

SURENIAN, EDWARDS, BUZAK & NOLAN LLC

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

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

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

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

Also admitted:

◀ CA ▼ DC ▲ PA ■ MA ► NY

A Limited Liability Company
Counselors at Law
311 Broadway, Suite A
Point Pleasant Beach, New Jersey 08742
Phone: (732) 612-3100
Fax: (732) 612-3101
www.Surenian.com

—
North Jersey location:
150 River Road, Suite N-4
Montville, NJ 07045
Phone: (973) 335-0600
Fax: (973) 335-1145

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

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

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

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

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

March 11, 2026

Via eCourts

Honorable Linda Grasso Jones, J.S.C.
Monmouth County Courthouse
71 Monument Park
Freehold, NJ 07728

RE: In the Matter of the Application of the Borough of Avon-By-The-Sea, Docket No. MON-L-376-25

Dear Judge Jones:

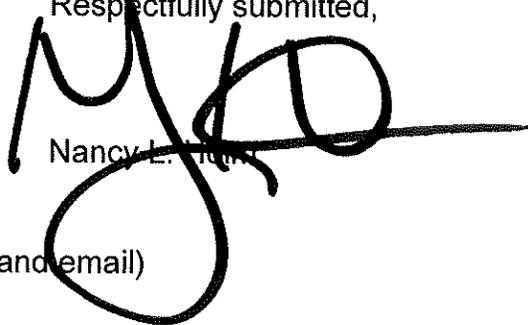
As the Court is aware, this office represents the Borough of Avon-By-The-Sea with regard to affordable housing matters. In accordance with the Consent Order filed in this matter between the Borough and Fair Share Housing Center ("FSHC"), and in accordance with the amended Fair Housing Act, N.J.S.A. 52:27D-304.1(f)(2)(c), please find the following documentation to be submitted in furtherance of the Borough's application for a Certificate of Compliance:

1. Ordinance No. 3-2026, Repealing and Replacing the Borough's Affordable Housing Ordinance, which includes the amended Mandatory Set-Aside Ordinance, as well as the Planning Board consistency resolution;
2. Ordinance No. 4-2026, Repealing and Replacing the Borough's Development Fee Ordinance, as well as the Planning Board's consistency resolution;
3. Resolution No. 71-2026, Adopting an Affordability Assistance Manual, with manual attached;
4. Resolution No. 70-2026, Adopting an Affirmative Marketing Plan; and
5. Resolution No. 72-2026 Adopting an Accessory Apartment Manual, with manual attached.

The Borough has worked diligently to implement its Fourth Round HEFSP and all of the corresponding ordinances and administrative documents. Should any documentation need to be corrected or amended, the City will do so timely, in accordance with the instructions of the Court and in collaboration with FSHC.

The Borough extends its sincere appreciation to FSHC for working together with Avon-By-The-Sea to come to an agreement in an extremely short timeframe, and looks forward to finalizing its Fourth Round compliance with the Court in the coming months.

Respectfully submitted,



Nancy L. Nolan

cc: Ariela Rutbeck-Goldman, Esq. (via eCourts and email)
Borough of Avon-By-The-Sea (via email)
Barry Cooke, Esq. (via email)
Christine Bell, PP, AICP (via email)

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Ordinance No. 3-2026

AN ORDINANCE REPEALING AND REPLACING CHAPTER 114 ENTITLED “AFFORDABLE HOUSING” OF THE BOROUGH CODE.

WHEREAS, Chapter 114 (Affordable Housing) of the General Ordinances of the Borough of Avon-by-the-Sea has to be repealed and replaced in its entirety to comply with the Fair Housing Act, N.J.S.A. 52:27D-301, et. seq. (“FHA”), as was amended in 2024, the newly adopted Uniform Housing Affordability Controls (“UHAC”) regulations, N.J.A.C. 5:80-26.1 et seq., and newly adopted N.J.A.C. 5:99-1 et seq; 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

BE IT ORDAINED by the Mayor and Council of the Borough of Avon-by-the-Sea, in the County of Monmouth and State of New Jersey that Chapter 114 (Affordable Housing) of the General Ordinances of the Borough of Avon-by-the-Sea is hereby repealed and replaced as follows:

Section 1. Chapter 114, Affordable Housing, of the General Ordinances of the Borough of Avon-by-the-Sea, shall be repealed and replaced as follows:

Article I General Provisions

§114-1 Introduction & Applicability.

- A. This section of the Code sets forth regulations regarding the very low-, low- and moderate-income housing units in Borough of Avon-by-the-Sea 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 E.3. below.

- C. The Borough of Avon-by-the-Sea Planning 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.

§114-2 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 very low-, 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, as defined by N.J.S.A. 34:1B-21.24, that is affordable to very low-, low- or moderate-income households and is reserved for occupancy by a supportive housing household. Supportive housing units are also referred to as permanent supportive housing units.

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

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

“UHAC” means the Uniform Housing Affordability Controls 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.

§114-3 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.

§114-4 Municipality-wide Mandatory Set-Aside.

- A. A development, other than single-family detached, providing a minimum of five new housing units created through any municipal rezoning or Zoning Board action, use or density variance, redevelopment plan, or rehabilitation plan that provides for densities at or above six units per acre, is required to include an affordable housing set-aside of 20%.
- 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 choose one of two options for addressing the fractional unit:
 1. The developer may round the set-aside upward to construct a whole additional affordable unit; or
 2. 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 requirements above:

The developer shall round up the 0.4 unit to one whole affordable unit so as to construct a total of two (2) affordable housing units; or 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.

§114-5. New Construction.

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

- 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.
- 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.
 - iv. At least 30% of all low- and moderate-income units, rounded up
 - v. At least 20% of all low- and moderate-income units, rounded up
 - 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 2.i. through 2.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.

§114-6 Affordable Housing Programs.

- 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). The Borough currently participates in the Monmouth County Home Improvement Program to satisfy its 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 low- and moderate-income units or may be limited to only low- or only moderate-income units.
 2. Accessory apartments are permitted in the following zones: GC – General Commercial District (§ 113-12 GC – General Commercial District) and the M-O/R-Mixed

- Office/Residential District (§ 113-13 M-O/R-Mixed Office/Residential District) where all design and zoning standards for accessory apartments are provided.
3. 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.
 4. Rents of accessory apartments shall be established using the same methodology of affordable rental units discussed herein.
 5. 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.
 6. The municipal accessory apartment program shall not restrict the number of bedrooms in any accessory apartment.
 7. Per N.J.A.C. 5:97-6.8(b)2, the municipality shall provide a minimum of \$25,000 per unit to subsidize the creation of each low-income accessory apartment or \$20,000 per unit to subsidize the creation of each moderate-income accessory apartment. Subsidy may be used to fund actual construction costs and/or to provide compensation for reduced rental rates.
- D. Extension of Controls Program (for ownership units per N.J.A.C. 5:97-6.14 and UHAC at N.J.A.C. 5:80-26.6(h) through (k) and (m); and for rental units per N.J.A.C. 5:97-6.14 and N.J.A.C. 5:80-26.12(h) through (k)).
1. An extension of affordability controls program is established to maintain and extend the affordability of deed restricted units scheduled to come out of their affordability control period, subject to N.J.A.C. 5:97-6.14 and UHAC, including the following:
 - i. The affordable unit meets the criteria for prior cycle (April 1, 1980 - December 15, 1986) or post December 15, 1986 credits set forth in N.J.A.C. 5:97.
 - ii. The affordability controls for the unit are scheduled to expire in the current round; or in the next round of housing obligations if the municipal election to extend controls is made no earlier than one year before the end of the current round;
 - iii. The municipality shall obtain a continuing certificate of occupancy or a certified statement from the municipal building inspector stating that the restricted unit meets all code standards.
 - iv. If a unit requires repair and/or rehabilitation work in order to receive a continuing certificate of occupancy or certified statement from the municipal building inspector, the municipality shall fund and complete the work.
 - v. The municipality shall adhere to the process for extending controls pursuant to UHAC for extending ownership units and rental units, either inclusionary or 100% affordable developments.
 - vi. The deed restriction for the extended control period shall be filed with the County Clerk.
- E. Assisted Living Residence (per N.J.A.C. 5:97-6.11).

1. An assisted living residence is a facility licensed by the New Jersey Department of Health to provide apartment-style housing and congregate dining and to assure that assisted living services are available. All or a designated number of apartments in the facility shall be restricted to low- and moderate-income households.
 2. The unit of credit shall be the apartment. However, a two-bedroom apartment shall be eligible for two units of credit if it is restricted to two unrelated individuals.
 3. A recipient of a Medicaid waiver shall automatically qualify as a low- or moderate-income household.
 4. Assisted living units are considered age-restricted housing in a HEFSP and shall be included with the maximum number of units that may be age-restricted.
 5. Low- and moderate-income residents cannot be charged any upfront fees.
 6. The units shall comply with UHAC with the following exceptions:
 - i. Affirmative marketing (N.J.A.C. 5:80-26.16); provided that the units are restricted to recipients of Medicaid waivers;
 - ii. The deed restriction may be on the facility, rather than individual apartments or rooms;
 - iii. Low/moderate income split and affordability average (N.J.A.C. 5:80-26.4); only if all of the affordable units are affordable to households at a maximum of 60 percent of median income; and
 7. Tenant income eligibility (N.J.A.C. 5:80-26.14); up to 80 percent of an applicant's gross income may be used for rent, food and services based on occupancy type and the affordable unit must receive the same basic services as required by the Agency's underwriting guidelines and financing policies. The cost of non-housing related services shall not exceed one and two-thirds times the rent established for each unit.
- F. Supportive Housing and Group Homes (per N.J.A.C. 5:97-6.10).
1. The following provisions shall apply to group homes, residential health care facilities, and supportive shared living housing:
 - i. Units are 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).
 - ii. Units 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.

- iii. The unit of credit shall be the bedroom. However, the unit of credit shall be the unit if occupied by a single person or household.
- iv. Housing that is age-restricted shall be included with the maximum number of units that may be age-restricted pursuant to the Act.
- v. Occupancy shall not be restricted to youth under 18 years of age.
- vi. In affordable developments with 20 or more restricted units that are supportive housing, two-bedroom units must compose at least five percent of those restricted units.
- vii. The bedrooms and/or units shall comply with UHAC with the following exceptions:
 - (a) Affirmative marketing; however, group homes, residential health care facilities, permanent supportive housing, and supportive shared living housing shall be affirmatively marketed to broadest possible population of qualified individuals with special needs in accordance with a plan approved by the sponsoring program;
 - (b) Affordability average and bedroom distribution (N.J.A.C. 5:80-26.4).
- viii. With the exception of units established with capital funding through a 20-year operating contract with the Department of Human Services, Division of Developmental Disabilities, group homes, residential health care facilities, supportive shared living housing and permanent supportive housing shall have the appropriate controls on affordability in accordance with the Act. In the event that a supportive housing provider is unable to record or execute a long-term deed restriction, the units shall be subject to annual recertification by the Municipal Housing Liaison to confirm continued occupancy and compliance with this Section.
- ix. Objective standards shall be applied in the selection of tenants for supportive housing units and shall be designed to ensure that individuals are not excluded in an arbitrary or capricious manner.
- x. The following documentation shall be submitted by the sponsor to the municipality prior to marketing the completed units or facility:
 - (a) An Affirmative Marketing Plan in accordance with §114-9 above; and
 - (b) If applicable, proof that the supportive and/or special needs housing is regulated by the New Jersey Department of Health and Senior Services, the New Jersey Department of Human Services or another State agency in accordance with the requirements of this section, which includes validation of the number of bedrooms or units in which low- or moderate-income occupants reside.
- xi. The sponsor/owner shall complete annual monitoring as directed by the MHL.

§114-7 Regional Income Limits.

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

- B. Regional income limits are based on regional median income, which is established by a regional weighted average of the “median family incomes” published by HUD. The procedure for computing the regional median income is detailed in N.J.A.C. 5:80-26.3.
- C. Updated regional income limits are effective as of the effective date of the regional Section 8 income limits for the year, as published by HUD, or 45 days after HUD publishes the regional Section 8 income limits for the year, whichever comes later. The new income limits may not be less than those of the previous year.

§114-8 Maximum Initial Rents And Sales Prices.

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

3. A two-bedroom unit shall be affordable to a three-person household;
 4. A three-bedroom unit shall be affordable to a four and one-half person household; and
 5. A four-bedroom unit shall be affordable to a six-person household.
- H. In determining the initial rents and sales prices for compliance with the affordability average requirements for restricted units in assisted living facilities and age-restricted and special needs and supportive housing developments, the following standards shall be met:
1. A studio or efficiency unit shall be affordable to a one-person household;
 2. A one-bedroom unit shall be affordable to a one and one-half person household; and
 3. A two-bedroom unit shall be affordable to a two-person household or to two one-person households. Where pricing is based on two one-person households, the developer shall provide a list of units so priced to the Municipal Housing Liaison and the Administrative Agent.
- I. The initial purchase price for all restricted ownership units shall be calculated so that the monthly carrying cost of the unit, including principal and interest (based on a mortgage loan equal to 95 percent of the purchase price and the FreddieMac 30-Year Fixed Rate-Mortgage rate of interest), property taxes, homeowner and private mortgage insurance and condominium or homeowner association fees do not exceed 30 percent of the eligible monthly income of the appropriate size household as determined pursuant to N.J.A.C. 5:80-26.7, as may be amended and supplemented; provided, however, that the price shall be subject to the affordability average requirement of N.J.A.C. 5:80-26.4, as may be amended and supplemented.
- J. The initial rent for a restricted rental unit shall be calculated so that the total monthly housing expense, including an allowance for tenant-paid utilities, does not exceed 30 percent of the gross monthly income of a household of the appropriate size whose income is targeted to the applicable percentage of median income for the unit, as determined pursuant to N.J.A.C. 5:80-26.3, as may be amended and supplemented. The rent shall also comply with the affordability average requirement of N.J.A.C. 5:80-26.4, as may be amended and supplemented. The initial rent for a restricted rental unit shall be calculated so the eligible monthly housing expenses/income, including an allowance for tenant-paid utilities does not exceed 30 percent of gross income of and the appropriate household size as determined pursuant to N.J.A.C. 5:80-26.3, as may be amended and supplemented.
- K. At the anniversary date of the tenancy of the certified household occupying a restricted rental unit, following proper notice provided to the occupant household pursuant to N.J.S.A. 2A:18-61.1.f, the rent may be increased to an amount commensurate with the annual percentage increase in the Consumer Price Index for All Urban Consumers (CPI-U), specifically U.S. Bureau of Labor Statistics Series CUUR0100SAH, titled "Housing in Northeast urban, all urban consumers, not seasonally adjusted." Rent increases for units constructed pursuant to Low-Income Housing Tax Credit regulations shall be indexed pursuant to the regulations governing Low-Income Housing Tax Credits.

