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March 13, 2026

### VIA eCOURTS

**Honorable John C. Porto, P.J.Cv.**

Superior Court of New Jersey

Atlantic County Courthouse

1201 Bacharach Blvd.

Atlantic City, New Jersey 08401

**RE: In the Matter of the Application of the Borough of West Cape May  
Docket No. CPM-L-36-25**

Dear Judge Porto:

This Firm represents the Borough of West Cape May as Special Affordable Housing Counsel in the above matter. The Borough hereby files this letter and attached documentation to meet the March 15, 2026 deadline in the Fair Housing Act (“FHA”), N.J.S.A. 52:27D-304.1(f)(2)(c), and the March 15, 2026 deadlines established in the Consent Order between the Borough and Fair Share Housing Center (“FSHC”), which was entered by the Court in this matter on March 2, 2026 (hereinafter “Consent Order”)<sup>1</sup>.

To that end, please see the following documentation that is being submitted on behalf of the Borough to the Court for review:

1. **Amendment to Housing Element and Fair Share Plan**: An Amendment to the Borough’s Fourth Housing Element and Fair Share Plan was adopted by the Borough’s Planning Board on March 3, 2026, and was endorsed by the Borough’s Board of Commissioners on March 11, 2026. See attached Exhibit A.

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<sup>1</sup> In addition to the documentation being submitted with this letter to meet the March 15, 2026 deadline, the Borough submitted earlier letters on August 14, 2025 and November 26, 2025 with attached additional compliance documentation via ecourts to the Program, the Court, FSHC and all parties.

2. **Amendment to Overlay Zone**: The Board of Commissioners adopted an Ordinance amending the Borough's C-1, C-2 and C-3 zones on March 11, 2026. See attached Exhibit B.
3. **Spending Plan**: The Borough's adopted Fourth Round Spending Plan is attached hereto as Exhibit C.
4. **Affordable Housing Ordinance/Development Fee Ordinance**: The Borough's adopted combined Affordable Housing Ordinance and Development Fee Ordinance is attached hereto as Exhibit D.
5. **Affirmative Marketing Plan**: The Borough's adopted Fourth Round Affirmative Marketing Plan is attached hereto as Exhibit E.

To date the Borough has worked diligently to meet all of the deadlines required by the FHA, the Program, the Court and the Consent Order with FSHC, and will continue to do so. This has resulted in a multitude of compliance documentation being provided. Should any documentation need to be corrected or amended, the Borough will do so in a timely fashion, in accordance with the instructions of the Court and in collaboration with FSHC.

Finally, the Consent Order also has items that are to be completed after the March 15, 2026 deadline. The Borough will work on finalizing and submitting said items as per the terms of the Consent Order.

I thank Your Honor for your time and attention to this matter.

Respectfully submitted,



Erik C. Nolan

ECN/sp

Enclosures

cc: Ashley J. Lee, Esq. (*via eCourts and email*)  
Susan Gruel, PP, AICP (*via email*)  
Frank Corrado, Esq. (*via email*)

# EXHIBIT A

**RESOLUTION NO. 07-26**

**RESOLUTION OF THE PLANNING BOARD OF THE BOROUGH OF WEST CAPE  
MAY ADOPTING AN AMENDED FOURTH ROUND HOUSING ELEMENT AND  
FAIR SHARE PLAN**

**WHEREAS**, on March 20, 2024, Governor Murphy signed into law P.L. 2024, c.2, which amended the New Jersey Fair Housing Act and established the Affordable Housing Dispute Resolution Program (the “Program”); and

**WHEREAS**, in accordance with the Amended Fair Housing Act, the Township timely submitted its Fourth Round Housing Element and Fair Share Plan (“HEFSP”) to the Program for review in June of 2025; and

**WHEREAS**, the Borough received a deficiency letter for its Fourth Round Plan from Fair Share Housing Center in August of 2025; and

**WHEREAS**, the Court entered a Case Management Order in November of 2025 requiring the Borough to provide documents to FSHC in response to the deficiency letter and to enter into a Consent Order with FSHC; and

**WHEREAS**, the Borough and FSHC entered into a Consent Order and filed it with the Court on January 29, 2026; and

**WHEREAS**, as per the FHA and the Consent Order with FSHC, the Borough is required to amend its Fourth Round Plan to include the terms and conditions agreed upon in the Consent Order; and

**WHEREAS**, the Borough has prepared an Amended Fourth Round Housing Element and Fair Share Plan (“Amended Fourth Round Plan”), which is attached hereto as Exhibit A; and

**WHEREAS**, upon notice duly provided pursuant to N.J.S.A. 40:55D-13, the Planning-Zoning Board held a public hearing on the Amended Fourth Round Plan on March 3, 2026; and

**WHEREAS**, the Planning-Zoning Board determined that the attached Amended Fourth Round Plan is consistent with the goals and objectives of the Borough’s current Master Plan, and that adoption and implementation of the Amended Fourth Round Plan is in the public interest and protects public health and safety and promotes the general welfare.

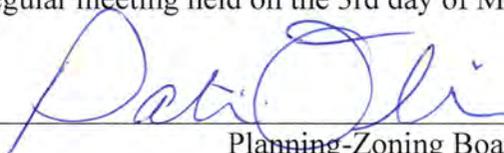
**NOW, THEREFORE, BE IT RESOLVED** by the Planning-Zoning Board of the Borough of West Cape May, County of Cape May, State of New Jersey, that the Planning-Zoning Board hereby adopts the Borough’s Amended Fourth Round Housing Element and Fair Share Plan attached hereto as Exhibit A.



Chair of the Planning-Zoning Board

**CERTIFICATION**

I certify that the foregoing Resolution was duly adopted by the Planning-Zoning Board of the Borough of West Cape May at a regular meeting held on the 3rd day of March, 2026.



Planning-Zoning Board Secretary

**BOROUGH OF WEST CAPE MAY  
COUNTY OF CAPE MAY  
STATE OF NEW JERSEY**

**RESOLUTION #63-26**

**RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE BOROUGH OF  
WEST CAPE MAY ENDORSING AN AMENDED FOURTH ROUND HOUSING  
ELEMENT AND FAIR SHARE PLAN**

**WHEREAS**, on March 20, 2024, Governor Murphy signed into law P.L. 2024, c.2, which amended the New Jersey Fair Housing Act and established the Affordable Housing Dispute Resolution Program (the "Program"); and

**WHEREAS**, in accordance with the Amended Fair Housing Act, the Borough timely submitted its Fourth Round Housing Element and Fair Share Plan ("HEFSP") to the Program for review in June of 2025; and

**WHEREAS**, the Borough received a deficiency letter for its Fourth Round Plan from Fair Share Housing Center in August of 2025; and

**WHEREAS**, the Court entered a Case Management Order in November of 2025 requiring the Borough to provide documents to FSHC in response to the deficiency letter and to enter into a Consent Order with FSHC; and

**WHEREAS**, the Borough and FSHC entered into a Consent Order and filed it with the Court on January 29, 2026; and

**WHEREAS**, as per the FHA and the Consent Order with FSHC, the Borough is required to amend its Fourth Round Plan to include the terms and conditions agreed upon in the Consent Order; and

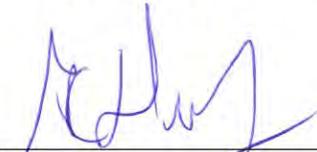
**WHEREAS**, the Borough has prepared an Amended Fourth Round Housing Element and Fair Share Plan ("Amended Fourth Round Plan"), which is attached hereto as Exhibit A; and

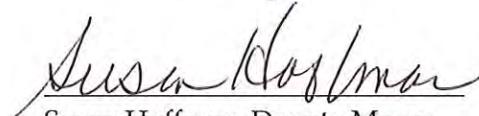
**WHEREAS**, upon notice duly provided pursuant to N.J.S.A. 40:55D-13, the Planning-Zoning Board held a public hearing on the Amended Fourth Round Plan on March 3, 2026; and

**WHEREAS**, the Board of Commissioners has reviewed the Amended Fourth Round Plan and concurs with the Planning-Zoning Board's determination that the Amended Fourth Round Plan is consistent with the Borough's Master Plan, promotes the public health, safety, and general welfare, and is in the best interests of the Borough.

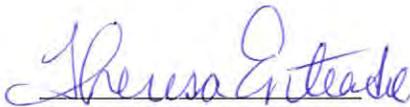
**NOW, THEREFORE, BE IT RESOLVED** by the Board of Commissioners of the Borough of West Cape May, County of Cape May, State of New Jersey, that the Board of Commissioners hereby

endorses the Borough's Amended Fourth Round Housing Element and Fair Share Plan attached hereto as Exhibit A.

  
 \_\_\_\_\_  
 George Dick, Mayor

  
 \_\_\_\_\_  
 Susan Hoffman, Deputy Mayor

  
 \_\_\_\_\_  
 Ellen McDevitt, Commissioner



Theresa Entead, RMC  
 Municipal Clerk  
 Adopted: March 11, 2026

cc: AH Counsel  
 AH Planner  
 Borough Solicitor  
 File

	Motion	Second	Aye	Nay	Abstain	Absent
Dick			✓			
Hoffman		✓	✓			
McDevitt	✓		✓			

CLERK CERTIFICATION

I hereby certify that the foregoing is a true copy of a Resolution duly passed and adopted by a majority of full membership of the Board of Commissioners of the Borough of West Cape May, County of Cape May, New Jersey, at a meeting held on March 11, 2026.

