring of the status of all restricted units listed in the Fair Share Plan.
- e. Verifying, certifying and providing annual information within AHMS at such time and in such form as required by the Division.
- f. Coordinating meetings with affordable housing providers and administrative agents, as needed.
- g. Attending continuing education opportunities on affordability controls, compliance monitoring, and affirmative marketing as offered or approved by the Division.
- h. Overseeing the recording of a preliminary instrument in the form set forth at N.J.A.C. 5:80-26.1 for each affordable housing development.
- i. Coordinating with the Administrative Agent, municipal attorney and municipal Construction Code Official to ensure that permits are not issued unless the document required in C.8. above has been duly recorded.
- j. Listing on the municipal website contact information for the MHL and Administrative Agents.

T. Administrative Agent.

1. All municipalities that have created or will create affordable housing programs and/or affordable units shall designate or approve, for each project within its HEFSP, an administrative agent to administer the affordable housing program and/or affordable housing units in accordance with the requirements of the FHA, NJAC 5:99-1 et seq. and UHAC.
2. The fees for administrative agents shall be paid as follows:
 - a. Administrative agent fees related to rental units shall be paid by the developer/owner.
 - b. Administrative agent fees related to initial sale of units shall be paid by the developer.
 - c. Administrative agent fees related to resales shall be paid by the seller of the affordable home.
 - d. Administrative agent fees related to ongoing administration and enforcement shall be paid by the municipality.
3. An Operating Manual for each affordable housing program shall be provided by the Administrative Agent(s). The Operating Manual(s) shall be available for public inspection in the Office of the Clerk and in the office(s) of the Administrative Agent(s). Operating manuals shall be adopted by resolution of the Governing Body.
4. Subject to the role of the Administrative Agent(s), the duties and responsibilities as are set forth in N.J.A.C. 5:99-7 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:

- i. Conducting an outreach process to affirmatively market affordable housing units in accordance with the Affirmative Marketing Plan of the municipality and the provisions of N.J.A.C. 5:80-26.16.
 - ii. Providing counseling, or contracting to provide counseling services, to low- and moderate-income applicants on subjects such as budgeting, credit issues, mortgage qualification, rental lease requirements; and landlord/tenant law.
 - c. Household certification.
 - i. Soliciting, scheduling, conducting and following up on interviews with interested households.
 - ii. Conducting interviews and obtaining sufficient documentation of gross income and assets upon which to base a determination of income eligibility for a low- or moderate-income unit;
 - iii. Providing written notification to each applicant as to the determination of eligibility or non-eligibility within five (5) business days of the determination thereof.
 - iv. 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.
 - v. Creating and maintaining a referral list of eligible applicant households living in the housing region, and eligible applicant households with members working in the housing region, where the units are located.
 - vi. Employing a random selection process as provided in the Affirmative Marketing Plan when referring households for certification to affordable units.
 - d. Affordability controls.
 - i. Furnishing to attorneys or closing agents forms of deed restrictions and mortgages for the recording at the time of conveyance of title of each restricted unit.
 - ii. Ensuring that the removal of the deed restrictions and cancellation of the mortgage note are effectuated and filed properly with the County Register of Deeds or County Clerk's office after the termination of the affordability controls for each restricted unit in accordance with UHAC.
 - iii. Communicating with lenders and the Municipal Housing Liaison regarding foreclosures.
 - iv. Ensuring the issuance of Continuing Certificates of Occupancy or certifications pursuant to N.J.A.C. 5:80-26.11.
 - e. Records retention.
 - i. Creating and maintaining a file on each restricted unit for its control period, including the recorded deed with restrictions, recorded recapture mortgage, and note, as appropriate.
 - ii. Records received, retained, retrieved, or transmitted in furtherance of crediting affordable units of a municipality constitute public records of the municipality as defined by N.J.S.A. 47:3-16, and are legal property of the municipality.

- f. Resales and re-rentals.
 - i. Instituting and maintaining an effective means of communicating information between owners and the Administrative Agent regarding the availability of restricted units for resale or re-rental.
 - ii. Instituting and maintaining an effective means of communicating information to very low-, low-, or moderate-income households regarding the availability of restricted units for resale or re-rental.
- g. Processing requests from unit owners.
 - i. Reviewing and approving requests from owners of restricted units who wish to refinance or take out home equity loans during the term of their ownership to determine that the amount of indebtedness to be incurred will not violate the terms of this ordinance.
 - ii. Reviewing and approving requests to increase sales prices from owners of restricted units who wish to make capital improvements to the units that would affect the selling price, such authorizations to be limited to those improvements resulting in additional bedrooms or bathrooms and the depreciated cost of central air conditioning systems.
 - iii. Notifying the municipality of an owner's intent to sell a restricted unit.
 - iv. Making determinations on requests by owners of restricted units for hardship waivers.
- h. Enforcement.
 - i. Securing annually from the municipality a list of all affordable ownership units for which property tax bills are mailed to absentee owners, and notifying all such owners that they must either move back to their unit or sell it;
 - ii. Securing from all developers and sponsors of restricted units, at the earliest point of contact in the processing of the project or development, written acknowledgement of the requirement that no restricted unit can be offered, or in any other way committed, to any person, other than a household duly certified to the unit by the Administrative Agent;
 - iii. Sending annual mailings to all owners of affordable dwelling units reminding them of the notices and requirements outlined in N.J.A.C. 5:80-26.19(d)4;
 - iv. Establishing a program for diverting unlawful rent payments to the municipal Affordable Housing Trust Fund; and
 - v. Creating and publishing a written operating manual for each affordable housing program administered by the Administrative Agent setting forth procedures for administering the affordability controls.
- i. The Administrative Agent(s) shall, as delegated by the municipality, have the authority to take all actions necessary and appropriate to carry out its/their responsibilities, herein.

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

1. The owner of all developments containing affordable units subject to this subchapter or the assigned management company thereof shall provide to the administrative agent:
 - a. Site plan, architectural plan, or other plan that identifies the location of each affordable unit, if subject to the site plan approval, settlement agreement, or other applicable document regulating the location of affordable units. The administrative agent shall determine the location of affordable units if not set forth in the site plan approval, settlement agreement, or other applicable document.
 - b. The total number of units in the project and the number of affordable units.
 - c. The breakdown of the affordable units by or identification of affordable unit locations by bedroom count and income level, including street addresses / unit numbers, if subject to the site plan approval, settlement agreement, or other applicable document regulating the breakdown of affordable units. The administrative agent shall determine the bedroom and income distribution if not set forth in the site plan approval, settlement agreement, or other applicable document.
 - d. Floor plans of all affordable units, including complete and accurate identification of all rooms and the dimensions thereof.
 - e. A projected construction schedule.
 - f. The location of any common areas and elevators.
 - g. The name of the person who will be responsible for official contact with the administrative agent for the duration of the project, which must be updated if the contact changes.
2. In addition to A above, the owner of rental developments containing affordable rental units subject to this subchapter or the assigned management company thereof shall:
 - a. Send to all current tenants in all restricted rental units an annual mailing containing a notice as to the maximum permitted rent and a reminder of the requirement that the unit must remain their principal place of residence, which is defined as residing in the unit at least 260 days out of each calendar year, together with the telephone number, mailing address, and email address of the administrative agent to whom complaints of excess rent can be issued.
 - b. Provide to the administrative agent a description of any applicable fees.
 - c. Provide to the administrative agent a description of the types of utilities and which utilities will be included in the rent.
 - d. Agree and ensure that the utility configuration established at the start of the rent-up process not be altered at any time throughout the restricted period.
 - e. Provide to the administrative agent a proposed form of lease for any rental units.
 - f. Ensure that the tenant selection criteria for the applicants for affordable units not be more restrictive than the tenant selection criteria for applicants for non-restricted units.
 - g. Strive to maintain the continued occupancy of the affordable units during the entire restricted period.

