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March 11, 2026

VIA ECOURTS

Honorable Linda Grasso Jones, J.S.C.

Monmouth County Superior Court

71 Monument Park

Freehold, NJ 07728

**RE: In the Matter of the Application of the Borough of Little Silver,
County of Monmouth; Docket No.: MON-L-357-25**

Dear Judge Jones,

As Your Honor is aware, this office represents the Borough of Little Silver in the above-referenced matter. Enclosed herewith please find the implementing ordinances, as well as the requisite administrative documents and their resolutions, that were adopted at the March 9, 2026, Borough Council meeting. Notice of the adoption is scheduled to be published in the papers on March 12, 2026, so the adopting date reflects that day.

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

Respectfully submitted,

William E. Olson

William E. Olson

Enclosure

cc: All attorneys of Record (via ecourts)

| Council | Motion | 2 nd | Ayes | Nays | Abstain | Absent |
|----------------------|--------|-----------------|------|------|---------|--------|
| Councilman Brennan | X | | X | | | |
| Councilman Faherty | | | X | | | |
| Councilman Galante | | X | X | | | |
| Councilwoman Giblin | | | X | | | |
| Councilman Smith | | | | | | X |
| Councilwoman Vilardi | | | X | | | |
| Mayor Neff | | | | | | |
| | | VOTE | 5 | 0 | | |

**BOROUGH OF LITTLE SILVER: #910-26 PUBLIC HEARING
MARCH 9, 2026**

ORDINANCE PUBLIC HEARING: #910-26:

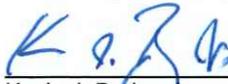
AN ORDINANCE AMENDING AND SUPPLEMENTING CHAPTER 16A “LAND USE AND DEVELOPMENT REGULATIONS” ARTICLE X “ZONING DISTRICT REGULATIONS” OF THE BOROUGH OF LITTLE SILVER, FOR THE ADDITION OF THE “INCLUSIONARY HOUSING OVERLAY 9 ZONE (IHO-9)” SECTION 16A-10.30

INTRODUCED: FEBRUARY 23, 2026

PASSED: MARCH 9, 2026

ADOPTED: MARCH 12, 2026

I, Kevin J. Burke, Jr., Borough Administrator/ Borough Clerk of the Borough of Little Silver do hereby certify that the foregoing is a true copy of ordinance #2026-910 that was passed by unanimous vote after a first reading held during a meeting of the Mayor and Council on February 23, 20226. On March 9, 2026, a 2nd reading and public hearing was held during a meeting of the Mayor and Council, and this ordinance was passed by unanimous vote.



 Kevin J. Burke, Jr.
 Administrator/Borough Clerk

BOROUGH OF LITTLE SILVER

ORDINANCE #910-26

AN ORDINANCE AMENDING AND SUPPLEMENTING CHAPTER 16A “LAND USE AND DEVELOPMENT REGULATIONS” ARTICLE X “ZONING DISTRICT REGULATIONS” OF THE BOROUGH OF LITTLE SILVER, FOR THE ADDITION OF THE “INCLUSIONARY HOUSING OVERLAY 9 ZONE (IHO-9)” SECTION 16A-10.30

WHEREAS, the Borough Council of the Borough of Little Silver desires to amend and supplement the Borough’s Land Use and Development Regulations to permit the construction of an inclusionary residential development. The development will include affordable units set aside for very-low, -low, and moderate-income households, pursuant to the Mount Laurel doctrine and the laws of New Jersey; and

WHEREAS, the Inclusionary Housing Overlay 9 Zone (IHO-9) is comprised of the property identified as Lot 15, Block 1, on the Borough Tax Map; and

WHEREAS, the Borough Council of the Borough of Little Silver desires to adopt this Ordinance pursuant to a mediation agreement between Real Foursome, LLC, and the Borough, dated December 15, 2025, in the case captioned *In the Matter of the Application of the Borough of Little Silver, County of Monmouth, State of New Jersey* docketed at MON-L-357-25.

NOW, THEREFORE, BE IT ORDAINED by the Borough Council of the Borough of Little Silver, County of Monmouth, State of New Jersey, that the Land Use and Development Regulations of the Borough of Little Silver is supplemented at Chapter 16A, “Land Use and Development Regulations” for the addition of Article X, Section 16A-10.30, “Inclusionary Housing Overlay 9 Zone (IHO-9)” as follows:

SECTION 1.

- A. The purpose of the Inclusionary Housing Overlay 9 Zone (IHO-9) is to permit an opportunity for the construction of an inclusionary residential development. The IHO-9 Zone is comprised of property identified as Lot 15, Block 1, on the Borough of Little Silver Tax Map. This Ordinance is adopted pursuant to a mediation agreement between Real Foursome, LLC, and the Borough, dated December 15, 2025, in the case captioned *In the Matter of the Application of the Borough of Little Silver* docketed at MON-L-357-25 (“Agreement”).
- B. Permitted Uses:
 - 1. Townhouse residences.
 - 2. Stacked flat residences.
 - 3. Townhouse units and stacked flat units permitted within same building.
- C. Permitted accessory uses.

1. Off-street parking facilities, private garages, and driveways.
2. Mailboxes, lampposts, light fixtures, and similar structures.
3. Patios, decks, porches, covered and uncovered terraces, and balconies at ground level and the second story.
4. Residential amenities including, but not limited to: outdoor cooking areas, common walkways, gazebos, sitting areas, and other typical, incidental, or ancillary to residential use.
5. Fences and walls, which shall not be higher than six (6) feet.
6. Signs.
7. Temporary construction and sales trailers, that are removed prior to the issuance of the final unit certificate of occupancy.
8. Utility structures, including but not limited to, stormwater management basins and facilities, pump stations, junction boxes, water and sewer utilities, cable, and the like.
9. Generators.
10. Uses that are customary and incidental to a residential use.

D. Affordable Housing.

1. Twenty percent (20%) of the total units developed shall be set-aside as affordable housing units. For the development of 17 units, the set-aside shall be 3 affordable units. A payment in-lieu for the four-tenths (.4) fractional unit shall be provided ($17 \times .2 = 3.4$) and shall be paid to the Borough's affordable housing trust fund. The payment in lieu amount shall be dictated pursuant to the mediation agreement between the Borough of Little Silver and Real Foursome, LLC.
2. The affordable units shall comply with the applicable the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.1 et seq. ("UHAC"), including but not limited to, the requirement to deed restrict the affordable units, length of affordability controls, and unit sizes.
3. The 3 affordable housing units shall be developed as two stacked flat units and one townhouse unit. Should the affordable units be for rent, they must be of the same unit type as market-rate units within the same building.

E. Area, Yard and Building Requirements.

1. Minimum lot size: 2 acres.
2. Minimum lot frontage: n/a
3. Minimum building setback, all yards: 20 feet
4. Maximum density / units: 17
5. Maximum Building height.

- a. Principal buildings. 3 stories and 35 feet, except no portion of a unit within 30 feet of a property line shared with an off tract residence may exceed a height of 32 feet.
 - b. Accessory buildings. 16 feet
 - c. Building height shall be measured from the average finished grade of the building to the highest point of the roof, inclusive of Architectural elements, parapets, cornices, walls, mechanical equipment, screening of mechanical equipment, and other rooftop appurtenances. Chimneys, vent pipes, roof jacks, ventilators, and other similarly sized pipes are excluded from the calculation of building height.
- 6. Maximum impervious cover. 65%
 - 7. Maximum lot cover: 30%

F. Landscaping.

- 1. A 20 foot wide perimeter buffer shall be provided along all property lines consistent with Section 16A-8.4.B, unless stated otherwise herein.
 - a. The required buffer may be located within the required building setbacks.
 - b. Existing vegetation may satisfy the buffer requirements, to the extent applicable, and shall be supplemented with additional plantings as necessary for compliance.
 - c. No buffer shall be required on the portion of the Property facing Borough-owned Preserved Open Space.
 - d. A 6 foot high solid (including board on board) fence shall be installed around the perimeter of the Property along the boundary and within setbacks.
 - e. The required height of trees within the buffer along the rail line shall be at least 4 feet tall.
 - f. A buffer of evergreen trees between 6 and 8 feet in height and a solid fence (including board on board) shall be provided within 50 feet of the entrance to the Property from Grant Place
- 2. The development access driveway and freestanding sign are permitted within the buffer. Stormwater management basins may be located within the required setback and buffer areas along lot lines shared with the rail line or a nonresidential use.
- 3. All landscaped areas, other than any surface water management facility or buffer areas, shall be served by an automatic sprinkler system, and the operation (including water) and maintenance of the system shall be the sole responsibility, and at the sole expense, of the Homeowner's Association.

G. Off-street parking.

- 1. The number of parking spaces and stall dimensions shall be consistent with the requirements of the Residential Site Improvements Standards N.J.A.C. 5:21-1.1 et seq.

2. The outdoor parking or storage of recreational vehicles or boats is prohibited.

H. Design Standards.

1. Maximum building length. 220 feet
2. The front elevation shall not continue on the same plane for more than 50 feet without an offset of at least 2 feet.
3. Building architecture and materials shall be similar from front, rear and side elevations.
4. Townhome entrances shall face the access drive to which the building is oriented.
5. The front entrance of residential units may incorporate front stoops, decorative columns, and covered entrances.
6. Outdoor spaces on the second story of a unit are permitted to project from the unit's façade, except that within 40 feet of a contiguous residential lot the second story space shall not be oriented toward and shall be recessed so as not project beyond the façade of the unit.
7. Flat roofs are prohibited.

I. Signs.

1. Signs shall be permitted consistent with Section 16A-8.26, except as follows:
 - a. One freestanding project identification sign shall be permitted at the site entrance.
 - b. Maximum sign area: 20 square feet.
 - c. Maximum height: 5 feet
 - d. Minimum setback: 20 feet
 - e. External illumination is permitted.

SECTION 2. Referral to Planning Board. Upon introduction, this Ordinance shall be referred to the Planning Board of the Borough of Little Silver for its review and comment.

SECTION 3. Conflict. In the event that there is a conflict between this Ordinance and any other portion of the Borough Code which details the requirements for anything addressed in this Ordinance, this Ordinance shall control.

SECTION 4. Severability. If any Section, part of any Section or clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the remaining provisions of this Ordinance. The Borough Council of the Borough of Little Silver declares that it would have passed the Ordinance and each Section thereof, irrespective of the fact

that any one or more of the subsections, sentences, clauses or phrases may be declared unconstitutional or invalid.

SECTION 5. Effective Date. This Ordinance shall take effect immediately upon final passage and publication according to law.

| Council | Motion | 2 nd | Ayes | Nays | Abstain | Absent |
|----------------------|--------|-----------------|------|------|---------|--------|
| Councilman Brennan | X | | X | | | |
| Councilman Faherty | | | X | | | |
| Councilman Galante | | | X | | | |
| Councilwoman Giblin | | X | X | | | |
| Councilman Smith | | | | | | X |
| Councilwoman Vilardi | | | X | | | |
| Mayor Neff | | | | | | |
| | | VOTE | 5 | 0 | | |

**BOROUGH OF LITTLE SILVER: #911-26 PUBLIC HEARING
MARCH 9, 2026**

ORDINANCE PUBLIC HEARING: #911-26:

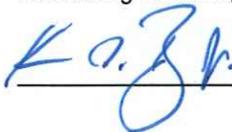
AN ORDINANCE AMENDING AND SUPPLEMENTING CHAPTER 16A “LAND USE AND DEVELOPMENT REGULATIONS” ARTICLE X “ZONING DISTRICT REGULATIONS” OF THE BOROUGH OF LITTLE SILVER, FOR THE ADDITION OF THE “INCLUSIONARY HOUSING OVERLAY 10 ZONE (IHO-10)” SECTION 16A-10.31

INTRODUCED: FEBRUARY 23, 2026

PASSED: MARCH 9, 2026

ADOPTED: MARCH 12, 2026

I, Kevin J. Burke, Jr., Borough Administrator/ Borough Clerk of the Borough of Little Silver do hereby certify that the foregoing is a true copy of ordinance #2026-911 that was passed by unanimous vote after a first reading held during a meeting of the Mayor and Council on February 23, 2026. On March 9, 2026, a 2nd reading and public hearing was held during a meeting of the Mayor and Council, and this ordinance was passed by unanimous vote.