\_\_\_\_\_  
 Municipal Clerk

**West Cape May Borough  
February 2026 Amendment to  
Fourth Round Housing Element/Fair Share Plan**

**This report details the substantive revisions which comprise the February 2026 Amendment to the Fourth Round Housing Element and Fair Share Plan (“HEFSP”) for the Borough of West Cape May, dated June 2025 and adopted by the Planning/Zoning Board on June 17, 2025. All page numbers listed correspond to the adopted HEFSP document.**

- Amended the subsection entitled “Existing Inclusionary Zoning” within the “Addressing the Third Round Unmet Need” section as follows (page 42):
  - Replace second paragraph in its entirety to read: “On October 10, 2018, the West Cape May adopted Ordinance No. 551-18 establishing an affordable housing overlay within the Borough’s C-1, C-2, and C-3 commercial districts (see Appendix J). Most notably, the 2018 Ordinance amended the code to subject all projects producing five (5) or more residential units to a mandatory affordable housing set-aside of 20% for rental projects and 15% for for-sale projects in conformance with the applicable regulations. The 2018 Ordinance further amended these districts to permit a maximum building height of 35 feet / 3 stories.”
- Amended the subsection entitled “Existing Inclusionary Zoning” within the “Addressing the Fourth Round Unmet Need” section as follows (bolded italics indicate an addition **thus**) (page 44):
  - “The Borough will continue to allow residential dwelling units above permitted ground-floor commercial uses in its existing C-1 Broadway Commercial District, C-2 Park Commercial District, and C-3 Sunset Commercial District (see Appendix J). **Further, these overlays have been updated to require a 20% set-aside for both rental and for-sale units yielding five (5) or more residential units. Additionally, the maximum permitted building height in the C-2 Park Commercial District has been increased to 45 feet / 4 stories to allow for a greater yield of units in the District.**”

# EXHIBIT B

**BOROUGH OF WEST CAPE MAY  
COUNTY OF CAPE MAY  
STATE OF NEW JERSEY**

**ORDINANCE NO. 655-26**

**AN ORDINANCE AMENDING CHAPTER XXVII ZONING  
TO FURTHER SUPPORT THE CREATION OF AFFORDABLE HOUSING  
IN THE BOROUGH’S C-1, C-2 and C-3 ZONES**

**WHEREAS**, the Borough Planning Board adopted a Fourth Round Housing Element and Fair Share Plan on June 17, 2025 (hereinafter “Affordable Housing Plan”), which was endorsed by the Borough Board of Commissioners on June 25, 2025 via resolution 120-25; and

**WHEREAS**, the Borough and Fair Share Housing Center (“FSHC”) entered into a Consent Order of Conditional Compliance Certification (hereinafter “Consent Order”), filed with the Superior Court of New Jersey on January 29, 2026; and

**WHEREAS**, one of the terms of the Consent Order is for the Borough to adopt an Ordinance amending the Borough’s C-1 (Broadway Commercial District), C-2 (Park Commercial District) and C-3 (Sunset Commercial District) zones to increase the affordable housing set-aside and further support the opportunity for the creation of affordable housing in the zones to help the Borough address its remaining “unmet need”; and

**WHEREAS**, the Borough has determined Chapter XXVII entitled “Zoning” of the Borough’s Revised General Ordinances need to be amended in order to accomplish the aforementioned goal.

**NOW, THEREFORE, BE IT ORDAINED** by the Borough Commissioners of the Borough of West Cape May that the Borough Code be amended as follows (additions noted in bold italic *thus* and deletions notes in strikethrough ~~thus~~):

**Section 1.** Chapter 27-15 (C-1 Broadway Commercial District) of Chapter XXVII “Zoning” of the Borough Code shall be amended to read as follows:

27-15.9.a – “For residential projects of five or more units, such projects will deliver an on-site affordable housing set-aside of ~~15% for rental projects, and~~ 20% for *both rental and* for-sale projects. Affordable units in said projects must be affordable to very low, low and moderate income households in accordance with the Borough’s Affordable Housing Ordinance, the Borough’s Housing Element and Fair Share Plan, the Fair Housing Act *at* N.J.S.A. 52:27D-301 et seq (“FHA”) *as amended and supplemented*, Uniform Housing Affordability Controls *at* N.J.A.C. 5:80-26.1 et seq. (“UHAC”) *as amended and supplemented*, and applicable New Jersey Council on Affordable Housing (COAH) Prior Round regulations, ~~N.J.A.C. 5:93-1 et seq.”~~ *N.J.A.C. 5:99 et seq. as amended and supplemented.”*

**Section 2.** Chapter 27-16 (C-2 Park Commercial District) of Chapter XXVII “Zoning” of the Borough Code shall be amended to read as follows:

27-16.2 – Maximum Building Height – ~~35~~ **45** feet

27-16.2 – Maximum Stories – ~~3~~ **4** stories

27-16.5.a – “For residential projects of five or more units, such projects will deliver an on-site affordable housing set-aside of ~~15% for rental projects, and~~ 20% for *both rental and* for-sale projects. Affordable units in said projects must be affordable to very low, low and moderate income households in accordance with the Borough’s Affordable Housing Ordinance, the Borough’s Housing Element and Fair Share Plan, the Fair Housing Act *at* N.J.S.A. 52:27D-301 et seq (“FHA”) *as amended and supplemented*, Uniform Housing Affordability Controls *at* N.J.A.C. 5:80-26.1 et seq. (“UHAC”) *as amended and supplemented*, and applicable New Jersey Council on Affordable Housing (COAH) Prior Round regulations, N.J.A.C. 5:93-1 et seq.” *N.J.A.C. 5:99 et seq. as amended and supplemented.*”

**Section 3.** Chapter 27-17 (C-3 “Sunset Commercial District”) of Chapter XXVII “Zoning” of the Borough Code shall be amended to read as follows:

27-17.6.a – “For residential projects of five or more units, such projects will deliver an on-site affordable housing set-aside of ~~15% for rental projects, and~~ 20% for *both rental and* for-sale projects. Affordable units in said projects must be affordable to very low, low and moderate income households in accordance with the Borough’s Affordable Housing Ordinance, the Borough’s Housing Element and Fair Share Plan, the Fair Housing Act *at* N.J.S.A. 52:27D-301 et seq (“FHA”) *as amended and supplemented*, Uniform Housing Affordability Controls *at* N.J.A.C. 5:80-26.1 et seq. (“UHAC”) *as amended and supplemented*, and applicable New Jersey Council on Affordable Housing (COAH) Prior Round regulations, N.J.A.C. 5:93-1 et seq.” *N.J.A.C. 5:99 et seq. as amended and supplemented.*”

**Section 4.** If any article, section, subsection, sentence, clause or phrase of this Ordinance is, for any reason, held to be unconstitutional or invalid, such decision shall not affect the remaining portions of this Ordinance and they shall remain in full force and effect.

**Section 5.** In the event of any inconsistencies between the provisions of this Ordinance and any prior ordinance of the Borough of West Cape May, the provisions hereof shall be determined to govern. All other parts, portions and provisions of the Revised General Ordinances of the Borough of West Cape May are hereby ratified and confirmed, except where inconsistent with the terms hereof.

**Section 6.** The Borough Clerk is directed to give notice at least ten (10) days prior to a hearing on the adoption of this ordinance to the Cape May County Planning Board and to all other persons entitled thereto pursuant to N.J.S.A. 40:55D-15, and N.J.S.A. 40:55D-63 (if required).

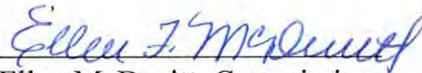
**Section 7.** After introduction, the Borough Clerk is hereby directed to submit a copy of the within Ordinance to the Planning Board of the Borough of West Cape May for its review in accordance with N.J.S.A. 40:55D-26 and N.J.S.A. 40:55D-64. The Planning Board is directed to make and transmit to the Borough Council, within 35 days after referral, a report including identification of any provisions in the proposed ordinance which are inconsistent with the master plan and recommendations concerning any inconsistencies and any other matter as the Board deems appropriate.

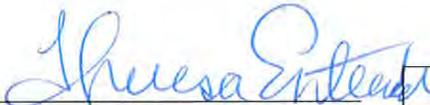
**Section 8.** This Ordinance shall be presented to the Mayor for approval and signature, which approval shall be granted or denied within ten (10) days of receipt of same, pursuant to N.J.S.A. 40:69A-149.7. If the Mayor fails to return this Ordinance with either approval or objection to same within ten (10) days after it has been presented, then this Ordinance shall be deemed approved.

**Section 9.** This Ordinance shall take effect immediately upon: (1) adoption; (2) approval by the Mayor pursuant to N.J.S.A. 40:69A-149.7; (3) publication in accordance with the laws of the State of New Jersey; and (4) filing of the final form of adopted ordinance by the Clerk with (a) the Cape May County Planning Board pursuant to N.J.S.A. 40:55D-16, and (b) the Borough Tax Assessor as required by N.J.S.A. 40:49-2.1.

  
 \_\_\_\_\_  
 George Dick, Mayor

  
 \_\_\_\_\_  
 Susan Hoffman, Deputy Mayor

  
 \_\_\_\_\_  
 Ellen McDevitt, Commissioner

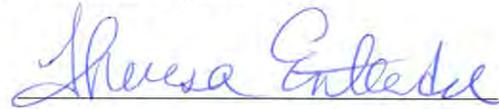
  
 Theresa Entead, RMC  
 Municipal Clerk

	Motion	Second	Aye	Nay	Abstain	Absent
Dick			✓			
Hoffman	✓		✓			
McDevitt		✓	✓			

Introduced:	February 25, 2026
Legal Notice:	February 26, 2026
Second Reading and Adoption:	March 11, 2026
Final Legal Notice:	March 12, 2026
Effective date:	March 31, 2026

CLERK CERTIFICATION

I hereby certify that the foregoing is a true copy of an Ordinance duly passed and adopted by a majority of full membership of the Board of Commissioners of the Borough of West Cape May, County of Cape May, New Jersey, at a meeting held on March 11, 2026.