3. In addition to A, above, the owner of affordable for-sale developments containing affordable for-sale units subject to this subchapter or the assigned management company thereof shall provide the administrative agent:
 - a. Proposed pricing for all units, including any purchaser options and add-on items.
 - b. Realistic condominium or homeowner association fees and any other applicable fees.
 - c. Estimated real property taxes.
 - d. Sewer, water, trash disposal, and any other utility assessments.
 - e. Flood insurance requirement, if applicable.
 - f. The State-approved planned real estate development public offering statement and/or master deed, where applicable, as well as the full build-out budget.

V. Enforcement of Affordable Housing Regulations

1. Upon the occurrence of a breach of any of the regulations governing the affordable unit by an owner, developer or tenant, the municipality shall have all remedies provided at law or equity, including but not limited to foreclosure, tenant eviction, municipal fines, a requirement for household recertification, acceleration of all sums due under a mortgage, recoupment of any funds from a sale in the violation of the regulations, injunctive relief to prevent further violation of the regulations, entry on the premises, and specific performance.
2. After providing written notice of a violation to an owner, developer or tenant of an affordable unit and advising the owner, developer or tenant of the penalties for such violations, the municipality may take the following action against the owner, developer or tenant for any violation that remains uncured for a period of 60 days after service of the written notice:
 - a. The municipality may file a court action pursuant to N.J.S.A. 2A:58-11 alleging a violation, or violations, of the regulations governing the affordable housing unit. If the owner, developer or tenant is found by the Court to have violated any provision of the regulations governing affordable housing units the owner, developer or tenant shall be subject to one or more of the following penalties, at the discretion of the Court:
 - i. A fine of not more than \$250/day or imprisonment for a period not to exceed 30 days unless otherwise specified below, provided that each and every day that the violation continues or exists shall be considered a separate and specific violation of these provisions and not a continuation of the initial offense;
 - ii. In the case of an owner who has rented his or her low- or moderate-income unit in violation of the regulations governing affordable housing units, payment into the municipal Affordable Housing Trust Fund of the gross amount of rent illegally collected;
 - iii. In the case of an owner who has rented his or her affordable unit in violation of the regulations governing affordable housing units, payment of an innocent tenant's reasonable relocation costs, as determined by the Court.

3. The municipality shall have the authority to levy fines against the owner of the development for instances of noncompliance with NJHRC advertising requirements (N.J.S.A. 52:27D-321.6.e.(2)), following written notice to the owner. The fine for the first offense of noncompliance shall be \$5,000, the fine for the second offense of noncompliance shall be \$10,000, and the fine for each subsequent offense of noncompliance shall be \$15,000.
4. The municipality may file a court action in the Superior Court seeking a judgment, which would result in the termination of the owner's equity or other interest in the unit, in the nature of a mortgage foreclosure. Any judgment shall be enforceable as if the same were a judgment of default of the first purchase money mortgage and shall constitute a lien against the low- or moderate-income unit.
 - a. Such judgment shall be enforceable, at the option of the municipality, by means of an execution sale by the Sheriff, at which time the affordable unit of the violating owner shall be sold at a sale price which is not less than the amount necessary to fully satisfy and pay off any first purchase money mortgage and prior liens and the costs of the enforcement proceedings incurred by the municipality, including attorney's fees. The violating owner shall have the right to possession terminated as well as the title conveyed pursuant to the Sheriff's sale.
 - b. The proceeds of the Sheriff's sale shall first be applied to satisfy the first purchase money mortgage lien and any prior liens upon the low- or moderate-income unit. The excess, if any, shall be applied to reimburse the municipality for any and all costs and expenses incurred in connection with either the court action resulting in the judgment of violation or the Sheriff's sale. In the event that the proceeds from the Sheriff's sale are insufficient to reimburse the municipality in full as aforesaid, the violating owner shall be personally responsible for the full extent of such deficiency, in addition to any and all costs incurred by the municipality in connection with collecting such deficiency. In the event that a surplus remains after satisfying all of the above, such surplus shall be placed in escrow by the municipality for the owner and shall be held in such escrow for a maximum period of two years or until such earlier time as the owner shall make a claim with the municipality for such. Failure of the owner to claim such balance within the two year period shall automatically result in a forfeiture of such balance to the municipality. Any interest accrued or earned on such balance while being held in escrow shall belong to and shall be paid to the municipality, whether such balance shall be paid to the owner or forfeited to the municipality.
 - c. Foreclosure due to violation of the regulations governing affordable housing units shall not extinguish the restrictions of the regulations governing affordable housing units as they apply to the low- and moderate-income unit. Title shall be conveyed to the purchaser at the Sheriff's sale, subject to the restrictions and provisions of the regulations governing the affordable housing unit. The owner determined to be in violation of the provisions of this plan and from whom title and possession were taken by means of the Sheriff's sale shall not be entitled to any right of redemption.
 - d. If there are no bidders at the Sheriff's sale, or if insufficient amounts are bid to satisfy the first purchase money mortgage and any prior liens, the municipality may acquire title to the affordable unit by satisfying the first purchase money mortgage and any