§114-9 Affirmative Marketing.

- A. The municipality shall adopt, by resolution, an Affirmative Marketing Plan, subject to approval of the Superior Court, compliant with N.J.A.C. 5:80-26.16, as may be amended and supplemented.
- B. The Affirmative Marketing Plan is a regional marketing strategy designed to attract buyers and/or renters of all majority and minority groups, regardless of race, creed, color, national origin, ancestry, marital or familial status, gender, affectional or sexual orientation, disability, age, or number of children, to housing units which are being marketed by a developer, sponsor or owner of affordable housing. The Affirmative Marketing Plan is intended to target those potentially eligible persons who are least likely to apply for affordable units in that region. It is a continuing program that directs all marketing activities toward Housing Region 4 and is required to be followed throughout the period of deed restriction.
- C. The Affirmative Marketing Plan provides the following preferences, provided that units that remain unoccupied after these preferences are exhausted may be offered to households without regard to these preferences.
 - 1. Where the municipality has entered into an agreement with a developer or residential development owner to provide a preference for very-low-, low-, and moderate-income veterans who served in time of war or other emergency, pursuant to N.J.S.A. 52:27D-311.j, there shall be a preference for veterans for up to 50 percent of the restricted rental units in a particular project.
 - 2. There shall be a regional preference for all households that live and/or work in Housing Region 4 comprising Mercer, Monmouth, and Ocean Counties.
 - 3. Subordinate to the regional preference, there shall be a preference for households that live and/or work in New Jersey.
 - 4. With respect to existing restricted units undergoing approved rehabilitation for the purpose of preservation or to restricted units newly created to replace existing restricted units undergoing demolition, a preference for the very-low-, low-, and moderate-income households that are displaced by the rehabilitation or demolition and replacement.
- D. The municipality has the ultimate responsibility for adopting the Affirmative Marketing Plan and for the proper administration of the Affirmative Marketing Process, including the marketing of initial sales and rentals and resales and re-rentals. The Administrative Agent designated by the municipality shall implement the Affirmative Marketing Process to ensure the Affirmative Marketing of all affordable units, with the exception of affordable programs that are exempt from Affirmative Marketing as noted herein.
- E. The Affirmative Marketing Process shall describe the media to be used in advertising and publicizing the availability of housing. In implementing the Affirmative Marketing Process, the Administrative Agent shall consider the use of language translations where appropriate.
- F. Applications for affordable housing or notices thereof, if offered online, shall be available in several locations, including, at a minimum, the County Administration Building and/or the County Library for each county within the housing region; the municipal administration building and municipal library in the municipality in which the units are located; and the

developer's rental or sales office. The developer shall mail applications to prospective applicants upon request and shall make applications available through a secure online website address.

- a. In addition to other Affirmative Marketing strategies, the Administrative Agent shall provide specific notice of the availability of affordable housing units on the New Jersey Housing Resource Center website. Any other entities, including developers or persons or companies retained to implement the Affirmative Marketing Process, shall comply with this paragraph. The Affirmative Marketing Plan shall require the notification to Fair Share Housing Center; New Jersey State Conference of the NAACP; Latino Action Network; STEPS, Ocean, Inc.; the Greater Red Bank, Asbury Park/Neptune, Bayshore, Greater Freehold, Greater Long Branch, and Trenton branches of the NAACP; and the Supportive Housing Association.
- G. In implementing the Affirmative Marketing Process, the Administrative Agent shall provide a list of counseling services to low- and moderate-income applicants on subjects such as budgeting, credit issues, mortgage qualification, rental lease requirements, and landlord/tenant law.
- H. The Affirmative Marketing Process for available affordable units shall begin at least four months (120 days) prior to the expected date of occupancy.
- I. The cost to affirmatively market the affordable units shall be the responsibility of the developer, sponsor or owner, with the exception of Affirmative Marketing for resales.

§114-10 Selection of Occupants of Affordable Housing Units.

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

§114-11 Occupancy Standards.

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

§114-12 Control Periods for Restricted Ownership Units and Enforcement Mechanisms.

- A. Control periods for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.6, as may be amended and supplemented, and each restricted ownership unit shall

remain subject to the controls on affordability for a period of at least 30 years subject to the requirements of N.J.A.C. 5:80-26.6, as may be amended and supplemented.

- B. Rehabilitated housing units that are improved to code standards shall be subject to affordability controls for a period of not less than 10 years (crediting towards present need only).
- C. The affordability control period for a restricted ownership unit shall commence on the date the initial certified household takes title to the unit. The date of commencement shall be identified in the deed restriction.
- D. If existing affordability controls are being extended, the extended control period for a restricted ownership unit commences on the effective date of the extension, which is the end of the original control period.
- E. After the end of any control period, the restricted ownership unit remains subject to the affordability controls set forth in this subchapter until the owner gives notice of their intent to make an exit sale, at which point:
 - 1. If the municipality exercises the right to extend the affordability controls on the unit, no exit sale occurs and a new control period commences; or
 - 2. If the municipality does not exercise the right to extend the affordability controls on the unit, the affordability controls terminate following the exit sale.
- F. Prior to the issuance of any building permit for the construction/rehabilitation of restricted ownership units, the developer/owner and the municipality shall record a preliminary instrument provided by the Administrative Agent.
- G. Prior to the issuance of the initial certificate of occupancy for a restricted ownership unit and upon each successive sale during the period of restricted ownership, the Administrative Agent shall determine the restricted price for the unit and shall also determine the nonrestricted, fair market value of the unit based on either an appraisal or the unit's equalized assessed value without the restrictions in place.
- H. At the time of the initial sale of the unit and upon each successive price-restricted sale, the initial purchaser shall execute and deliver to the Administrative Agent a recapture note obliging the purchaser, as well as the purchaser's heirs, successors, and assigns, to repay, upon the first non-exempt sale after the unit's release from the restrictions set forth in this Ordinance, an amount equal to the difference between the unit's non-restricted fair market value and its restricted price, and the recapture note shall be secured by a recapture lien evidenced by a duly recorded mortgage on the unit.
- I. The affordability controls set forth in this Ordinance shall remain in effect despite the entry and enforcement of any judgment of foreclosure with respect to price-restricted ownership units.

§114-13 Price Restrictions for Restricted Ownership Units and Resale Prices.

- A. Price restrictions for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.7, as may be amended and supplemented, including:
 - 1. The initial purchase price and affordability percentage for a restricted ownership unit shall be set by the Administrative Agent.

2. The Administrative Agent shall approve all resale prices, in writing and in advance of the resale, to assure compliance with the standards set forth in N.J.A.C 5:80-26.7.
 - i. If the resale occurs prior to the one-year anniversary of the date on which title to the unit was transferred to a certified household, the maximum resale price for a is the most recent non-exempt purchase price.
 - ii. If the resale occurs on or after such anniversary date, the maximum resale price is the most recent non-exempt purchase price increased to reflect the cumulative annual percentage increases to the regional median income, effective as of the same date as the regional median income calculated pursuant to N.J.A.C. 5:80-26.3
 3. The owners of restricted ownership units may apply to the Administrative Agent to increase the maximum sales price for the unit on the basis of anticipated capital improvements. Eligible capital improvements shall be:
 - i. those that render the unit suitable for a larger household or the addition of a bathroom.
 - ii. The maximum resale price may be further increased by an amount up to the cumulative dollar value of approved capital improvements made after the last non-exempt sale for improvements and/or upgrades to the unit, excluding capital improvements paid for by the entity favored on the recapture note and recapture lien described at N.J.A.C. 5:80-26.6(d);
 4. No increase for capital improvements is permitted if the maximum resale price prior to adjusting for capital improvements already exceeds whatever initial purchase price the unit would have if it were being offered for purchase for the first time at the initial affordability percentage. All adjustments for capital improvements are subject to 10-year, straight-line depreciation.
- B. Upon the resale of a restricted ownership unit, all items of property that are permanently affixed to the unit or were included when the unit was initially restricted (for example, refrigerator, range, washer, dryer, dishwasher, wall-to-wall carpeting) shall be included in the maximum allowable resale price. Other items may be sold to the purchaser at a reasonable price that has been approved by the Administrative Agent at the time of the signing of the agreement to purchase but shall be separate and apart from any contract of sale for the underlying real estate. The purchase of central air conditioning installed subsequent to the initial sale of the unit and not included in the base price may be made a condition of the unit resale provided the price of the air conditioning equipment, which shall be subject to 10-year, straight-line depreciation, has been approved by the Administrative Agent. Unless otherwise approved by the Administrative Agent, the purchase of any property other than central air conditioning shall not be made a condition of the unit resale. The seller and the purchaser must personally certify at the time of closing that no unapproved transfer of funds for the purpose of selling and receiving property has taken place at the time of or as a condition of resale.

§114-14 Buyer Income Eligibility.

- A. Buyer income eligibility for restricted ownership units shall be established pursuant to N.J.A.C. 5:80-26.17, as may be amended and supplemented, such that very low-income ownership units shall be reserved for occupancy by households with a gross household

income less than or equal to 30% of median income, low-income ownership units shall be reserved for occupancy by households with a gross household income less than or equal to 50% of median income and moderate-income ownership units shall be reserved for occupancy by households with a gross household income less than 80% of median income.

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

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

§114-15 Limitations on Indebtedness Secured by Ownership Unit; Subordination.

- A. Prior to incurring any indebtedness to be secured by a restricted ownership unit, the owner shall apply to the Administrative Agent for a determination in writing that the proposed indebtedness complies with the provisions of this Section, and the Administrative Agent shall issue such determination prior to the owner incurring such indebtedness.
- B. With the exception of original purchase money mortgages, neither an owner nor a lender shall at any time during the control period cause or permit the total indebtedness secured by a restricted ownership unit to exceed 95% of the maximum allowable resale price of that unit, as such price is determined by the Administrative Agent in accordance with N.J.A.C. 5:80-26.7(c).

§114-16 Control Periods for Restricted Rental Units.

- A. Control periods for units that meet the definition of prior round units shall be pursuant to the 2001 UHAC rules originally adopted October 1, 2001, 33 N.J.R. 3432, and amended December 20, 2004, 36 N.J.R. 5713 and shall remain subject to the requirements of this ordinance for a period of at least 30 years as applicable unless otherwise indicated.
- B. Other than for prior round units, control periods for restricted rental units shall be in accordance with N.J.A.C. 5:80-26.12, as may be amended and supplemented, and each restricted rental unit shall remain subject to the requirements of this Ordinance for a period of at least 40 years. Restricted rental units created as part of developments receiving 9% Low-Income Housing Tax Credits must comply with a control period of not less than a 30-year compliance period plus a 15-year extended use period for a total of 45 years.
- C. The affordability control period for a restricted rental unit shall commence on the first date that a unit is issued a certificate of occupancy following the execution of the deed restriction or, if affordability controls are being extended, on the effective date of the extension, which is the end of the original control period.
- D. Rehabilitated renter-occupied housing units that are improved to code standards shall be subject to affordability controls for a period of not less than 10 years.
- E. Prior to the issuance of any building permit for the construction/rehabilitation of restricted rental units, the developer/owner and the municipality shall record a preliminary instrument provided by the Administrative Agent.
- F. Deeds of all real property that include restricted rental units shall contain deed restriction language. The deed restriction shall have priority over all mortgages on the property. The deed restriction shall be recorded by the developer with the county records office, and provided as filed and recorded, to the Administrative Agent within 30 days of the receipt of a certificate of occupancy.
- G. A restricted rental unit shall remain subject to the affordability controls of this Ordinance despite the occurrence of any of the following events:
 1. Sublease or assignment of the lease of the unit;
 2. Sale or other voluntary transfer of the ownership of the unit;

3. The entry and enforcement of any judgment of foreclosure on the property containing the unit; or
4. The end of the control period, until the occupant household vacates the unit, or is certified as over-income and the controls are released in accordance with UHAC.

§114-17 Rent Restrictions for Rental Units; Leases and Fees.

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

§114-18 Tenant Income Eligibility.

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

2. Low-income rental units shall be reserved for households with a gross household income less than or equal to 50% of the regional median income by household size.
 3. Moderate-income rental units shall be reserved for households with a gross household income less than 80% of the regional median income by household size.
- B. The Administrative Agent shall certify a household as eligible for a restricted rental unit when the household is a very low-income, low-income or moderate-income household, as applicable to the unit, and the rent proposed for the unit does not exceed 35% (40% for age-restricted units) of the household's eligible monthly income as determined pursuant to N.J.A.C. 5:80-26.17, as may be amended and supplemented; provided, however, that this limit may be exceeded if one or more of the following circumstances exists:
1. The household currently pays more than 35% (40% for households eligible for age-restricted units) of its gross household income for rent, and the proposed rent will reduce its housing costs;
 2. The household has consistently paid more than 35% (40% for households eligible for age-restricted units) of eligible monthly income for rent in the past and has proven its ability to pay;
 3. The household is currently in substandard or overcrowded living conditions;
 4. The household documents the existence of assets with which the household proposes to supplement the rent payments; or
 5. The household documents reliable anticipated third-party assistance from an outside source such as a family member in a form acceptable to the Administrative Agent and the owner of the unit.
- C. The applicant shall file documentation sufficient to establish the existence of any of the circumstances in B.1. through B.5. above with the Administrative Agent, who shall counsel the household on budgeting.

§114-19 Municipal Housing Liaison.

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

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

§114-20 Administrative Agent.