Municipal Clerk

# EXHIBIT C

BOROUGH OF WEST CAPE MAY  
COUNTY OF CAPE MAY  
STATE OF NEW JERSEY

RESOLUTION #131-25

RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE BOROUGH  
OF WEST CAPE MAY APPROVING A FOURTH ROUND AFFORDABLE  
HOUSING TRUST FUND SPENDING PLAN AND REQUESTING  
PROGRAM AND COURT APPROVAL OF THE SPENDING PLAN

WHEREAS, the Borough of West Cape May (hereinafter "Borough" or "West Cape May") has an approved Development Fee Ordinance that was adopted on January 28, 2009, which established standards for the collection, maintenance, and expenditure of development fees; and

WHEREAS, the Borough's previous Affordable Housing Trust Fund Spending Plan was approved by the Court on September 23, 2024; and

WHEREAS, on March 20, 2024, Governor Murphy signed into law P.L. 2024, c.2, which amended the 1985 New Jersey Fair Housing Act (hereinafter the "Amended FHA") which governs how municipalities will comply with their affordable housing obligations for the Fourth Round (2025-2035); and

WHEREAS, the Administrative Office of the Courts issued Directive #14-24 ("AOC Directive #14-24"), governing how municipalities file their compliance documents with the Affordable Housing Dispute Resolution Program ("the Program"); and

WHEREAS, the Borough has prepared a Fourth Round Spending Plan consistent with the Amended FHA, AOC Directive #14-24, and applicable regulations, which projects anticipated revenues to the Borough's Affordable Housing Trust Fund and describes the anticipated expenditures of funds.

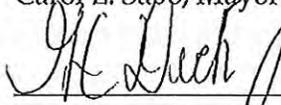
NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of the Borough of West Cape May, County of Cape May, State of New Jersey, as follows:

1. The Board of Commissioners of the Borough of West Cape May hereby approves the Fourth Round Spending Plan that is attached hereto as Exhibit A, and requests that the Program and the Court review and approve the Borough's Fourth Round Spending Plan.

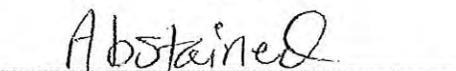
2. This Resolution shall take effect immediately upon adoption, according to law.



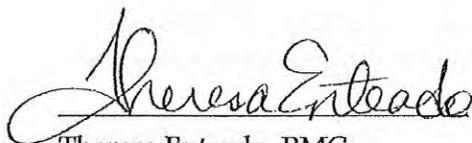
Carol E. Sabo, Mayor



George Dick, Deputy Mayor



Giacomo Antonicello, Commissioner



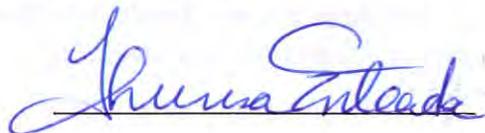
Theresa Bnteado, RMC  
Municipal Clerk

Adopted: July 23, 2025

cc: Affordable Housing Counsel  
Affordable Housing Planner  
Borough Solicitor  
Finance  
File

	Aye	Nay	Abstain	Absent
Sabo	✓			
Dick	✓			
Antonicello			✓	

I hereby certify that the foregoing is a true copy of a Resolution duly passed and adopted by a majority of full membership of the Board of Commissioners of the Borough of West Cape May, County of Cape May, New Jersey, at a meeting held on July 23, 2025.



Municipal Clerk

**Borough of West Cape May**  
**Affordable Housing Trust Fund**  
**Fourth Round Spending Plan**

July 2025

Adopted by the Borough Commissioners on July 23, 2025

Borough of West Cape May  
Cape May County, New Jersey

Prepared By:



**Heyer, Gruel & Associates**  
Community Planning Consultants  
236 Broad Street, Red Bank, NJ 07701  
(732) 741-2900

The original of this report was signed and  
sealed in accordance with N.J.S.A. 45:14A-12

A handwritten signature in black ink, appearing to read 'Susan S. Gruel', written over a horizontal line.

Susan S. Gruel, P.P. #1955

*With contributing content by Hanah Davenport, AICP #393588*

West Cape May Borough Spending Plan – July 2025

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**APPENDICES**

**Appendix A:** West Cape May Borough Development Fee Ordinance (Ordinance 437-09)

**Appendix B:** West Cape May Borough Accessory Apartment Ordinance (Ordinance 550-18)

West Cape May Borough Spending Plan – July 2025

## **INTRODUCTION**

On September 12, 2007, West Cape May Borough adopted its first Development Fee Ordinance (Ordinance 394-07) which established the Borough's Affordable Housing Trust Fund. The ordinance was subsequently amended by Ordinances 419-08 (adopted January 28, 2009), 433-09 (adopted November 11, 2009), and 437-09 (adopted November 11, 2009).

The Development Fee Ordinance establishes standards for the collection, maintenance, and expenditure of development fees consistent with: (a) COAH rules; (b) P.L.2008, c.46, Sections 8 and 32-38 (C.52:27D-329.1 et al.); and (c) the Statewide Non-Residential Development Fee Act (C. 40:55D-8.1 through 8.7). All development fees, payments in lieu of constructing affordable units on site, and any other source of income are deposited into this separate affordable housing trust fund for the sole purpose of providing affordable housing.

As of June 3, 2025, the Affordable Housing Trust Fund established by the Borough had a balance of \$594,414.14. All development fees and interest generated by the fees are deposited in this separate, interest-bearing affordable housing trust fund for the purposes of affordable housing. These funds shall be spent in accordance with N.J.A.C. 5:99, or applicable regulations, as described in the sections that follow.

West Cape May Borough Spending Plan – July 2025

**1. REVENUES FOR CERTIFICATION PERIOD**

To calculate a projection of revenue anticipated during the period of the Fourth Round, the Borough of West Cape May considered the following:

**(a) Development fees**

1. Residential and nonresidential projects which have had development fees imposed upon them at the time of preliminary or final development approvals;
2. All projects currently before the land use board for development approvals that may apply for building permits and certificates of occupancy; and
3. Future development that is likely to occur based on historical rates of development.

**(b) Projected interest**

1. Interest on the projected revenue in the municipal affordable housing trust fund at the current average interest rate.

To calculate the projection of revenue anticipated from the general development fees, previous transactions within the Affordable Housing Trust Fund dating back to 2015 were reviewed and averaged. The Trust Fund collected approximately \$103,000 annually during this time frame. All interest earned on the account shall accrue to the account to be used only for the purposes of affordable housing. Projected revenues through 2035 are outlined in Table 1 below.

The Borough projects a total of \$1,036,088.70 in development fees will be collected between July 1, 2025 and June 30, 2035. An additional \$4,662.40 in interest is projected to be earned. All interest earned on the account shall accrue to the account to be used only for the purposes of affordable housing. In conjunction with the existing Trust Fund balance of \$594,414.14, the Borough projects total Trust fund revenues and interest of \$1,635,165.24 through June 30, 2035.

<b>TABLE 1: PROJECTED REVENUES</b>				
<b>Year</b>	<b>Source of Funds</b>			
	<b>Historical Balance (as of 6/3/2025)*</b>	<b>(a) Projected Development Fees</b>	<b>(c) Projected Interest</b>	<b>Total</b>
Current Balance	\$594,414.14	--	--	\$594,414.14
2025	--	\$51,804.44	\$233.12	\$52,037.55
2026	--	\$103,608.87	\$466.24	\$104,075.11
2027	--	\$103,608.87	\$466.24	\$104,075.11
2028	--	\$103,608.87	\$466.24	\$104,075.11
2029	--	\$103,608.87	\$466.24	\$104,075.11
2030	--	\$103,608.87	\$466.24	\$104,075.11
2031	--	\$103,608.87	\$466.24	\$104,075.11
2032	--	\$103,608.87	\$466.24	\$104,075.11
2033	--	\$103,608.87	\$466.24	\$104,075.11
2034	--	\$103,608.87	\$466.24	\$104,075.11
2035	--	\$51,804.44	\$233.12	\$52,037.55
<b>TOTAL</b>	<b>\$594,414.14</b>	<b>\$1,036,088.70</b>	<b>\$4,662.40</b>	<b>\$1,635,165.24</b>

\*Balance shown on the COAH CTM System accessed on June 3, 2025. This may not reflect pending transactions.

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## **2. ADMINISTRATIVE MECHANISM TO COLLECT AND DISTRIBUTE FUNDS**

The following procedural sequence for the collection and distribution of development fee revenues shall be followed by the Borough of West Cape May:

### **(a) Collection of development fee revenues**

Collection of development fee revenues shall be consistent with the Borough’s Development Fee Ordinance for both residential and non-residential developments in accordance with applicable COAH regulations, and P.L. 2008, c.46, sections 8 (C. 52:27D-329.2) and 32-38 (C. 40:55D-8.1 through 8.7).

### **(b) Distribution of development fee revenues**

Collected development fees will be distributed for the underwriting of the programs described herein under the supervision of the Borough’s Administrative Agent and the Borough’s Municipal Housing Liaison (hereinafter “MHL”).

## **3. DESCRIPTION OF ANTICIPATED USE OF AFFORDABLE HOUSING FUNDS**

The following represent the anticipated affordable housing projects within the Borough of West Cape May that will utilize Trust Fund monies. For additional details on the below projects, see the Borough’s Fair Share Plan.

### **(a) General Activity**

#### **1. Habitat for Humanity Project on Willow Avenue (Block 21.02, Lot 27)**

As stipulated in the Borough’s 2023 Affordable Housing Agreement with Habitat for Humanity (“HFH”) and as indicated in the 2023 Spending Plan, the Borough agrees to work with HFH to support the creation of two new affordable units on the Willow Avenue property including one low-income unit and one moderate-income unit. On August 9, 2023, the Borough Planning and Zoning Board granted subdivision approval for the Willow Avenue property, creating three new lots. Two of these parcels are currently in the process of being conveyed to Habitat for Humanity for \$1.

The Borough agrees to contribute \$50,000.00 of Affordable Housing Trust Fund monies to Habitat for Humanity to assist with the construction costs of the two units. In addition, the Borough will also utilize up to \$50,000.00 from the trust fund for site preparation and subdivision costs, and for costs involving the installation of sewer and water connections to the site.

Aligned with the 2023 Spending Plan, the Borough reimbursed itself a total of \$344,292.00 from Affordable Housing Trust Fund monies in 2025 for the cost of acquiring the Willow

West Cape May Borough Spending Plan – July 2025

Avenue site. For the years of 2025-2035, the Borough will reserve an additional \$441,970.00 of Trust Fund monies to further reimburse the Borough for the land acquisition.

Including the additional funds for the land acquisition, construction costs, and site preparation/subdivision costs, in total the Borough will set aside a total of \$541,969.77 from its 2025-2035 Trust Fund to support the Habitat for Humanity project.