Borough of Little Silver, Monmouth County, New Jersey
Ordinance# 911-26
Amendments to Zoning Ordinance

AN ORDINANCE AMENDING CHAPTER 16A "LAND USE AND DEVELOPMENT", ARTICLE X
"ZONING DISTRICT REGULATIONS" TO ADD THE NEW IHO-10 OVERLAY ZONE DISTRICT
PERMITTING INCLUSIONARY DEVELOPMENT

WHEREAS, the Borough adopted a 2025 Fourth Round Housing Element and Fair Share Plan that also set forth that the portion of the B-1 Business Zone along White Road shall receive zoning to permit mixed-use inclusionary townhouses and multi-family development at a density of 13 du/ac and an affordable housing set-aside of 20% in order to satisfy a portion of Little Silver's Round 4 affordable housing obligation; and

WHEREAS, Fair Share Housing Center filed an objection to the Borough's Fourth Round compliance filing, and, in response, the Borough participated in mediation to address that objection and to identify limited, targeted amendments to the Borough's zoning framework in furtherance of the Borough's Fourth Round affordable housing compliance; and

WHEREAS, the Borough of Little Silver entered into a Mediation Agreement with Fair Share Housing Center on December 19, 2025 in the Matter of the Application of the Borough of Little Silver's Housing Element and Fair Share Plan (Docket No.: MON-L-357-25); and

WHEREAS, the Mediation Agreement set forth that the portion of the B-1 Business Zone along White Road shall receive zoning to permit mixed-use inclusionary townhouses and multi-family development of up to 105 units, which equates to a density of 16 du/ac, and an affordable housing set-aside of 20%; and

WHEREAS, the zoning herein implements the 2025 Fourth Round Housing Plan and the Mediation Agreement with Fair Share Housing Center; and

WHEREAS, these amendments are only applicable to the portions of the B-1 Business Zone located along White Road, inclusive of Block 30, Lots 1 and 2; and

NOW, THEREFORE, BE IT ORDAINED by the Borough Council of the Borough of Little Silver, Monmouth County, New Jersey, that the Code of the Borough of Little Silver is hereby amended as follows.

SECTION 1. Chapter 16A. Land Use and Development Regulations, Article X. Zoning District Regulations, shall be amended as follows:

(Additions shown as **thus**; deletions shown as **~~thus~~**)

§ 16A-10.28. Inclusionary Housing Overlay 10 Zone (IHO-10).

A. Principal Permitted Use.

- 1. Townhouse dwellings (TH-1 and TH-2).**
- 2. Stacked townhouse dwellings.**
- 3. Multi-family dwellings.**

4. Business and professional offices
5. Federal, State, County and Municipal buildings and grounds

B. Accessory Uses Permitted.

1. Conservation areas, public parks, and common open spaces.
2. Off-street parking in accordance with the provisions of the Borough Code.
3. Signs in accordance with the provisions of the Borough Code.
4. Balconies and patios.
5. Signs in accordance with the provisions of the Borough Code.
6. Generators.
7. Indoor and outdoor amenities for on-site residents, such as but not limited to a pool, clubhouse, and playground.
8. A sales/construction trailer as may be specifically approved by the Planning Board, provided that such trailer shall be removed by the developer prior to the issuance by the Borough of the last Certificate of Occupancy.
9. Trailers of contractors actively engaged in construction of the development, in locations specifically approved by the Planning Board, and provided that such trailers are removed when the related construction activity is completed.

C. Conditional Permitted Uses.

1. None.

D. Affordable Housing.

1. Not less than 20% of dwelling units shall be restricted for low and moderate income households.
2. Affordable housing units shall be restricted, regulated and administered consistent with the Borough's affordable housing regulations, the Uniform Housing Affordability Controls rules (N.J.A.C. 5:80-26.1 et seq.) and the New Jersey Fair Housing Act (N.J.S.A. 52:27D-301 et seq.). This shall include but is not limited to income distribution, bedroom distribution, unit integration, and phasing.

E. Area Yard Building Requirements.

1. Minimum lot size: 1.5 acres.
2. Minimum lot frontage: 400 feet.
3. Minimum front yard setback: 50 feet.
4. Minimum setback to a residential use: 50 feet
5. Minimum setback to a nonresidential use or rail line: 30 feet
6. Impervious surface coverage: 70%.
7. Maximum residential density: 16 du/ac.
8. Minimum distance between buildings:
 - i) Side to side: 20 feet
 - ii) Front to any façade: 60 feet.

iii) Rear to any façade: 60 feet

9. Permitted encroachments: building overhangs and projections may encroach not more than 2 feet into any setback or distance between buildings.
10. Accessory buildings shall comply with the requirements for principal buildings.

F. Building Design Requirements.

1. Non-garaged parking spaces shall be no closer than 15 feet to any building. This shall exclude parking within townhouse driveways.
2. No building shall exceed a length of 210 feet.
3. Maximum building height:
 - i) Principal buildings: maximum of 35 feet and 2.5 stories.
 - ii) Accessory structures: maximum of 16 feet.
4. The front, sides and rear of the buildings shall be similarly designed and finished with the same materials and similar architecture.
5. Buildings shall be designed with horizontal and vertical offsets to create a visually attractive development and shall be oriented in clusters which relate to the tract's topography and natural features.
6. Building entrances shall face the public street which the building is oriented. This shall include but not be limited to the front door of townhouse units and the lobby of multi-family and office buildings.
7. Flat roofs are prohibited.

G. Off-Street Parking and Loading.

1. Off street loading shall be subject to the provisions of Section 16A-8.19, except as noted herein.
2. Minimum parking and loading setback from a single-family residential lot: 50 feet.
3. Minimum parking and loading setback from a nonresidential lot and rail line: 20 feet
4. Residential off-street parking requirements shall be governed by the New Jersey Residential Site Improvement Standards (RSIS).
5. Nonresidential off street parking shall be subject to the provisions of Section 16A-8.20.
6. Parking shall not be located between a building and a public street.
7. Individual residential units shall not have direct access to a public street.

H. Signs.

1. Signs shall be consistent with Section 16A-8.26, with the following exception:
 - i) One free-standing permanent monument sign shall be permitted at the entrance to the development; the sign shall not exceed 18 square feet in area, shall not exceed five feet in height, shall be setback at least five feet from the street right-of-way, and shall be setback at least 50 feet from a single-family residential lot.

2. Temporary signs shall be permitted as may be specifically approved by the Planning Board.

I. Courtyards, Balconies, and Patios.

1. Courtyards, balconies, and patios may extend up to 10 feet into any required side or rear setback area that is not adjacent to an off-tract residential use.

J. Streetscape and Landscaping.

1. All developed portions of the tract shall be left in their natural state or shall be landscaped as specifically approved by the Planning Board.
2. A 20 foot wide perimeter buffer shall be provided along all property lines consistent with Section 16A-8.4.B, unless stated otherwise herein.
 - i) The required buffer may be located within the required building setbacks.
 - ii) Existing vegetation may satisfy the buffer requirements, to the extent applicable, and shall be supplemented with additional plantings as necessary for compliance.
 - iii) A 6 foot high solid (including board on board) fence shall be installed along lot lines along an off-tract residential use and the rail line.
3. Street trees shall be planted along public and private streets and drives with average spacing of not more than 40 feet.
4. All landscaped areas, other than any surface water management facility, shall be served by an automatic sprinkler system, and the operation (including water) and maintenance of the system shall be the sole responsibility, and at the sole expense, of the Homeowner's Association.

K. Other Applicable Requirements.

1. The outdoor parking or storage of recreational facilities or boats shall not be permitted.
2. A Developer's Agreement shall be entered into between the Borough and the developer to address any off-tract improvements required for the proposed development.

SECTION 2. Severability.

If any Section, part of any Section or clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the remaining provisions of this Ordinance. The Borough Council of the Borough of Little Silver declares that it would have passed the Ordinance and each Section thereof, irrespective of the fact that any one or more of the subsections, sentences, clauses or phrases may be declared unconstitutional or invalid.

SECTION 3. Effective Date.

This Ordinance shall take effect immediately upon final passage and publication according to law.

| Council | Motion | 2 nd | Ayes | Nays | Abstain | Absent |
|----------------------|--------|-----------------|------|------|---------|--------|
| Councilman Brennan | X | | X | | | |
| Councilman Faherty | | X | X | | | |
| Councilman Galante | | | X | | | |
| Councilwoman Giblin | | | X | | | |
| Councilman Smith | | | | | | X |
| Councilwoman Vilardi | | | X | | | |
| Mayor Neff | | | | | | |
| | | VOTE | 5 | 0 | | |

**BOROUGH OF LITTLE SILVER: #912-26 PUBLIC HEARING
MARCH 9, 2026**

ORDINANCE PUBLIC HEARING: #912-26:

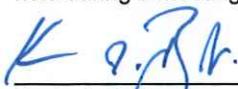
**AN ORDINANCE REPEALING AND REPLACING SECTION 16A-11 OF ARTICLE XI
“AFFORDABLE HOUSING REGULATIONS AND ADMINISTRATION**

INTRODUCED: FEBRUARY 23, 2026

PASSED: MARCH 9, 2026

ADOPTED: MARCH 12, 2026

I, Kevin J. Burke, Jr., Borough Administrator/ Borough Clerk of the Borough of Little Silver do hereby certify that the foregoing is a true copy of ordinance #2026-912 that was passed by unanimous vote after a first reading held during a meeting of the Mayor and Council on February 23, 20226. On March 9, 2026, a 2nd reading and public hearing was held during a meeting of the Mayor and Council, and this ordinance was passed by unanimous vote.



 Kevin J. Burke, Jr.
 Administrator/Borough Clerk

Borough of Little Silver, Monmouth County

Ordinance # 912-26

Affordable Housing Ordinance

AN ORDINANCE REPEALING EXISTING ARTICLE XI “AFFORDABLE HOUSING REGULATIONS AND ADMINISTRATION” OF THE CODE OF LITTLE SILVER BOROUGH, IN ITS ENTIRETY AND REPLACING IT WITH NEW COMPREHENSIVE REGULATIONS FOR THE ADMINISTRATION OF AFFORDABLE HOUSING AND ADDRESSING THE CURRENT REQUIREMENTS OF THE FAIR HOUSING ACT AND THE UNIFORM HOUSING AFFORDABILITY CONTROLS (UHAC)

Whereas, on March 20, 2024, Governor Murphy signed P.L.2024, c.2. into law, establishing a new framework for determining and enforcing municipalities' affordable housing obligations under the New Jersey Supreme Court's Mount Laurel doctrine and the New Jersey Fair Housing Act (the " Amended FHA") (N.J.S.A. 52:27D-301 et al.); and

Whereas, in accordance with the Amended FHA and the Administrative Office of the Court's Directive No. 14-24, Little Silver Borough (the "Borough") filed a timely Fourth Round Declaratory Judgment complaint ("DJ Complaint") with the Affordable Housing Dispute Resolution Program (the "Program"), under Docket Number MON-L-422-25; and

Whereas, in accordance with the Amended FHA, the Borough's Planning Board adopted a Fourth Round Housing Element and Fair Share Plan on June 11, 2025; and

Whereas, the Borough filed its Fourth Round Affordable Housing Plan with the Program seeking Compliance Certification approving its Fourth Round Affordable Housing Plan; and

Whereas, in accordance with the Amended FHA and the Borough's participation in the Program, the Borough is required to take several actions, including updating the regulations implementing the Fourth Round Affordable Housing Plan; and

Whereas, the Borough's affordable housing regulations, Article XI do not reflect the Amended FHA at N.J.S.A. 52:27D-301 et seq., the Fair Housing Act Regulations of the Department of Community Affairs, Division of Local Planning Services ("LPS") at N.J.A.C. 5:99 et seq., or the Uniform Housing Affordability Controls ("UHAC") at N.J.A.C. 5:80-26.1 et seq.; and

Now Therefore Be It Ordained, by the Borough Council of Little Silver Borough, Monmouth County, New Jersey, that the Code of the Borough of Little Silver is hereby amended to repeal Article XI, and replace it with a new Section Article XI.

SECTION 1. Article XI, “Affordable Housing Regulations and Administration”, shall be replaced as follows:

A. Purpose, Applicability & Interpretation.

- (1) This section of the Code sets forth regulations regarding the creation, use, occupancy, administration and preservation of very low-, low- and moderate-income affordable housing units in Little Silver Borough consistent with the Mount Laurel doctrine; the New Jersey Fair Housing Act, as amended by P.L. 2024, c.2, N.J.S.A. 52:27D-301 et seq.,

(hereinafter the “Act,” “FHA” or FHA-2”) ; the regulations promulgated pursuant thereto by the New Jersey Department of Community Affairs, Division of Local Planning Services (“LPS”) at N.J.A.C. 5:99 et seq., (“Affordable Housing Rules”), and the Housing and Mortgage Finance Agency’s (HMFA) Uniform Housing Affordability Controls at N.J.A.C. 5:80-26.1 et seq.; and the ; and the municipality’s Fourth Round Housing Element and Fair Share Plan (“HEFSP”).

- (2) This 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 in accordance with applicable statutory and regulatory requirements. This provisions of this Code shall apply to all inclusionary developments, individual affordable units, and 100% affordable housing developments except where inconsistent with applicable law. Low-Income Housing Tax Credit-financed developments shall adhere to the provisions set forth below in item 5.c. below.
- (3) The Little Silver Borough 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.
- (4) This Ordinance implements and incorporates the relevant provisions of the HEFSP and addresses the requirements of the Mt. Laurel doctrine, the FHA N.J.A.C. 5:99, NJ Supreme Court upheld COAH regulations at N.J.A.C. 5:93 and 5:97, and UHAC at N.J.A.C. 5:80-26.1, et seq., as may be amended and supplemented.