- A. All municipalities that have created or will create affordable housing programs and/or affordable units shall designate or approve, for each project within its HEFSP, an administrative agent to administer the affordable housing program and/or affordable housing units in accordance with the requirements of the FHA, NJAC 5:99-1 et seq. and UHAC.
- B. The fees for administrative agents shall be paid as follows:
 1. Administrative agent fees related to rental units shall be paid by the developer/owner.
 2. Administrative agent fees related to initial sale of units shall be paid by the developer.
 3. Administrative agent fees related to resales shall be paid by the seller of the affordable home.
 4. Administrative agent fees related to ongoing administration and enforcement shall be paid by the municipality.
- C. An Operating Manual for each affordable housing program shall be provided by the Administrative Agent(s). The Operating Manual(s) shall be available for public inspection in the Office of the Clerk and in the office(s) of the Administrative Agent(s). Operating manuals shall be adopted by resolution of the Governing Body.
- D. Subject to the role of the Administrative Agent(s), the duties and responsibilities as are set forth in N.J.A.C. 5:99-7 and which are described in full detail in the Operating Manual, including those set forth in UHAC, include:
 1. Attending continuing education opportunities on affordability controls, compliance monitoring, and affirmative marketing as offered or approved by the Division;
 2. Affirmative marketing:
 - i. Conducting an outreach process to affirmatively market affordable housing units in accordance with the Affirmative Marketing Plan of the municipality and the provisions of N.J.A.C. 5:80-26.16.

- ii. Providing counseling, or contracting to provide counseling services, to low- and moderate-income applicants on subjects such as budgeting, credit issues, mortgage qualification, rental lease requirements; and landlord/tenant law.
3. Household certification.
 - i. Soliciting, scheduling, conducting and following up on interviews with interested households.
 - ii. Conducting interviews and obtaining sufficient documentation of gross income and assets upon which to base a determination of income eligibility for a low- or moderate-income unit;
 - iii. Providing written notification to each applicant as to the determination of eligibility or non-eligibility within 5 days of the determination thereof.
 - iv. Requiring that all certified applicants for restricted units execute a certificate substantially in the form, as applicable, of either the ownership or rental certificates set forth in the Appendices J and K of N.J.A.C. 5:80-26.1 et seq.
 - v. Creating and maintaining a referral list of eligible applicant households living in the housing region, and eligible applicant households with members working in the housing region, where the units are located.
 - vi. Employing a random selection process as provided in the Affirmative Marketing Plan when referring households for certification to affordable units.
4. Affordability controls.
 - i. Furnishing to attorneys or closing agents forms of deed restrictions and mortgages for the recording at the time of conveyance of title of each restricted unit.
 - ii. Ensuring that the removal of the deed restrictions and cancellation of the mortgage note are effectuated and filed properly with the County Register of Deeds or County Clerk's office after the termination of the affordability controls for each restricted unit in accordance with UHAC.
 - iii. Communicating with lenders and the Municipal Housing Liaison regarding foreclosures.
 - iv. Ensuring the issuance of Continuing Certificates of Occupancy or certifications pursuant to N.J.A.C. 5:80-26.11.
5. Records retention.
 - i. Creating and maintaining a file on each restricted unit for its control period, including the recorded deed with restrictions, recorded recapture mortgage, and note, as appropriate.
 - ii. Records received, retained, retrieved, or transmitted in furtherance of crediting affordable units of a municipality constitute public records of the municipality as defined by N.J.S.A. 47:3-16, and are legal property of the municipality.
6. Resales and re-rentals.

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

§114-21 Responsibilities of The Owner of a development containing affordable units.

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

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

§114-22 Enforcement of Affordable Housing Regulations

- A. Upon the occurrence of a breach of any of the regulations governing the affordable unit by an owner, developer or tenant, the municipality shall have all remedies provided at law or equity, including but not limited to foreclosure, tenant eviction, municipal fines, a requirement for household recertification, acceleration of all sums due under a mortgage, recoupment of any funds from a sale in the violation of the regulations, injunctive relief to prevent further violation of the regulations, entry on the premises, and specific performance.
- B. After providing written notice of a violation to an owner, developer or tenant of an affordable unit and advising the owner, developer or tenant of the penalties for such violations, the municipality may take the following action against the owner, developer or tenant for any violation that remains uncured for a period of 60 days after service of the written notice:
1. The municipality may file a court action pursuant to N.J.S.A. 2A:58-11 alleging a violation, or violations, of the regulations governing the affordable housing unit. If the owner, developer or tenant is found by the Court to have violated any provision of the regulations governing affordable housing units the owner, developer or tenant shall be subject to one or more of the following penalties, at the discretion of the Court:
 - i. A fine of not more than \$500.00 per day or imprisonment for a period not to exceed 90 days, or both, unless otherwise specified below, provided that each and every day that the violation continues or exists shall be considered a separate and specific violation of these provisions and not a continuation of the initial offense;
 - ii. In the case of an owner who has rented his or her low- or moderate-income unit in violation of the regulations governing affordable housing units, payment into the Affordable Housing Trust Fund of the gross amount of rent illegally collected;
 - iii. In the case of an owner who has rented his or her affordable unit in violation of the regulations governing affordable housing units, payment of an innocent tenant's reasonable relocation costs, as determined by the Court.
- C. The municipality shall have the authority to levy fines against the owner of the development for instances of noncompliance with NJHRC advertising requirements

(N.J.S.A. 52:27D-321.6.e.(2)), following written notice to the owner. The fine for the first offense of noncompliance shall be \$5,000, the fine for the second offense of noncompliance shall be \$10,000, and the fine for each subsequent offense of noncompliance shall be \$15,000.

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

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

the Division Director upholding, modifying, or reversing an administrative agent's decision is a final administrative action.

Section 2. Chapter 114, Affordable Housing, of the General Ordinances of the Borough of Avon-by-the-Sea, shall be repealed in its entirety.

Section 3. Invalidity.

If any section, subsection, clause, or phrase of this ordinance is held to be unconstitutional or invalid for any reason, such decision shall not affect the remaining portions of this ordinance.

Section 4. Inconsistent Ordinances Repealed.

All ordinances or parts of ordinances inconsistent with this ordinance are hereby repealed to the extent of such inconsistency.

Section 5. Effective Date.

This ordinance shall take effect immediately upon:

1. Final passage and publication according to law and filing with the Monmouth County Planning Board; and
2. Approval by the Court through the issuance of a Compliance Certification or other appropriate order.

ADOPTED ON FIRST READING

DATED: February 25, 2026



ANNA BONGIORNO,

Borough Clerk

ADOPTED ON SECOND READING

DATED: March 9, 2026



ANNA BONGIORNO,

Borough Clerk

BOROUGH OF AVON-BY-THE SEA PLANNING BOARD

Resolution No. 8-2026

RESOLUTION OF THE PLANNING BOARD OF THE BOROUGH OF AVON-BY-THE-SEA, COUNTY OF MONMOUTH, STATE OF NEW JERSEY MEMORIALIZING REPEALING AND AMENDING CHAPTER 114 OF THE BOROUGH CODE ENTITLED "AFFORDABLE HOUSING" AS CONSISTENT WITH THE MASTER PLAN

WHEREAS, pursuant to N.J.S.A. 40:55D-28, adoption of a Master Plan is mandatory for any New Jersey community that manages land development through zoning codes and is adopted by the Planning Board through a public hearing process. All Master Plans in the State of New Jersey must be reviewed every ten (10) years; and

WHEREAS, the New Jersey Municipal Land Use Law requires that all municipal Master Plans contain a statement of objectives, principals, assumptions, policies and standards upon which the comprehensive plan is to be based. This requirement recognizes the necessity of having clearly defined municipal goals and objectives; and

WHEREAS, the Borough of Avon-By-The-Sea Planning Board has the statutory power to prepare a Master Plan pursuant to N.J.S.A. 40:55D-28 subject to the obligation to provide for a general re-examination of its master plan and development ordinance and is required to prepare and adopt by resolution a report on the findings of such re-examination pursuant to N.J.S.A. 40:55D-89; and

WHEREAS, on August 9, 2018, the Master Plan Re-Examination Report was adopted by the Borough of Avon-By-The-Sea; and

WHEREAS, pursuant to N.J.S.A. 40:55D-26 of the Municipal Land Use Law, the Planning Board is to prepare a "report including identifications of any provisions in the proposed development regulation, revision or amendment which are inconsistent with the Master Plan and recommendations concerning these inconsistencies and any other matters as the Board deems appropriate"; and

WHEREAS, on February 25, 2026, the Borough of Avon-By-The-Sea Board of Commissioners referred an amendment pursuant to Ordinance No. 3-2026 to the Planning Board; and

WHEREAS, the Borough of Avon-By-The-Sea seeks to repeal and replace Chapter 114 entitled "Affordable Housing" of the Borough Code; and

WHEREAS, the Planning Board engaged in discussion and independent findings as to whether the Ordinance is or is not substantially consistent with the Avon-by-the-Sea Master Plan at its meeting on February 26, 2026; and

WHEREAS, the Planning Board Members are in agreement with repealing and replacing Chapter 114 entitled "Affordable Housing" in the Code of the Borough of Avon-By-The-Sea since it is consistent with the Master Plan and its re-examination report and advances the purpose of planning and zoning, as well as advances the planning objectives of the Avon-By-The-Sea Master Plan; and

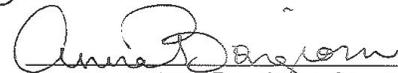
WHEREAS, pursuant to N.J.S.A. 40:55D-4, the Planning Board reviews and makes proposed amendments for the Master Plan; and

NOW, THEREFORE, BE IT RESOLVED, by the Planning Board of the Borough of Avon-By-The-Sea, on the 26th day of February 2026, determines the proposed land use Ordinance No. 3-2026 repealing and replacing Chapter 114 of the Borough Code entitled "Affordable Housing" is consistent with the Avon-By-The-Sea Master Plan and Re-Examination Report.

CERTIFICATION

I hereby certify that I, the undersigned, am the secretary of the Planning Board of the Borough of Avon-By-The-Sea, and I hereby certify that the foregoing Resolution was unanimously adopted by the Planning Board at a meeting held on the 26th day of February 2026.


John Ryan, Chairman


Anna Bongiorno, Secretary

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Ordinance No. 4-2026

AN ORDINANCE OF THE BOROUGH OF AVON-BY-THE-SEA REPEALING AND REPLACING THE BOROUGH'S AFFORDABLE HOUSING DEVELOPMENT FEE ORDINANCE IN CHAPTER 115 OF THE BOROUGH CODE TO ADDRESS CHANGES IN THE LAW REGARDING DEVELOPMENT FEES.

WHEREAS, the Borough of Avon-by-the-Sea adopted a Development Fee Ordinance ("DFO") on June 15, 1998 to collect both residential and non-residential development fees to be used to help facilitate the creation of affordable housing in the Borough; and

WHEREAS, the Borough also created an Affordable Housing Trust Fund into which said development fees were to be deposited; and

WHEREAS, the Borough adopted an amended DFO on March 24, 2025 to account for changes to (1) the New Jersey Fair Housing Act (FHA), (2) the enactment of the Non-Residential Development Fee Act (NRDF)(N.J.S.A. 40:55D-8.1 through 8.7), (3) the Council on Affordable Housing (COAH) regulations (N.J.A.C. 5:93-1 et seq.), and (4) the Uniform Housing Affordability Controls (UHAC) (N.J.A.C. 5:80-26.1 et seq.) that are still utilized in the Mount Laurel framework that will not only benefit the Borough's affordable housing program, but also render some provisions of the Borough's previous ordinance that was outdated and/or superseded by statute; and

WHEREAS, for the Fourth Round of affordable housing obligations the New Jersey Department of Community Affairs recently created a model development fee ordinance which includes changes from the FHA, the recently adopted Affordable Housing Regulations (N.J.A.C. 5:99-1.1 et seq.) and the recently amended UHAC (N.J.A.C. 5:80-26.1, et seq.); and

WHEREAS, it has become necessary for the Borough of Avon-by-the-Sea to amend its DFO as follows to ensure its ordinance is consistent with the FHA, Affordable Housing Regulations (N.J.A.C. 5:99-1.1 et seq.), and UHAC.

NOW, THEREFORE, BE IT ORDAINED, By the Board of Commissioners of the Borough of Avon-by-the-Sea, as follows:

Section 1. Chapter 115, sections 1-10, are hereby repealed and replaced with the following:

§115-1. FINDINGS & PURPOSE

This section establishes standards for the collection, maintenance, and expenditure of development fees that are consistent with the amended Fair Housing Act (P.L.2024, c.2), N.J.A.C. 5:99, and the Statewide Non-Residential Development Fee Act (C. 40:55D-8.1 through

8.7). Fees collected pursuant to this Ordinance shall be used for the sole purpose of providing very low-, low- and moderate-income housing in accordance with a Court-approved Spending Plan.

§115-2. BASIC REQUIREMENTS

The municipality previously adopted a development fee ordinance, which established the Municipal Affordable Housing Trust Fund.

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

§115-3. Definitions

The following terms, as used in this Ordinance, shall have the following meanings:

“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.

“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.

“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 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.

“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.

“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.).

“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.

“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.

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

“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.

“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.

“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.

“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.

“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.

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

“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.

“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.

“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.

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

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

§115-4. Residential Development Fees

A. Imposition of Fees

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

2) When an increase in residential density is permitted pursuant to a “d” variance granted under N.J.S.A. 40:55D-70d(5), developers shall be required to pay a “bonus” development fee of six percent (6%) of the equalized assessed value for each additional unit that may be realized, except that this provision shall not be applicable to a development that will include affordable housing. If the zoning on a site has changed during the two-year period preceding the filing of such a variance application, the base density for the purposes of calculating the bonus development fee shall be the highest

density permitted by right during the two-year period preceding the filing of the variance application.