- prior liens and crediting the violating owner with an amount equal to the difference between the first purchase money mortgage and any prior liens and costs of the enforcement proceedings, including legal fees and the maximum resale price for which the affordable unit could have been sold under the terms of the regulations governing affordable housing units. This excess shall be treated in the same manner as the excess that would have been realized from an actual sale as previously described.
- e. Failure of the low- or moderate-income unit to be either sold at the Sheriff's sale or acquired by the municipality shall obligate the owner to accept an offer to purchase from any qualified purchaser that may be referred to the owner by the municipality, with such offer to purchase being equal to the maximum resale price of the low- or moderate-income unit as permitted by the regulations governing affordable housing units.
 - f. The affordable unit owner shall remain fully obligated, responsible and liable for complying with the terms and restrictions of governing affordable housing units until such time as title is conveyed from the owner.
5. It is the responsibility of the municipal housing liaison and the administrative agent(s) to ensure that affordable housing units are administered properly. All affordable units must be occupied within a reasonable amount of time and be re-leased within a reasonable amount of time upon the vacating of the unit by a tenant. If an administrative agent or municipal housing liaison becomes aware of or suspects that a developer, landlord, or property manager has not complied with these regulations, it shall report this activity to the Division. The Division must notify the developer, landlord, or property manager, in writing, of any violation of these regulations and provide a 30-day cure period. If, after the 30-day cure period, the developer, landlord, or property manager remains in violation of any terms of this subchapter, including by keeping a unit vacant, the developer, landlord, or property manager may be fined up to the amount required to construct a comparable affordable unit of the same size and the deed-restricted control period will be extended for the length of the time the unit was out of compliance, in addition to the remedies provided for in this section. For the purposes of this subsection, a reasonable amount of time shall presumptively be 60 days, unless a longer period of time is required due to demonstrable market conditions and/or failure of the municipal housing liaison or the administrative agent to refer a certified tenant.
 6. Banks and other lending institutions are prohibited from issuing any loan secured by owner occupied real property subject to the affordability controls set forth in this subchapter if such loan would be in excess of amounts permitted by the restriction documents recorded in the deed or mortgage book in the county in which the property is located. Any loan issued in violation of this subsection is void as against public policy.
 7. The Agency and the Department hereby reserve, for themselves and for each administrative agent appointed pursuant to this subchapter, all of the rights and remedies available at law and in equity for the enforcement of this subchapter, including, but not limited to, fines, evictions, and foreclosures as approved by a county-level housing judge.
 8. Appeals

- a. Appeals from all decisions of an administrative agent appointed pursuant to this subchapter must be filed, in writing, with the municipal housing liaison. A decision by the municipal housing liaison may be appealed to the Division. A written decision of the Division Director upholding, modifying, or reversing an administrative agent's decision is a final administrative action.

W. Waivers

A waiver may be granted of any provision of this ordinance if it would advance the interests of low- and moderate-income households or if strict compliance would cause an unreasonable result.

X. General Qualifications

The State only made the regulations available that impact this ordinance in December of 2025 and the State provided a prototype as late as February 13, 2026. Consequently, the Borough reserves the right to review and amend this ordinance consistent with applicable law.

Y. Development Fees.

1. Purpose

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

2. Basic Requirements

- a. The municipality previously adopted a development fee ordinance, which established the Municipal Affordable Housing Trust Fund.
- b. The municipality shall not spend development fees until the court has approved a plan for spending such fees. Approval of a Round 3 Spending Plan shall suffice to satisfy this requirement until such time as a Round 4 Spending Plan or subsequent amendments is/are approved.

3. Residential Development Fees

a. Imposed fees

- i. Residential developers, except for developers of the types of development specifically exempted below, shall pay a fee of 1.5 percent of the equalized assessed value for residential development, provided no increased density is permitted. Development fees shall also be imposed and collected when an additional dwelling unit is added to an existing residential structure; in such cases, the fee shall be calculated based on the increase in the equalized assessed value of the property due to the additional dwelling unit.
- ii. When an increase in residential density is permitted pursuant to a "d" variance granted under N.J.S.A. 40:55D-70d(5), developers shall be required to pay a

“bonus” development fee of 6.0 percent of the equalized assessed value for each additional unit that may be realized, except that this provision shall not be applicable to a development that will include affordable housing. If the zoning on a site has changed during the two-year period preceding the filing of such a variance application, the base density for the purposes of calculating the bonus development fee shall be the highest density permitted by right during the two-year period preceding the filing of the variance application.

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

- b. Eligible exactions, ineligible exactions and exemptions for residential development
 - i. Affordable housing developments, developments where the developer is providing for the construction of affordable units elsewhere in the municipality, and developments where the developer has made an eligible payment in lieu of on-site construction of affordable units, if permitted by ordinance, or by agreement with the municipality and if approved by a municipality prior to the statutory elimination of payments in-lieu on March 20, 2024 per P.L.2024, c.2, shall be exempt from development fees.
 - ii. Developments that have received preliminary or final site plan approval prior to the adoption of this ordinance and any preceding ordinance permitting the collection of development fees shall be exempt from the payment of development fees, unless the developer seeks a substantial change in the original approval. Where a site plan approval does not apply, the issuance of a zoning and/or building permit shall be synonymous with preliminary or final site plan approval for the purpose of determining the right to an exemption. In all cases, the applicable fee percentage shall be determined based upon the development fee ordinance in effect on the date that the construction permit is issued.
 - iii. All single-family residential additions, renovations and accessory structures shall be exempt; however, all new residential dwelling units shall be subject to a development fee.
 - iv. All multifamily additions, renovations and accessory structures not requiring site plan approval shall be exempt; however, all new residential dwelling units shall be subject to a development fee.
 - v. No development fee shall be collected for the demolition and replacement of a residential building resulting from a fire or natural disaster.

1. Non-Residential Development Fees

a. Imposition of fees

- i. Within all zoning districts, non-residential developers, except for developers of the types of development specifically exempted, shall pay a fee equal to 2.5 percent of

- the equalized assessed value of the land and improvements, for all new non-residential construction on an unimproved lot or lots.
- ii. Within all zoning districts, non-residential developers, except for developers of the types of development specifically exempted, shall also pay a fee equal to 2.5 percent of the increase in equalized assessed value resulting from any additions to existing structures to be used for non-residential purposes.
 - iii. Development fees shall be imposed and collected when an existing structure is demolished and replaced. The development fee of 2.5 percent shall be calculated on the difference between the equalized assessed value of the pre-existing land and improvements and the equalized assessed value of the newly improved structure; i.e., land and improvements; and such calculation shall be made at the time a final certificate of occupancy is issued. If the calculation required under this section results in a negative number, the non-residential development fee shall be zero.
- b. Eligible exactions, ineligible exactions and exemptions for non-residential development
 - i. The non-residential portion of a mixed-use inclusionary or market-rate development shall be subject to a 2.5 percent development fee, unless otherwise exempted below.
 - ii. The 2.5 percent fee shall not apply to an increase in equalized assessed value resulting from alterations, change in use within existing footprint, reconstruction, renovations and repairs.
 - c. Non-residential developments shall be exempt from the payment of non-residential development fees in accordance with the exemptions required pursuant to the Statewide Non-Residential Development Fee Act (N.J.S.A. 40:55D-8.1 through 8.7), as specified in Form N-RDF “State of New Jersey Non-Residential Development Certification/Exemption.” Any exemption claimed by a developer shall be substantiated by that developer.
 - d. A developer of a non-residential development exempted from the non-residential development fee pursuant to the Statewide Non-Residential Development Fee Act shall be subject to the fee at such time as the basis for the exemption no longer applies, and shall make the payment of the non-residential development fee, in that event, within three years after that event or after the issuance of the final certificate of occupancy of the non-residential development, whichever is later.
 - e. If a property that was exempted from the collection of a non-residential development fee thereafter ceases to be exempt from property taxation, the owner of the property shall remit the fees required pursuant to this section within 45 days of the termination of the property tax exemption. Unpaid non-residential development fees under these circumstances may be enforceable by the municipality as a lien against the real property of the owner.
 - f. Notwithstanding anything to the contrary, if there are any inconsistencies between these regulations and the Statewide Non-residential Development Fee Act (N.J.S.A. 40:55D-8.1 through 40:55D-8.7), the Act controls.