## **2. Accessory Apartment Program**

The Borough will utilize \$540,000.00 from the Trust Fund towards its Accessory Apartment Program. Each very-low income unit will receive a fixed subsidy of \$70,000.00, each low-income unit will receive a fixed subsidy of \$40,000.00, and each moderate-income unit will receive a fixed subsidy of \$25,000.00.

### **(b) Affordability Assistance**

As per the requirements regarding the use of funds for affordability assistance laid out in N.J.A.C. 5:99-2.5, the Borough is required to set aside a portion of all development fees collected and interest earned to provide affordability assistance to very low-, low-, and moderate-income households. The Borough will set-aside 30% for this purpose.

The calculation of available affordability assistance funds is performed by considering the lifetime of the Trust Fund. To project the funding amount that is dedicated to affordability assistance, all actual expenditures spent on new construction activities as well as any rehabilitation activities from the inception of the fund are subtracted from the sum of the actual and projected development fees and interest. That total is multiplied by 30% to determine the affordability assistance requirement. The actual affordability assistance expenditures from the inception of the fund are then subtracted from the overall 30% that the Borough wishes to set aside for affordability assistance. This final outcome is the total remaining funds that will be dedicated to affordability assistance for the period moving forward.

West Cape May Borough has collected \$1,415,072.58 in development fees and interest through June 3, 2025. The Borough projects an additional \$1,036,088.70 in development fees and \$4,662.40 in interest through 2035.

The Borough will dedicate \$497,649.56 from the affordable housing Trust Fund to render units more affordable. The affordability assistance programs that the Borough will implement through its Administrative Agent will include, but are not limited, to: security deposit assistance; down payment assistance; emergency and health/safety repairs; and creating additional very low-income units. Furthermore, the Borough will contribute \$50,000.00 of the Affordability Assistance Trust Fund

## West Cape May Borough Spending Plan – July 2025

monies to assist Habitat for Humanity in creating a financially feasible low-income family for-sale unit.

<b>TABLE 2: AFFORDABILITY ASSISTANCE</b>		
Actual Development Fees and Interest Earned through June 3, 2025		\$1,415,072.58
Projected Development fees 2025-2035	+	\$1,036,088.70
Projected Trust Fund Interest 2025-2035	+	\$4,662.40
Less Housing Activity through June 3, 2025	-	\$796,991.82
<b>Total</b>	=	\$1,658,831.86
30%	x 0.30 =	\$497,649.56
Less Affordability Assistance Expenditures through June 3, 2025	-	\$0.00
<b>Projected Minimum Affordability Assistance through June 30, 2035</b>	=	<b>\$497,649.56</b>

**(c) Administrative Expenses**

No more than 20% of revenues collected from development fees shall be expended on administration, including, but not limited to, salaries and benefits for municipal employees or consultant fees necessary to develop and implement the Borough's Fair Share Plan, Accessory Apartment Program, affirmative marketing program, and affordability assistance programs. Administrative funds may also be used for income qualification of households, monitoring the turnover of sale and rental units, and compliance with monitoring requirements. Legal or other fees related to litigation opposing affordable housing sites are not eligible uses of the Affordable Housing Trust Fund.

The calculation of allowable administrative expenses is performed by considering the lifetime of the Trust Fund. To project the funding amount that will be available for administrative costs, the sum of all development fees actually collected and all interest earned since the inception of the account will be added to the sum of all projected development fees and interest projected to be collected throughout the Fourth Round. From this amount, any Regional Contribution Agreement (RCA) expenditures made or contractually obligated from the inception of the account are subtracted. This final amount is multiplied by 20% and then any actual administrative expenditures made since the inception of the Trust Fund are subtracted out. The final outcome of this calculation, as depicted in the following table, is the total remaining funds that will be available for administrative expenses through the end of the Fourth Round.

The Borough collected \$1,415,072.58 in development fees and interest through June 3, 2025. The Borough projects an additional \$1,036,088.70 in development fees and \$4,662.40 in interest through 2035. The Borough has never taken part in an RCA. West Cape May Borough has spent \$435,618.82 on administrative expenses between the inception of the Trust Fund and June 3, 2025.

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The Borough projects that a maximum of \$55,545.92 is available from the affordable housing Trust Fund for administrative expenses for the Fourth Round. Because the actual administrative expense maximum is calculated on an ongoing basis based on actual revenues, the Borough shall be permitted to spend 20% of the actual balance at any given time on administrative fees. Money becomes available for administrative expenses as additional income is collected.

<b>TABLE 3: ADMINISTRATIVE EXPENSES</b>		
Actual Development Fees and Interest Earned through June 3, 2025		\$1,415,072.58
Projected Development Fees 2025-2035	+	\$1,036,088.70
Projected Interest 2025-2035	+	\$4,662.40
RCA Contributions	+	\$0.00
Total	=	\$2,455,823.68
20% Maximum Permitted on Administrative Expenses through June 30, 2035	x 0.20 =	\$491,164.74
Less Administrative Expenditures through June 3, 2025	-	\$435,618.82
<b>Projected Allowed Administrative Expenditures</b>	<b>=</b>	<b>\$55,545.92</b>

West Cape May Borough Spending Plan – July 2025

**4. EXPENDITURE SCHEDULE**

The funding schedule below indicates the allotment of funds between July 1, 2025 and June 30, 2035.

Program	TABLE 4: PROJECTED EXPENDITURE SCHEDULE 2025-2035											
	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	TOTAL
<b>GENERAL</b>												
Habitat for Humanity												
Construction Costs	\$10,000.00	\$20,000.00	\$20,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$50,000.00
Sewer, Water, Site Prep, & Subdivision	\$50,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$50,000.00
Land Acquisition	\$22,098.49	\$44,196.98	\$44,196.98	\$44,196.98	\$44,196.98	\$44,196.98	\$44,196.98	\$44,196.98	\$44,196.98	\$44,196.98	\$22,098.49	\$540,000.00
Accessory Apartment Program	\$27,000.00	\$54,000.00	\$54,000.00	\$54,000.00	\$54,000.00	\$54,000.00	\$54,000.00	\$54,000.00	\$54,000.00	\$54,000.00	\$27,000.00	\$540,000.00
<b>AFFORDABILITY ASSISTANCE</b>												
	\$24,882.48	\$49,764.96	\$49,764.96	\$49,764.96	\$49,764.96	\$49,764.96	\$49,764.96	\$49,764.96	\$49,764.96	\$49,764.96	\$24,882.48	\$497,649.56
<b>ADMINISTRATION</b>												
	\$7,500.00	\$15,000.00	\$4,000.00	\$3,000.00	\$2,500.00	\$2,000.00	\$1,500.00	\$1,500.00	\$6,000.00	\$6,000.00	\$6,545.92	\$55,545.92
<b>TOTAL</b>	\$81,758.26	\$163,516.52	\$163,516.52	\$163,516.52	\$163,516.52	\$163,516.52	\$163,516.52	\$163,516.52	\$163,516.52	\$163,516.52	\$81,758.26	\$1,635,165.26

West Cape May Borough Spending Plan – July 2025

**5. EXCESS OR SHORTFALL OF FUNDS**

In the event of any expected or unexpected shortfall of funds necessary to implement the Fair Share Plan, the Borough will handle the shortfall of funds through an alternative funding source to be identified by the Borough and/or by adopting a resolution with an intent to bond. In the event of excess funds, any remaining funds above the amount necessary to satisfy the municipal affordable housing obligation will be dedicated towards the Borough’s Accessory Apartment Program, additional Affordability Assistance and/or any other emergent affordable housing opportunities that may arise during the Fourth Round.

**SUMMARY**

The Borough of West Cape May intends to spend affordable housing trust fund revenues pursuant to applicable regulations, and consistent with the housing programs outlined in the Borough’s Fourth Round Housing Element and Fair Share Plan.

As of June 3, 2025, the Borough’s Affordable Housing Trust Fund had a balance of \$594,414.14. West Cape May anticipates an additional \$1,040,751.10 in revenues and interest by June 30, 2035, resulting in a projected balance of \$1,635,165.24 for the Fourth Round. The Borough will commit: \$541,969.77 for the Habitat for Humanity project (including \$50,000.00 for construction costs, \$50,000.00 for sewer, water, site prep, and subdivision costs, and \$441,969.77 for additional land acquisition costs); \$540,000.00 for the Borough’s accessory apartment program; \$497,649.56 for affordability assistance efforts; and \$55,545.92 for administrative expenses.

<b>TABLE 5: SPENDING PLAN SUMMARY</b>	
Balance as of June 3, 2025	\$594,414.14
<b>PROJECTED REVENUE THROUGH JUNE 30, 2035</b>	
Development fees	+ \$1,036,088.70
Interest	+ \$4,662.40
<b>TOTAL REVENUE + CURRENT BALANCE</b>	<b>= \$1,635,165.24</b>
<b>PROJECTED EXPENDITURES THROUGH JUNE 30, 2025</b>	
General	
Habitat for Humanity Project	
<i>Construction Costs</i>	- \$50,000.00
<i>Sewer, Water, Site Prep, and Subdivision</i>	- \$50,000.00
<i>Additional Land Acquisition Costs</i>	- \$441,969.77
Accessory Apartment Program	- \$540,000.00
Affordability Assistance	- \$497,649.56
Administration	- \$55,545.92
Excess Funds for Additional Housing Activity	= \$0.00
<b>TOTAL PROJECTED EXPENDITURES</b>	<b>= \$1,635,165.24</b>
<b>REMAINING BALANCE</b>	<b>= \$0.00</b>

West Cape May Borough Spending Plan – July 2025

**Appendix A**  
**West Cape May Borough**  
**Development Fee Ordinance**

- h. The owner shall remain fully obligated, responsible and liable for complying with the terms and restrictions of governing affordable housing units until such time as title is conveyed from the owner.  
(Ord. No. 437-09 § 19)

### 28-1.16 Appeals.

Appeals from all decisions of an Administrative Agent designated pursuant to this section shall be filed in writing with the Executive Director of COAH. (Ord. No. 437-09 § 20)

## 28-2 AFFORDABLE HOUSING DEVELOPMENT FEES.\*

\***Editor's Note:** Prior ordinance history includes portions of Ordinance No. 394-07.