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

B. Eligible Exactions, Ineligible Exactions and Exemptions for Residential Developments

- 1) Affordable housing developments, developments where the developer is providing for the construction of affordable units elsewhere in the municipality, and/or developments where the developer has made an eligible payment in lieu of on-site construction of affordable units, if permitted by ordinance, or by agreement with the municipality and if approved by a municipality prior to the statutory elimination of payments in-lieu on March 20, 2024 per P.L.2024, c.2, shall be exempt from development fees.
- 2) Developments that have received preliminary or final site plan approval prior to the adoption of this Ordinance and any preceding Ordinance permitting the collection of development fees shall be exempt from the payment of development fees, unless the developer seeks a substantial change in the original approval. For example, a substantial alteration in site layout, development density, or types of uses within the proposed development. Where site plan approval is not applicable, the issuance of a Zoning Permit and/or Construction Permit shall be synonymous with preliminary or final site plan approval for the purpose of determining the right to an exemption. In all cases, the applicable fee percentage shall be determined based upon the Development Fee Ordinance in effect on the date that the Zoning Permit and/or Construction Permit is issued.
- 3) Any project for improvement of a structure to comply with existing state or local building, fire, health, sanitary or safety code specifications which are solely necessary to assure safe living conditions shall be exempt from paying a residential development fee.
- 4) Any alteration of a structure listed on the National Register of Historic Places or a state inventory of historic places shall be exempt from paying a residential development fee, but a development fee shall be charged for any new dwelling constructed as a replacement for a previously existing dwelling on the same lot that was or will be demolished, unless the owner resided in the previous dwelling for a period of one year or more prior to obtaining a demolition permit. Where a development fee is charged for a replacement dwelling, the development fee shall be calculated on the increase in the equalized assessed value of the new structure as compared to the previous structure.

- 5) Structural alterations that do not increase gross floor area of a residential building or structure or increase the equalized assessed value of a property shall be exempted from paying a development fee.
- 6) Nonprofit organizations constructing residential projects 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.
- 7) Federal, state, county and local governments shall be exempted from paying a development fee.
- 8) Homes replaced as a result of a natural disaster, fire, or flood shall be exempt from the payment of a development fee. This exemption applies only for the owner of record at the time of the fire, flood, or natural disaster and the use is not increased, i.e., a single-family house is destroyed and a two-family home is built in its place. Should this scenario occur, the fee will be calculated from the difference between the new, more intense use (two-family) from the original use that was destroyed (single family).

115-5. Non-Residential Development Fees

A. Imposition of Fees

- 1) Within all zoning districts, non-residential developers, except for developers of the types of developments specifically exempted below, 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 non-residential construction on an unimproved lot or lots.
- 2) Within all zoning districts, non-residential developers, except for developers of the types of developments specifically exempted below, 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 non-residential purposes.
- 3) Development fees shall be imposed and collected when an existing structure is demolished and replaced. The development fee of two and a half percent (2.5%) shall be calculated on the difference between the equalized assessed value of the pre-existing land and improvements and the equalized assessed value of the newly improved structure, i.e. land and improvements, and such calculation shall be made at the time a final Certificate of Occupancy is issued. If the calculation required under this Section results in a negative number, the non-residential development fee shall be zero.

B. Eligible Exactions, Ineligible Exactions and Exemptions for Non-residential Development

- 1) The non-residential portion of a mixed-use inclusionary or market rate development shall be subject to a two and a half percent (2.5%) development fee, unless otherwise exempted below.
- 2) The two and a half percent (2.5%) development fee shall not apply to an increase in equalized assessed value resulting from alterations, change in use within the existing footprint, reconstruction, renovations and repairs.
- 3) Non-residential developments shall be exempt from the payment of non-residential development fees in accordance with the exemptions required pursuant to the Statewide Non-Residential Development Fee Act (N.J.S.A. 40:55D-8.1 through 8.7), as specified in Form N-RDF "State of New Jersey Non-Residential Development Certification/Exemption". Any exemption claimed by a developer shall be substantiated by that developer.
- 4) A developer of a non-residential development exempted from the non-residential development fee pursuant to the Statewide Non-Residential Development Fee Act shall be subject to the fee at such time as the basis for the exemption no longer applies, and shall make the payment of the non-residential development fee, in that event, within three years after that event or after the issuance of the final Certificate of Occupancy for the non-residential development, whichever is later.
- 5) If a property which was exempted from the collection of a non-residential development fee thereafter ceases to be exempt from property taxation, the owner of the property shall remit the fees required pursuant to this Section within 45 days of the termination of the property tax exemption. Unpaid non-residential development fees under these circumstances may be enforceable by the Borough of Avon-by-the-Sea as a lien against the real property of the owner.
- 6) Federal, state, county and local governments constructing nonresidential housing shall be exempted from paying a development fee.

115-6. Collection Procedures

A. Upon the granting of a preliminary, final or other applicable approval for a development, the approving authority or entity shall notify or direct its staff to notify the Construction Official responsible for the issuance of a Zoning Permit and/or Construction Permit.

B. For non-residential developments only, the developer shall also be provided with a copy of Form N-RDF "State of New Jersey Non-Residential Development Certification/Exemption" to be completed as per the instructions provided. The developer of a non-residential development shall complete Form N-RDF as per the instructions provided. The Construction Official shall verify the information submitted by the non-residential 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 Construction Permit shall notify the Borough Tax Assessor of the issuance of the first Construction Permit for a development which is subject to a development fee.

D. Within 90 days of receipt of such notification, the Borough Tax Assessor shall prepare 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 Borough Tax Assessor of any and all requests for the scheduling of a final inspection on a property which is subject to a development fee.

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

G. Should the Borough of Avon-by-the-Sea fail to determine or notify the developer of the amount of the development fee within 10 business days of the request for final inspection, the developer may estimate the amount due and pay that estimated amount consistent with the dispute process set forth in Subsection b. of Section 37 of P.L. 2008, c.46 (C.40:55D-8.6).

H. Fifty percent (50%) of the initially calculated development fee shall be collected at the time of issuance of the Construction Permit. The remaining portion shall be collected at the time of issuance of the Certificate of Occupancy. The developer shall be responsible for paying the difference between the fee calculated at the time of issuance of the Construction Permit and that determined at the time of issuance of the 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. Such a challenge must be made within 45 days from the issuance of the Certificate of Occupancy. Pending a review and determination by the Board, collected fees shall be placed in an interest-bearing escrow account by the Borough of Avon-by-the-Sea. Appeals from a determination of the Board may be made to the tax court in accordance with the provisions of the State Tax Uniform Procedure Law, R.S. 54:48-1, *et seq.*, within 90 days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.

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

115-7. Affordable Housing Trust Fund

A. There is hereby created a separate, interest-bearing Affordable Housing Trust Fund to be maintained by the Chief Financial Officer of the Borough of Avon-by-the-Sea 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 a fraction of an affordable unit, where previously permitted by ordinance or by agreement with the municipality and if approved by a municipality prior to the statutory elimination of payments in-lieu on March 20, 2024 per P.L.2024, c.2;

2) Funds contributed by developers to make ten percent (10%) of the adaptable entrances in a townhouse or other multistory attached dwelling unit 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 Avon-by-the-Sea's affordable housing program including but not limited to interest earned on fund deposits.

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

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

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

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

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

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

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

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

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

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

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

E. All interest accrued in the Affordable Housing Trust Fund shall only be used to fund eligible affordable housing purposed approved by the Court.

115-8. Use of Funds

A. The expenditure of all funds shall conform to a Spending Plan approved by the Superior Court. Funds deposited in the Affordable Housing Trust Fund may be used for any activity approved by the Court to address the Borough of Avon-by-the-Sea'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; housing rehabilitation; new construction of affordable housing units and related costs; accessory apartments; a market to affordable program; Regional Housing Partnership programs; conversion of existing non-residential buildings to create new affordable units; green building strategies designed to be cost saving and in accordance with accepted national or State standards; purchase of land for affordable housing; improvement of land to be used for affordable housing; extensions or improvements of roads and infrastructure to affordable housing sites; financial assistance designed to increase affordability; administration necessary for implementation of the Housing Element and Fair Share Plan; and/or any other activity permitted by the Court and specified in the approved Spending Plan.

B. Funds shall not be expended to reimburse the Borough of Avon-by-the-Sea or activities that occurred prior to the authorization of a municipality to collect development fees.

C. At least a portion of all development fees collected and interest earned on such fees shall be used to provide affordability assistance to very low-, low- and moderate-income households in affordable units included in the municipal Fair Share Plan. A portion of the affordability assistance portion of development fees collected shall be used to provide affordability assistance to very low-income households earning 30 percent or less of the regional median household income by household size for Housing Region 4, in which Avon-by-the-Sea is located.

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, infrastructure assistance, and assistance with emergency repairs. The specific programs to be used for affordability assistance shall be identified and described within the Spending Plan.

2) Affordability assistance to very low-income households may include producing very low-income units or buying down the cost of low or moderate income units in the municipal Fair Share Plan to make them affordable to households earning 30 percent or less of median income. The specific programs to be used for very low income affordability assistance shall be identified and described within the Spending Plan.

D. The Borough of Avon-by-the-Sea may contract with a private or public entity to administer any part of its Housing Element and Fair Share Plan, including its programs for affordability assistance.

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

1) In the case of a rehabilitation program, the administrative costs of the rehabilitation program shall be included as part of the 20 percent of collected development fees that may be expended on administration.

2) Administrative funds may be used for income qualification of households, monitoring the turnover of sale and rental units, and compliance with the Program or the Court's monitoring requirements. Administrative funds may be used for legal fees and other professional fees related to compliance with the Borough's affordable housing obligations as set forth in applicable law and regulations governing same.

115-9. Monitoring

The Borough of Avon-by-the-Sea shall provide annual reporting of Affordable Housing Trust Fund activity to the State of New Jersey, Department of Community Affairs, through its Affordable Housing Monitoring System (AHMS), which is required to be completed by February 15th of every year, beginning in 2025. The reporting shall include an accounting of all 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. Such reporting shall include an accounting of development fees collected from residential and non-residential developers, previously eligible payments in lieu of constructing affordable units on site (if permitted by Ordinance or by Agreement with the Borough prior to the March 20, 2024 statutory elimination per P.L. 2024m c.4), funds from the sale of units with extinguished controls, barrier free escrow funds, rental income from Borough owned affordable housing units, repayments from affordable housing program loans, and any other funds collected in connection with Avon-by-the-Sea's affordable housing programs, as well as an accounting of the expenditures of revenues and implementation of the Spending Plan approved by the Court.

115-10. Ongoing Collection of Fees

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

If the municipality fails to renew its ability to impose and collect development fees prior to the expiration of its Judgment of Compliance, it may be subject to forfeiture of any or all funds remaining within its Affordable Housing Trust Fund. Any funds so forfeited shall be deposited into the New Jersey Affordable Housing Trust Fund established pursuant to section 20 of P.L.1985, c.222 (C. 52:27D-320).

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

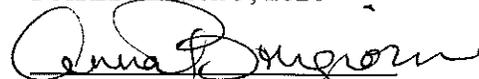
ADOPTED ON FIRST READING

DATED: February 25, 2026


ANNA BONGIORNO,
Borough Clerk

ADOPTED ON SECOND READING

DATED: March 9, 2026


ANNA BONGIORNO,
Borough Clerk

BOROUGH OF AVON-BY-THE SEA PLANNING BOARD
Resolution No. 9-2026

RESOLUTION OF THE PLANNING BOARD OF THE BOROUGH OF AVON-BY-THE-SEA, COUNTY OF MONMOUTH, STATE OF NEW JERSEY MEMORIALIZING CHAPTER 115 OF THE BOROUGH CODE REPEALING AND REPLACING THE BOROUGH'S AFFORDABLE HOUSING DEVELOPMENT FEE ORDINANCE TO ADDRESS CHANGES IN THE LAW REGARDING DEVELOPMENT FEES AS CONSISTENT WITH THE MASTER PLAN

WHEREAS, pursuant to N.J.S.A. 40:55D-28, adoption of a Master Plan is mandatory for any New Jersey community that manages land development through zoning codes and is adopted by the Planning Board through a public hearing process. All Master Plans in the State of New Jersey must be reviewed every ten (10) years; and

WHEREAS, the New Jersey Municipal Land Use Law requires that all municipal Master Plans contain a statement of objectives, principals, assumptions, policies and standards upon which the comprehensive plan is to be based. This requirement recognizes the necessity of having clearly defined municipal goals and objectives; and

WHEREAS, the Borough of Avon-By-The-Sea Planning Board has the statutory power to prepare a Master Plan pursuant to N.J.S.A. 40:55D-28 subject to the obligation to provide for a general re-examination of its master plan and development ordinance and is required to prepare and adopt by resolution a report on the findings of such re-examination pursuant to N.J.S.A. 40:55D-89; and

WHEREAS, on August 9, 2018, the Master Plan Re-Examination Report was adopted by the Borough of Avon-By-The-Sea; and

WHEREAS, pursuant to N.J.S.A. 40:55D-26 of the Municipal Land Use Law, the Planning Board is to prepare a "report including identifications of any provisions in the proposed development regulation, revision or amendment which are inconsistent with the Master Plan and recommendations concerning these inconsistencies and any other matters as the Board deems appropriate"; and

WHEREAS, on February 25, 2026, the Borough of Avon-By-The-Sea Board of Commissioners referred an amendment pursuant to Ordinance No. 4-2026 to the Planning Board; and

WHEREAS, the Borough of Avon-By-The-Sea seeks to repeal and replace the Borough's Affordable Housing Developmental Fee Ordinance; and

WHEREAS, the Planning Board engaged in discussion and independent findings as to whether the Ordinance is or is not substantially consistent with the Avon-by-the-Sea Master Plan at its meeting on February 26, 2026; and

WHEREAS, the Planning Board Members are in agreement with repealing and replacing the Borough's Affordable Housing Development Fee Ordinance in the Code of the Borough of Avon-By-The-Sea since it is consistent with the Master Plan and its re-examination report and advances the purpose of planning and zoning, as well as advances the planning objectives of the Avon-By-The-Sea Master Plan; and

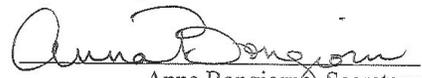
WHEREAS, pursuant to N.J.S.A. 40:55D-4, the Planning Board reviews and makes proposed amendments for the Master Plan; and

NOW, THEREFORE, BE IT RESOLVED, by the Planning Board of the Borough of Avon-By-The-Sea, on the 26th day of February 2026, determines the proposed land use Ordinance No. 4-2026 repealing and replacing the Borough's Affordable Housing Development Fee Ordinance in Chapter 115 of the Borough Code to address changes in the law regarding development fees is consistent with the Avon-By-The-Sea Master Plan and Re-Examination Report.

CERTIFICATION

I hereby certify that I, the undersigned, am the secretary of the Planning Board of the Borough of Avon-By-The-Sea, and I hereby certify that the foregoing Resolution was unanimously adopted by the Planning Board at a meeting held on the 26th day of February 2026.