2. Collection Procedures

- a. Upon the granting of a preliminary, final or other applicable approval for a development, the applicable approving authority shall direct its staff to notify the construction official responsible for the issuance of a building permit.
- b. For non-residential developments only, the developer shall also be provided with a copy of Form N-RDF, "State of New Jersey Non-Residential Development Certification/Exemption," to be completed by the developer as per the instructions provided in the Form N-RDF. The construction official shall verify the information submitted by the non-residential developer as per the instructions provided on Form N-RDF. The tax assessor shall verify exemptions and prepare estimated and final assessments as per the instructions provided in Form N-RDF.
- c. The construction official responsible for the issuance of a building permit shall notify the tax assessor of the issuance of the first construction permit for a development that is subject to a development fee.
- d. Within 90 days of receipt of that notice, the tax assessor shall provide an estimate, based on the plans filed, of the equalized assessed value of the development.
- e. The construction official responsible for the issuance of a final certificate of occupancy shall notify the tax assessor of any and all requests for the scheduling of a final inspection on property that is subject to a development fee.
- f. Within 10 business days of a request for the scheduling of a final inspection, the tax assessor shall confirm or modify the previously estimated equalized assessed value of the improvements associated with the development; calculate the development fee; and thereafter notify the developer of the amount of the fee.
- g. Should the municipality fail to determine or notify the developer of the amount of the development fee within 10 business days of the request for final inspection, the developer may estimate the amount due and pay that estimated amount consistent with the dispute process set forth in Subsection b. of section 37 of P.L.2008, c.46 (N.J.S.A. 40:55D-8.6).
- h. Fifty percent (50 percent) of the development fee shall be collected at the time of issuance of the construction permit. The remaining portion shall be collected at the time of issuance of the certificate of occupancy. The developer shall be responsible for paying the difference between the fee calculated at the time of issuance of the construction permit and that determined at the time of issuance of certificate of occupancy.

3. 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.
4. Affordable Housing Trust Fund
- a. A separate, interest-bearing Municipal Affordable Housing Trust Fund shall be maintained by the chief financial officer of the municipality for the purpose of depositing development fees collected from residential and non-residential developers and proceeds from the sale of units with extinguished controls.
 - b. The following additional funds shall be deposited in the Municipal Affordable Housing Trust Fund and shall at all times be identifiable by source and amount:
 - i. Payments in lieu of on-site construction of an affordable unit, where previously permitted by ordinance or by agreement with the municipality and if approved by a municipality;
 - ii. Funds contributed by developers to make 10 percent of the adaptable entrances in a townhouse or other multistory attached dwelling unit development accessible;
 - iii. Rental income from municipally operated units;
 - iv. Repayments from affordable housing program loans;
 - v. Recapture funds;
 - vi. Proceeds from the sale of affordable units; and
 - vii. Any other funds collected in connection with the municipal affordable housing program including but not limited to interest earned on fund deposits.
 - c. The municipality shall provide the Division with written authorization, in the form of a tri-party escrow agreement(s) between the municipality, the Division and the financial institution in which the municipal affordable housing trust fund has been established to permit the Division to direct the disbursement of the funds as provided for in N.J.A.C. 5:99-2.1 et seq.
 - d. Occurrence of any of the following deficiencies may result in the Division requiring the forfeiture of all or a portion of the funds in the municipal Affordable Housing Trust Fund:
 - i. Failure to meet deadlines for information required by the Division in its review of a development fee ordinance;
 - ii. Failure to commit or expend development fees within four years of the date of collection in accordance with N.J.A.C. 5:99-5.5;
 - iii. Failure to comply with the requirements of the Non-Residential Development Fee Act and N.J.A.C. 5:99-3;

- iv. Failure to submit accurate monitoring reports pursuant to this subchapter within the time limits imposed by the Act, this chapter, and/or the Division;
 - v. Expenditure of funds on activities not approved by the Superior Court or otherwise permitted by law;
 - vi. Revocation of compliance certification or a judgment of compliance and repose;
 - vii. Failure of a municipal housing liaison or administrative agent to comply with the requirements set forth at N.J.A.C. 5:99-6, 7, and 8;
 - viii. Other good cause demonstrating that municipal affordable housing funds are not being used for an approved purpose.
- e. All interest accrued in the housing trust fund shall only be used on eligible affordable housing purposes approved by the Court.
5. Use of Funds
- a. The expenditure of all funds shall conform to a Spending Plan approved by Superior Court. Funds deposited in the municipal Affordable Housing Trust Fund may be used for any activity approved by the Court to address the fair share obligation and may be set up as a grant or revolving loan program. Such activities include, but are not limited to: preservation or purchase of housing for the purpose of maintaining or implementing affordability controls; housing rehabilitation; new construction of affordable housing units and related costs; accessory apartments; a market-to-affordable program; conversion of existing non-residential buildings to create new affordable units; green building strategies designed to be cost-saving and in accordance with accepted national or state standards; purchase of land for affordable housing; improvement of land to be used for affordable housing; extensions or improvements of roads and infrastructure to affordable housing sites; financial assistance designed to increase affordability; administration necessary for implementation of the Housing Element and Fair Share Plan; and/or any other activity permitted by Superior Court and specified in the approved Spending Plan.
 - b. Funds shall not be expended to reimburse the municipality or activities that occurred prior to the authorization of a municipality to collect development fees.
 - c. At least a portion of all development fees collected and interest earned shall be used to provide affordability assistance to very low-, low- and moderate-income households in affordable units included in the municipal Fair Share Plan. A portion of the development fees which provide affordability assistance shall be used to provide affordability assistance to very low-income households.
 - i. Affordability assistance programs may include down payment assistance, security deposit assistance, low-interest loans, rental assistance, assistance with homeowners association or condominium fees and special assessments, infrastructure assistance, and assistance with emergency repairs. The specific programs to be used for affordability assistance shall be identified and described within the Spending Plan.
 - ii. Affordability assistance for very low-income households may include producing very low-income units or buying down the cost of low- or moderate-income units

in the municipal Fair Share Plan to make them affordable to households earning 30 percent or less of median income.

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

6. Monitoring

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

7. Ongoing Collection of Fees

- a. The ability to impose, collect and expend development fees shall continue so long as the municipality retains authorization from the Court in the form of Compliance Certification or the good faith effort to obtain it.
- b. If the municipality fails to renew its ability to impose and collect development fees prior to the expiration of its Judgment of Compliance, it may be subject to forfeiture of any or all funds remaining within its 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).

8. 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.