### 28-2.1 Purpose.

- a. In *Holmdel Builder's Association v. Holmdel Township*, 121 N.J. 550 (1990), the New Jersey Supreme Court determined that mandatory development fees are authorized by the Fair Housing Act of 1985, N.J.S.A. 52:27d-301 et seq., and the State Constitution, subject to the rules adopted by the New Jersey Council on Affordable Housing's (COAH).
- b. Pursuant to P.L. 2008, c. 46 section 8 (C. 52:27D-329.2) and the Statewide Non-Residential Development Fee Act (C. 40:55D-8.1 through 8.7), COAH is authorized to adopt and promulgate regulations necessary for the establishment, implementation, review, monitoring and enforcement of municipal affordable housing trust funds and corresponding spending plans. Municipalities that are under the jurisdiction of the Council or court of competent jurisdiction and have an approved spending plan may retain fees collected from nonresidential development.
- c. This section establishes standards for the collection, maintenance, and expenditure of development fees pursuant to COAH's regulations and in accordance with P.L. 2008, c. 46, Sections 8 and 32-38. Fees collected pursuant to this section shall be used for the sole purpose of providing low- and moderate-income housing. This section shall be interpreted within the framework of COAH's rules on development fees, codified at N.J.A.C. 5:97-8.  
(Ord. No. 419-08 § 1)

### 28-2.2 Basic Requirements.

- a. The Borough of West Cape May shall not impose development fees on any applicant pursuant to this section until COAH or a Court has approved the Development Fee Ordinance pursuant to N.J.A.C. 5:96-5.1, except that residential fees may be collected pursuant to the previously approved fee ordinance until such time as this section takes effect, and non-residential fees shall be collected in accordance with the Statewide Non-Residential Development Fee Act, N.J.S.A. 40:55D-8.1 et seq.
- b. The Borough of West Cape May shall not spend development fees until COAH or a Court has approved a plan for spending such fees in conformance with N.J.A.C. 5:97-8.10 and N.J.A.C. 5:96-5.3.  
(Ord. No. 419-08 § 2)

### 28-2.3 Definitions.

- a. The following terms, as used in this section, shall have the following meanings:

*Affordable housing development* shall mean a development included in the Housing Element and Fair Share Plan, and includes, but is not limited to, an inclusionary development, a municipal construction project, or a one hundred (100%) percent affordable development.

*COAH* or the *Council* shall mean the New Jersey Council on Affordable Housing established under the Act which has primary jurisdiction for the administration of housing obligations in accordance with sound regional planning considerations in the State.

*Development fee* shall mean money paid by a developer for the improvement of property as permitted under N.J.A.C. 5:97-8.3.

*Developer* shall mean 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.

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

*Green building strategies* shall mean those strategies that minimize the impact of development on the environment, and enhance 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.  
(Ord. No. 419-08 § 3)

#### 28-2.4 Residential Development Fees.

a. *Imposed Fees.*

1. Within all zoning districts in the Borough of West Cape May, residential developers, except for developers of the types of development specifically exempted below, shall pay a fee of one and one-half (1.5%) percent of the equalized assessed value for residential development, provided no increased density is permitted.
2. When an increase in residential density pursuant to N.J.S.A. 40:55D-70d(5) (known as a “d” variance) has been permitted, developers shall be required to pay a development fee of six (6%) percent of the equalized assessed value (EAV) for each additional unit above that permitted by right which may be realized. However, 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 (4) units to be constructed on a site that was zoned for two (2) units, the fees could equal one and one-half (1.5%) percent of the equalized assessed value on the first two (2) units; and the specified higher percentage up to six (6%) percent of the equalized assessed value for the two (2) 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.*

1. Affordable housing developments and developments where the developer has made a payment in lieu of on-site construction of affordable units shall be exempt from development fees.
2. Developments that have received preliminary or final site plan approval prior to the adoption of a municipal development fee ordinance shall be exempt from development fees, unless the developer seeks a substantial change in the approval. Where a site plan approval does not apply, a zoning and/or building permit shall be synonymous with preliminary or final site plan approval for this purpose. The fee percentage shall be vested on the date that the building permit is issued.
3. Development fees shall be imposed and collected when an existing structure undergoes a change to a more intense use, is demolished and replaced, or is expanded, if the expansion is not otherwise exempt from the development fee requirement. The development fee shall be calculated on the increase in the equalized assessed value of the improved structure.
4. Nonprofit organizations which have received tax exempt status pursuant to Section 501(c)(3) of the Internal Revenue Code, providing current evidence of that status is submitted to the Municipal Clerk, together with a certification that services of the organization are provided at reduced rates to those who establish an inability to pay existing charges, shall be exempted from paying a development fee.
5. Federal, State, County and local governments shall be exempted from paying a development fee.
6. The owner of a residential unit who rebuilds when the owner’s existing dwelling unit was destroyed due to fire, flood or other natural disaster shall be exempt from paying a development fee.

(Ord. No. 419-08 § 4)

#### 28-2.5 Nonresidential Development Fees.

a. *Imposed Fees.*

1. Within all zoning districts, nonresidential developers, except for developers of the types of development specifically exempted, shall pay a fee equal to two and one-half (2.5%) percent of the equalized assessed value of the land and improvements, for all new nonresidential construction on an unimproved lot or lots.
2. Nonresidential developers, except for developers of the types of development specifically exempted, shall also pay a fee equal to two and one-half (2.5%) percent of the increase in equalized assessed value resulting from any additions to existing structures to be used for nonresidential purposes.
3. Development fees shall be imposed and collected when an existing structure is demolished and replaced. The development fee of two and one-half (2.5%) percent shall be calculated on the difference between the equalized assessed value of the pre-existing land and improvement and the equalized assessed value of the newly-improved structure, i.e. land and improvement, at the time final certificate of occupancy is issued. If the calculation required under this section results in a negative number, the nonresidential development fee shall be zero.

b. *Eligible Exactions, Ineligible Exactions and Exemptions for Nonresidential Development.*

1. The nonresidential portion of a mixed-use inclusionary or market rate development shall be subject to the two and one-half (2.5%) percent development fee, unless otherwise exempted below.
2. The two and one-half (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.
3. Nonresidential developments shall be exempt from payment of nonresidential development fees in accordance with the exemptions required pursuant to P.L. 2008, c.46, as specified in the Form N-RDF "State of New Jersey Non-Residential Development Certification/ Exemption" Form. Any exemption claimed by a developer shall be substantiated by that developer.
4. A developer of a nonresidential development exempted from the nonresidential development fee pursuant to P.L. 2008, c.46 shall be subject to it at such time the basis for the exemption no longer applies, and shall make the payment of the non-residential development fee, in that event, within three (3) years after that event or after the issuance of the final certificate of occupancy of the non-residential development, whichever is later.
5. If a property which was exempted from the collection of a nonresidential 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 forty-five (45) days of the termination of the property tax exemption. Unpaid nonresidential development fees under these circumstances may be enforceable by the Borough of West Cape May as a lien against the real property of the owner. (Ord. No. 419-08 § 5)

### **28-2.6 Collection Procedure.**

- 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 Borough's Construction Official responsible for the issuance of a building permit.
- b. For nonresidential 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 as per the instructions provided. The developer of a nonresidential development shall complete Form N-RDF as per the instructions provided. The Construction Official shall verify the information submitted by the nonresidential developer as per the instructions provided in the 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 local Tax Assessor of the issuance of the first building permit for a development which is subject to a development fee.
- d. Within ninety (90) days of receipt of that notice, the Municipal Tax Assessor, based on the plans filed, shall provide an estimate 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 local Assessor of any and all requests for the scheduling of a final inspection on property which is subject to a development fee.
- f. Within ten (10) business days of a request for the scheduling of a final inspection, the Municipal Assessor shall confirm or modify the previously estimated equalized assessed value of the improvements of the development; calculate the development fee, and thereafter notify the developer of the amount of the fee.
- g. Should the Borough of West Cape May fail to determine or notify the developer of the amount of the development fee within ten (10) business days of the request for final inspection, the developer may estimate the amount due and pay that estimated amount consistent with the dispute process set forth in subsection b. of section 37 of P.L.2008, c.46 (C.40:55D-8.6).
- h. Fifty (50%) percent of the development fee shall be collected at the time of issuance of the building permit. The remaining portion shall be collected at the issuance of the certificate of occupancy. The developer shall be responsible for paying the difference between the fee calculated at building permit and that determined at issuance of certificate of occupancy.
- i. *Appeal of Development Fees.*
  1. A developer may challenge residential development fees imposed by filing a challenge with the County Board of Taxation. Pending a review and determination by the Board, collected fees shall be placed in an interest bearing escrow account by the Borough of West Cape May. 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 ninety (90) days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.
  2. A developer may challenge nonresidential 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 forty-five (45) days of receipt of the challenge, collected fees shall be placed in an interest bearing escrow account by the Borough of West Cape May. 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 ninety (90) days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.