John Ryan, Chairman


Anna Bongiorno, Secretary

3

Resolution No. 71-2026 – Resolution of the Board of Commissioners of the Borough of Avon-by-the-Sea Adopting an Affordability Assistance Program Manual

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, on November 6, 2025, the Uniform Housing Affordability Controls (“UHAC”) were updated and amended;

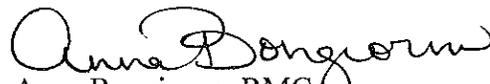
WHEREAS, to ensure that the Borough’s Affordability Assistance Program conforms with UHAC as amended, the Borough will adopt an Affordability Assistance Program Manual;

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of the Borough of Avon-By-The-Sea, County of Monmouth, State of New Jersey as follows:

1. Borough of Avon-By-The-Sea hereby adopts an Affordability Assistance Program Manual, attached hereto as Exhibit A.
2. This Resolution shall take effect immediately.

CERTIFICATION

I hereby certify the above to be a true and correct copy of a Resolution adopted by the Board of Commissioners of the Borough of Avon-by-the-Sea at a meeting held on March 9, 2026.


Anna Bongiorno, RMC
Borough Clerk

BOROUGH OF AVON-BY-THE-SEA

AFFORDABILITY ASSISTANCE MANUAL

This manual sets forth the policies and procedures of the Affordability Assistance Program for the Borough of Avon-By-The-Sea. This manual will outline the program options and provide what an applicant needs in order to qualify for the affordability assistance.

The Affordability Assistance Program is designed to help low and moderate-income households acquire funding that will assist them in securing affordable housing within the Borough of Avon-By-The-Sea. This is done by providing a one-time deferred payment loan to offset the initial costs of securing such housing. The Borough's program provides assistance for both owner-occupied affordable housing units or rental affordable housing units.

This program provides the following options for affordability assistance:

1. One or Two Month's Rent assistance – For a rental unit, funding equal to the one month's rent may be available to be paid directly to the landlord on behalf of an income-eligible low- or moderate-income tenant. This is a grant to the landlord for the unit to be rented. Very low-income households are eligible for two months' rental assistance.
2. Down payment / Closing cost assistance – For qualified first-time home buyers, funding of up to \$10,000.00 per applicant may be applied to offset the up-front costs of purchasing a deed-restricted home or condominium unit in Avon-By-The-Sea in the form of a no-interest, forgivable loan for a period of 10 years.

Administration

The Borough's appointed Affordable Housing Administrative Agent will be responsible for administering the Affordability Assistance Program. All funds provided for the Affordability Assistance Program shall be distributed from the Borough's Affordable Housing Trust Fund, in accordance with the Borough's adopted Affordable Housing Trust Fund Spending Plan. Questions about the Program should be directed to the Administrative Agent.

Applicant Eligibility

Submitted applications for the Program will be provided and reviewed on a first-come-first-served basis according to the following criteria. PLEASE NOTE: All the following criteria must be met in order for an applicant to be deemed eligible for this Program. Eligibility does not guarantee that any funding will be provided to applicants.

1. There are affordability assistance funds remaining in the budget for the year.
2. The applicant has not received affordability assistance in the past in the applied assistance category. For example, an applicant may receive One Month's Rent and Moving Expenses assistance, but an applicant cannot receive One Month's Rent assistance twice.
3. The applicant must qualify as a very low-, low-, or moderate-income household in accordance with the most current regional income limits established by the Affordable Housing Professionals of New Jersey (AHPNJ), or the applicable State of New Jersey regulatory agency should the State resume promulgation of regional income limits.

Down Payment/Closing Cost Program Procedures

1. An application shall be submitted to the Borough's Affordable Housing Administrative Agent.
2. The Administrative Agent shall review and process the application.
3. If an applicant is certified and approved, the Administrative Agent shall notify the Borough's financial department of the intent to award the loan and confirm the availability of funds.
4. The Administrative Agent shall prepare a draft resolution authorizing the award of the loan, specifying the amount of funds, the location and type of unit, and the specific affordability controls on the unit.
5. The Borough shall release the funds from the Affordable Housing Trust Fund to the escrow account following the approval of the resolution.
6. A Repayment Agreement, Mortgage Note, and Mortgage shall be executed at closing, and recorded by the title company.
7. The Administrative Agent shall notify the applicant of the awarding of funds, and record the assistance, and terms of the assistance, in the file for the affordable unit.

Eligible Participants

Eligible participants must be under contract to purchase a home in Avon-By-The-Sea. This means that the applicant must have signed a contract with the seller, applied to the Program, and have been income qualified as a low- or moderate-income household.

Loan Amount and Period

The amount of assistance that is provided per applicant is \$10,000.00. The loan period shall be ten (10) years.

Loan Terms & Repayment Agreement

All funds are distributed at closing. The funds are sent via bank wire to either the participant's attorney or closing agent trust account. The attorney or trust account must have a business registration certificate and W-9 Tax Identification Form. The Borough must be given notice of the closing five (5) business days ahead of the closing of title.

Loans for applicants to the Program shall be secured through a mortgage and mortgage note in favor of the Borough, and executed by the property owner when required. The mortgage and mortgage note, as well as a deed restriction, will be executed at closing. The terms of the mortgage are in the mortgage note, which is not recorded. The original mortgage note shall be retained by the Program Administrator and kept in the unit file. The administrative agent shall send the mortgage and deed restriction requiring recording to the Borough. Upon receipt, the Borough will file said documents with the County Clerk's office upon the completion of the closing of title.

All loans are deferred payment loans and are due in full at zero percent (0%) interest upon sale, or change in title, if said sale or change in title occurs within five (5) years of the date of closing. All repayment of loans shall be made to the Borough's Affordable Housing Trust Fund. After the fifth year, the loan shall be forgiven at 20% a year for five additional years, fully forgiven at the end of the 10-year period. If the applicant remains the owner and occupant of the dwelling at the end of the duration of the ten (10) year mortgage period, the full amount of the loan shall be forgiven.

Insurance Requirements

The applicant must provide proof of homeowner's insurance and proof that the insurance has been paid. The homeowner's insurance must list the Borough of Avon-By-The-Sea as additional insureds, loss payees, or additional mortgagees for the entire 10-year period of the lien.

If the home is associated with a Condominium Association or a substantially similar entity, the Borough of Avon-By-The-Sea shall be listed as additional insureds, loss payees, or additional mortgagees on the blanket insurance policy for the Association's property.

If the property is located in a Flood Zone, flood insurance will be required listing the Borough of Avon-By-The-Sea as additional insureds, loss payees, or additional mortgagees.

Affordability Controls

All homes purchased by qualified low or moderate income households with assistance from the Borough's First Time Homebuyer Program shall include a deed restriction, which provides affordability controls so that the unit must remain affordable to a low or moderate income household for a period of at least thirty (30) years, in accordance with the Uniform Housing Affordability Controls (UHAC) at N.J.A.C. 5:80-16.1 et seq.

One or Two Months' Rent Program Procedures

1. An application for funding shall be filed with the Borough's Affordable Housing Administrative Agent.
2. The Administrative Agent shall review and process the application.
3. If there are more income-qualified applicants than there are funds available, preference shall be given to very low-income households.
4. If an applicant is certified and approved, the Administrative Agent shall notify the Borough's financial department of the intent to award the grant and confirm the availability of funds.
5. The Administrative Agent shall prepare a draft resolution authorizing the award of funds, specifying the amount, the location and type of unit, and the specific affordability controls on the unit.
6. The Borough shall release the funds from the Affordable Housing Trust Fund to the participating landlord following the approval of the resolution.
7. The Administrative Agent shall notify the applicant of the awarding of funds, and record the assistance, and terms of the assistance, in the file for the affordable unit.

Eligible Participants

All participants must be very low-, low-, or moderate-income households, entering into a lease agreement to rent a deed restricted affordable dwelling unit in the Borough of Avon-By-The-Sea. Applicants must not have received any assistance from any of the Borough's Affordability Assistance Program previously.

Grant Amount and Period

The maximum amount of assistance that may be provided per applicant shall be equal to one month's contract rent. Very low-income households are awarded two months' rent.

Terms & Repayment Agreement

This program is a grant and there are no terms and no repayment agreement.

Income Eligibility and Certification Procedure

In order to be eligible for assistance, applicants must be determined to be income eligible. All adult members 18 years of age and older must be fully certified as income-eligible before they can receive any assistance from the Program. The Program will income-qualify applicants in accordance with the Uniform Housing Affordability Controls (UHAC) at N.J.A.C. 5:80-16.1 et seq., except for the asset test. The applicant's monthly housing payment shall not exceed 40% of the applicant's adjusted monthly gross income.

The following is a list of various types of wages, payments, rebates, and credits. Those that are considered as part of the household's income are listed under "Income."

Qualified Income Sources

The following are considered income and will be included in the determination of the applicant's income eligibility:

- Wages, salaries, tips, commissions
- Regularly scheduled overtime
- Social Security
- Unemployment Compensation (verify # of weeks that are eligible to be received)
- Pensions
- Disability
- Alimony
- Verified regular child support (received)
- Any other forms of regular income reported to the Internal Revenue Service
- Interest income from assets such as savings, certificates of deposit, money market accounts, mutual funds, stocks, bonds
- Imputed interest (using a current average annual rate of 2%) from non-income producing assets, such as equity in real estate. Rent from real estate is considered income, after deduction of any mortgage payment, real estate taxes, property owner's insurance.
- TANF (Temporary Assistance for Needy Families)
- Net income from business or real estate
- Rent from real estate is considered income

Unqualified Income Sources

The following are not considered income and will not be included in the determination of the applicant's income eligibility:

- Court ordered payments for alimony or child support paid to another household shall be deducted from gross annual income
- Food stamps
- Rebates or credits received under low-income energy assistance programs
- Income of live-in attendants
- Student loans
- Part-time income of dependents enrolled as full time students
- Lump-sum additions to assets such as inheritances, lottery winnings, gifts, insurance settlements
- Payments received for foster care
- Relocation assistance benefits
- Scholarships
- Personal property such as automobiles

Income Verification

To calculate income, the current gross income of the applicant is used to project income over the next 12 months. Income verification documentation should include, but is not limited to, the following for each member of a household who is 18 years of age or older:

- Four current consecutive pay stubs, including bonuses, overtime or tips, or a letter from the employer stating the present annual income figure, or if self-employed, a current Certified Profit & Loss Statement and Balance Sheet.
- A signed copy of regular IRS Form 1040 (Tax computation form), 1040A, or 1040EZ (as applicable) and state income tax returns filed for the last three years prior to the date of interview or notarized tax waiver letter for respective tax year(s).
- A form 1040 Tax Summary for the past three tax years can be requested from the local IRS Center or by calling 800-829-1040
- If applicable, a letter or appropriate reporting form verifying monthly benefits such as:
 - Social Security or SSI – current awards letter or computer printout letter
 - Unemployment – verification of unemployment benefits
 - Welfare – TANF current award letter
 - Disability – Worker's compensation letter, or
 - Pension income (monthly or annually) – a pension letter
 - A letter or appropriate reporting to verify any other sources of income claimed by the applicant such as alimony or child support – copy of court order or recent original letter from the court (includes separation agreement or divorce papers) or education scholarship/stipends – current award letter.
- Reports from the last two consecutive months that verify income from assets to be submitted by banks or other financial institutions managing savings and checking accounts (bank statements and

passbooks), trust funds, money market accounts, certificate of deposit, stocks or bonds (in brokerage accounts – most recent statements and/or in certificate form – photocopy of certificates)

Examples: copies of all interest and dividend statements for savings accounts, interest and non-interest-bearing checking accounts, and investments.

- Evidence or reports of income from directly held assets, such as real estate or businesses owned by any household member 18 years and older.
- Interest in a corporation or partnership – Federal tax returns for each of the preceding three tax years.
- Current reports of assets – Market Value Appraisal or Realtor Comparative Market Analysis and Bank/Mortgage Co. Statement indicating current mortgage balance. For rental property attach copies of all leases.

Verifying Student Income and Income from Real Estate

1. *Student Income* – Only full-time income of full-time students is included in the income calculation. A full-time student is a member of the household reported to the IRS as a dependent who is enrolled in a degree seeking program for 12 or more credit hours per semester; and part-time income is income earned on less than a 35-hour work week.

2. *Income from Real Estate* – If real estate owned by an applicant to the Program is a rental property, the rent is considered income. After deduction of any mortgage interest, real estate taxes, property owner insurance, and reasonable property management expenses as reported to the IRS, the remaining amount shall be counted as income.

Other Eligibility Requirements

Applicants must also submit the following in the application package as applicable:

- Recorded deed to the property to be assisted;
- If you are a widow or widower, copy of Death Certificate should be included;
- Signed release form to verify eligibility determination from third party sources;
- Copy of any and all other liens recorded against property; and
- Personal identification (a copy of any of the following: Driver's license, Passport, Birth Certificate, Social Security Card, Adoption Papers, Alien Registration card, etc.) for each household member.

Eligibility Certification

After the Administrative Agent determines that the household is income eligible and meets all other eligible requirements, the Administrative Agent will complete and sign the eligibility certification. This certification shall be valid for twelve (12) months starting from the date of eligibility certification.

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Resolution No. 70-2026 – Resolution of the Board of Commissioners of the Borough of Avon-by-the-Sea Adopting an “Affirmative Marketing Plan” for the Borough of Avon-by-the-Sea

WHEREAS, in accordance with P.L. 2024, Chapter 2 and the New Jersey Uniform Housing Affordability Controls (“UHAC”)(N.J.A.C. 5:80-26.1 et seq.), the Borough of Avon-by-the-Sea is required to adopt an Affirmative Marketing Plan to ensure that all affordable housing units created are affirmatively marketed to very low-, low- and moderate-income households, particularly those living and/or working within Housing Region 4, the Housing Region encompassing the Borough of Avon-by-the-Sea.