Repealer

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

Severability

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

Effective Date

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

**Appendix B: Resolutions Appointing the Municipal Housing Liaison and
Administrative Agent**

**BOROUGH OF ORADELL
BERGEN COUNTY, NEW JERSEY**

RESOLUTION 26-67

Offered by Kern Seconded by Kelly

Member	Aye	No	Abstain	Absent
MAYOR KOTH				
KELLY	✓			
TASHJIAN				✓
KERN	✓			
GULLO				✓
HARRER	✓			
BANDFIELD	✓			

WHEREAS, The Department of Community Affairs has mandated that all municipalities appoint a Municipal Housing Liaison by February 15, 2025; and

WHEREAS, the duties and responsibilities are hereby outlined in attachment "A".

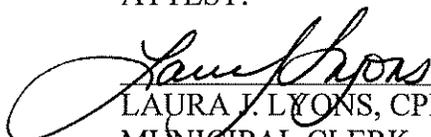
BE IT RESOLVED, the Borough Administrator hereby recommends the appointment of Patrick Wilkins as Municipal Housing Liaison effective January 29, 2025, with an annual stipend of \$7,500.00.



JAMES G. KOTH III, MAYOR

Passed on roll call vote at the Meeting of
the Mayor and Council of the Borough of Oradell
held on Tuesday, February 19, 2026
(SEAL)

ATTEST:



LAURA J. LYONS, CPM, RMC, RPPO
MUNICIPAL CLERK

Attachment "A"

RESPONSIBILITIES OF THE MUNICIPAL HOUSING LIAISON

The Municipal Housing Liaison is responsible for coordinating all the activities of the municipal government as it relates to the creation and administration of affordable housing units, in conjunction with the Municipal Attorney, where appropriate. The primary purpose of the Municipal Housing liaison is to ensure that all affordable housing projects are established and administered according to the Regulations as outlined in an Operating Manual. Duties include;

- Monitor the status of all restricted units in the municipality's Fair Share Plan
- Serve as the municipality's primary point of contact for all inquiries from the State, Administrative Agents, developers, affordable housing sponsors, owners, property managers and interested households.
- Compile, verify and submit annual reporting

- Coordinate meetings with Administrative Agents and Developers/Affordable Housing Sponsors/Owners

**RESOLUTION 26-59
BOROUGH OF ORADELL
COUNTY OF BERGEN**

Offered by Tashjian Seconded by Kern

Member	Aye	No	Abstain	Absent
MAYOR KOTH				
KELLY	✓			
TASHJIAN	✓			
KERN	✓			
GULLO	✓			
HARRER	✓			
BANDFIELD	✓			

RESOLUTION FOR THE QUALIFYING OF PROFESSIONAL SERVICE VENDORS

WHEREAS the Borough of Oradell is seeking to fill the need for Affordable Housing Services for a one year term for 2026; and

WHEREAS Triad Associates has demonstrated that it has the necessary qualifications and experience to perform the duties of Affordable Housing Service Agent.

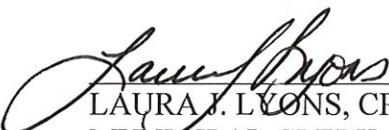
NOW THEREFORE BE IT RESOLVED that Triad Associates is hereby appointed to the position of Affordable Housing Service Agent for 2026 under the following terms and conditions: see attached proposal.



 JAMES G. KOTH III, MAYOR

Passed on roll call vote at the Meeting of the Mayor and Council of the Borough of Oradell held on February 10, 2026

ATTEST:



 LAURA J. LYONS, CPM, RMC, RPPO
 MUNICIPAL CLERK

Appendix C: Ordinance & Map - Extension of CBD Overlay Zone

BOROUGH OF ORADELL

James G. Koth III, Mayor
Thomas Kelly, Council President
COUNCIL
Roger Tashjian
Jonathan Kern
Ted Gullo
Maggie Harrer
David Bandfield



Edward Hynes, Borough Administrator

Laura J. Lyons, Municipal Clerk
CPM, RMC, RPPO

February 20, 2026

Mr. Brian Giblin, Planning Board Counsel
2 Forest Avenue #200
Oradell NJ 07649

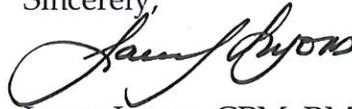
Delivered via email btgiblin@msn.com

RE: Ordinance No: 26-4

Dear Mr. Giblin:

At the February 19, 2026, meeting of the Mayor & Council of the Borough of Oradell, the above captioned Ordinances were Introduced (copies attached herewith). We are hereby referring same to the Oradell Planning Board for recommendations and report, pursuant to Municipal Land Use Law. Thank you.

Sincerely,



Laura Lyons, CPM, RMC, RPPO
Municipal Clerk

Cc: Mr. Jeff Surenian, Special Counsel
Stephen Depken, Construction Official
Gabi Ferrezza, Land Use Assistant

BOROUGH OF ORADELL
BERGEN COUNTY, NEW JERSEY
ORDINANCE #26-4

This ordinance published herewith was introduced and passed upon first reading at a meeting of the Borough Council of the Borough of Oradell, in the County of Bergen and State of New Jersey, held on February 19, 2026 at 7:30 PM. It will be further considered for final passage after public hearing thereon, at a Public Meeting of said Borough Council to be held at 350 Prospect Avenue, in said Borough, on March 10, 2026 at 7:30 PM, and during the week prior to and up to and including the date of such meeting, copies of said ordinance will be made available at the Clerk's Office in said Borough Hall to the members of the general public who shall request the same.

LAURA J. LYONS
Municipal Clerk

ORDINANCE NO. 26-4
AN ORDINANCE TO AMEND SECTIONS 240-6.2, 240-6.5, 240-6.6, AND 240-11.1
OF THE BOROUGH CODE

Intent and purpose. It is the intent and purpose of this Zoning Ordinance Amendment to expand the B-1 Business Zone within the Borough to satisfy a portion of Oradell's Round 4 unmet need affordable housing obligation. This ordinance also eliminates the B-3 Business and Apartment Zone

Zoning Ordinance Section 240-6.2:

Properties to be rezoned from B-3 Business and Apartment Zone to B-1 Business Zone: Block 103, Lot 17, Block 110, Lots 1-3, Block 113, Lots 1-4, and Block 116, Lots 1-3 as shown on the attached map.

The CBD Central Business District Overlay Zone, which includes a Court approved affordable housing overlay option, is applicable within the expanded B-1 Business Zone.