B. Applicability

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

C. Interpretation

- (1) In the event of any ambiguity, the provisions of this Code shall be interpreted and liberally construed in favor of the Municipality.
- (2) Any subject matter that is not otherwise addressed hereinafter, or is not otherwise covered by the Act, the Affordable Housing Rules or the UHAC, the Municipality may rely upon

the provisions of COAH's prior round regulations at N.J.A.C. 5:93 and 5:97 that were deemed valid by binding Court precedent that are most favorable to the municipality.

D. 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 low- and moderate-income housing needs of its region and which details the affirmative measures the municipality proposes to undertake to achieve its fair share of low- and moderate-income housing, as provided in the municipal housing element, and which addresses the development regulations necessary to implement the housing element, including, but not limited to, inclusionary requirements and development fees, and the elimination of unnecessary housing cost-generating features from the municipal land use ordinances and regulations.

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

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

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

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

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

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

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

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

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

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

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

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

“Moderate-income household” means a household with a household income in excess of 50 percent but less than 80 percent 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 minus reasonable real estate broker fees, 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, minus reasonable real estate broker fees, determined as of the date of the appraisal. If the controlled sale price exceeds the contract price or, in the absence of a contract price, the appraised value, the price differential is zero dollars.

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

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

“Random selection process” means a 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.

E. Monitoring and Reporting Requirements

- (1) In accordance with the Act and N.J.A.C. 5:99 et seq., the Borough is required to annually provide updated affordable housing monitoring activity and affordable housing trust fund activity through the Department's Affordable Housing Monitoring Service on or before February 15 annually.

- (2) All developers, program sponsors and landlords of developments or projects containing affordable housing in the Borough shall be required to provide all necessary information related to the status of construction and occupancy of each affordable unit within the respective developer, program sponsor or landlord's development to the municipality's Municipal Housing Liaison by no later than January 2 annually for the previous year.

F. **New Construction.** Per the definition of "New Construction," this section governs the creation of new affordable housing units regardless of the means by which the units are created. Newly constructed units may include new residences constructed or created through other means.

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

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

- (3) **Design.** The following design requirements apply to affordable housing developments, excluding prior round units.
 - (a) **Design of 100 percent affordable developments:**
 - (i) Restricted units must meet the minimum square footage required for the number of inhabitants for which the unit is marketed and the minimum square footage required for each bedroom, as set forth in the Neighborhood Preservation Balanced Housing rules at N.J.A.C. 5:43-2.4.
 - (ii) Each bedroom in each restricted unit must have at least one window.
 - (iii) Restricted units must include adequate air conditioning and heating.
 - (b) **Design of developments comprising market-rate rental units and restricted rental units.** The following does not apply to prior round units, unless stated otherwise.
 - (i) Restricted units must use the same building materials and architectural design elements (for example, plumbing, insulation, or siding) as market-rate units of the same unit type (for example, flat or townhome) within the same development, except that restricted units and market-rate units may use different interior finishes. This shall apply to prior round units.

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

- (iv) Restricted units must meet the minimum square footage required for the number of inhabitants for which the unit is marketed and the minimum square footage required for each bedroom, as set forth in the Neighborhood Preservation Balanced Housing rules at N.J.A.C. 5:43-2.4.
 - (v) Penthouse and end units may be reserved for market-rate sale, provided that the overall number, value, and distribution of affordable units across the development is not negatively impacted by such reservation(s).
 - (vi) Residents of restricted units must be offered the same access to communal amenities as residents of market-rate units within the same affordable development. Examples of communal amenities include, but are not limited to, community pools, fitness and recreation centers, playgrounds, common rooms and outdoor spaces, and building entrances and exits. This shall apply to prior round units.
 - (vii) Each bedroom in each restricted unit must have at least one window; and
 - (viii) Restricted units must include adequate air conditioning and heating.
- (4) Utilities.
- (a) Affordable units shall utilize the same type of cooling and heating source as market-rate units within the affordable housing development.
 - (b) Tenant-paid utilities that are included in the utility allowance shall be so stated in the lease and shall be consistent with the utility allowance in accordance with N.J.A.C 5:80-26.13(e).
- (5) Income split and bedroom distribution.
- (a) Affordable units shall be divided equally between low- and moderate-income units, except that where there is an odd number of affordable housing units, the extra unit shall be a low-income unit.
 - (b) In each affordable housing development, at least 50% of the restricted units within each bedroom distribution rounded up to the nearest whole number shall be very low- or low-income units. The municipality has chosen to allow rounding.
 - (c) Within rental developments, of the total number of affordable rental units, at least 13%, rounded up to the nearest whole number, shall be affordable to very low-income households. The very low-income units shall be distributed between each bedroom count as proportionally as possible, to the nearest whole unit, to the total number of restricted units within each bedroom count, and counted as part of the required number of low-income units within the development.
 - (d) Affordable housing developments 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% of the total number of low- and moderate-income units. The number may be rounded up when the calculation results in a fraction of .5 or greater if the development includes a minimum of 1 two-bedroom

affordable unit and 1 three-bedroom affordable unit. The number of units may be rounded down when calculation results in a fraction of .4 or less.

- (iv) At least 30% of all low- and moderate-income units, shall be two-bedroom units. The number of units may be rounded up when the calculation results in a fraction of .5 or greater, or rounded down where the calculation results in a fraction of .4 or less.
 - (v) At least 20% of all low- and moderate-income units, shall be three-bedroom units.
 - (vi) The remaining units may be allocated among two- and three- bedroom units at the discretion of the developer.
- (e) Affordable housing developments that are age-restricted or supportive housing, except those supportive housing units whose sponsoring program determines the unit arrangements, shall be structured such that, at a minimum, the number of bedrooms shall equal the number of age-restricted or supportive housing low- and moderate-income units within the inclusionary development. Supportive housing units whose sponsoring program determines the unit arrangement shall comply with all requirements of the sponsoring program. The standard may be met by having all one-bedroom units or by having a two-bedroom unit for each efficiency unit. In affordable housing developments with 20 or more restricted units that are age-restricted or supportive housing, two-bedroom units must comprise at least 5% of those restricted units.
- (6) Accessibility requirements.
- (a) Any new construction shall be adaptable; however, elevators shall not be required in any building or within any dwelling unit for the purpose of compliance with this section. In buildings without elevator service, only ground floor dwelling units shall be required to be constructed to conform with the technical design standards of the barrier free subcode. "Ground floor" means the first floor with a dwelling unit or portion of a dwelling unit, regardless of whether that floor is at grade. A building may have more than one ground floor.
 - (b) Notwithstanding the exemption for townhouse dwelling units in the barrier free subcode, the first floor of all townhouse dwelling units and of all other multi-floor dwelling units that are attached to at least one other dwelling unit shall be subject to the technical design standards of the barrier free subcode and shall include the following features:
 - (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 above 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.

G. Affordable Housing Programs

- (1) Pursuant to amended UHAC regulations at N.J.A.C. 5:80-26.1 et seq. and, in addition, pursuant to P.L. 2024, c.2 and specifically to the amended FHA at N.J.S.A. 52:27D-311.m, “All parties shall be entitled to rely upon regulations on municipal credits, adjustments, and compliance mechanisms adopted by the Council on Affordable Housing unless those regulations are contradicted by statute, including but not limited to P.L. 2024, c.2, or binding court decisions.”

H. Regional Income Limits.

- (1) Administrative agents shall use the current regional income limits for the purpose of pricing affordable units and determining income eligibility of households.
- (2) Regional income limits are based on regional median income, which is established by a regional weighted average of the “median family incomes” published by HUD. The procedure for computing the regional median income is detailed in N.J.A.C. 5:80-26.3.
- (3) Updated regional income limits are effective as of the effective date of the regional Section 8 income limits for the year, as published by HUD, or 45 days after HUD publishes the

regional Section 8 income limits for the year, whichever comes later. The new income limits may not be less than those of the previous year.

I. Maximum Initial Rents And Sales Prices.

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

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

J. **Affirmative Marketing.**

- (1) The municipality shall adopt, by resolution, an Affirmative Marketing Plan, subject to approval of the Superior Court, compliant with N.J.A.C. 5:80-26.16, as may be amended and supplemented.
- (2) The Affirmative Marketing Plan is a regional marketing strategy designed to attract buyers and/or renters of all majority and minority groups, regardless of race, creed, color, national

origin, ancestry, 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.

- (3) The Affirmative Marketing Plan provides the following preferences, provided that units that remain unoccupied after these preferences are exhausted may be offered to households without regard to these preferences.
 - (a) Where the municipality has entered into an agreement with a developer or residential development owner to provide a preference for very-low-, low-, and moderate-income veterans who served in time of war or other emergency, pursuant to N.J.S.A. 52:27D-311.j, there shall be a preference for veterans for up to 50 percent of the restricted rental units in a particular project.
 - (b) There shall be a regional preference for all households that live and/or work in Housing Region 4 comprising Monmouth, Ocean and Mercer Counties.
 - (c) Subordinate to the regional preference, there shall be a preference for households that live and/or work in New Jersey.
 - (d) With respect to existing restricted units undergoing approved rehabilitation for the purpose of preservation or to restricted units newly created to replace existing restricted units undergoing demolition, a preference for the very-low-, low-, and moderate-income households that are displaced by the rehabilitation or demolition and replacement.
- (4) The municipality has the ultimate responsibility for adopting the Affirmative Marketing Plan and for the proper administration of the Affirmative Marketing Process, including the marketing of initial sales and rentals and resales and re-rentals. The Administrative Agent designated by the municipality shall implement the Affirmative Marketing Process to ensure the Affirmative Marketing of all affordable units, with the exception of affordable programs that are exempt from Affirmative Marketing as noted herein.
- (5) The Affirmative Marketing Process shall describe the media to be used in advertising and publicizing the availability of housing. In implementing the Affirmative Marketing Process, the Administrative Agent shall consider the use of language translations where appropriate.
- (6) Applications for affordable housing or notices thereof, if offered online, shall be available in several locations, including, at a minimum, the County Administration Building and/or the County Library for each county within the housing region; the municipal administration building and municipal library in the municipality in which the units are located; and the developer's rental or sales office. The developer shall mail applications to prospective applicants upon request and shall make applications available through a secure online website address.
- (7) In addition to other Affirmative Marketing strategies, the Administrative Agent shall provide specific notice of the availability of affordable housing units on the New Jersey Housing Resource Center website. Any other entities, including developers or persons or companies retained to implement the Affirmative Marketing Process, shall comply with this paragraph.

- (8) In implementing the Affirmative Marketing Process, the Administrative Agent shall provide a list of counseling services to low- and moderate-income applicants on subjects such as budgeting, credit issues, mortgage qualification, rental lease requirements, and landlord/tenant law.
 - (9) The Affirmative Marketing Process for available affordable units shall begin at least four months (120 days) prior to the expected date of occupancy.
 - (10) The cost to affirmatively market the affordable units shall be the responsibility of the developer, sponsor or owner, with the exception of Affirmative Marketing for resales.
- K. Selection of Occupants of Affordable Housing Units.
- (1) The Administrative Agent shall use a random selection process to select occupants of very low-, low- and moderate-income housing.
 - (2) A pool of interested households will be maintained in accordance with the provisions of N.J.A.C. 5:80-26.16.
- L. Occupancy Standards.
- (1) In referring certified households to specific restricted units, to the extent feasible, and without causing an undue delay in occupying the unit, the Administrative Agent shall strive to:
 - (a) Ensure each bedroom is occupied by at least one person, except for age-restricted and supportive and special needs housing units;
 - (b) Provide a bedroom for every two adult occupants;
 - (c) With regard to occupants under the age of 18, accommodate the household's requested arrangement, except that such arrangement may not result in more than two occupants under the age of 18 occupying any bedroom; and
 - (d) Avoid placing a one-person household into a unit with more than one bedroom.
- M. Control Periods for Restricted Ownership Units and Enforcement Mechanisms.
- (1) 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.
 - (2) Rehabilitated housing units that are improved to code standards shall be subject to affordability controls for a period of not less than 10 years (crediting towards present need only).
 - (3) The affordability control period for a restricted ownership unit shall commence on the date the initial certified household takes title to the unit. The date of commencement shall be identified in the deed restriction.
 - (4) If existing affordability controls are being extended, the extended control period for a restricted ownership unit commences on the effective date of the extension, which is the end of the original control period.
 - (5) After the end of any control period, the restricted ownership unit remains subject to the affordability controls set forth in this subchapter until the owner gives notice of their intent to make an exit sale, at which point:

- (a) If the municipality exercises the right to extend the affordability controls on the unit, no exit sale occurs and a new control period commences;
 - (b) If the municipality exercises the right to purchase the restricted ownership unit, the municipality shall then convey the unit to a very-low, low or moderate income purchaser at a price not to exceed the maximum restricted sales price; or
 - (c) If the municipality does not exercise the right to extend the affordability controls on the unit, the affordability controls terminate following the exit sale.
- (6) Prior to the issuance of any building permit for the construction/rehabilitation of restricted ownership units, the developer/owner and the municipality shall record a preliminary instrument provided by the Administrative Agent.
 - (7) Prior to the issuance of the initial certificate of occupancy for a restricted ownership unit and upon each successive sale during the period of restricted ownership, the Administrative Agent shall determine the restricted price for the unit and shall also determine the nonrestricted, fair market value of the unit based on either an appraisal or the unit's equalized assessed value without the restrictions in place.
 - (8) At the time of the initial sale of the unit and upon each successive price-restricted sale, the respective 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 price differential minus the equity share amount, or another amount determined by ordinance, which must be less than the price differential minus the equity share amount, and the recapture note shall be secured by a recapture lien evidenced by a duly recorded mortgage on the unit.
 - (9) The affordability controls set forth in this Ordinance shall remain in effect despite the entry and enforcement of any judgment of foreclosure with respect to price-restricted ownership units.