NOW, THEREFORE, BE IT RESOLVED, that the Mayor and Board of Commissioners of the Borough of Avon-by-the-Sea, County of Monmouth, State of New Jersey, does hereby adopt the following Affirmative Marketing Plan:

Affirmative Marketing Plan

- A. The Affirmative Marketing Plan is a regional marketing strategy designed to attract buyers and/or renters of all majority and minority groups, regardless of race, creed, color, national origin, ancestry, English-speaking ability, marital or familial status, gender, affectional or sexual orientation, disability, age or number of children, source of lawful income, or any other characteristic described in the New Jersey Law Against Discrimination, to housing units which are being marketed by a developer or sponsor of affordable housing. The Affirmative Marketing Plan is also intended to target those potentially eligible persons who are least likely to apply for affordable units in that region. It is a continuing program that directs all marketing activities toward the Housing Region in which the municipality is located and covers the entire period of the deed restriction for each restricted housing unit. The Borough of Avon-by-the-Sea is located in Housing Region 4, consisting of Monmouth, Ocean, and Mercer Counties.
- B. The Borough of Avon-by-the-Sea has a plan to address both its Prior Round Obligation (1987-2025) and its Fourth Round Obligation (2025-2035). This Affirmative Marketing Plan shall apply to all developments that contain or will contain very low-, low- and moderate-income units, including those that are part of the municipality’s Housing Element and Fair Share Plan, and those that may be constructed in future developments not yet anticipated by the Housing Element and Fair Share Plan.
- C. The Affirmative Marketing Plan shall be implemented by the Administrative Agent under contract to the Borough of Avon-by-the-Sea, or the Administrative Agent of any specific developer approved by the municipality.
- D. All of the costs of advertising and affirmatively marketing affordable housing units shall be borne by the developers/sellers/owners of affordable unit(s), and all such advertising and affirmative marketing shall be subject to approval and oversight by the designated Administrative Agent.
- E. The implementation of the Affirmative Marketing Plan for a development that includes affordable housing shall commence at least 120 days prior to expected occupancy. The implementation of the Affirmative Marketing Plan shall continue until all very low-, low- and moderate-income housing units are initially occupied and for as long as the affordable units remain deed restricted such that qualifying new tenants and/or purchasers continues to be necessary.

- F. The Affirmative Marketing Plan is a continuing program that shall be followed throughout the entire period of affordability restrictions. In implementing the Affirmative Marketing Plan, the Administrative Agent, whether acting on behalf of the Borough of Avon-By-The-Sea or on behalf of a specific developer, shall meet the following requirements at a minimum:
1. The primary marketing and advertising must be employed at the start of the marketing program and continue until all units are leased or sold or until the number of applications received is at least three times the number of units. Additional advertising and publicity shall be on an "as needed" basis. The developer/owner shall disseminate all public service announcements and pay for display advertisements. The developer/owner shall provide proof of all publications to the Administrative Agent. All press releases and advertisements shall be approved in advance by the Administrative Agent.
 2. The advertisements shall, at a minimum, include:
 - a. The name and location of the housing project;
 - b. An address sufficient to find directions to the housing units;
 - c. A range of prices or rents for the affordable housing units;
 - d. The sizes, as measured in number of bedrooms of the affordable housing units;
 - e. The types (that is, family, age-restricted, or supportive) and number of affordable units available;
 - f. The number of units available to very low-, low-, and moderate-income households;
 - g. The accessibility features, if any, of the affordable housing units;
 - h. The maximum income permitted to qualify for the affordable housing units;
 - i. The population(s), if any, given preference in the selection process pursuant to N.J.A.C. 5:80-26.17(k)2;
 - j. Where applications (paper and online) for the affordable housing units may be found;
 - k. The expected lease-up/closing date(s) for the affordable housing units;
 - l. The expected date of the random selection;
 - m. The business hours when interested households may obtain paper applications for the affordable housing units;
 - n. Contact information, including an email address and phone number that are regularly monitored by the administrative agent;
 - o. The name of the sales agent and/or rental manager; and
 - p. Application fees, if any.
 3. Affirmative fair marketing of affordable units must be completed in accordance with the requirements set forth in UHAC at N.J.A.C. 5:80-26.16 in all media and outlets required by the rules.
 4. Each affordable housing development must complete worksheet substantially in the form of the model affirmative marketing worksheet published by the state.

5. Affordable units must be listed on the New Jersey Housing Resource Center's website (www.njhrc.gov) in accordance with N.J.A.C. 5:80-26.16(f)1 at least 60 days before the random selection.
 6. Applications, or notices thereof, used as part of the affirmative marketing program must be available in the following locations:
 - a. Mercer County Administration Building, 640 South Broad Street, Trenton, NJ 08650
Monmouth County Administration Building, 33 Mechanic Street, Freehold, NJ 07728
Ocean County Administration Building, 101 Hooper Avenue, Toms River, NJ 08753
 - b. Monmouth County Library Headquarters, 125 Symmes Drive, Manalapan, NJ 07726
Ocean County Library Headquarters, 101 Washington Street, Toms River, NJ 08753
Mercer County Library Headquarters, 2751 Brunswick Pike, Lawrence, NJ 08648
 7. Additional outreach efforts, as dictated by the Settlement Agreement, will include the following organizations:
 - a. Fair Share Housing Center;
 - b. The New Jersey State Conference of the NAACP
 - c. The Latino Action Network;
 - d. Supportive Housing Association
 8. The municipality's Administrative Agent, or the Administrative Agent of a specific developer, shall comply with all requirements set forth in N.J.S.A. 52:27D-321.3 et seq. with regard to the affirmative marketing of affordable housing units.
- G. The municipality's Administrative Agent shall develop, maintain and update a list of community contact person(s) and/or organizations(s) in Monmouth, Ocean, and Mercer Counties that will aid in the affirmative marketing program with particular emphasis on contacts that will reach out to groups that are least likely to apply for housing within the region, including major regional employers.
- H. The municipality's Administrative Agent shall develop, maintain, and update a list of major employers in Monmouth, Ocean, and Mercer Counties that will aid in the affirmative marketing program.
- I. A random selection method to select occupants of very low-, low- and moderate-income housing will be used by the municipality's Administrative Agent, or the Administrative Agent of any specific developer, in conformance with N.J.A.C. 5:80-26.16(d). This Affirmative Marketing Plan provides a state-wide and/or regional preference for very low-, low-, and moderate-income households that live and/or work in Housing Region 4, which

is comprised of Monmouth, Ocean, and Mercer Counties. Pursuant to the New Jersey Fair Housing Act (C.52:27D-311), a preference for very low-, low- and moderate-income veterans duly qualified under N.J.A.C. 54:4-8.10 may also be exercised, provided an agreement to this effect has been executed between the developer or landlord and the municipality prior to the affirmative marketing of the units.

- J. All developers/owners of very low-, low- and moderate-income housing units shall be required to undertake and pay the costs of the marketing of the affordable units in their respective developments, subject to the direction and supervision of the municipality's Administrative Agent. All developers/owners shall also be responsible for all costs and fees associated with its own Administrative Agent, and the developer/owner will be responsible for reimbursement of the Borough for the costs/fees of its Administrative Agent that are associated with its respective units.

BE IT FURTHER RESOLVED that the appropriate municipal officials and professionals are authorized to take all actions required to implement the terms of this Resolution.

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

CERTIFICATION

I hereby certify the above to be a true and correct copy of a Resolution adopted by the Board of Commissioners of the Borough of Avon-by-the-Sea at a meeting held on March 9, 2026.


Anna Bongiorno, RMC
Borough Clerk

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Resolution No. 72-2026 – Resolution of the Board of Commissioners of the Borough of Avon-by-the-Sea Adopting an Accessory Apartment Program Manual

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, on November 6, 2025, the Uniform Housing Affordability Controls (“UHAC”) were updated and amended;

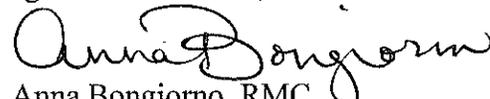
WHEREAS, to ensure that the Borough’s Accessory Apartment Program conforms with UHAC as amended, the Borough will adopt an Accessory Apartment Program Manual;

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of the Borough of Avon-By-The-Sea, County of Monmouth, State of New Jersey as follows:

1. Borough of Avon-By-The-Sea hereby adopts an Accessory Apartment Program Manual, attached hereto as Exhibit A.
2. This Resolution shall take effect immediately.

CERTIFICATION

I hereby certify the above to be a true and correct copy of a Resolution adopted by the Board of Commissioners of the Borough of Avon-by-the-Sea at a meeting held on March 9, 2026.



Anna Bongiorno, RMC
Borough Clerk

**Borough of Avon-By-The-Sea, Monmouth County
Accessory Apartment Manual**

Introduction

Avon-By-The-Sea Borough Housing Element and Fair Share Housing Plan includes an accessory apartment component whereby accessory apartments are permitted in the Borough’s zoning ordinances in specific zones. Occupants of accessory apartments must be “income eligible” based on the income limitations established by the current State affordable housing regulations and UHAC Regulations for the Borough’s Housing Region. A maximum of one apartment may be permitted on any one property.

Each apartment unit shall be encumbered by a deed restriction acceptable to the Borough’s Affordable Housing Attorney. The deed restriction shall require that units be restricted to income eligible households at affordable (as defined herein) rents for a period of at least 10 years.

WHAT IS AN ACCESSORY APARTMENT?

An Accessory Apartment is "a self-contained residential dwelling unit with a kitchen, sanitary facilities, sleeping quarters and a private entrance, which is created within an existing home, or through the conversion of an existing accessory structure on the same site, or by an addition to an existing home or accessory building, or by the construction of a new accessory structure on the same site."

WHO QUALIFIES FOR AFFORDABLE HOUSING?

In order to be eligible for affordable housing in New Jersey, a household's income must be below the income limit for the region in which the affordable housing is located, either for low or moderate levels. A moderate-income household is classified as earning between 50 percent and 80 percent of the area median income. A low-income household is classified as earning less than 50 percent of area median income. Municipalities are also required to provide affordable housing to very low-income households; at least 13 percent of all affordable units must be affordable to households earning 30 percent or less of median income.

New Jersey’s six affordable housing regions are as follows:

Regions	Counties
1	Bergen, Hudson, Passaic, Sussex
2	Essex, Morris, Union, Warren
3	Hunterdon, Middlesex, Somerset
4	Mercer, Monmouth, Ocean
5	Burlington, Camden, Gloucester
6	Atlantic, Cape May, Cumberland, Salem

The Regional Income Limits Chart that the Administrative Agent will use provides information about income limits for each of the six housing regions. Each region has different calculated median incomes, which are adjusted annually.

An applicant does not have to currently live in the region in which the applicant is interested in applying for an affordable unit. An applicant's income qualification is determined by the Regional Income Limits for where the applicant wants to live.

Financial Assistance

In accordance with applicable affordable housing regulations, Avon-By-The-Sea Borough will provide \$30,000 per very-low-income unit, \$25,000 per low-income unit, and \$20,000 per moderate-income unit to subsidize the physical creation of an accessory apartment conforming to the requirements of this section and COAH Regulations. Prior to the grant of such subsidy, the property owner shall enter into a written agreement with Avon-By-The-Sea Borough insuring that (i) the subsidy shall be used to create the accessory apartment; and (ii) the apartment shall meet the requirements of this ordinance and COAH regulations.

Low- and Moderate-Income Criteria

For a household to be eligible to lease an accessory apartment unit, combined current family income from all sources, including assets, must not exceed the amounts established under regional income limits. The applicant must qualify as a very low-, low-, or moderate-income household in accordance with the most current regional income limits established by the Affordable Housing Professionals of New Jersey (AHPNJ), or the applicable State of New Jersey regulatory agency should the State resume promulgation of regional income limits

FAIR HOUSING AND EQUAL HOUSING OPPORTUNITIES

It is unlawful to discriminate against any person making application to buy or rent a home with regard to race, creed, color, national origin, ancestry, age, marital status, affectional or sexual orientation, familial status, disability, nationality, sex, gender identity or expression or source of unlawful income used for mortgage or rental payments.

For more information on discrimination or if anyone feels they are a victim of discrimination, please contact the New Jersey division on civil rights at 1-866-405-3050 or <http://www.state.NJ.us/lps/dcr/index.html>.

OVERVIEW OF THE AFFORDABLE HOUSING ADMINISTRATION PROCESS

- The municipal housing liaison serves as an initial point of contact for unsolicited calls to the municipality about affordable housing and where appropriate direct applicants to an administrative agent who may be nonprofit agencies, state agencies, or consultants that may administer the affordable housing within the municipality.
- The administrative agent implements the municipality's affirmative marketing plan.
- The administrative agent serves as the initial point of contact for all inquiries generated by the affirmative marketing efforts and send out pre-applications to interested callers.
- The administrative agent, the developer, or the affordable housing sponsor will accept these returned, pre-applications for a specific period of time, for example, 30 to 90 days. At the end of this time period, all applications will go to the administrative agent where these applications will be randomly selected, through a lottery, to create a pool of applicants.
- The administrative agent pre-qualified applicants in the applicant pool for income eligibility and send either a rejection letter to those over the income level or a preliminary approval letter to those who appear income eligible.
- When a unit becomes available, the administrative agent will interview the applicant households and proceed with the income qualification process.
- Once certified, households are further screened to match household size and bedroom size.
- Certified households that are approved for a rental affordable housing unit will sign a disclosure statement (Appendix K) and any other applicable documents, which are held in the applicant file. Applicants then can make an appointment with the accessory apartment unit owner. Applicant household seeking rental units may be subject to a credit check by the unit owner. If approved, the applicant will sign the lease, pay the first month's rent, and the security deposit, and receive the keys.
- The certified household moves into the affordable rental unit.

ROLES AND RESPONSIBILITIES

Responsibilities of the Municipal Housing Liaison

The municipal housing liaison is responsible for coordinating all the activities of the municipal government as it relates to the creation and administration of affordable housing units, in conjunction with the municipal attorney, where appropriate (See responsibilities of the municipal attorney). The primary purpose of the municipal housing liaison is to ensure that all affordable housing projects are established and administered according to the regulations, as outlined in an operating manual. The duties of the municipal housing liaison include the following duties and may include the responsibilities for providing administrative services as described in the next section under, responsibilities of an administrative agent.

Monitor the status of all restricted units in the municipality's Fair Share Plan. Regardless of any arrangements the municipality may have with one or more administrative agents, it is the municipal housing liaison's responsibility to know the status of all restricted units in the community.