A. For the purposes of this chapter, the Borough of Oradell is divided into 17 zones, which are as follows:

R-1	One-Family Residential Zone
R-2	One-Family Residential Zone
R-3	One-Family Residential Zone
R-4	One-Family Residential Zone
R-5	Two-Family Residential Zone
A-1	Garden Apartment and Residential Zone
B-1	Business Zone
B-2	Limited Business Zone
CBD	Central Business District Overlay Zone
C-1	Commercial Zone
CR	Conservation/Recreation Zone (Recreation, Watershed, Open Space)
MX	Mixed-Use Development Zone (Residential/Business)
AHO	Affordable Housing Overlay District
AH-1	Affordable Housing 1 Residential Zone
AH-2	Affordable Housing 2 Residential Zone
R-2A	One-Family Residential Zone

- B. The boundaries of these zones are hereby established as shown on the map entitled "Zoning Map of the Borough of Oradell, New Jersey," revised March 1, 2010, which map is hereby adopted by reference and declared to be a part of this chapter.[1]
[1] Editor's Note: The Zoning Map and amendments thereto are on file in the Borough offices.
- C. District boundary lines are intended to follow street and railroad center lines and lot or property lines as they exist at the time of enactment of this chapter unless otherwise indicated on the Zoning Map. The exact location of any disputed boundary line shall be determined by the Zoning Board of Adjustment.
- D. Where a vacated right-of-way is bounded on either side by more than one district, the former center line of such right-of-way shall become the new district line.
- E. Where a district boundary line divides one or more lots that are in a single ownership at the time of the passage of this chapter, the use provided for one district shall not extend into the other district.

Zoning Ordinance Section 240-6.5:

- I. C-1 Commercial.
 - 1) Permitted uses shall be as follows:
 - a) All the uses permitted as set forth in the B-1 Zone and B-2 Zone

Zoning Ordinance Section 240-6.6:

- A. In the A-1 Zone, B-1 Zone, B-2 Zone, MX Zone and C-1 Zone, parking shall be behind the rear building line.

Zoning Ordinance Section 240-11.1:

- D. Permitted signs: B-1 Zone District-and CBD Overlay. The following signs shall be permitted in the B-1 Business Zones and Central Business District (CBD) Overlay Zone.

Repealer

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

Severability

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

Effective Date

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

Proposed B-1 Expansion Borough of Oradell, NJ



 Proposed Rezoning from B-3 to B-1

  250 US Feet

**Appendix D: Ordinance & Map - Creation of New Inclusionary Zone at 445
Kinderkamack Road**

MEDIATION AGREEMENT BEFORE THE AFFORDABLE HOUSING DISPUTE
RESOLUTION PROGRAM-445 KINDERKAMACK

In the Matter of the Application of the Borough of Oradell, County of Bergen
Docket No. BER-L-733-25

WHEREAS, the Borough of Oradell (the “Borough” or “Oradell”) having filed a resolution of participation in the Affordable Housing Dispute Resolution Program (the “Program”) and a declaratory judgment action pursuant to N.J.S.A. 52:27D-301 et. Seq. (the “Fair Housing Act”) on January 24, 2025; and

WHEREAS, the Court having entered an order on May 13, 2025 setting the Borough’s Fourth Round fair share obligations as a Present Need of zero units and a Prospective Need of 180 units, which no party appealed; and

WHEREAS, the Borough having filed a Housing Element and Fair Share Plan (“HEFSP”) in June of 2025 (“Adopted HEFSP”) and sought a certificate of compliance; and

WHEREAS, 445 Kinderkamack LLC (hereinafter the “Developer”) having filed a challenge on August 28, 2025 pursuant to N.J.S.A. 52:27D-304.1(f)(2)(b) challenging the Borough’s application for approval of its HEFSP; and

WHEREAS, the Borough and the Developer have agreed to amicably resolve the issues set forth in the Developer’s challenge through this Mediation Agreement and present this Mediation Agreement for review by the Program, and referral to the Mount Laurel judge for approval pursuant to N.J.S.A. 52:27D-304.1(f)(2)(b) and Administrative Directive #14-24; and

THEREFORE, the Borough and the Developer agree:

1. Developer is the owner of property located at 441-445 Kinderkamack Road, identified as Block 716, Lots 14 and 15 on the official tax map of the Borough (hereinafter “subject property”) and intends to develop an inclusionary project on the subject property that will

consist of a total of twenty five (25) units, of which five will be affordable, rental units (hereinafter the "Project").

2. All of the affordable units in the project shall fully comply with the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.1, et seq. ("UHAC"), as may be amended from time to time, including but not limited to the required bedroom and income distribution, length of affordability controls, phasing of affordable units, and other relevant affordable housing regulations.
3. The Borough will prepare, for Developer's prior review, and adopt an ordinance for the site to permit the construction of 25 units with a mandatory set-aside of 20%, which ordinance shall be adopted by the Borough no later than March 15, 2026. The ordinance shall have the standards set forth in Exhibit A or a variation thereof as long as the zoning permits the construction of 25 units in a manner consistent with the concept plan, dated July 29, 2025, last revised October 31, 2025, attached hereto as Exhibit A except that the project shall be developed in accordance with paragraph 4 and except further that the two parking spaces in the back of the property adjacent to a residential use shall be removed to create a larger buffer. The parties agree that the removal of the two parking changes will not affect the number of units permitted (25) and that the reduction shall not affect the compliance of the project with future zoning. The proposed building envelope can be shifted to the agreement of the Borough and the Developer so that the side yard setbacks vary between a minimum of 10 and 15 ft. However, the combined side yard setback shall be no less than 25 ft. The ordinance shall permit Developer to file an application with the Oradell Planning Board that is fully-conforming, meaning that no variances or design waivers will be required.
4. As to design standards, the parties have agreed to modify the concept plan as follows:

- a. Brick and fieldstone will no longer be co-mingled. The brick will be removed.
 - b. Construction will be limited to three materials: hardi plank, fieldstone and metal roofing (metal roofing to be used in connection with the shed windows).
 - c. Add additional grouped shed windows on the sides of the building, similar to their use on the front of the building. Grouping the shed windows on the sides of the building will help to make them more pronounced and break up the linear sides of the building.
5. Developer shall file an application to develop the subject property in accordance with the ordinance and the concept plan with elevations attached hereto as Exhibit A.
6. The Borough, including all of its officials, employees, agents, committees, departments and planning and zoning boards, shall cooperate in good faith with the Developer, to the extent permitted under any applicable state or federal law, rule or regulations, to secure necessary municipal, county and state permits, approvals, licenses, deviations, waivers, exceptions, variations and variances for the Project from agencies having jurisdiction, including but not limited to, the Borough Planning Board, County of Bergen, Bergen County Planning Board, the New Jersey Department of Environmental Protection, and the New Jersey Department of Transportation (the "Required Approvals"). The Borough agrees to cooperate with Developer in its undertakings to obtain the Required Approvals including but not limited to, facilitating the prompt review of, and if required, approval and endorsement of any and all agreements, applications and/or permits necessary for construction of the Project, including but not limited to applications related to allocation of capacity and delivery of public water and sewer service to the subject property, and the vacation and/or relocation of easements and/or paper streets impacting the Project. The Borough further acknowledges that the Project as depicted on the Concept Plan may require modification to comply with conditions imposed by the Required Approvals, and that deviations and reasonable variances from the Ordinance, as applicable, may be required to

comply with the Required Approvals and effectuate the intent and purpose of this Mediation Agreement. Nothing shall prevent Developer from seeking waivers or bulk variances from any standard imposed by the Ordinance, as applicable, pursuant to the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq. (“MLUL”), or from seeking a waiver of de minimus exception to any standard of the Residential Site Improvement Standards.