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

- (1) Price restrictions for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.7, as may be amended and supplemented, including:
 - (a) The initial purchase price and affordability percentage for a restricted ownership unit shall be set by the Administrative Agent.
 - (b) The Administrative Agent shall approve all resale prices, in writing and in advance of the resale, to assure compliance with the standards set forth in N.J.A.C 5:80-26.7.
 - (i) If the resale occurs prior to the one-year anniversary of the date on which title to the unit was transferred to a certified household, the maximum resale price for a is the most recent non-exempt purchase price.
 - (ii) If the resale occurs on or after such anniversary date, the maximum resale price is the most recent non-exempt purchase price increased to reflect the cumulative annual percentage increases to the regional median income, effective as of the same date as the regional median income calculated pursuant to N.J.A.C. 5:80-26.3
 - (c) The owners of restricted ownership units may apply to the Administrative Agent to increase the maximum sales price for the unit on the basis of anticipated capital improvements. Eligible capital improvements shall be:

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

O. Buyer Income Eligibility.

- (1) Buyer income eligibility for restricted ownership units shall be established pursuant to N.J.A.C. 5:80-26.17, as may be amended and supplemented, such that very low-income ownership units shall be reserved for occupancy by households with a gross household income less than or equal to 30% 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.
- (2) Notwithstanding the foregoing, the Administrative Agent may, upon approval by the municipality, and subject to the Division's approval, permit a moderate-income purchaser to buy a low-income unit if and only if the Administrative Agent can demonstrate that there is an insufficient number of eligible low-income purchasers in the housing region to permit prompt occupancy of the unit and all other reasonable efforts to attract a low-income purchaser, including pricing and financing incentives, have failed. Any such low-income unit that is sold to a moderate-income household shall retain the required pricing and pricing restrictions for a low-income unit. Similarly, the administrative agent may permit low-income purchasers to buy very-low-income units in housing markets where, as determined by the Division, units are reserved for very-low-income purchasers, but there is an insufficient number of very-low-income purchasers to permit prompt occupancy of the units. In such instances, the purchased unit must be maintained as a very-low-income unit and sold at a very-low-income price point such that on the next resale the unit will still

be affordable to very-low-income households and able to be purchased by a very-low-income household. A very-low-income unit that is seeking bonus credit pursuant to N.J.S.A. 52:27D-311.k(9) must first be advertised exclusively as a very-low-income unit according to the Affirmative Marketing requirements at N.J.A.C. 5:80-26.16, then advertised as a very-low-income or low-income unit for at least 30 additional days prior to referring any low-income household to the unit.

- (3) A certified household that purchases a restricted ownership unit must occupy it as the certified household's principal residence and shall not lease the unit; provided, however, that the Administrative Agent may permit the owner of a restricted ownership unit, upon application and a showing of hardship, to lease the restricted unit to another certified household for a period not to exceed one year.
 - (4) The Administrative Agent shall certify a household as eligible for a restricted ownership unit when the household is a low-income household or a moderate-income household, as applicable to the unit, and the estimated monthly housing cost for the particular unit (including principal, interest, property taxes, homeowner and private mortgage insurance and condominium or homeowner association fees, as applicable) does not exceed 35 percent of the household's eligible monthly income; provided, however, that this limit may be exceeded if one or more of the following circumstances exists:
 - (a) The household currently pays more than 35% (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;
 - (b) 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
 - (c) The household is currently in substandard or overcrowded living conditions;
 - (d) The household documents the existence of assets, within the asset limitation otherwise applicable, with which the household proposes to supplement the rent payments
- P. Limitations on Indebtedness Secured by Ownership Unit; Subordination.
- (1) Prior to incurring any indebtedness to be secured by a restricted ownership unit, the owner shall apply to the Administrative Agent for a determination in writing that the proposed indebtedness complies with the provisions of this Section, and the Administrative Agent shall issue such determination prior to the owner incurring such indebtedness.
 - (2) With the exception of original purchase money mortgages, neither an owner nor a lender shall at any time during the control period cause or permit the total indebtedness secured by a restricted ownership unit to exceed 95% 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).
- Q. Control Periods for Restricted Rental Units.
- (1) 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. Each restricted rental unit created on or after December 20, 2024 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.

- (2) 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.
- (3) 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.
- (4) 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.
- (5) 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 after the receipt of a certificate of occupancy.
- (6) A restricted rental unit shall remain subject to the affordability controls of this Ordinance despite the occurrence of any of the following events:
 - (a) Sublease or assignment of the lease of the unit;
 - (b) Sale or other voluntary transfer of the ownership of the unit;
 - (c) The entry and enforcement of any judgment of foreclosure on the property containing the unit; or
 - (d) The end of the control period, until the occupant household vacates the unit, or is certified as over-income and the controls are released in accordance with UHAC.

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

- (1) The initial rent for a restricted rental unit shall be set by the Administrative Agent.
- (2) A written lease shall be required for all restricted rental units, except for units in an assisted living residence, and tenants shall be responsible for security deposits and the full amount of the rent as stated on the lease. A copy of the current lease for each restricted rental unit shall be retained on file by the Administrative Agent.
- (3) No additional fees, operating costs, or charges shall be added to the approved rent (except, in the case of units in an assisted living residence, to cover the customary charges for food and services) without the express written approval of the Administrative Agent.
 - (a) Operating costs, for the purposes of this section, include certificate of occupancy fees, move-in fees, move-out fees, mandatory internet fees, mandatory cable fees, mandatory utility submetering fees, and for developments with more than one and a half off-street parking spaces per unit, parking fees for one parking space per household.
- (4) Any fee structure that would remove or limit affordable unit occupant access to any amenities or services that are required or included for market-rate unit occupants is prohibited. Application fees (including the charge for any credit check) shall not exceed 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.
- (5) Fees for unit-specific, non-communal items that are charged to market-rate unit tenants on an optional basis, such as pet fees for tenants with pets, storage spaces, bicycle-share

programs, or one-time rentals of party or media rooms, may also be charged to affordable unit tenants, if applicable.

- (6) Pet fees may not exceed \$30.00 per month and associated one-time payments for optional fees pertaining to pets, such as a pet cleaning fee, are prohibited.
- (7) Fees charged to affordable unit tenants for other optional, unit-specific, non-communal items shall not exceed the amounts charged to market-rate tenants.
- (8) For any prior round rental unit leased before December 20, 2024, elements of the existing fee structure that are consistent with prior rules, but inconsistent with 5:80-26.13(c)1, may continue until the occupant household's current lease term expires or that occupant household vacates the unit, whichever occurs later.

S. Tenant Income Eligibility.

- (1) Tenant income eligibility shall be determined pursuant to N.J.A.C. 5:80-26.14, as may be amended and supplemented, and shall be determined as follows:
 - (a) Very low-income rental units shall be reserved for households with a gross household income less than or equal to 30% of the regional median income by household size.
 - (b) Low-income rental units shall be reserved for households with a gross household income less than or equal to 50% of the regional median income by household size.
 - (c) Moderate-income rental units shall be reserved for households with a gross household income less than 80% of the regional median income by household size.
- (2) The Administrative Agent shall certify a household as eligible for a restricted rental unit when the household is a very low-income, low-income or moderate-income household, as applicable to the unit, and the rent proposed for the unit does not exceed 35% (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:
 - (a) 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;
 - (b) 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;
 - (c) The household is currently in substandard or overcrowded living conditions;
 - (d) The household documents the existence of assets with which the household proposes to supplement the rent payments; or
 - (e) The household documents reliable anticipated third-party assistance from an outside source such as a family member in a form acceptable to the Administrative Agent and the owner of the unit.
- (3) The applicant shall file documentation sufficient to establish the existence of any of the circumstances in 2.a. through 2.e. above with the Administrative Agent, who shall counsel the household on budgeting.

T. Municipal Housing Liaison.

- (1) The Municipal Housing Liaison shall be approved by municipal resolution.

- (2) The Municipal Housing Liaison shall be approved by the Division, or is in the process of getting approval, and fully or conditionally meets the requirements for qualifications, including initial and periodic training as set forth in in N.J.A.C. 5:99-1 et seq.
- (3) The Municipal Housing Liaison shall be responsible for oversight and administration of the affordable housing program, including the following responsibilities, which may not be contracted out to the Administrative Agent:
 - (a) Serving as the primary point of contact for all inquiries from the Affordable Housing Dispute Resolution Program, the State, affordable housing providers, administrative agents and interested households.
 - (b) The oversight of the Affirmative Marketing Plan and affordability controls.
 - (c) When applicable, overseeing and monitoring any contracting Administrative Agent.
 - (d) Overseeing the monitoring of the status of all restricted units listed in the Fair Share Plan.
 - (e) Verifying, certifying and providing annual information within AHMS at such time and in such form as required by the Division.
 - (f) Coordinating meetings with affordable housing providers and administrative agents, as needed.
 - (g) Attending continuing education opportunities on affordability controls, compliance monitoring, and affirmative marketing as offered or approved by the Division.
 - (h) Overseeing the recording of a preliminary instrument in the form set forth at N.J.A.C. 5:80-26.1 for each affordable housing development.
 - (i) Coordinating with the Administrative Agent, municipal attorney and municipal Construction Code Official to ensure that permits are not issued unless the document required in C.8. above has been duly recorded.
 - (j) Listing on the municipal website contact information for the MHL and Administrative Agents.

U. Administrative Agent.

- (1) All municipalities that have created or will create affordable housing programs and/or affordable units shall designate or approve, for each project within its HEFSP, an administrative agent to administer the affordable housing program and/or affordable housing units in accordance with the requirements of the FHA, NJAC 5:99-1 et seq. and UHAC.
- (2) The fees for administrative agents shall be paid as follows:
 - (a) Administrative agent fees related to rental units shall be paid by the developer/owner.
 - (b) Administrative agent fees related to initial sale of units shall be paid by the developer.
 - (c) Administrative agent fees related to resales shall be paid by the seller of the affordable home.

- (d) Administrative agent fees related to ongoing administration and enforcement shall be paid by the municipality.
- (3) An Operating Manual for each affordable housing program shall be provided by the Administrative Agent(s). The Operating Manual(s) shall be available for public inspection in the Office of the Clerk and in the office(s) of the Administrative Agent(s). Operating manuals shall be adopted by resolution of the Governing Body.
- (4) Subject to the role of the Administrative Agent(s), the duties and responsibilities as are set forth in N.J.A.C. 5:99-7 and which are described in full detail in the Operating Manual, including those set forth in UHAC, include:
 - (a) Attending continuing education opportunities on affordability controls, compliance monitoring, and affirmative marketing as offered or approved by the Division;
 - (b) Affirmative marketing:
 - (i) Conducting an outreach process to affirmatively market affordable housing units in accordance with the Affirmative Marketing Plan of the municipality and the provisions of N.J.A.C. 5:80-26.16.
 - (ii) Providing counseling, or contracting to provide counseling services, to low- and moderate-income applicants on subjects such as budgeting, credit issues, mortgage qualification, rental lease requirements; and landlord/tenant law.
 - (c) Household certification.
 - (i) Soliciting, scheduling, conducting and following up on interviews with interested households.
 - (ii) Conducting interviews and obtaining sufficient documentation of gross income and assets upon which to base a determination of income eligibility for a low- or moderate-income unit;
 - (iii) Providing written notification to each applicant as to the determination of eligibility or non-eligibility within 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.
 - (d) Affordability controls.
 - (i) Furnishing to attorneys or closing agents forms of deed restrictions and mortgages for the recording at the time of conveyance of title of each restricted unit.