Serve as the municipality's primary point of contact for all inquiries from the state, administrative agents, developers, affordable housing sponsors, owners, property managers, and interested households. The municipal housing liaison serves as the municipality's primary point of contact on affordable housing issues. Interested applicants should be provided with information on the types of affordable units within the municipality and, where applicable the name of the administrative agent that manages the units and the contact information for the administrative agent.

Compile, verifying, and submit annual reporting. Administrative agents are responsible for collecting much of the data that is ultimately included in an annual monitoring report. However, it is the municipal housing liaisons responsibility to collect and verify this data and consolidated into the annual report to the courts. Any requests additional information or corrections will be directed to the municipal housing liaison.

Coordinate meetings with administrative agents and developer/affordable housing sponsors/owners. When a new accessory apartment is in the planning process, the municipal housing liaison should coordinate a meeting between the administrative agent and the owner. The purpose of this initial meeting is to make sure that unit owner understands all the requirements of the program and go over the procedures outlined in the operating manual.

Provide administrative services, unless those services are contracted out. The responsibilities for providing administrative services are described in the next section under, responsibilities of an administrative agent.

Responsibilities of an Administrative Agent

The primary responsibility of an administrative agent is to establish and enforce affordability controls and ensure that the units in the administrative agent's portfolio are rented to eligible households. Administrative agents must:

Secure written acknowledgment from all owners in the accessory apartment program that no restricted unit can be offered or in any other way committed to any person other than a household duly certified by the administrative agent.

Create and adhere to an operating manual. All administrative agents are required to follow the policies and procedures of an operating manual, as applicable to the scope of services they have been contracted to perform.

Implement the municipality's affirmative marketing plan. The administrative agent is responsible for implementing the affirmative marketing plan adopted by the municipality. Affirmative marketing includes conducting regional outreach and advertising for the affordable units.

Accept applications from interested households. In response to marketing initiatives or by referral from the municipal housing liaison, interested households will contact the administrative agent. The administrative agent will supply applicants with applications, provide additional information on available units, and accept completed applications.

Conduct random selection of applicants for rental of restricted units. The administrative agent is responsible for conducting the random selection in accordance with the affirmative marketing plan and any related local ordinances, and as described in the operating manual.

Create and maintain a pool of applicants' households. This includes reaching out to household in the applicant pool to determine continued interest and/or changes in household size and income.

Determine eligibility of households. The task of collecting application materials and documentation from applicant households and analyzing it for eligibility is the responsibility of an administrative agent. A written determination on a household eligibility must be provided within forty-five (45) days of the administrative agent's determination of eligibility or non-eligibility. Whether or not the household is determined to be eligible for a unit, it is an administrative agent's responsibility to secure all information provided by the household in individual files and to maintain strict confidentiality of all information regarding that household. An administrative agent is required to ensure that all certified applicants execute a disclosure statement acknowledging the rights and requirements of renting an affordable unit, in the form of Appendix K of UHAC, as applicable.

Establish and maintain effective communication with owners. Owners of restricted unit should be instructed in regularly reminded that the administrative agent is their primary point of contact. The administrative agent must immediately inform all owners of any change to the administrative agents contact information or business hours. The administrative agent must create and distribute annual mailings to all owners of affordable units reminding them of the rights and requirements of owning an affordable rental unit.

Owners should be instructed to immediately contact the administrative agent in the following circumstances:

- Immediately upon learning that an affordable rental unit will be vacated.
- For review and approval of annual rental increases.
- If they are considering or have decided to sell their home.

Send out annual mailings about restrictions.

Administrative agents must annually mail to all owners of affordable housing units a reminder of their rights and responsibilities as owners of an affordable rental unit.

Provide annual notification of maximum rents. Each year when AHPNJ releases its very low-, low-, and moderate-income limits, rental households must be notified of the new maximum rent that they may be charged for their unit. The administrative agents contact information must be included on such a notification in case the tenant is being overcharged.

Serve as the custodian of all legal documents. And administrative agent is responsible for maintaining originals of all legal instruments for the units in their portfolio. Throughout the duration of a control, an administrative agent must maintain a file containing its affordability control documents. This includes, but is not limited to, the recorded deed restriction, lease, and disclosure statement (Appendix K).

Provide annual activity reports to municipal housing liaison for use in the annual monitoring report when requested. And administrative agent is responsible for collecting the reporting data on each unit in the administrative agent's portfolio.

Maintain and distribute information on HUD approved housing counseling programs, which can be found at the following link:

<https://apps.hud.gov/offices/hsg/sfh/hcc/hcs.cfm?&webListAction=search&searchstate=NJ#searchArea>

Responsibilities of the Municipal Attorney

The municipal attorney assists the municipality with developing, administrating, and enforcing affordability controls, including but not limited to:

- Assisting the municipal housing liaison with the review of the affordable housing provisions of any Master Deed and Public Offering for consistency with the courts and UHAC regulations, before they are recorded and submitted to DCA for approval.
- Providing all reasonable and necessary assistance in support of the administrative agent's efforts to ensure compliance with the housing affordability controls, including reviewing legal documents and legal actions required on foreclosures and violations.

Responsibilities of Owners of Accessory Apartments

When an owner is in the planning process for in an affordable accessory apartment, he/she should contact the municipal housing liaison, who shall coordinate a meeting between the administrative agent and the owner.

The purpose of this initial meeting is to develop a clear division of labor between the parties and to transmit any components of the operating manual – including copies of all Court-related local ordinances – that have already been adopted by the municipality.

The administrative agent will secure from the owner written acknowledgment that no restricted unit can be offered or in any other way committed to any person other than a household duly certified by the administrative agent.

Open and direct communication between the owners of rental developments, the municipal housing liaison, and the administrative agent is essential to ongoing administration of affordability controls. Although the administrative agent is required to serve as the primary point of contact with households, the owner must provide the municipal housing liaison and administrative agent with information on vacancies. Owners of rental developments are also responsible for working with the administrative agent to ensure that the municipal housing liaison has all necessary information to complete the annual reporting.

CREATION OF AN ACCESSORY APARTMENT

Accessory apartments are allowed in the Borough of Avon-By-The-Sea as set forth in the Borough's zoning ordinances with a financial incentive. Homeowner is interested in creating an accessory apartment on their property should contact the Borough's Municipal Housing Liaison:

Jaycie Flynn
Municipal Housing Liaison
(732) 502-4510 x237
jflynn@avonbytheseanj.com

REQUIREMENTS FOR CREATING AN ACCESSORY APARTMENT

- Homeowners interested in creating an accessory apartment or making an existing accessory unit available for this program must read this manual and understand all of the requirements of owning and renting out an affordable housing unit.
- Property considered for an accessory unit must fall within the zone(s) where accessory units are permitted within the Borough of Avon-By-The-Sea.
- Property must have sufficient water and sewer capacity to service the proposed accessory apartment. This must be documented and kept on file by the administrative agent.
- A deed restriction in the uniform housing affordability controls (N.J.A.C. 5:80-26.1 et. seq.) And appended to this manual stating the affordability controls will be recorded on the primary residence.
- Deed restrictions for accessory apartments in the Borough of Avon-By-The-Sea are for a period of no less than 10 years.
- The rent for the accessory apartment will be lower than market rate rents in the area to make it affordable for very low, low- and/or moderate-income households. Households must be income qualified by the administrative agent. Application for the apartment is open to the public; however, the homeowner may establish reasonable criteria for the household selected to live in the unit.

COMPENSATION FOR THE CREATION OF AN ACCESSORY APARTMENT

- The municipality will provide \$30,000 per very-low-income unit, \$25,000 per low-income unit, and \$20,000 per moderate-income unit to subsidize the creation of an accessory apartment that is affordable to very-low-, low- and moderate-income households in the region.

PROCESS FOR CREATING AN ACCESSORY APARTMENT

- Application for approval of accessory apartment construction
- Initial inspection by building inspector
- Approval of apartment design
- Contract agreement between municipality and owner
- Deed restriction recorded on residence
- Construction inspections
- Final inspection and issuance of Certificate of Occupancy
- Final payment
- Initial occupancy by qualified tenant

DETERMINING AFFORDABLE RENTS

To determine the affordable rents the administrative agent uses the program calculators located at <https://ahpnj.org/resources/updated-coah-calculators>.

DEVELOPMENT CONSIDERATIONS AND COMPLIANCE ISSUES

There are several regulations that must be considered from the development perspective before the rents of accessory apartments can be calculated. These requirements should be discussed at the first meeting between the municipal housing liaison, administrative agent, and homeowner.

Number of bedrooms. The number of bedrooms is a decision that must be made by the homeowner, as there is no requirement for a certain number of bedrooms for accessory apartments. The homeowner must provide this information to the municipality and the administrative agent so that a rent may be established for the unit.

Pricing by household size. Initial rents are based on targeted “model” household sizes for each size home, as determined by the number of bedrooms. Initial rent must adhere to the following rules. These maximum rents are based on the annual regional income limits chart at the time of occupancy:

- A studio shall be affordable to a one-person household;
- A one-bedroom unit shall be affordable to a 1 ½ person household;
- A two-bedroom unit shall be affordable to a three-person household;
- A three-bedroom unit shall be affordable to a 4 ½ person household; and
- A four-bedroom unit shall be affordable to a six-person household.

The above rules are only to be used for setting initial rents. They are not guidelines for matching household sizes with unit sizes. The pricing of age-restricted units may not exceed affordability based on a two-person household.

Utilities. The homeowner must determine how utilities for the accessory apartment will be paid, either by the homeowner and reimbursed through rent, or by the tenant separately. Either way, the maximum rent amount may not be exceeded. This should be discussed with the administrative agent prior to the rent being set.

DETERMINING INITIAL RENTS

To determine the initial rents, the administrative agent uses the program calculators located at <https://ahpnj.org/resources/updated-coah-calculators>.

Maximum Rent. When including percentages in the program rental calculator, the maximum rent for a moderate-income unit shall be affordable to household earning no more than 60% of median income and the maximum rent for a low-income unit shall be affordable to household earning no more than 45% of median income.

ADDITIONAL REGULATIONS FOR ACCESSORY APARTMENTS

In the Borough of Avon-By-The-Sea, the Accessory Apartment Program allows for the creation of very low, low, and moderate-income units.

The Borough's Accessory Apartment Program will subsidize the development of 10 total affordable accessory apartment units. At least two units will be very-low income, four units low-income, and four units moderate-income. To the extent possible, accessory apartment will be designed as very-low, low income, and moderate income, based on the unit's bedroom size and square footage of the apartment. Notwithstanding, the Borough's accessory apartment program will provide a total of 10 accessory apartment units.

DETERMINING RENT INCREASES

Annual rent increases are permitted and affordable units. Rent increases are permitted at the anniversary of tenancy according to the program's annual regional income limits chart, available on AHPNJ's website. These increases must be filed with and approved by the administrative agent. Property managers or landlords who have charged less than the permissible increase may use the maximum allowable rent with the next tenant with permission of the administrative agent. The maximum allowable rent would be calculated by starting with the rent schedule approved as part of initial lease up of the development and calculating the annual AHPNJ approved increase from the initial lease up year to the present. Rents may not be increased more than once a year, may not be increased by more than one AHPNJ approved increment at a time, and may not be increased at the time of new occupancy, if this occurs less than one year from the last rental. No additional fees may be added to the approved rent without the express written approval of the administrative agent.

AFFIRMATIVE MARKETING

Overview of the Requirements

All affordable units are required to be affirmatively marketed using the Borough of Avon-By-The-Sea Affirmative Marketing Plan. An affirmative marketing plan is a regional marketing strategy, designed to attract households of all majority and minority groups, regardless of race, creed, color, national origin, ancestry, marital or familial status, gender, affectional or sexual orientation, disability, age, or Number of children to housing units, which are being marketed by an administrative agent or a developer, sponsor, owner or property manager of affordable housing. The primary objectives of an affirmative marketing plan or to target households who are least likely to apply for affordable housing, and to target households throughout the entire housing region in which the units are located.

Every affirmative marketing plan must include all of the following:

- Publication of at least one advertisement in the newspaper of general circulation within the housing region; and
- Broadcast of at least one advertisement by radio or television throughout the housing region.
- At least one additional regional marketing strategy, such as a neighborhood newspaper, religious publication, organizational newsletter, advertisements with major employers, or notification through community and regional organizations such as nonprofit, religious, and civic organizations.

Although not a requirement of UHAC, the program encourages municipalities to list all affordable housing units in their community on the New Jersey housing resource center at www.njhousing.gov. The New Jersey housing resource center is a free service to both owners and administrators of affordable housing and household seeking affordable housing opportunities.

For each affordable housing opportunity within the municipality, the affirmative marketing plan must include the following information:

- The address of the project and development name, if any
- The number of rental units
- The price ranges of rental units
- The name and contact information of the municipal housing liaison, administrative agent, property manager or landlord
- A description of the random selection method that will be used to select applicants for affordable housing
- Disclosure of required application fees, if any

Advertisements must contain the following information for each affordable housing opportunity:

- The name of the program, i.e. accessory apartment
- The rent amounts
- The bedroom size of the units
- The maximum income permitted to qualify for the housing units
- The locations of applications for the housing units
- The business hours when interested households may obtain an application for a housing unit

- Application fees, if any

It is also recommended that the following information be included in the advertisements:

- Last date applications will be accepted
- Contact number of the municipal housing liaison or administrative agent
- If already adopted by ordinance, a statement concerning regional preference
- The program recommends including the following statement on all advertisements: “visit www.njhousing.gov for more affordable housing opportunities.”

Regional Preference

The Borough of Avon-By-The-Sea has by ordinance provided that households that live or work in housing region three comprised of the following counties: Monmouth, Ocean, and Mercer, shall be selected for an affordable housing unit before household from outside this region. Units that remain on occupied after household who live or work in the region are exhausted, may be offered to the households outside the region.

Municipalities that wish to give preference to applicant households that live or work in their housing region must state this preference in the form of an ordinance. This preference cannot be limited to families that live or work in the host municipality – if preference is given, it must be given to all households that live or work in the housing region.

Implementation of the Affirmative Marketing Plan

The affirmative marketing process for affordable units shall begin at least four months prior to the expected occupancy. In implementing the marketing program, the administrative agent shall undertake all of the strategies outlined in the Borough of Avon-By-The-Sea affirmative marketing plan. Advertising and outreach shall take place during the first week of the marketing program, and every other month thereafter, until all the units have been rented. Applications for affordable housing shall be available in several locations in accordance with the affirmative marketing plan. The time. When applications will be accepted will be posted with the applications. Applications will be mailed, emailed, or faxed to prospective applicants upon request.