7. Oradell and the Developer both understand that the Planning Board is not a party to this Mediation Agreement, but the Borough will use its best efforts to work with the Planning Board to help effectuate, as expeditiously as reasonably possible, action, following the Developer’s submission of an application for the Project, and in furtherance of the processing of the Developer development application(s) for the Project and/or site plan approvals, within the time limits imposed by the MLUL and to “fast track” the required approvals as set forth in N.J.A.C. 5:93-10.1.
8. The Borough recognizes that the Project is an inclusionary development, and agrees that in order to permit the agreed upon construction of the Project at the subject property, that the Borough shall abide by the COAH regulations and prohibition against cost generative measures as set forth at N.J.A.C. 5:93-10.1, the Mount Laurel Doctrine, and interpretive case law. To the extent any special meetings of the Planning Board are necessary for the Developer’s land development application, Developer shall not be obligated to pay the costs associated with same. To the extent the Planning Board ordinarily charges applicants to conduct special meetings, payment of such fees and charges shall be the responsibility of the Borough.

9. The Borough and the Developer shall present this Mediation Agreement to the Program member for review, subject to final execution by the Developer and a representative of the Borough.
10. Both parties agree to implement the terms of this Mediation Agreement. If the Program, county level housing judge, or any appellate court rejects this Mediation Agreement, the parties reserve their right to rescind any action taken in anticipation of the Program's approval and return to *status quo ante* in this matter as if no settlement was reached and with full reservation of all rights and interests.
11. The Parties shall exercise good faith, cooperate, and assist each other in fulfilling the intent and purpose of this Mediation Agreement, including, but not limited to, the completion of the Project consistent with the terms hereof, and the mutual defense against any third-party challenge with regard to any of the foregoing. In the event of a successful legal challenge to this Mediation Agreement, the Ordinance, the Planning Board Approval of the Project, or any other legal action which results in a requirement to modify this Mediation Agreement and/or the Project, the parties shall negotiate in good faith to reach a mutually acceptable amendment to this Mediation Agreement and any such other implementing agreements and resolutions, provided that nothing herein shall be construed to permit a change the number of units in the Project.
12. All parties shall have an obligation to fulfill the intent and purpose of this Mediation Agreement, unless to do so would be inconsistent with the final, unappealable adjudication of any Program or court ruling or judgment.

13. The terms of this Mediation Agreement may be enforced through an enforcement motion in this declaratory judgment action, or through a separate action before the Program or the Superior Court, Law Division.
14. This Mediation Agreement may be executed in counterparts, all of which together shall constitute the same agreement, and any exhibits or schedules attached hereto shall be hereby made a part of this Mediation Agreement.
15. This Mediation Agreement shall not be modified, amended or altered in any way except by a writing signed by each of the parties.
16. Each party acknowledges that each has entered into this Mediation Agreement on its own volition without coercion or duress after consulting with its counsel, that each signatory is the proper person and possesses the authority to sign the Mediation Agreement, and that this Mediation Agreement was not drafted by any one of the parties, but was drafted, negotiated and reviewed by all parties, therefore, the presumption of resolving ambiguities against the drafter shall not apply.
17. Unless otherwise specified, it is intended that the provisions of this Mediation Agreement are to be severable. The validity of any article, section, clause or provision of this Agreement shall not affect the validity of the remaining articles, sections, clauses or provisions hereof. If any section of this Agreement shall be adjudged by a court to be invalid, illegal, or unenforceable in any respect, such determination shall not affect the remaining sections.

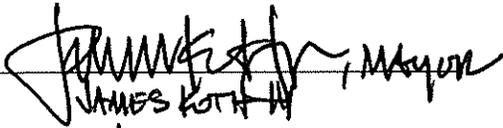
No member, official or employee of the municipality shall have any direct or indirect interest in this Mediation Agreement, nor participate in any decision relating to the

Mediation Agreement which is prohibited by law, absent the need to invoke the rule of necessity.

Attest:

BOROUGH OF ORADELL

Print Name:

By: 
Date: 29 Jan. 2016

Attest:

445 KINDERKAMACK, LLC

Print Name:

By: _____
Date: _____

Date:

Attest: 
Christopher Khalaf

445 KINDERKAMACK, LLC

By: 

Print Name: Ronald Fermano

Date: 1/29/26

EXHIBIT A
CONCEPT PLAN



bACHstuda

KINDERKAMACK ROAD VIEW

441-445
KINDERKAMACK ROAD
REDEVELOPMENT

OWNER: M. B. B. LLC
 ARCHITECT: BACHSTUDA

DATE: 03/12/2026
 SHEET: A-1

VIRGINIA
 &
 VIRGINIA

REGISTERED ARCHITECTS

MEMBER: AIA, ASLA, IIDA



WWW.BACHSTUDA.COM



REAR VIEW



NORTH SIDE VIEW

THIS PLAN IS THE PROPERTY OF BACHSTUDA ARCHITECTS, INC. AND IS NOT TO BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT THE WRITTEN PERMISSION OF BACHSTUDA ARCHITECTS, INC.

DATE: 03/12/2026
 SHEET: A-1
 OF 10
 SCALE: AS SHOWN
 DRAWN BY: B. B. B.
 CHECKED BY: B. B. B.
 PROJECT NO.: 441-445

BOROUGH OF ORADELL

James G. Koth III., Mayor
Thomas Kelly, Council President
COUNCIL
Roger Tashjian
Jonathan Kern
Ted Gullo
Maggie Harrer
David Bandfield



Edward Hynes, Borough Administrator

Laura J. Lyons, Municipal Clerk
CPM, RMC, RPPO

February 20, 2026

Mr. Brian Giblin, Planning Board Counsel
2 Forest Avenue #200
Oradell NJ 07649

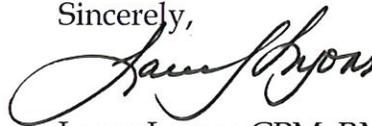
Delivered via email btgiblin@msn.com

RE: Ordinance No: 26-2

Dear Mr. Giblin:

At the February 19, 2026, meeting of the Mayor & Council of the Borough of Oradell, the above captioned Ordinances were Introduced (copies attached herewith). We are hereby referring same to the Oradell Planning Board for recommendations and report, pursuant to Municipal Land Use Law. Thank you.

Sincerely,



Laura Lyons, CPM, RMC, RPPO
Municipal Clerk

Cc: Mr. Jeff Surenian, Special Counsel
Stephen Depken, Construction Official
Gabi Ferrezza, Land Use Assistant

BOROUGH OF ORADELL
BERGEN COUNTY, NEW JERSEY
ORDINANCE #26-02

This ordinance published herewith was introduced and passed upon first reading at a meeting of the Borough Council of the Borough of Oradell, in the County of Bergen and State of New Jersey, held on February 19, 2026 at 7:30 PM. It will be further considered for final passage after public hearing thereon, at a Public Meeting of said Borough Council to be held at 350 Prospect Avenue, in said Borough, on March 10, 2026 at 7:30 PM, and during the week prior to and up to and including the date of such meeting, copies of said ordinance will be made available at the Clerk's Office in said Borough Hall to the members of the general public who shall request the same.