(Ord. No. 419-08 § 6)

### **28-2.7 Affordable Housing Trust Fund.**

- a. There is hereby created a separate, interest-bearing housing trust fund to be maintained by the Borough's Chief Financial Officer 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 Affordable Housing Trust Fund and shall at all times be identifiable by source and amount:
  1. Payments in lieu of on-site construction of affordable units;
  2. Developer-contributed funds to make ten (10%) percent of the affordable entrances in a townhouse or other multistory attached development accessible;
  3. Rental income from municipally-operated units;
  4. Repayments from affordable housing program loans;
  5. Recapture funds;
  6. Proceeds from the sale of affordable units; and
  7. Any other funds collected in connection with the Borough of West Cape May's affordable housing program.
- c. The Borough of West Cape May shall provide COAH with written authorization, in the form of a three-party escrow agreement between the municipality, the Borough's banking institution, and COAH to permit COAH to direct the disbursement of the funds as provided for in N.J.A.C. 5:97-8.13(b).
- d. All interest accrued in the housing trust fund shall only be used on eligible affordable housing activities approved by COAH or the Court.  
(Ord. No. 419-08 § 7)

### **28-2.8 Use of Funds.**

- a. The expenditure of all funds shall conform to a spending plan approved by COAH or the Court. Funds deposited in the housing trust fund may be used for any activity approved by COAH or the Court to address the Borough of West Cape May's 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, rehabilitation, new construction of affordable housing units and related costs, accessory apartment, market to affordable, or regional housing partnership programs, conversion of existing nonresidential 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, or any other activity as permitted pursuant to N.J.A.C. 5:97-8.7 through 8.9 and specified in the approved spending plan.
- b. Funds shall not be expended to reimburse the Borough of West Cape May for past housing activities.
- c. At least thirty (30%) percent of all development fees collected and interest earned shall be used to provide affordability assistance to low- and moderate-income households in affordable units included in the municipal Fair Share Plan. One-third (1/3) of the affordability assistance portion of development fees collected shall be used to provide affordability assistance to those households earning thirty (30%) percent or less of median income by region.
  1. 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, and assistance with emergency repairs.
  2. Affordability assistance to households earning thirty (30%) percent or less of median income may include buying down the cost of low- or moderate-income units in the municipal Fair Share Plan to make them affordable to households earning thirty (30%) percent or less of median income.
  3. Payments in lieu of constructing affordable units on site and funds from the sale of units with extinguished controls shall be exempt from the affordability assistance requirement.
- d. The Borough of West Cape May may contract with a private or public entity to administer any part of its Housing Element and Fair Share Plan, including the requirement for affordability assistance, in accordance with N.J.A.C. 5:96-18.

- e. No more than twenty (20%) percent of all revenues collected from development fees may be expended on administration, including, but not limited to, salaries and benefits for municipal employees or consultant fees necessary to develop or implement a new construction program, a Housing Element and Fair Share Plan, and/or an affirmative marketing program. In the case of a rehabilitation program, no more than twenty (20%) percent of the revenues collected from development fees shall be expended for such administrative expenses. Administrative funds may be used for income qualification of households, monitoring the turnover of sale and rental units, and compliance with COAH's monitoring requirements. Legal or other fees related to litigation opposing affordable housing sites or objecting to the Council's regulations and/or action are not eligible uses of the Affordable Housing Trust Fund.

(Ord. No. 419-08 § 8)

### **28-2.9 Monitoring.**

- a. The Borough of West Cape May shall complete and return to COAH all monitoring forms included in the annual monitoring report related to the collection of development fees from residential and nonresidential developers, payments in lieu of constructing affordable units on site, and funds from the sale of units with extinguished controls barrier free escrow funds, rental income, repayments from affordable housing program loans, and any other funds collected in connection with the Borough of West Cape May's housing program, as well as to the expenditure of revenues and implementation of the plan approved by the court. All monitoring reports shall be completed on forms designed by COAH.

(Ord. No. 419-08 § 9)

### **28-2.10 Ongoing Collection of Fees.**

- a. The ability of the Borough of West Cape May to impose, collect and expend development fees shall expire with its substantive certification or judgment of compliance unless the Borough of West Cape May has filed an adopted Housing Element and Fair Share Plan with COAH, has petitioned COAH for substantive certification, or brought a declaratory relief action in Court pursuant to N.J.S.A. 52:27D-313 and has received approval of its development fee ordinance by COAH or a court. If the Borough of West Cape May fails to renew its ability to impose and collect development fees prior to the expiration of its substantive certification or judgment of compliance, it may be subject to forfeiture of any or all funds remaining within its municipal 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). The Borough of West Cape May shall not impose a residential development fee on a development that receives preliminary or final site plan approval after the expiration of its substantive certification or its judgment of compliance, nor shall the Borough of West Cape May retroactively impose a development fee on such a development. The Borough of West Cape May shall not expend development fees after the expiration of its substantive certification or its judgment of compliance. (Ord. No. 419-08 § 10)

### **28-2.11 Resolution of Conflicting Provisions.**

Notwithstanding the provisions of any other ordinance to the contrary, the provision of this section shall not apply to the development within the Mount Laurel zoning districts containing inclusionary affordable housing units. (Ord. No. 419-08 § 11; Ord. No. 433-09 § 2)

## **CHAPTER XXVIII AFFORDABLE HOUSING**

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West Cape May Borough Spending Plan – July 2025

**Appendix B**  
**West Cape May Borough**  
**Accessory Apartment Ordinance (Ordinance 550-18)**

**BOROUGH OF WEST CAPE MAY  
COUNTY OF CAPE MAY  
STATE OF NEW JERSEY**

**ORDINANCE NO. 550-18**

**AN ORDINANCE UPDATING CHAPTER XXVII, SECTION 37.1  
OF THE BOROUGH'S CODE TO UPDATE THE  
BOROUGH'S ACCESSORY APARTMENT PROGRAM**

**WHEREAS**, pursuant to In re N.J.A.C. 5:96 and 5:97, 221 N.J. 1 (2015)(Mount Laurel IV), the Borough of West Cape May (hereinafter "West Cape May" or the "Borough") filed a Declaratory Judgment Complaint on July 2, 2015 in Superior Court, Law Division seeking, among other things, a judicial declaration that its Housing Element and Fair Share Plan, to be amended as necessary, satisfies its "fair share" of the regional need for low and moderate income housing pursuant to the "Mount Laurel doctrine" (hereinafter "DJ Action"); and

**WHEREAS**, the Borough and Fair Share Housing Center ("FSHC") entered into a Settlement Agreement on March 28, 2018 to globally settle the Borough's DJ Action (hereinafter "FSHC Settlement Agreement"), which was approved by the via an Order entered by the Court on June 15, 2018 after a properly noticed Fairness Hearing was held; and

**WHEREAS**, the Borough Planning Board adopted a Housing Element and Fair Share Plan on July 10, 2018 (hereinafter "Affordable Housing Plan"), which was endorsed by the Borough Board of Commissioners on July 25, 2018, to implement the FSHC Settlement Agreement; and

**WHEREAS**, one of the terms of the FSHC Settlement Agreement, as described in the Borough's Affordable Housing Plan, is for the Borough to update the requirements of its Accessory Apartment program, in order to address the Borough's Third Round (1999-2025) Realistic Development Potential ("RDP") and its remaining Third Round (1999-2025) "unmet need"; and

**WHEREAS**, the Borough has determined that the Accessory Apartment requirements in Chapter 27 of the Borough's Revised General Ordinances need to be updated to implement the FSHC Settlement Agreement and the Borough's Affordable Housing Plan.

**NOW, THEREFORE, BE IT ORDAINED** by the Borough Commission of the Borough of West Cape May as follows:

**Section 1.** Chapter XXVII, Section 37.1 entitled "Accessory Apartments as Affordable Housing Units" be amended and replaced, in its entirety, to read as follows:

**27-37.1 Accessory Apartments as Affordable Housing Units.**

- a. It is the specific purpose and intent of this section to allow accessory apartments on parcels of minimum size in conformance with the specific zoning district minimum lot size requirement to provide the opportunity for the development of affordable housing units to meet the needs of very low, low and moderate income residents. It is also the purpose of this limited, special-use provision to allow more efficient use of the Borough's existing stock of dwellings and the Borough's existing stock of accessory buildings, to allow existing residents the opportunity to remain in large, underutilized houses by virtue

of the added income for them from an accessory apartment, to allow accessory apartments in new attached and/or detached structures and to protect and preserve property values in the Borough of West Cape May. To help achieve these goals to promote the other objectives of this chapter and of the Master Plan, and to implement the Borough's 2018 Housing Element and Fair Share Plan, the following specific standards and limitations are set forth for such accessory apartment use. The requirements of this section do not apply to accessory apartment units created prior to the adoption of the Ordinance creating this section.

b. *Location and Number of Units.*

1. An accessory apartment may be located in the principal building or in an existing permitted accessory building, such as a barn or garage, and may include existing and/or expanded structure construction.

c. *Other Requirements.*

1. An accessory apartment unit will comply with the requirements of the Borough's Affordable Housing Ordinance.
2. All standards and requirements of the zone district, except as modified by this section, shall apply.
3. An accessory apartment unit shall comply with all applicable statutes and regulations of the State of New Jersey in addition to all local building codes.
4. **Exterior Appearance.** Principal buildings containing an accessory apartment shall have only one (1) front or principal entry to the building, and the accessory apartment shall be located, designed, constructed, and landscaped so as to preserve the appearance of the principal building to the maximum extent feasible and further to enhance and not detract from the character of the principal building and the surrounding neighborhood. An accessory apartment shall have a separate, distinct entry which does not detract from the character of the principal building.
5. **Off-Street Parking.** Off-street parking requirements shall be that two (2) off-street parking spaces must be provided for each dwelling unit on the property of the applicant. Additional parking areas shall be paved only when proven necessary and shall be screened and buffered from adjacent properties to the extent possible.
6. The appropriate utility authority must certify that there is water and sewer infrastructure with sufficient capacity to serve the proposed accessory apartment.
7. An accessory apartment unit shall, for a period of at least 10 years from the date of the issuance of a certificate of occupancy, be rented only to a very low, low or moderate income qualified household as is defined by applicable Council on Affordable Housing ("COAH") and Uniform Housing Affordability Controls ("UHAC") regulations at the time of initial occupancy of the unit.