- (ii) Ensuring that the removal of the deed restrictions and cancellation of the mortgage note are effectuated and filed properly with the County Register of Deeds or County Clerk's office after the termination of the affordability controls for each restricted unit in accordance with UHAC.
 - (iii) Communicating with lenders and the Municipal Housing Liaison regarding foreclosures.
 - (iv) Ensuring the issuance of Continuing Certificates of Occupancy or certifications pursuant to N.J.A.C. 5:80-26.11.
- (e) Records retention.
 - (i) Creating and maintaining a file on each restricted unit for its control period, including the recorded deed with restrictions, recorded recapture mortgage, and note, as appropriate.
 - (ii) Records received, retained, retrieved, or transmitted in furtherance of crediting affordable units of a municipality constitute public records of the municipality as defined by N.J.S.A. 47:3-16, and are legal property of the municipality.
- (f) Resales and re-rentals.
 - (i) Instituting and maintaining an effective means of communicating information between owners and the Administrative Agent regarding the availability of restricted units for resale or re-rental.
 - (ii) Instituting and maintaining an effective means of communicating information to very low-, low-, or moderate-income households regarding the availability of restricted units for resale or re-rental.
- (g) Processing requests from unit owners.
 - (i) Reviewing and approving requests from owners of restricted units who wish to refinance or take out home equity loans during the term of their ownership to determine that the amount of indebtedness to be incurred will not violate the terms of this ordinance.
 - (ii) Reviewing and approving requests to increase sales prices from owners of restricted units who wish to make capital improvements to the units that would affect the selling price, such authorizations to be limited to those improvements resulting in additional bedrooms or bathrooms and the depreciated cost of central air conditioning systems.
 - (iii) Notifying the municipality of an owner's intent to sell a restricted unit.
 - (iv) Making determinations on requests by owners of restricted units for hardship waivers.
- (h) Enforcement.
 - (i) Securing annually from the municipality a list of all affordable ownership units for which property tax bills are mailed to absentee owners, and notifying all such owners that they must either move back to their unit or sell it;
 - (ii) Securing from all developers and sponsors of restricted units, at the earliest point of contact in the processing of the project or development, written

acknowledgement of the requirement that no restricted unit can be offered, or in any other way committed, to any person, other than a household duly certified to the unit by the Administrative Agent;

- (iii) Sending annual mailings to all owners of affordable dwelling units reminding them of the notices and requirements outlined in N.J.A.C. 5:80-26.19(d)4;
 - (iv) Establishing a program for diverting unlawful rent payments to the municipal Affordable Housing Trust Fund; and
 - (v) Creating and publishing a written operating manual for each affordable housing program administered by the Administrative Agent setting forth procedures for administering the affordability controls.
- (i) The Administrative Agent(s) shall, as delegated by the municipality, have the authority to take all actions necessary and appropriate to carry out its/their responsibilities, herein.

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

- (1) The owner of all developments containing affordable units subject to this subchapter or the assigned management company thereof shall provide to the administrative agent:
- (a) Site plan, architectural plan, or other plan that identifies the location of each affordable unit, if subject to the site plan approval, settlement agreement, or other applicable document regulating the location of affordable units. The administrative agent shall determine the location of affordable units if not set forth in the site plan approval, settlement agreement, or other applicable document.
 - (b) The total number of units in the project and the number of affordable units.
 - (c) The breakdown of the affordable units by or identification of affordable unit locations by bedroom count and income level, including street addresses / unit numbers, if subject to the site plan approval, settlement agreement, or other applicable document regulating the breakdown of affordable units. The administrative agent shall determine the bedroom and income distribution if not set forth in the site plan approval, settlement agreement, or other applicable document.
 - (d) Floor plans of all affordable units, including complete and accurate identification of all rooms and the dimensions thereof.
 - (e) A projected construction schedule.
 - (f) The location of any common areas and elevators.
 - (g) The name of the person who will be responsible for official contact with the administrative agent for the duration of the project, which must be updated if the contact changes.
- (2) In addition to V(1V) above, the owner of rental developments containing affordable rental units subject to this subchapter or the assigned management company thereof shall:
- (a) Send to all current tenants in all restricted rental units an annual mailing containing a notice as to the maximum permitted rent and a reminder of the requirement that the unit must remain their principal place of residence, which is defined as residing in the unit at least 260 days out of each calendar year, together with the telephone

number, mailing address, and email address of the administrative agent to whom complaints of excess rent can be issued.

- (b) Provide to the administrative agent a description of any applicable fees.
 - (c) Provide to the administrative agent a description of the types of utilities and which utilities will be included in the rent.
 - (d) Agree and ensure that the utility configuration established at the start of the rent-up process not be altered at any time throughout the restricted period.
 - (e) Provide to the administrative agent a proposed form of lease for any rental units.
 - (f) Ensure that the tenant selection criteria for the applicants for affordable units not be more restrictive than the tenant selection criteria for applicants for non-restricted units.
 - (g) Strive to maintain the continued occupancy of the affordable units during the entire restricted period.
- (3) In addition to the above, the owner of affordable for-sale developments containing affordable for-sale units subject to this subchapter or the assigned management company thereof shall provide the administrative agent:
- (a) Proposed pricing for all units, including any purchaser options and add-on items.
 - (b) Condominium or homeowner association fees and any other applicable fees.
 - (c) Estimated real property taxes.
 - (d) Sewer, water, trash disposal, and any other utility assessments.
 - (e) Flood insurance requirement, if applicable.
 - (f) The State-approved planned real estate development public offering statement and/or master deed, where applicable, as well as the full build-out budget.

W. Enforcement of Affordable Housing Regulations

- (1) Upon the occurrence of a breach of any of the regulations governing the affordable unit by an owner, developer or tenant, the municipality shall have all remedies provided at law or equity, including but not limited to foreclosure, tenant eviction, municipal fines, a requirement for household recertification, acceleration of all sums due under a mortgage, recoupment of any funds from a sale in the violation of the regulations, injunctive relief to prevent further violation of the regulations, entry on the premises, and specific performance.
- (2) After providing written notice of a violation to an owner, developer or tenant of an affordable unit and advising the owner, developer or tenant of the penalties for such violations, the municipality may take the following action against the owner, developer or tenant for any violation that remains uncured for a period of 60 days after service of the written notice:
 - (a) The municipality may file a court action pursuant to N.J.S.A. 2A:58-11 alleging a violation, or violations, of the regulations governing the affordable housing unit. If the owner, developer or tenant is found by the Court to have violated any provision of the regulations governing affordable housing units the owner, developer or tenant shall be subject to one or more of the following penalties, at the discretion of the Court:

- (i) A fine of not more than \$500 / 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.
- (3) The municipality shall have the authority to levy fines against the owner of the development for instances of noncompliance with NJHRC advertising requirements (N.J.S.A. 52:27D-321.6.e.(2)), following written notice to the owner. The fine for the first offense of noncompliance shall be \$5,000, the fine for the second offense of noncompliance shall be \$10,000, and the fine for each subsequent offense of noncompliance shall be \$15,000.
- (4) The municipality may file a court action in the Superior Court seeking a judgment, which would result in the termination of the owner's equity or other interest in the unit, in the nature of a mortgage foreclosure. Any judgment shall be enforceable as if the same were a judgment of default of the first purchase money mortgage and shall constitute a lien against the low- or moderate-income unit.
- (a) Such judgment shall be enforceable, at the option of the municipality, by means of an execution sale by the Sheriff, at which time the affordable unit of the violating owner shall be sold at a sale price which is not less than the amount necessary to fully satisfy and pay off any first purchase money mortgage and prior liens and the costs of the enforcement proceedings incurred by the municipality, including attorney's fees. The violating owner shall have the right to possession terminated as well as the title conveyed pursuant to the Sheriff's sale.
 - (b) The proceeds of the Sheriff's sale shall first be applied to satisfy the first purchase money mortgage lien and any prior liens upon the very low, low- or moderate-income unit. The excess, if any, shall be applied to reimburse the municipality for any and all costs and expenses incurred in connection with either the court action resulting in the judgment of violation or the Sheriff's sale. In the event that the proceeds from the Sheriff's sale are insufficient to reimburse the municipality in full as aforesaid, the violating owner shall be personally responsible for the full extent of such deficiency, in addition to any and all costs incurred by the municipality in connection with collecting such deficiency. In the event that a surplus remains after satisfying all of the above, such surplus shall be placed in escrow by the municipality for the owner and shall be held in such escrow for a maximum period of two years or until such earlier time as the owner shall make a claim with the municipality for such. Failure of the owner to claim such balance within the two year period shall automatically result in a forfeiture of such balance to the municipality. Any interest accrued or earned on such balance while being held in escrow shall belong to and shall be paid to the municipality, whether such balance shall be paid to the owner or forfeited to the municipality.

- (c) Foreclosure due to violation of the regulations governing affordable housing units shall not extinguish the restrictions of the regulations governing affordable housing units as they apply to the very low, low- and moderate-income unit. Title shall be conveyed to the purchaser at the Sheriff's sale, subject to the restrictions and provisions of the regulations governing the affordable housing unit. The owner determined to be in violation of the provisions of this plan and from whom title and possession were taken by means of the Sheriff's sale shall not be entitled to any right of redemption.
 - (d) If there are no bidders at the Sheriff's sale, or if insufficient amounts are bid to satisfy the first purchase money mortgage and any prior liens, the municipality may acquire title to the affordable unit by satisfying the first purchase money mortgage and any prior liens and crediting the violating owner with an amount equal to the difference between the first purchase money mortgage and any prior liens and costs of the enforcement proceedings, including legal fees and the maximum resale price for which the affordable unit could have been sold under the terms of the regulations governing affordable housing units. This excess shall be treated in the same manner as the excess that would have been realized from an actual sale as previously described.
 - (e) Failure of the very low, low- or moderate-income unit to be either sold at the Sheriff's sale or acquired by the municipality shall obligate the owner to accept an offer to purchase from any qualified purchaser that may be referred to the owner by the municipality, with such offer to purchase being equal to the maximum resale price of the low- or moderate-income unit as permitted by the regulations governing affordable housing units.
 - (f) The affordable unit owner shall remain fully obligated, responsible and liable for complying with the terms and restrictions of governing affordable housing units until such time as title is conveyed from the owner.
- (5) It is the responsibility of the municipal housing liaison and the administrative agent(s) to ensure that affordable housing units are administered properly. All affordable units must be occupied within a reasonable amount of time and be re-leased within a reasonable amount of time upon the vacating of the unit by a tenant. If an administrative agent or municipal housing liaison becomes aware of or suspects that a developer, landlord, or property manager has not complied with these regulations, it shall report this activity to the Division. The Division must notify the developer, landlord, or property manager, in writing, of any violation of these regulations and provide a 30-day cure period. If, after the 30-day cure period, the developer, landlord, or property manager remains in violation of any terms of this subchapter, including by keeping a unit vacant, the developer, landlord, or property manager may be fined up to the amount required to construct a comparable affordable unit of the same size and the deed-restricted control period will be extended for the length of the time the unit was out of compliance, in addition to the remedies provided for in this section. For the purposes of this subsection, a reasonable amount of time shall presumptively be 60 days, unless a longer period of time is required due to demonstrable market conditions and/or failure of the municipal housing liaison or the administrative agent to refer a certified tenant.
- (6) Banks and other lending institutions are prohibited from issuing any loan secured by owner occupied real property subject to the affordability controls set forth in this subchapter if such loan would be in excess of amounts permitted by the restriction documents recorded

in the deed or mortgage book in the county in which the property is located. Any loan issued in violation of this subsection is void as against public policy.

- (7) The Agency and the Department hereby reserve, for themselves and for each administrative agent appointed pursuant to this subchapter, all of the rights and remedies available at law and in equity for the enforcement of this subchapter, including, but not limited to, fines, evictions, and foreclosures as approved by a county-level housing judge.
- (8) Appeals
 - (a) Appeals from all decisions of an administrative agent appointed pursuant to this subchapter must be filed, in writing, with the municipal housing liaison. A decision by the municipal housing liaison may be appealed to the Division. A written decision of the Division Director upholding, modifying, or reversing an administrative agent's decision is a final administrative action.

Repealer

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

Severability

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

Effective Date

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

| Council | Motion | 2 nd | Ayes | Nays | Abstain | Absent |
|----------------------|--------|-----------------|------|------|---------|--------|
| Councilman Brennan | X | | X | | | |
| Councilman Faherty | | | X | | | |
| Councilman Galante | | | X | | | |
| Councilwoman Giblin | | X | X | | | |
| Councilman Smith | | | | | | X |
| Councilwoman Vilardi | | | X | | | |
| Mayor Neff | | | | | | |
| | | VOTE | 5 | 0 | | |

**BOROUGH OF LITTLE SILVER: #913-26 PUBLIC HEARING
MARCH 9, 2026**

ORDINANCE PUBLIC HEARING: #913-26:

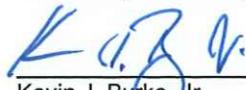
AN ORDINANCE REPEALING AND REPLACING SECTION 16A-3.4.U "FEES" IN ARTICLE I "ADMINISTRATION PROCEDURES.

INTRODUCED: FEBRUARY 23, 2026

PASSED: MARCH 9, 2026

ADOPTED: MARCH 12, 2026

I, Kevin J. Burke, Jr., Borough Administrator/ Borough Clerk of the Borough of Little Silver do hereby certify that the foregoing is a true copy of ordinance #2026-913 that was passed by unanimous vote after a first reading held during a meeting of the Mayor and Council on February 23, 20226. On March 9, 2026, a 2nd reading and public hearing was held during a meeting of the Mayor and Council, and this ordinance was passed by unanimous vote.