Applicant pool will be maintained by the administrative agent for re-rentals.

When a re-rental affordable unit becomes available, the applicants will be selected from the applicant pool and, if necessary, the unit will be affirmatively marketed as described above.

The selection of applicants from the applicant pool is described in more detail in this manual under random selection in applicant pools.

RANDOM SELECTION & APPLICANT POOL(S)

Initial Randomization

Applicants are selected at random before income eligibility is determined, based on household size or desired number of bedrooms. The process is as follows:

After advertising is implemented, applications are accepted for 30 to 90 days.

At the end of the period, sealed applications are selected one-by-one through a lottery (unless fewer applications are received than the number of available units, then all eligible households will be placed in a unit).

Note: only pre-qualified applicants are placed in the lottery, based on their being preliminarily income eligible. Applicants are notified in writing of eligibility and non-eligibility in advance of the lottery.

Households are informed of the date, time, and location of the lottery and are invited to attend.

An applicant pool is created by listing applicants in the order selected.

Applications are reviewed for income eligibility. In eligible households are informed that they are being removed from the applicant pool or given the opportunity to correct and/or update income and household information.

Eligible households are match to available units based upon number of bedrooms needed (and any other special requirements, such as regional preference or the need for an accessible unit).

The applicant pool remains open after the initial lottery and names are added to the existing list based on time and date of submission.

Randomization After Certification

Random selection is conducted when the unit is available, and only certified households seeking the type and bedroom size of available units are placed in the lottery. The process is as follows:

After advertising is implemented, applications are accepted for 30 days.

Eligible households are placed in applicant pools based upon the number of bedrooms needed (and any other special requirements, such as regional preference or the need for an accessible unit).

When a unit is available, only the certified household in need of that type of unit or selected for a lottery and put into the randomizer.

After the lotteries conducted, the first households elected are given five calendar days to express interest or disinterest in the unit. (If the first household is not interested in the unit, this process continues until a certified household selects the unit).

Applications are accepted on an ongoing basis, certified households are added to the pool for the appropriate household income and size categories, and advertising and outreach is conducted as needed,

according to the affirmative marketing plan.

MATCHING HOUSEHOLDS TO AVAILABLE UNITS

In referring certified households to specific restricted units, to the extent feasible, and without causing an undue delay in occupying the unit, the administrative agent shall strive to implement the following policies:

- Provide an occupant for each unit bedroom;
- Provide children of different sex with separate bedrooms;
- Prevent more than two persons from occupying a single bedroom;
- Require that all bedrooms be used as a bedroom; and
- Require that a couple requesting a two-bedroom unit provide a doctor's note justifying such request.

The administrative agent cannot require an applicant household to take an affordable housing unit with a greater number of bedrooms, as long as overcrowding is not a factor.

A household can be eligible for more than one-unit category and should be placed in the applicant pool for all categories for which it is eligible.

HOUSEHOLD CERTIFICATION

Before any household can rent a restricted unit, the Administrative Agent must certify the household as eligible. Certification of a household involves the verification of two critical pieces of data: 1) Household size and composition, including gender; and 2) The total income and assets for all household members over 18 years of age. The certification process begins with the applicant completing an application in its entirety and providing the required backup documentation. Once eligibility documents and data have been collected, the Administrative Agent can begin the process of calculating the household's income.

PROCEDURE FOR INCOME-ELIGIBILITY CERTIFICATION

The Administrative Agent shall require each member of an applicant household who is 18 years of age or older to provide documentation to verify their income. Income verification documentation should include, but is not limited to the following for each and every member of a household who is 18 years of age or older:

- Four current consecutive pay stubs [including both the check and the stub], including bonuses, overtime or tips, or a letter from the employer stating the present annual income figure or if self-employed, a current Certified Profit & Loss Statement and Balance Sheet.
- Copies of Federal and State income tax returns for each of the preceding three tax years
 - A Form 1040 Tax Summary for the past three tax years can be requested from the local Internal Revenue Service Center or by calling 1-800-829-1040.
- A notarized letter or appropriate reporting form verifying monthly benefits such as:
 - o Social Security or SSI - Current award letter or computer printout letter

- o Unemployment - verification of Unemployment Benefits
 - o Welfare -TANF¹ current award letter
 - o Disability - Worker's compensation letter or
 - o Pension income (monthly or annually)- a pension letter
- A letter or appropriate reporting form verifying any other sources of income claimed by the applicant, such as alimony or child support - copy of court order or recent original letters from the court or education scholarship/stipends- current award letter.
 - Last three (3) months' reports of savings and checking accounts (bank statements and passbooks) and income reports from banks or other financial institutions holding or managing trust funds, money market accounts, certificates of deposit, stocks or bonds (In brokerage accounts - most recent statements and/or in certificate form - photocopy of certificates).
 - Evidence or reports of income from directly held assets, such as real estate or businesses.
 - Interest in a corporation or partnership - Federal tax returns for each of the preceding three tax years.
 - Current reports of assets - Market Value Appraisal or Realtor Comparative Market Analysis and Bank/Mortgage Co. Statement indicating Current Mortgage Balance. For rental property, attach copies of all leases.

The following is a list of various types of wages, payments, rebates and credits. Those that are considered as part of the household's income are listed under Income. Those that are not considered as part of the household's income are listed under Not Income. Restricted units constructed with Federal funds should consult the appropriate regulations, for example, HUD Section 42, to ensure compliance with applicable Federal regulations.

INCOME

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1. Wages, salaries, tips, commissions
 2. Alimony
 3. Regularly scheduled overtime
 4. Pensions
 5. Social security
 6. Unemployment compensation (verify the remaining number of weeks they are

¹ TANF = Temporary Assistance for Needy Families

eligible to receive)

7. TANF
8. Verified regular child support
9. Disability
10. Net income from business or real estate
11. Interest income from assets such as savings, certificates of deposit, money market accounts, mutual funds, stocks, bonds
12. Imputed interest (using a current average annual rate of two percent) from non-income producing assets, such as equity in real estate. Rent from real estate is considered income, after deduction of any mortgage payments, real estate taxes, property owner's insurance.
13. Rent from real estate is considered income
14. Any other forms of regular income reported to the Internal Revenue Service

NOT INCOME

1. Rebates or credits received under low-income energy assistance programs
2. Food stamps
3. Payments received for foster care
4. Relocation assistance benefits
5. Income of live-in attendants
6. Scholarships
7. Student loans
8. Personal property such as automobiles
9. Lump-sum additions to assets such as inheritances, lottery winnings, gifts, insurance settlements
10. Part-time income of persons enrolled as full-time students
11. Court ordered payments for alimony or child support paid to another household shall be deducted from gross annual income

To calculate income, the current gross income of the applicant is used to project that income over the next 12 months.

STUDENT INCOME

Only full-time income of full-time students is included in the income calculation. A full-time student is a member of the household who is enrolled in a degree-seeking program for 12 or more credit hours per semester; and part-time income is income earned on less than a 35-hour workweek.

REAL ESTATE ASSET LIMIT

Except for federal programs, if an applicant's primary residence, which is to be sold upon rental of an affordable unit, has no mortgage debt and is valued at or above the regional asset limit as published annually by AHPNJ with AHPNJ's Annual Regional Income Limits Chart, the household must be determined ineligible for certification.

However, if the applicant's existing monthly housing costs including taxes, homeowner insurance, and condominium or homeowner association fees exceed 38 percent of the household's eligible monthly income, the household will be exempt from the asset limit.

An applicant must provide a recent, Market Value Appraisal or Realtor Comparative Market Analysis, on the home they own unless the applicant has mortgage debt on the home or can demonstrate that the existing monthly housing costs exceed 38 percent of the household's eligible monthly income, in which case the applicant is exempt from the asset limit.

Before obtaining a professional appraisal, the applicant should review the property's tax appraisal and the current market value and compare it to the asset limit to avoid any unnecessary expense. For instance, if homes are commonly selling in the applicant's neighborhood for over \$250,000, it is unlikely that an appraisal will determine a value below the asset limit.

INCOME FROM REAL ESTATE

If real estate owned by an applicant for affordable housing is a rental property, the rent is considered income. After deduction of any mortgage payments, real estate taxes, property owner insurance and reasonable property management expenses as reported to the Internal Revenue Service, the remaining amount shall be counted as income.

If an applicant owns real estate with mortgage debt, which is not to be used as rental housing, the Administrative Agent should determine the imputed interest from the value of the property. The Administrative Agent should deduct outstanding mortgage debt from the documented market value established by a market value appraisal. Based on current money market rates, interest will be imputed on the determined value of the real estate.

MAXIMUM MONTHLY PAYMENTS

The percentage of funds that a household can contribute toward housing expenses is limited. However, an applicant may qualify for an exception based on the household's current housing cost (see below). The Administrative Agent will strive to place an applicant in a unit with a monthly housing cost equal to or less than the applicant's current housing cost.

UHAC states that a certified household is not permitted to lease a restricted rental unit that would require more than 35 percent of the verified household income to pay rent and utilities. However, at the discretion of the Administrative Agent, this limit may be exceeded if:

- The household currently pays more than 35 percent (40 percent for households eligible for age-restricted units) of its gross household income for rent and the proposed rent will reduce the household's housing costs;
- The household has consistently paid more than 35 percent (40 percent for households eligible for age-restricted units) of eligible monthly income for rent in the past and has proven its ability to pay;
- The household is currently in substandard or overcrowded living conditions;
- The household documents the existence of assets, with which the household proposes to supplement the rent payments; or
- The household documents proposed third party assistance from an outside source such as a family member in a form acceptable to the Administrative Agent and the Owner of the unit; and
- The household receives budget counseling.

HOUSING COUNSELING

The Administrative Agent is responsible for providing housing counseling, or providing referrals for counseling, as a part of the Affirmative Marketing Plan and during the application process. Although housing counseling is recommended, a household is only required to attend counseling if their monthly housing expense exceeds UHAC standards. A HUD-approved housing counseling agency, or a counseling agency approved by the NJ Department of Banking and Insurance, meets UHAC's requirements for an experienced Housing Counseling Agency. If the Administrative Agent is not approved by HUD or by the NJ Department of Banking and Insurance, the Agent will make referrals to one of the HUD-approved housing counseling agencies in

New Jersey. This counseling to low- and moderate-income housing applicants will focus on subjects such as budgeting, credit issues, and mortgage qualification, and is free of charge. A list of non-profit counselors approved by HUD and/or the New Jersey Department of Banking and Insurance is included on DCA's website and is available from the Administrative Agent.

DOCUMENTING HOUSEHOLD COMPOSITION AND CIRCUMSTANCES

The following are various records for documenting household information:

- Social Security records or cards. Either individual Social Security card or letter from Social Security Administration
- Adoption papers, or legal documents showing adoption in process
- Income tax return
- Birth Certificate or Passport
- Alien Registration Card

APPROVING OR REJECTING A HOUSEHOLD

Administrative Agents must notify applicant households of their eligibility within twenty (20) days of the Administrative Agent's determination.

Households with a verified total household income that exceeds 80 percent of the regional income limit for the appropriate family size are ineligible for purchase or rental of restricted units. A letter rejecting the household's application shall be mailed to the household.

Similarly, households with a verified total household income that is within the income limits, but too low to afford any of the units administered by the Administrative Agent shall be sent a letter rejecting the household's application, and/or referring them to housing counseling.

Households with a verified total household income of less than 80 percent shall be issued a letter certifying eligibility. This certification is valid for 180 days. If the Administrative Agent is unable to place the household in a restricted unit at the conclusion of 180 days, an extension may be granted once the household's eligibility is verified.

Once the applicant is certified and matched to an available unit, the Administrative Agent must secure from the applicant a signed and notarized acknowledgement of their requirements and responsibilities in renting a restricted unit. UHAC's Disclosure Statement shall be forwarded to the applicants.

In addition to non-eligibility based on income, the Administrative Agent may deny a certification because of the household's failure or inability to document household composition, income, assets, sufficient funds for down payment, or any other required facts and information. A household may also be denied certification if the Administrative Agent determines that there was a willful or material misstatement of fact made by the applicant.

DISMISSAL OF APPLICATIONS

Applications can be dismissed for the following reasons:

1. The application is not signed or submitted on time.
2. The applicant commits fraud, or the application is not truthful or complete.
3. The applicant cannot or does not provide documentation to verify their income or other required information when due.
4. The household income does not meet the minimum or maximum income requirements for a particular property.
5. The applicant owns assets that exceed the Asset Limit.
6. The applicant fails to respond to any inquiry in a timely manner.
7. The applicant is non-cooperative or abusive with the staff, property manager or landlord.
8. The applicant changes address or other contact information without informing the Administrative Agent in writing.
9. The applicant does not meet the credit standard or other requirement set forth by managers of rental properties.
10. The applicant fails to verify attendance in a credit-counseling program when required to do so by the program rules.
11. The applicant does not respond to periodic update inquiry in a timely fashion.
12. The applicant fails to sign the Compliance Certification, Certificate for Applicant, Lease Document, as may be required.
13. The applicant, once approved, fails to sign the lease in a timely manner.
14. Applicants will also be removed from all lists held by the Administrative Agent once they have been approved for an affordable unit. However, these applicants may re-apply for

other opportunities in that municipality once they have occupied their unit.

Applicants who are dismissed must re-apply. A minimum time period of six months applies in most situations where the applicant has been withdrawn for fraud, poor credit, uncooperative behavior or other serious matters.

Applicants will be automatically removed from rental lists if they do not respond to a Notice of Availability.

Applications may be held in abeyance for a period not to exceed 60 days if there is an error on the credit report, so that the applicant can correct the error and re-apply. Units will not be held open for that applicant. However, once the credit report is corrected, the applicant will be given a priority for the next opportunity at that property.

APPEALS

Appeals from all decisions of an Administrative Agent shall be made in writing to The Chief Executive Officer or President of the entity acting as Administrative Agent for the Borough of Avon-By-The-Sea. The Executive Director's written decision, which shall be made within 15 days of receipt of an appeal, shall be a final administrative action.