8. The occupant must meet the established income limitations for very low, low, and moderate income households as specified by the rules and regulations of the Council on Affordable Housing (COAH) (N.J.A.C. 5:93 et seq.).
  9. The accessory apartment must meet the adaptability law at P.L. 2005, c.350, if applicable.
  10. Rents of accessory apartments shall be affordable to very low, low, and moderate income households as per COAH and UHAC regulations.
  11. There shall be a recorded deed or declaration of covenants and restrictions applied to the property upon which the accessory apartment is located running with the land and limiting its subsequent rental or sale within the affordable housing requirements stated herein.
  12. Each accessory apartment shall have living/sleeping space, cooking facilities, a kitchen sink and complete sanitary facilities for the exclusive use of its occupants.
  13. The accessory apartment shall have a separate door with direct access to the outdoors.
  14. The accessory apartment shall be affirmatively marketed to the housing region in accordance with COAH regulations and the Uniform Housing Affordability Controls at N.J.A.C. 5:80-26.1 et seq.
  15. Accessory Apartment units are exempt from bedroom mix requirements in N.J.A.C. 5:93-7.3.
  16. New freestanding accessory buildings containing accessory apartment units shall conform to the setback requirements for principal buildings in the district.
- d. *Administration.*
1. West Cape May Borough shall designate an Administrative Agent to administer the accessory apartment program.
  2. The Administrative Agent shall administer the accessory apartment program in accordance with the Borough's Affordable Housing Ordinance, which includes, but is not limited to, advertising, income qualifying prospective renters, setting rents and annual rental increases, maintaining a waiting list, distributing the subsidy, overseeing the securing of certificates of occupancy, qualifying properties, handling application forms, overseeing the filing deed restrictions, filing monitoring reports and affirmatively marketing the accessory apartment program.
  3. The Borough shall provide fixed subsidies per accessory apartment unit as follows to subsidize the creation of each accessory apartment: For very-low income units a \$70,000 fixed subsidy will be available. For low income units a \$40,000 fixed subsidy will be available. For moderate income units a \$25,000 fixed subsidy will be available. Prior to the grant of such subsidy, the property

owner shall enter into a written agreement with the Borough insuring that the subsidy shall be used to create the accessory apartment and the apartment shall meet the requirements of this subsection.

4. Applicants for the creation of an accessory apartment shall submit to the administrative agent:
  - (a) A sketch of floor plans showing the location, size and relationship of both the accessory apartment and the primary dwelling within the building or in another structure;
  - (b) Rough elevations showing the modification of any exterior building façade to which changes are proposed; and
  - (c) A site development sketch showing the location of the existing dwelling and other existing buildings; all property lines; proposed addition, if any, along with the minimum building setback lines; the required parking spaces for both dwelling units and any manmade conditions which might affect construction.
  
5. In accordance with the recommendations of the Court and the Court-appointed Master, the Borough reserves the right to revisit this subsection from time to time, and to make appropriate adjustments to enhance the effectiveness of the Borough's Accessory Apartment Program.

**Section 2.** If any article, section, subsection, sentence, clause or phrase of this Ordinance is, for any reason, held to be unconstitutional or invalid, such decision shall not affect the remaining portions of this Ordinance and they shall remain in full force and effect.

**Section 3.** In the event of any inconsistencies between the provisions of this Ordinance and any prior ordinance of the Borough of West Cape May, the provisions hereof shall be determined to govern. All other parts, portions and provisions of the Revised General Ordinances of the Borough of West Cape May are hereby ratified and confirmed, except where inconsistent with the terms hereof.

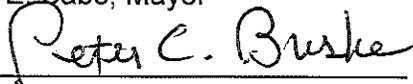
**Section 4.** The Borough Clerk is directed to give notice at least ten (10) days prior to a hearing on the adoption of this ordinance to the Cape May County Planning Board and to all other persons entitled thereto pursuant to N.J.S.A. 40:55D-15, and N.J.S.A. 40:55D-63 (if required).

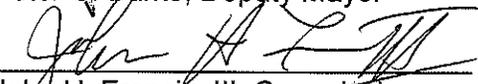
**Section 5.** After introduction, the Borough Clerk is hereby directed to submit a copy of the within Ordinance to the Planning Board of the Borough of West Cape May for its review in accordance with N.J.S.A. 40:55D-26 and N.J.S.A. 40:55D-64. The Planning Board is directed to make and transmit to the Borough Council, within 35 days after referral, a report including identification of any provisions in the proposed ordinance which are inconsistent with the master plan and recommendations concerning any inconsistencies and any other matter as the Board deems appropriate.

**Section 6.** This Ordinance shall be presented to the Mayor for her approval and signature, which approval shall be granted or denied within ten (10) days of receipt of same, pursuant to N.J.S.A. 40:69A-149.7. If the Mayor fails to return this Ordinance with either her approval or objection to same within ten (10) days after it has been presented to her, then this Ordinance shall be deemed approved.

**Section 7.** This Ordinance shall take effect immediately upon (1) adoption; (2) approval by the Mayor pursuant to N.J.S.A. 40:69A-149.7; (3) publication in accordance with the laws of the State of New Jersey; and (4) filing of the final form of adopted ordinance by the Clerk with (a) the Cape May County Planning Board pursuant to N.J.S.A. 40:55D-16, and (b) the Borough Tax Assessor as required by N.J.S.A. 40:49-2.1.

  
\_\_\_\_\_  
Carol E. Sabo, Mayor

  
\_\_\_\_\_  
Peter C. Burke, Deputy Mayor

  
\_\_\_\_\_  
John H. Francis, III, Commissioner

  
\_\_\_\_\_  
Suzanne M. Schumann, RMC  
Municipal Clerk

Introduced: September 12, 2018  
Adopted: October 10, 2018

I hereby certify that the foregoing is a true copy of an Ordinance duly passed and adopted by a majority of full membership of the Board of Commissioners of the Borough of West Cape May, County of Cape May, New Jersey, at a meeting held on October 10, 2018.

\_\_\_\_\_  
Municipal Clerk

NOTICE OF PENDING ORDINANCE

The foregoing Ordinance was introduced at a Regular Meeting of the Board of Commissioners of the Borough of West Cape May held on September 12, 2018, when it was read for the first time and then ordered to be published according to law. This Ordinance will be further considered for final passage by the Board of Commissioners of the Borough of West Cape May at a meeting to be held at Borough Hall, 732 Broadway, West Cape May, New Jersey on October 10, 2018, at 7:00pm or as soon thereafter as possible, at which time and place, all persons interested will be given an opportunity to be heard concerning such ordinance.

Suzanne M. Schumann, RMC  
Municipal Clerk

NOTICE OF FINAL ADOPTION

The above captioned Ordinance was passed on Second Reading, Public Hearing and Final Adoption by the Board of Commissioners of the Borough of West Cape May, in the County of Cape May, State of New Jersey, at a Regular Meeting of the Board of Commissioners held on October 10, 2018.

Suzanne M. Schumann, RMC  
Municipal Clerk

# EXHIBIT D

**BOROUGH OF WEST CAPE MAY  
COUNTY OF CAPE MAY  
STATE OF NEW JERSEY**

**ORDINANCE NO. 654-26**

**AN ORDINANCE REPEALING AND REPLACING IN ITS ENTIRETY CHAPTER 28 ENTITLED "AFFORDABLE HOUSING" AND REPEALING CHAPTER 27-37.3 ENTITLED "AFFORDABLE HOUSING MANDATORY SET-ASIDE" OF THE BOROUGH OF WEST CAPE MAY CODE TO ADDRESS THE REQUIREMENTS OF THE FAIR HOUSING ACT (FHA) AND THE UNIFORM HOUSING AFFORDABILITY CONTROLS (UHAC) REGARDING COMPLIANCE WITH THE BOROUGH'S AFFORDABLE HOUSING OBLIGATIONS**

**WHEREAS**, the Borough of West Cape May Planning/Zoning Board adopted a Fourth Round Housing Element and Fair Share Plan (HEFSP) on June 17, 2025 pursuant to the Municipal Land Use Law (N.J.S.A. 40:55D-1, et seq.), and the Borough Board of Commissioners endorsed the HEFSP on June 25, 2025 via resolution 120-25; and

**WHEREAS**, this Ordinance implements and incorporates the adopted and endorsed Fourth Round Housing Element and Fair Share Plan and addresses the requirements of N.J.A.C. 5:93-1, et seq., as amended and supplemented, N.J.A.C. 5:99, et seq., as amended and supplemented, N.J.A.C. 5:80-26.1, et seq. as amended and supplemented, and the New Jersey Fair Housing Act of 1985 as amended; and

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

**WHEREAS**, this Ordinance is intended to provide assurances 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 those units; and

**WHEREAS**, this Ordinance shall apply except where inconsistent with applicable law.

**NOW THEREFORE, BE IT ORDAINED** by the Board of Commissioners of the Borough of West Cape May, Cape May County, New Jersey, that Chapter 28, entitled "Affordable Housing," is hereby repealed and replaced in its entirety to include the provisions addressing West Cape May's constitutional obligation to provide for its fair share of very-low-, low-, and moderate-income housing, as directed by the Superior Court and consistent with N.J.A.C. 5:93-1, et seq., as amended and supplemented, N.J.A.C. 5:99, et seq., as amended and supplemented, N.J.A.C. 5:80-26.1, et seq., as amended and supplemented, and the New Jersey Fair Housing Act of 1985. Further, Chapter 27-37.3, entitled "Affordable Housing Mandatory Set-Aside" is hereby repealed.

**Section 1.** §28, entitled “Affordable Housing”, shall be repealed and replaced as follows:

**§28 Affordable Housing**

**§28-1 Affordable Housing Ordinance**

**§28-1.1 Introduction & Applicability**

- a. This section of the Code sets forth regulations regarding the very low-, low- and moderate-income housing units in West Cape May Borough consistent with the provisions outlined in P.L 2024, Chapter 2, including the amended Fair Housing Act (“FHA”) at N.J.S.A. 52:27D-301 et seq., as well as the Department of Community Affairs, Division of Local Planning Services (“LPS”) at N.J.A.C. 5:99 et seq., statutorily upheld existing regulations of the now-defunct Council on Affordable Housing (“COAH”) at N.J.A.C. 5:93 and 5:97, the Uniform Housing Affordability Controls (“UHAC”) at N.J.A.C. 5:80-26.1 et seq., and as reflected in the adopted municipal Fourth Round Housing Element and Fair Share Plan (“HEFSP”).
- b. This Ordinance is intended to ensure that very low-, low- and moderate-income units (“affordable units”) are created with controls on affordability over time and that very low-, low- and moderate-income households shall occupy these units pursuant to statutory requirements. This Ordinance shall apply to all inclusionary developments, individual affordable units, and 100% affordable housing developments except where inconsistent with applicable law. Low-Income Housing Tax Credit financed developments shall adhere to the provisions set forth below in item 5.c. below.
- c. The West Cape May Borough Planning/Zoning 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.
- d. This Ordinance implements and incorporates the relevant provisions of the HEFSP and addresses the requirements of P.L 2024, Chapter 2, the FHA, N.J.A.C. 5:99, NJ Supreme Court upheld COAH regulations at N.J.A.C. 5:93 and 5:97, and UHAC at N.J.A.C. 5:80-26.1, as may be amended and supplemented.
- e. **Applicability**
  1. The provisions of this Ordinance shall apply to all affordable housing developments and affordable housing units that currently exist and that are proposed to be created pursuant to the municipality’s most recently adopted HEFSP, excluding those affordable housing units that were subject to a written agreement, rezoning or approval prior to the end of the Third Round on June 30, 2025.
  2. This Ordinance shall also apply to any unanticipated future developments that will provide very low-, low- and moderate-income housing units.
  3. Projects receiving federal Low Income Housing Tax Credit financing and are proposed for credit shall comply with the low/moderate split and bedroom distribution requirements, maximum initial rents and sales prices requirements, affirmative fair marketing requirements of UHAC at N.J.A.C. 5:80-26.16 and the length of the affordability controls applicable to such projects shall be not less than a 30-year

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

### §28-1.2 Definitions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Affordable 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 units created with municipal affordable housing trust funds.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"New Jersey Affordable Housing Trust Fund" 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 a builder's remedy lawsuit for a period of time from the entry of a judgment of compliance by the Superior Court. A judgment of compliance often results in an order for repose.