 Kevin J. Burke, Jr.
 Administrator/Borough Clerk

Little Silver Borough, County of Monmouth
Ordinance #913-26
Development Fee Ordinance

AN ORDINANCE REPEALING AND REPLACING SECTION 16A-3.4.U “FEES” IN ARTICLE I “ADMINISTRATION PROCEDURES”

Whereas, the Borough of Little Silver adopted a Round 4 Housing Element and Fair Share Plan in June 2025 that addressed the Round 4 affordable housing obligation; and

Whereas, the Borough’s development fee regulations, Section 102-15.C, do not reflect the recently adopted amended Fair Housing Act (“FHA”) at N.J.S.A. 52:27D-301 et seq., or the Fair Housing Act Regulations of the Department of Community Affairs, Division of Local Planning Services (“LPS”) at N.J.A.C. 5:99 et seq.; and

Now Therefore Be It Ordained, by the Borough Council of the of Little Silver Borough, Bergen County, New Jersey, that the Code of the Borough of Little Silver is hereby amended to repeal and replace Section 16A-3.4.U, Development Fees, of Article IV Administrative Procedures.

SECTION 1. Section 16A-3.4.U. of Article III “Administrative Procedures” is repealed and replaced as follows:

U. Development Fees.

- (1) Purpose
 - (a) This section establishes standards for the collection, maintenance, and expenditure of development fees that are consistent with the amended Fair Housing Act (P.L.2024, c.2), N.J.A.C. 5:99, and the Statewide Non-Residential Development Fee Act (C. 40:55D-8.1 through 8.7). Fees collected pursuant to this Ordinance shall be used for the sole purpose of providing very low-, low- and moderate-income housing in accordance with a Court-approved Spending Plan.
- (2) Basic Requirements
 - (a) The municipality previously adopted a development fee ordinance, which established the Municipal Affordable Housing Trust Fund.
 - (b) The municipality shall not spend development fees until the court has approved a plan for spending such fees.
- (3) Residential Development Fees
 - (a) Imposed fees
 - (1) One-half of 1% of the equalized assessed value (EAV) of each new residential dwelling unit or reconstructed dwelling unit on an existing foundation prior to the effective date of Ordinance 2008-17 (December 10, 2008).
 - (2) One and one-half percent of the equalized assessed value (EAV) of each new residential dwelling unit or reconstructed dwelling unit on an existing foundation, provided no increase in density is permitted after the effective date of Ordinance 2008-17 (December 10, 2008). This fee shall apply 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.

- (3) When an increase in residential density is permitted pursuant to a "d" variance granted under N.J.S.A. 40:55D-70d(5), developers shall be required to pay a "bonus" development fee of 6.0% 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.
- (4) Developers of sites zoned for inclusionary development in the Borough's A-6 Zoning District (prior court approval of Westminster Realty Corporation v. Twp. of Little Silver et al., Docket No. MON-L-2954-99 Mount Laurel) shall be required to make a payment to the Little Silver Housing Trust Fund in lieu of the on-site construction of low- and moderate-income housing units. The payment will be calculated on the basis of the following two-step formula:
 - i. The number of set-aside units is calculated pursuant to the following formula: $\text{Set-aside units} = (\text{approved dwelling units}/0.85) (0.15)$ rounded to the nearest tenth.
 - ii. The developer is required to make a payment of \$25,000 to the Borough's Housing Trust Fund for each set-aside unit or fraction thereof.

(b) Eligible exactions, ineligible exactions and exemptions for residential development.

- (1) Affordable housing developments, developments where the developer is providing for the construction of affordable units elsewhere in the municipality, and developments where the developer has made a payment in lieu of on-site construction of affordable units shall be exempt from development fees.
- (2) Developments that have received preliminary or final site plan approval or are subject to an executed redevelopment or development agreement (including master redeveloper agreement) prior to the adoption of a municipal development fee ordinance shall be exempt from development fees unless the developer seeks a substantial change in the approval. Where a site plan approval does not apply, a zoning and/or building permit shall be synonymous with preliminary or final site plan approval for this purpose. The fee percentage shall be vested on the date that the building permit is issued.
- (3) Residential development fees shall not be imposed or collected for additions or renovations of existing residential units or replacement of an existing residential unit(s) destroyed by a natural disaster provided that it is reconstructed on its existing foundation or construction or renovations of accessory buildings or structures.

(4) Non-Residential Development Fees

(a) Imposition of fees

- (1) Within all zoning districts, non-residential developers, except for developers of the types of development specifically exempted, shall pay a fee equal to 2.5% of the

equalized assessed value of the land and improvements, for all new non-residential construction on an unimproved lot or lots.

- (2) Within all zoning districts, non-residential developers, except for developers of the types of development specifically exempted, shall also pay a fee equal to 2.5% of the increase in equalized assessed value resulting from any additions to existing structures to be used for non-residential purposes.
 - (3) Development fees shall be imposed and collected when an existing structure is demolished and replaced. The development fee of 2.5% shall be calculated on the difference between the equalized assessed value of the pre-existing land and improvements and the equalized assessed value of the newly improved structure; i.e., land and improvements; and such calculation shall be made at the time a final certificate of occupancy is issued. If the calculation required under this section results in a negative number, the non-residential development fee shall be zero.
- (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 2.5% development fee, unless otherwise exempted below.
 - (2) The 2.5% fee shall not apply to an increase in equalized assessed value resulting from alterations, change in use within existing footprint, reconstruction, renovations and repairs.
- (c) Non-residential developments shall be exempt from the payment of non-residential development fees in accordance with the exemptions required pursuant to the Statewide Non-Residential Development Fee Act (N.J.S.A. 40:55D-8.1 through 8.7), as specified in Form N-RDF "State of New Jersey Non-Residential Development Certification/Exemption." Any exemption claimed by a developer shall be substantiated by that developer.
- (d) A developer of a non-residential development exempted from the non-residential development fee pursuant to the Statewide Non-Residential Development Fee Act shall be subject to the fee at such time as the basis for the exemption no longer applies, and shall make the payment of the non-residential development fee, in that event, within three years after that event or after the issuance of the final certificate of occupancy of the non-residential development, whichever is later.
- (e) If a property that was exempted from the collection of a non-residential development fee thereafter ceases to be exempt from property taxation, the owner of the property shall remit the fees required pursuant to this section within 45 days of the termination of the property tax exemption. Unpaid non-residential development fees under these circumstances may be enforceable by the municipality as a lien against the real property of the owner.
- (5) Determination of Fees and Collection Procedures
- (a) Upon the granting of a preliminary, final or other applicable approval for a development, the applicable approving authority shall direct its staff to notify the construction official responsible for the issuance of a building permit.
 - (b) For non-residential developments only, the developer shall also be provided with a copy of Form N-RDF, "State of New Jersey Non-Residential Development Certification/Exemption," to be completed by the developer as per the instructions provided in the Form N-RDF. The construction official shall verify the information submitted by the non-residential developer as per the instructions provided on Form N-

RDF. The tax assessor shall verify exemptions and prepare estimated and final assessments as per the instructions provided in Form N-RDF.

- (c) The construction official responsible for the issuance of a building permit shall notify the tax assessor of the issuance of the first construction permit for a development that is subject to a development fee.
- (d) Within 90 days of receipt of that notice, the tax assessor shall provide an estimate, based on the plans filed, of the equalized assessed value of the development.
- (e) The construction official responsible for the issuance of a final certificate of occupancy shall notify the tax assessor of any and all requests for the scheduling of a final inspection on property that is subject to a development fee.
- (f) Within 10 business days of a request for the scheduling of a final inspection, the tax assessor shall confirm or modify the previously estimated equalized assessed value of the improvements associated with the development; calculate the development fee; and thereafter notify the developer of the amount of the fee.
- (g) Should the municipality fail to determine or notify the developer of the amount of the development fee within 10 business days of the request for final inspection, the developer may estimate the amount due and pay that estimated amount consistent with the dispute process set forth in Subsection b. of section 37 of P.L.2008, c.46 (N.J.S.A. 40:55D-8.6).
- (h) Fifty percent (50%) of the development fee shall be collected at the time of issuance of the construction permit. The remaining portion shall be collected at the time of issuance of the certificate of occupancy. The developer shall be responsible for paying the difference between the fee calculated at the time of issuance of the construction permit and that determined at the time of issuance of certificate of occupancy.

(6) Appeal of development fees

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

(7) Affordable Housing Trust Fund

- (a) A separate, interest-bearing Municipal Affordable Housing Trust Fund shall be maintained by the chief financial officer of the municipality for the purpose of depositing development fees collected from residential and non-residential developers and proceeds from the sale of units with extinguished controls.

- (b) The following additional funds shall be deposited in the Municipal Affordable Housing Trust Fund and shall at all times be identifiable by source and amount:
- (1) Payments in lieu of on-site construction of an affordable unit, where previously permitted by ordinance or by agreement with the municipality and if approved by a municipality prior to the statutory elimination of payments in-lieu on March 20, 2024 per P.L.2024, c.2;
 - (2) Funds contributed by developers to make 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 the municipal affordable housing program including but not limited to interest earned on fund deposits.
- (c) The municipality shall provide the Division with written authorization, in the form of a tri-party escrow agreement(s) between the municipality, the Division and the financial institution in which the municipal affordable housing trust fund has been established to permit the Division to direct the disbursement of the funds as provided for in N.J.A.C. 5:99-2.1 et seq.
- (d) All interest accrued in the housing trust fund shall only be used on eligible affordable housing purposes approved by the Court.
- (8) Use of Funds
- (a) The expenditure of all funds shall conform to a Spending Plan approved by Superior Court. Funds deposited in the municipal Affordable Housing Trust Fund may be used for any activity approved by the Court to address the fair share obligation and may be set up as a grant or revolving loan program. Such activities include, but are not limited to: preservation or purchase of housing for the purpose of maintaining or implementing affordability controls; housing rehabilitation; new construction of affordable housing units and related costs; accessory apartments; a market-to-affordable program; conversion of existing non-residential buildings to create new affordable units; green building strategies designed to be cost-saving and in accordance with accepted national or state standards; purchase of land for affordable housing; improvement of land to be used for affordable housing; extensions or improvements of roads and infrastructure to affordable housing sites; financial assistance designed to increase affordability; administration necessary for implementation of the Housing Element and Fair Share Plan; and/or any other activity permitted by Superior Court and specified in the approved Spending Plan.
 - (b) Funds shall not be expended to reimburse the municipality or activities that occurred prior to the authorization of a municipality to collect development fees.
 - (c) At least a portion of all development fees collected and interest earned shall be used to provide affordability assistance to very low-, low- and moderate-income households in affordable units included in the municipal Fair Share Plan. A portion of the development fees which provide affordability assistance shall be used to provide affordability assistance to very low-income households.

- (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 for very low income households may include producing very low-income units or buying down the cost of low- or moderate-income units in the municipal Fair Share Plan to make them affordable to households earning 30% or less of median income.
- (d) No more than 20% of all affordable housing trust funds, exclusive of those collected to fund an RCA prior to July 17, 2008, shall be expended on administration, including, but not limited to, salaries and benefits for municipal employees or consultants' fees necessary to develop or implement a new construction program, prepare and implement a Housing Element and Fair Share Plan, administer an Affirmative Marketing Program and for compliance with the Superior Court and the Program including the costs to the municipality of resolving a challenge.
- (9) Ongoing Collection of Fees
 - (a) The ability to impose, collect and expend development fees shall continue so long as the municipality retains authorization from the Court in the form of Compliance Certification or the good faith effort to obtain it.
 - (b) If the municipality fails to renew its ability to impose and collect development fees prior to the expiration of its Judgment of Compliance, it may be subject to forfeiture of any or all funds remaining within its Affordable Housing Trust Fund. Any funds so forfeited shall be deposited into the New Jersey Affordable Housing Trust Fund established pursuant to section 20 of P.L.1985, c.222 (C. 52:27D-320).
- (10) Emergent Affordable Housing Opportunities. Requests to expend affordable housing trust funds on emergent affordable housing opportunities not included in the municipal fair share plan shall be made to the Division and shall be in the form of a governing body resolution. Any request shall be consistent with N.J.A.C. 5:99-4.1.

Repealer

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

Severability

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

Effective Date

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

| Council | Motion | 2 nd | Ayes | Nays | Abstain | Absent |
|----------------------|--------|-----------------|----------|----------|---------|--------|
| Councilman Brennan | X | | X | | | |
| Councilman Faherty | | | X | | | |
| Councilman Galante | | X | X | | | |
| Councilwoman Giblin | | | X | | | |
| Councilman Smith | | | | | | X |
| Councilwoman Vilardi | | | X | | | |
| Mayor Neff | | | | | | |
| | | VOTE | 5 | 0 | | |

**BOROUGH OF LITTLE SILVER: #914-26 PUBLIC HEARING
MARCH 9, 2026**

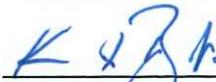
**ORDINANCE PUBLIC HEARING: #914-26: AN ORDINANCE AMENDING
CHAPTER 16A "LAND USE AND DEVELOPMENT", ARTICLE X "ZONING
DISTRICT REGULATIONS" TO AMEND THE PERMITTED DENSITY IN THE IHO-3
AND IHO-4 OVERLAY ZONES AND THE TERMS OF THE ACCESSORY
APARTMENT PROGRAM**

INTRODUCED: February 23, 2026

PASSED: MARCH 9, 2026

ADOPTED: MARCH 12, 2026

I, Kevin J. Burke, Jr., Borough Administrator/ Borough Clerk of the Borough of Little Silver do hereby certify that the foregoing is a true copy of ordinance #2026-914 that was passed by unanimous vote after a first reading held during a meeting of the Mayor and Council on February 23, 20226. On March 9, 2026 a 2nd reading and public hearing was held during a meeting of the Mayor and Council and this ordinance was passed by unanimous vote.