**AN ORDINANCE TO AMEND THE BOROUGH CODE TO INCLUDE A NEW
INCLUSIONARY ZONE DISTRICT FOR BLOCK 716, LOTS 14 & 15 IN THE
BOROUGH OF ORADELL, BERGEN COUNTY, NEW JERSEY**

WHEREAS, the Borough Oradell is constitutionally obligated to address its affordable housing obligations pursuant to the *Mount Laurel* doctrine and the New Jersey Fair Housing Act as amended in March of 2024 (“FHA II”) and other applicable law; and

WHEREAS, the Oradell Planning Board adopted a Housing Element and Fair Share Plan on June 24, 2025 and the Borough endorsed that plan on June 24, 2025; and

WHEREAS, on June 25, 2025, Oradell filed the Housing Element and Fair Share Plan with “the Program”, an entity created by FHA II, in accordance with the standards established by that Legislation; and

WHEREAS, 445 Kinderkamack LLC (“445 Kinderkamack”) among others filed objections to Oradell’s efforts to secure approval of its Housing Element and Fair Share Plan; and

WHEREAS, the objections triggered a mediation process, which culminated in a Mediation Agreement between 445 Kinderkamack and the Borough, dated January 29, 2026; and

WHEREAS, the Mediation Agreement calls for the Borough to prepare an ordinance for the Block 716, Lots 14 and 15 to allow the construction of 25 residential units with a mandatory set-aside of 20%; and

WHEREAS, the following ordinance satisfies the requirements of the agreement between the Borough and 445 Kinderkamack.

NOW, THEREFORE, BE IT ORDAINED, by the Borough Council of the Borough of Oradell, County of Bergen, State of New Jersey, that the Oradell Borough Code is revised as follows

SECTION 240-6.2.A is revised as follows: For the purposes of this chapter, the Borough of Oradell is divided into 18 zones, which are as follows

AH-3 Affordable Housing 3 Residential Zone

SECTION 240- 6.2. is amended to add Section 240-6.2.Q, AH-3 Zone, as follows:

- 1) The purpose of the AH-3 Zone is to implement the settlement agreement executed on January 29, 2026 between the Borough of Oradell and the property known as Block 716, Lots 14 & 15. As a result of the settlement, Lots 14 and 15 are permitted to be improved with an inclusionary development containing a maximum of 25 residential units, of which 20% will be affordable units.
- 2) This ordinance creates a new zone district, known as the AH-3 Zone, to include only the property known as Block 716, Lots 14 & 15 or 441-445 Kinderkamack Road.
- 3) The creation of the AH-3 Zone will facilitate creation of an inclusionary development that will diversify housing opportunities to partially satisfy the Borough's Round 4 affordable housing obligation.
- 4) Permitted uses. The only permitted use in the AH-3 Zone is
 - a) Multifamily Residential Development, containing:
 - (1) A maximum of 25 residential units, of which 20% or five (5) units shall be affordable to moderate, low and very low income households as described herein.
 - (2) The Ground Floor shall contain parking for the multifamily residential development, as well as an associated lobby, refuse and recycling areas, and mechanical space that is associated with the multifamily residential development.
 - (3) The Second and Third Floors shall contains multifamily residential dwelling units.
 - b) Parking on the ground floor.

- c) Accessory uses customarily incidental to the above uses and located on the same lot as the principal use to which they are accessory
- 5) Area and Bulk Requirements:
- a) Minimum lot size: 32,000 square feet
 - b) Maximum density: 35 units per acre, not to exceed the maximum number of total permitted residential units listed below.
 - c) Maximum number of dwelling units: 25 units.
 - d) Minimum Setbacks
 - (1) Front Yard Setback: 30 ft.
 - (2) Front Yard Setback from Roadway Widening Easement: 20 ft.
 - (3) Rear Yard Setback. : 10 ft.
 - (4) Side Yard Setback: 10 ft. minimum single side, but in no case shall the combined Side Yard Setback be less than 25 ft.
 - e) Parking & Loading
 - (1) 43 Parking Spaces shall be provided. The Concept Plan shows 45 spaces, but the number of parking spaces is reduced by two (2) spaces, as described herein.
 - f) Maximum principal building height: 35 ft. and three (3) stories.
 - g) Maximum Building Coverage: 50.5%
 - h) Maximum Lot Coverage: 85%
 - i) Bedroom Distribution: The 25 residential units shall contain the following bedroom distribution: One (1) three-bedroom affordable unit; 19 two-bedroom units, of which three (3) will be affordable units; four (4) one-bedroom units; one (1) affordable studio unit.
- 6) Site Design Requirements: The development shall be in conformance with the attached concept plan dated July 29, 2025 and revised to October 31, 2025 with the following exceptions:

- a) The two (2) parking spaces located in the back of the property shall be removed to create a larger buffer. This parking revision shall not impact the number of permitted residential units (25) or result in the need for a variance for insufficient onsite parking.
 - b) Brick and fieldstone will no longer be co-mingled. The brick will be removed.
 - c) Construction will be limited to three materials: hardi plank, fieldstone and metal roofing (metal roofing to be used in connection with the shed windows).
 - d) Additional grouped shed windows shall be added on the sides of the building, similar to their use of the front of the building in an effort to make them more pronounced and the break up the linear sides of the building.
- 7) Affordable Housing
- a) Not less than 20% of the total dwelling units shall be restricted to low and moderate income households, with 13% of the affordable units being available to very low income households. These households shall be available to families, and shall not be restricted to any specific demographic or population.
 - b) If the required total number of residential units does not result in a full integer, the developer shall round up to the nearest full integer. Should the developer elect to construct fewer than 25 total residential units, the required affordable set-aside will be 20%, rounded up to the nearest integer.
 - c) The affordable units shall be developed and administered in accordance with the Fair Housing Act (NJSA 52:27D-301 et. seq.), Local Planning Services regulations (N.J.A.C. 5:99), and UHAC regulations (N.J.A.C. 5:80-26.1), and as required under Chapter 61, Affordable Housing, of the Borough of Oradell. Such requirements include but are not limited to the following: income distribution, bedroom distribution, affordability controls (not less than 40 years for rental units and 30 years for sale units).

Repealer

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

Severability

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

Effective Date

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

**Proposed Affordable Housing Site
445 Kinderkamack Road
Block 716, Lot 14 and 15
Borough of Oradell, NJ**



 445 Kinderkamack (Block/Lot)



100

 US Feet

**Appendix E: Ordinance & Map - Creation of New Inclusionary Zone at 66
Kinderkamack Road**