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

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

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

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

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

"Prior round unit" means a housing unit that addresses a municipality's fair share obligation from a round prior to the fourth round of affordable housing obligations, including any unit that: (1) received substantive certification from COAH; (2) is part of a third-round settlement agreement or judgment of compliance approved by a court of competent jurisdiction, inclusive

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Supportive housing household" means a very low-, low- or moderate-income household certified as income eligible by an administrative agent in accordance with N.J.A.C. 5:80-26.14, in which at least one member is an individual who requires supportive services to maintain housing stability and independent living and who is part of a population identified by federal or state statute, regulation, or program guidance as eligible for supportive or special needs housing. Such populations include, but are not limited to: persons with intellectual or developmental disabilities, persons with serious mental illness, person with head injuries (as defined in Section 2 of P.L. 1977), persons with physical disabilities or chronic health conditions, persons who are homeless as defined by the U.S. Department of Housing and Urban Development at 24 C.F.R. Part 578, survivors of domestic violence, youth aging out of foster care, and other special needs populations recognized under programs administered by the U.S. Department of Housing and Urban Development, the Low-Income Housing Tax Credit

Program, the McKinney–Vento Act, or the New Jersey Department of Human Services. A supportive housing household may include family members, unrelated individuals, or live-in aides, provided that the household meets the income eligibility requirements of this subchapter, except that in the case of unrelated individuals not operating as a family unit, income eligibility shall be tested on an individual basis rather than in the aggregate; the unit is leased or sold subject to the affordability controls established herein; and the supportive services available to the household are designed to promote housing stability, independent living, and community integration. The determination of whether unrelated individuals are operating as a family unit shall be made based on the applicant’s self-identification of household members on the affordable housing application.

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

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

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

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

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

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

“Unit type” means type of dwelling unit with various building standards including but not limited to single-family detached, single-family attached/townhouse, stacked townhouse (attached building containing 2 units each with separate entrances), duplex (detached building containing 2 units each with separate entrances), triplex (3 units each with separate entrance),

quadplex (4 units each with separate entrance), multifamily / flat (2 or more units with a shared entrance). Inclusion of a garage, or not, shall not define the unit type.

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

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

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

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

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

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

### **§28-1.3 Monitoring and Reporting Requirements**

- a. 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:
  1. 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>.
  2. 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.
  3. 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.

### **§28-1.4 Municipality-wide Mandatory Set-Aside**

- a. A development, other than single-family detached, providing a minimum of five new for-sale of rental 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%.

- b. Any affordable units generated through such mandatory set-aside shall be subject to all other provisions of this ordinance.
- c. All such affordable units shall be governed by this ordinance, the controls on affordability, including bedroom distribution, and affirmatively marketed to the housing region in conformance with UHAC at N.J.A.C. 5:80-26.1 et seq., any successor regulation, and all other applicable laws.
- d. No subdivision shall be permitted or approved for the purpose of avoiding compliance with this requirement. Developers cannot, for example, subdivide a project into two lots and then make each of them a number of units just below the threshold.
- e. The mandatory set-aside requirements of this section do not give 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.
- f. This municipality-wide mandatory set-aside requirement does not apply to any sites or specific zones otherwise identified in the HEFSP, for which density and set-aside requirements shall be governed by the specific standards as set forth therein.
- g. In the event that the inclusionary set-aside of 20% of the total number of residential units does not result in a full integer, the developer shall address the fractional unit as follows:
  1. If the set-aside includes a fractional unit equal to 0.49 or less, the developer may round the set-aside downward and construct the lesser whole number of affordable units and shall also contribute the fractional subsidy payment ("fractional subsidy payment") to be made to the municipality and deposited in the municipal Affordable Housing Trust Fund. The fractional subsidy payment amount shall be calculated as the fractional unit multiplied by the base subsidy payment amount currently established by the municipality as the average subsidy reflected in financial pro formas for 100% affordable housing or subsidized developments in the municipality or region on file with the municipality. For example, if seven total units are developed at an inclusionary site, a 20% set-aside would require 1.4 affordable units. Per the requirement above:

The developer shall round the set-aside downward so as to construct only one affordable unit AND shall pay into the municipal affordable housing trust fund a fractional subsidy payment equal to the dollar amount established by the municipality multiplied by 0.4.

**§28-1.5 New Construction Programs (per N.J.A.C. 5:93 as may be updated per various sections in N.J.A.C. 5:97 and N.J.S.A. 52:27D-301 et seq.)**

- a. 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.

- b. 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

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

1. 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.

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

- i. Restricted units must use the same building materials and architectural design elements (for example, plumbing, insulation, or siding) as market-rate units of the same unit type (for example, flat or townhome) within the same development, except that restricted units and market-rate units may use different interior finishes. This shall apply to prior round units.
- ii. Restricted units and market-rate units within the same affordable development must be sited such that restricted units are not concentrated in less desirable locations.
- iii. Restricted units may not be physically clustered so as to segregate restricted and market-rate units within the same development or within the same building, but must be interspersed throughout the development, except that age-restricted and supportive housing units may be physically clustered if the clustering facilitates the provision of on-site medical services or on-site social services. Prior round affordable units shall be integrated with market rate units to the extent feasible.
- iv. Residents of restricted units must be offered the same 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.
3. Design of developments containing for-sale units, including those with a mix of rental and for-sale units. Restricted rental units shall meet the requirements of section b above. Restricted sale units shall comply with the below:
- i. Restricted units must use the same building standards as market-rate units of the same unit type (for example, flat, townhome, or single-family home), except that restricted units and market-rate units may use different interior finishes. This shall apply to prior round units.
  - ii. Restricted units may be clustered, provided 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.

d. Utilities.

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

e. Low/moderate split and bedroom distribution.

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

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

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

#### **§28-1.6 Affordable Housing Programs/Compliance Techniques**

- a. 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.
- b. Rehabilitation Programs (per N.J.A.C. 5:93-5.2 with updated provisions herein per N.J.A.C. 5:97-6.2 related to credit towards a municipal present need obligation).
  - 1. The rehabilitation program shall be designed to renovate deficient housing units occupied or intended to be occupied by very low-, low- and moderate-income households such that, after rehabilitation, these units will comply with the New Jersey State Housing Code pursuant to N.J.A.C. 5:28-1.1 et seq or the Rehabilitation Subcode, N.J.A.C. 5:23-6 to the extent applicable.
  - 2. Both ownership and rental units shall be eligible for rehabilitation funds.
  - 3. All rehabilitated units shall remain affordable to very low-, low- and moderate-income households for a period of 10 years (the control period). For owner-occupied units, the

control period shall be enforced with a mortgage and note and for renter-occupied units the control period will be enforced with a deed restriction.

4. The municipality shall dedicate a minimum average hard cost of \$10,000 for each unit to be rehabilitated through this program and in addition shall dedicate associated rehabilitation program soft costs such as case management, inspection fees and work write-ups.
5. The municipality shall designate, subject to the approval of the Department, one or more Administrative Agents to administer the rehabilitation program in accordance with P.L. 2024, Chapter 2. The Administrative Agent(s) shall provide rehabilitation manuals for ownership and rental rehabilitation programs. Manuals shall be adopted by resolution of the governing body. Both rehabilitation manuals shall be available for public inspection in the Office of the Municipal Clerk and on the municipal affordable housing web page.
6. Households determined to be very low-, low-, or moderate-income may participate in a rehabilitation program. Rehabilitated units shall be exempt from the very low-income requirements, low/mod split, and bedroom distribution requirements of UHAC, but shall be administered in accordance with the following:
  - i. If a unit is vacant at the time of rehabilitation, or if a rehabilitated unit becomes vacant and is re-rented before the expiration of the affordability controls, the deed restriction shall require that the unit be rented to a low- or moderate-income household at an affordable rent.
  - ii. If a rental unit is occupied by a tenant at the time rehabilitation is completed, the rent charged after rehabilitation shall not exceed the lesser of the tenant's current rent or the maximum rent permitted under UHAC.
  - iii. Rents in rehabilitated units may increase annually based on the standards in UHAC.
  - iv. At the time of application, applicant households and/or tenant households shall be subject to income eligibility determinations in accordance with UHAC.
- c. Accessory Apartment program (per N.J.A.C. 5:93-5.9 as may be updated per various sections in N.J.A.C. 5:97-6.8).
  1. An accessory apartment program shall provide very-low, low-, and moderate-income units.
  2. Per N.J.A.C. 5:97-6.8(c)1, at the time of initial occupancy of the unit and for at least ten years thereafter, the accessory apartment shall be rented only to income eligible households consistent with the income category and rent structure of the unit.
  3. Rents of accessory apartments shall be established using the same methodology of affordable rental units discussed herein.
  4. There shall be a recorded deed or declaration of covenants and restrictions applied to the property upon which the accessory apartment is located running with the land and limiting its subsequent rental for the duration of the control period.
  5. The municipal accessory apartment program shall not restrict the number of bedrooms in any accessory apartment.