 Kevin J. Burke, Jr.
 Administrator/Borough Clerk

Borough of Little Silver, Monmouth County, New Jersey
Ordinance #914-26
Amendments to Zoning Ordinance

AN ORDINANCE AMENDING CHAPTER 16A "LAND USE AND DEVELOPMENT", ARTICLE X "ZONING DISTRICT REGULATIONS" TO AMEND THE PERMITTED DENSITY IN THE IHO-3 AND IHO-4 OVERLAY ZONES AND THE TERMS OF THE ACCESSORY APARTMENT PROGRAM

WHEREAS, the Borough adopted a 2025 Fourth Round Housing Element and Fair Share Plan that addressed the Borough's Round 4 affordable housing obligation, including expansion of the accessory apartment program and an increase in the program subsidy; and

WHEREAS, Fair Share Housing Center filed an objection to the Borough's Fourth Round compliance filing, and, in response, the Borough participated in mediation to address that objection and to identify limited, targeted amendments to the Borough's zoning framework in furtherance of the Borough's Fourth Round affordable housing compliance; and

WHEREAS, the Borough of Little Silver entered into a Mediation Agreement with Fair Share Housing Center on December 19, 2025 in the Matter of the Application of the Borough of Little Silver's Housing Element and Fair Share Plan (Docket No.: MON-L-357-25); and

WHEREAS, the Mediation Agreement set forth that in addition to adjusting the terms of accessory apartment program and the density of the IHO-3 and IHO-4 districts would be modestly increased to permit more affordable housing; and

WHEREAS, the zoning herein implements the 2025 Fourth Round Housing Plan and the Mediation Agreement with Fair Share Housing Center; and

NOW, THEREFORE, BE IT ORDAINED by the Borough Council of the Borough of Little Silver, Monmouth County, New Jersey, that the Code of the Borough of Little Silver is hereby amended as follows.

SECTION 1. Chapter 16A, Land Use and Development Regulations, Article X, Zoning District Regulations, shall be amended as follows:

(Additions shown as **thus**; deletions shown as ~~thus~~)

§ 16A-10.23. Inclusionary Housing Overlay 3 Zone (IHO-3).

...

E. Yard and Building Requirements.

....

8. Maximum Density: ~~11~~ **13** du/ac

...

F. Building Design Requirements.

- 7. ~~Townhouse units shall be rear loaded. As such, garages and driveways shall not face a public street; they shall be located at the rear of the unit with access provided via a private alley serving multiple units. Driveways for individual units are prohibited to access a public street, with the exception of Conover Place.~~

...

§ 16A-10.24. Inclusionary Housing Overlay 4 Zone (IHO-4).

...

E. Yard and Building Requirements.

....

- 8. Maximum Density: ~~11~~ 13 du/ac

...

F. Building Design Requirements.

- 7. ~~Townhouse units shall be rear loaded. As such, garages and driveways shall not face a public street; they shall be located at the rear of the unit with access provided via a private alley serving multiple units. Driveways for individual units are prohibited to access a public street.~~

...

§ 16A-10.29. Accessory Apartment Program.

- A. Accessory apartments shall be permitted in the R-1, R-1A, ~~and R-2 zones (lots with frontage on Rumson Road only)~~, and the B-1 zone (lots with frontage on Church Street only), provided the units are reserved for very-low-, low-, and moderate-income households.

....

- J. The Borough of Little Silver shall designate an administrative entity to administer the accessory apartment program that shall have the following responsibilities:

...

- 3. In accordance with COAH requirements, the Borough of Little Silver shall provide at least ~~\$70,000~~ \$105,000 per unit to subsidize the creation of each very-low-income accessory apartment, ~~\$60,000~~ \$90,000 per unit to subsidize the creation of each low-income accessory apartment, or ~~\$50,000~~ \$75,000 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.
- 4. The Borough's accessory apartment program will subsidize the development of ~~10~~ 4 total affordable accessory apartment units. At least ~~two units~~ 1 unit will be very-low-income, ~~three units~~ 1 unit low-income, and ~~five~~ 2 units moderate-income.

SECTION 2. Severability.

If any Section, part of any Section or clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the remaining provisions of this Ordinance. The Borough Council of the Borough of Little Silver declares that it would have passed the Ordinance and

each Section thereof, irrespective of the fact that any one or more of the subsections, sentences, clauses or phrases may be declared unconstitutional or invalid.

SECTION 3. Effective Date.

This Ordinance shall take effect immediately upon final passage and publication according to law.

BOROUGH OF LITTLE SILVER
COUNTY OF MONMOUTH, STATE OF NEW JERSEY
RESOLUTION #2026-056
ADOPTING AN "AFFIRMATIVE MARKETING PLAN"

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 Little Silver 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 Little Silver

NOW, THEREFORE, BE IT RESOLVED, that the Governign Body of the Borough of Little Silver 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 Little Silver is located in Housing Region 4, consisting of Monmouth, Mercer and Ocean Counties.
- B. The Borough of Little Silver 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 Little Silver, 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 Little Silver 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. Monmouth County Clerks Office, 33 Mechanic St, Freehold, NJ 07728. Joyce McDade Administration Building, 640 S Broad St, Trenton, NJ 08611. Ocean County Administration Building, 101 Hooper Ave, Toms River, NJ 08753.
 - b. Monmouth County Library – Main Headquarters, 125 Symmes Dr, Manalapan Township, NJ 07726. Mercer County Library Headquarters – Lawrence Branch, 2751 Brunswick Pike, Lawrence Township, NJ 08648. Ocean County Public Library, 101 Washington St, Toms River, NJ 08753.
 - c. Fair Share Housing Center, 1 Ethel Lawrence Blvd, Mt Laurel Township, NJ 08054. The Latino Action Network, 13 Birch Dr, Freehold, NJ 07728. New Jersey NAACP, 15 W Front St, Trenton, NJ 08608. The Greater Red Bank Branch NAACP, 90 Bank St, Red Bank, NJ 07701. Asbury Park/Neptune Branch NAACP, 4326 Harbor Beach Blvd, Brigantine, NJ 08203. Greater Freehold Branch NAACP, Marlboro Annex, NJ 07746. Greater Long Branch NAACP, 38 Memorial Pkwy, Long Branch, NJ 07740. Trenton Branch NAACP, 395 W State St, Trenton, NJ 08618. Senior Citizens United Community Services (SCUCS), 537 W Nicholson Rd, Audubon, NJ 08106. Solutions to End Poverty Soon (STEPS), 14 Clifton Ave South, Lakewood, NJ 08701. OCEAN, Inc., 144 John St, Lakewood, NJ 08701. Supportive Housing Association, 185 Valley St, South Orange Village, NJ 07079.
 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, Mercer and Ocean 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, Mercer and Ocean 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

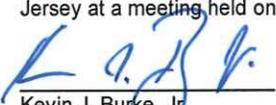
developer, in conformance with N.J.A.C. 5:80-26.16(d). This Affirmative Marketing Plan provides a state-wide and/or regional preference for very low-, low- and moderate-income households that live and/or work in Housing Region 4, which is comprised of Monmouth, Mercer and Ocean Counties. Pursuant to 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.

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.

I Kevin J. Burke, Jr., Borough Administrator/ Borough Clerk of the Borough of Little Silver do hereby certify that the foregoing is a true copy of resolution #2026-056 passed by the Borough Council of the Borough of Little Silver, County of Monmouth, State of New Jersey at a meeting held on March 9, 2026.


Kevin J. Burke, Jr.
Administrator/ Borough Clerk

**BOROUGH OF LITTLE SILVER
COUNTY OF MONMOUTH, STATE OF NEW JERSEY
RESOLUTION # 2026-057**

APPROVING THE FOURTH ROUND AFFORDABLE HOUSING TRUST FUND SPENDING PLAN

WHEREAS, the Borough of Little Silver has an approved Development Fee Ordinance, which was first approved by the Council on Affordable Housing (COAH) on May 9, 2006 and which was last amended in 2026, and which sets forth standards for the collection, maintenance, and expenditure of development fees; and

WHEREAS, the municipal Development Fee Ordinance established an Affordable Housing Trust Fund that includes development fees payments from developers in lieu of constructing affordable units on-site, barrier free escrow funds, rental income, repayments for affordable housing program loans, recapture funds, proceeds from the sale of affordable units, and/or funds collected in connection with the municipality's affordable housing program; and

WHEREAS, the Municipality's current Affordable Housing Trust Fund Spending Plan was approved by the Court in 2019 as part of the Third Round Affordable Housing declaratory judgment action; and

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

WHEREAS, the Little Silver Planning Board adopted the Fourth Round Housing Element and Fair Share Plan on June 12, 2025 following a public hearing thereon all in accordance with the requirements of the New Jersey Open Public Meetings Act, N.J.S.A. 10:4-6 et seq., and the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq.; and

WHEREAS, in addition to same, the municipal Affordable Housing Planner has prepared a proposed Fourth Round Affordable Housing Trust Fund Spending Plan consistent with the FHA-2, and applicable regulations, which projects anticipated revenues for the Borough's Affordable Housing Trust Fund and describes the anticipated expenditures of these funds; and

WHEREAS, the Municipality filed the 2025 Fourth Round Housing Element and Fair Share Plan, and all relevant supporting documentation and exhibits with the Court and the Program in the 2025 declaratory judgment action; and

WHEREAS, the Municipality executed a Mediation Agreement with Fair Share Housing Center on December 29, 2025 that states, among other items, that a Fourth Round Spending Plan will be adopted before March 15, 2026; and

NOW, THEREFORE, BE IT RESOLVED, by the Borough Council of the Borough of Little Silver, in the County of Monmouth, and State of New Jersey, as follows:

1. The Governing Body of the Borough of Little Silver hereby approves the Fourth Round Affordable Housing Trust Fund Spending Plan, attached hereto as Exhibit A; and
2. The Municipal Attorney is hereby directed to file this Resolution and the Borough's proposed Fourth Round Spending Plan with the Program and Court in the "2025 Action"; and
3. The Municipal Attorney, Municipal Planner, and all other appropriate officials, employees and other professionals of the municipality are hereby authorized and directed to take any and all steps

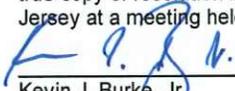
necessary to effectuate the purposes of this Resolution such that the Borough maintains its immunity from exclusionary zoning and builder's remedy litigation; and

4. A certified copy of this Resolution and the Fourth Round Affordable Housing Trust Fund Spending Plan shall remain on file with the Borough for the purpose of public inspection; and
5. The municipality further reserves the right to amend and supplement its Fourth Round Affordable Housing Trust Fund Spending Plan in accordance with applicable law should such further amendments be required or necessary; and

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.

I Kevin J. Burke, Jr., Borough Administrator/ Borough Clerk of the Borough of Little Silver do hereby certify that the foregoing is a true copy of resolution #2026-057 passed by the Borough Council of the Borough of Little Silver, County of Monmouth, State of New Jersey at a meeting held on March 9, 2026.



Kevin J. Burke, Jr.
Administrator/ Borough Clerk



2026 FOURTH ROUND SPENDING PLAN

HOUSING ELEMENT & FAIR SHARE PLAN
LITTLE SILVER BOROUGH
MONMOUTH COUNTY
NEW JERSEY

March 2026



Introduction

The Borough of Little Silver adopted a Fourth Round Housing Element and Fair Share Plan on June 12, 2025 that addresses its affordable housing obligation in accordance with the Fair Housing Act, N.J.S.A. 52:27D-301, et seq., as amended by P.L. 2024, c.2. This Spending Plan addresses the anticipated collection of money in the affordable housing trust fund, anticipated expenditures and the method of allocating funds through the end of the Fourth Round, July 1, 2035. The terms herein are consistent with the Fair Housing Act, as well as the Fair Housing Act Regulations, N.J.A.C. 5:99, et seq.

A development fee ordinance creating a dedicated revenue source for affordable housing was first adopted by the Borough on December 5, 2005 and approved by COAH on May 9, 2006. All development fees, other income, and interest generated by the fund is kept in an interest-bearing affordable housing trust fund account at Kearny Bank.

For the Fourth Round all affordable housing trust fund monies will be collected and spent in accordance with the Fair Housing Act, as amended, the Fair Housing Act Regulations, and shall be consistent with this Spending Plan, as approved by the Program or Court, as described in the sections that follow.

| Affordable Housing Trust Fund Summary | | |
|--|---|---|
| | | Total Collected through 12/31/2025 |
| Development Fees | + | \$634,126 |
| Interest | + | \$91,861 |
| Payments in Lieu of Construction | + | \$0 |
| Other Income | + | \$0 |
| Expenditures | - | \$197,952 |
| Ending Balance 12/31/2025 | | \$528,035 |



Fourth Round Revenue

In calculating a projection of revenue anticipated during the Fourth Round, through July 1, 2035, Little Silver Borough considered the following:

1. Development Fees. The Borough anticipates that it will receive a modest amount of residential and nonresidential development fees.
 - A. Residential and nonresidential projects that have had development fees imposed upon them at the time of preliminary or final development approvals.
 - B. All projects currently before the planning and zoning boards for development approvals that may apply for building permits and certificates of occupancy.
 - C. Future development that is likely to occur based on historical rates of development.
2. Payments in lieu of construction. The Borough expects one payment in lieu of construction from the Real Foursome site.
3. Other funding sources. The Borough does not expect revenue from other funding sources.
4. Projected interest. The Affordable Housing Trust Fund is in an interest-bearing account and as such, interest will be collected during the Fourth Round.

Assumptions. Projected residential and non-residential development fees are based on approved development and development trends over the last 3 years.

Administrative Mechanism to Collect & Distribute Funds

The following steps for the collection and distribution of development fee revenues shall apply:

1. Collection of development fee revenues. All collection of development fee revenues will be consistent with the Borough's development fee ordinance and the requirements of the Fair Housing Act set forth at *N.J.S.A. 52:27D-329.2* and the Fair Housing Act Regulations at *N.J.A.C. 5:99-3*.
2. Expenditure and distribution of development fee revenues. The Municipal Chief Financial Officer, in concert with the Borough Clerk will process the distribution of funds.

The release of such funds, with the exception of administrative use of funds within the limits set forth in the Fair Housing Act, requires the adoption of a resolution by the Borough Mayor & Council. Once a request is approved by resolution, the Chief Financial Officer releases the requested revenue from the trust fund for the specific use approved in the governing body's resolution.



| Projected Revenue | | | | | | | | | | | |
|-------------------|-----------------|-----------------|------------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|------------------|
| Revenue Source | 2026 | 2027 | 2028 | 2029 | 2030 | 2031 | 2032 | 2033 | 2034 | 2035 (6 mo.) | Total |
| Development Fees | \$30,000 | \$30,000 | \$30,000 | \$30,000 | \$30,000 | \$30,000 | \$30,000 | \$30,000 | \$30,000 | \$15,000 | \$285,000 |
| Payments-In-Lieu | \$0 | \$0 | \$100,000 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$100,000 |
| Other | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 |
| Interest | \$20,000 | \$10,000 | \$5,000 | \$5,000 | \$5,000 | \$5,000 | \$5,000 | \$5,000 | \$5,000 | \$2,500 | \$67,500 |
| Total | \$50,000 | \$40,000 | \$135,000 | \$35,000 | \$35,000 | \$35,000 | \$35,000 | \$35,000 | \$35,000 | \$17,500 | \$452,500 |



Description of Anticipated Use of Affordable Housing Funds

Little Silver Borough proposes to use the funds in the trust fund for the below listed items, pursuant to the Fair Housing Act, during the Fourth Round:

1. 43 Birch Avenue, a 100% affordable housing development
2. Accessory Apartment Program
3. Affordability Assistance
4. Administration

For any other uses of affordable housing trust funds, the Borough will apply to a court of competent jurisdiction or other authority, as the case may be, for an amendment to the Spending Plan.

43 Birch Avenue

As further detailed in the Round 4 Housing Plan, the Borough will partner with a 100% affordable housing developer for construction of 6 affordable units at the Borough-owned property at 43 Birch Avenue (Block 55, Lot 29). Three of the units will be reserved for low income households and the remaining 3 will be reserved for moderate income households.

The Borough anticipates dedicating not less than \$250,000 toward the construction of the development. See the Round 4 Housing Plan for more information about the site and affordable housing development.

Accessory Apartment Program

The Borough will create 4 accessory apartment units, one of which will be a very low income unit, one will be low income unit and the remaining two will be moderate income units. The Borough will offer \$75,000 for moderate income homes, \$90,000 for low income homes, and \$105,000 for very low income homes. See the Round 4 Housing Plan for more information about this program.

Affordability Assistance

A municipality shall set aside a portion of its collected development fees and interest earned for the purpose of providing affordability assistance to low- and moderate-income households in affordable units included in a municipal fair share plan, in accordance with *N.J.S.A. 52:27D-329.2c(3)* and *N.J.A.C. 5:99-2.5*.

This Spending Plan allocates a portion of its anticipated revenues to affordability assistance. Permitted affordability assistance expenditures include but are not limited to down-payment assistance and security deposit assistance, rental assistance, low interest loans and converting low-income units to very-low-income units or creating new very-low-income units.

The Borough will operate security deposit and downpayment programs and will provide specific funding for the 43 Birch Avenue development and will consider requested funding for other 100% affordable housing developments, to buy down the cost of low-and moderate-income homes to convert them to very-low-income homes to fulfill the affordability assistance requirements. See the Appendix to this Spending Plan for additional information.



Administration

Little Silver Borough may use affordable housing trust fund revenue for related administrative costs in an amount not to exceed 20% of the revenue collected from development fees. The table that follows demonstrates the funding available for administrative costs, given the 20% maximum.

When within the maximum of 20% expended, permitted administrative expenditures include the following:

1. Borough Attorney, Engineer, Planner and other staff (proportionate) salaries and fees related to plan preparation and implementation, and for such other actions, efforts and expenses as permitted at *N.J.S.A. 52:27D-329.2c(5)* of the Fair Housing Act and the provisions pertaining to same, as set forth in the final adopted version of the Fair Housing Act regulations at *N.J.A.C. 5:99*; and
2. Program administration expenses, such as but not limited to those for the administrative agent.

| Administration Expenditures | | |
|--|----------|------------------|
| Revenue collected through 12/31/2025 | | \$725,988 |
| Non-residential Development Fee Reimbursements | - | \$352,500 |
| Revenue projected through 7/1/2035 | + | \$1,078,488 |
| Total | = | \$215,698 |
| 20 percent maximum permitted administrative expenses | x 0.20 = | \$197,952 |
| Less administrative expenditures through 12/31/2025 | - | \$352,500 |
| Projected Administrative Costs through 7/1/2035 | = | \$17,745 |



Expenditure Schedule

Little Silver Borough intends to spend affordable housing trust funds on affordability assistance and administration during the fourth round.

| Program | Projected Expenditures | | | | | | | | | | | Total | |
|--------------------------|------------------------|------------------|-----------------|-----------------|-----------------|------------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|------------------|
| | 2026 | 2027 | 2028 | 2029 | 2030 | 2031 | 2032 | 2033 | 2034 | 2035 (6 mo.) | | | |
| 43 Birch Ave. | \$0 | \$250,000 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$250,000 |
| Accessory Apartments | \$0 | \$105,000 | \$0 | \$75,000 | \$0 | \$90,000 | \$0 | \$75,000 | \$0 | \$0 | \$0 | \$0 | \$345,000 |
| Affordability Assistance | \$10,000 | \$95,000 | \$20,000 | \$20,000 | \$27,790 | \$20,000 | \$20,000 | \$20,000 | \$20,000 | \$20,000 | \$20,000 | \$15,000 | \$267,790 |
| Administration | \$10,000 | \$0 | \$0 | \$0 | \$7,745 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$17,745 |
| Total | \$20,000 | \$450,000 | \$20,000 | \$95,000 | \$35,535 | \$110,000 | \$20,000 | \$95,000 | \$20,000 | \$20,000 | \$20,000 | \$15,000 | \$880,535 |



Excess or Shortfall of Funds

The Borough anticipates that funding will come from the following sources to satisfy said obligation: the affordable housing trust fund – development fee payments and in-lieu; and governmental sources such as the Federal Law Income Housing Tax Credits, New Jersey Balanced Housing funding, Federal Home Loan Bank Board financing, HMFA bond financing, Small Cities funds and other governmental transfers. In the event that the above funding sources prove inadequate to meet the municipal funding obligation, the Borough shall provide sufficient funding to address any shortfalls, including bonding if necessary, and will seek grants or low-cost loans to supplement the available funding. In the event of excess funds, any remaining funds above the amount necessary to satisfy the municipal affordable housing obligation will be used to produce additional affordable housing through these programs or pursuant to a Court-approved amendment to this Spending Plan.

Summary

The Borough will expend affordable housing trust fund revenues pursuant to the Fair Housing Act, the adopted Fair Housing Act Regulations governing such funds and consistent with its Housing Plan and this Spending Plan, as approved by the Court or Program. The following table provides a summary of anticipated collections and expenditures of the Affordable Housing Trust Fund as stated herein.

| Spending Plan Summary | | |
|--|----------|------------------|
| Affordable Housing Trust Fund Balance 12/31/2025 | | \$528,035 |
| Development fees and interest projected | + | \$352,500 |
| Payments in lieu projected | + | \$100,000 |
| Other revenue projected | + | |
| <i>Total</i> | = | \$880,535 |
| 43 Birch Ave. | - | \$250,000 |
| Accessory Apartments | - | \$345,000 |
| Administrative expenditures | - | \$17,745 |
| Affordability assistance expenditures | - | \$267,790 |
| <i>Excess Funds</i> | = | \$0 |



Appendix: Affordability Assistance Programs

Security Deposit Assistance

This program will provide a subsidy to income-qualified low-and moderate-income renters of deed restricted affordable rental units within the Borough to use as a security deposit. The Borough will provide up to \$2,000 as a grant to the qualifying low-and moderate-income renter for use as a security deposit for the deed restricted affordable unit. The goal of the program is to provide financial assistance to income-qualified renters.

Application to the program shall include proof of income qualification by the Borough's Administrative Agent, copy of the lease to rent a deed restricted home/unit that has been signed by the owner, and copy of the deed restriction (current or draft to-be-applied, as may be applicable). Affordability controls shall be embodied in a deed restriction which shall conform to the Uniform Housing Affordability Controls (N.J.A.C. 5:80-26.1 et seq.) in effect at the time the subsidy is granted by the Borough. The term of the affordability control period shall be for a period of at least 30 years for fourth round sale and prior round units or 40 years for fourth round rental units, with the Borough reserving the right and option to extend the affordability control term for an additional term at the end of the initial control period consistent with the requirements of the version of the Uniform Housing Affordability Controls or any successor regulation(s) in effect at the time the initial control period is set to end. Such security deposit shall be consistent with the requirements of the most recent adopted version of the Uniform Housing Affordability Controls in effect at the time the Borough adopts a resolution authority the specific funding assistance for the specific applicant.

Once the applicant provides the required application documents noted above, the Borough will pass a resolution authorizing funding assistance. Upon receipt of the approved municipal resolution, the renter will be provided an agreement for execution. The deed restriction shall be approved by the Borough Attorney and the Borough's Affordable Housing Administrative Agent, and shall be recorded in the chain-of-title by the owner of the property as a condition of any funding assistance from the Borough.

Recipients of Security Deposit Program funds are required to maintain the unit as their principal place of residence, which is defined as residing in the unit at least 260 days out of each calendar year, for the duration of the deed restriction and abide by all other requirements of their deed restriction (located in their deed or Affordable Housing Agreement) and the Uniform Housing Affordability Controls (N.J.A.C. 5:80-26.1 et seq.).

The program is not limited to one or more specific housing types or property locations in Little Silver Borough.

Down Payment Assistance

This program will provide a subsidy to income-qualified very-low, low-and moderate-income homebuyers of deed restricted affordable units within the Borough to use as a principal down payment. Subject to trust fund availability, the Borough will provide up to \$20,000 as a grant to the income-qualified homebuyer to be strictly used as a downpayment for the purchase of a deed restricted affordable unit, including assistance to bring down the cost of low-or moderate-income units to make them affordable to very-low-income households. The goal of the program is to incentivize homeownership and to provide financial assistance to income-qualified homebuyers.

Application to the program shall include proof of income qualification by the Borough's Administrative Agent, copy of the contract to purchase a deed restricted fee-simple home that has been signed by the seller, and copy of the deed restriction (current or draft to-be-applied, as may be applicable). Affordability controls shall



be embodied in a deed restriction, recapture note and mortgage for the benefit of the Borough, and which shall conform to the Uniform Housing Affordability Controls (N.J.A.C. 5:80-26.1 et seq.) in effect at the time the Borough issues the subsidy. The term of the initial affordability control period set forth in the deed restriction, recapture note, and mortgage shall be for a period of at least 30 years for fourth round sale and prior round units or 40 years for fourth round rental units, and shall include a reservation of the Borough's right and option to extend the control period for an additional term at the time the initial control period is set to expire consistent with the requirements of the version of the Uniform Housing Affordability Controls or any successor regulation(s) in effect at the time the initial control period is set to end.

Once the applicant provides the required application documents noted above, the Borough will pass a resolution authorizing funding assistance. Upon receipt of the approved municipal resolution, the homeowner will be provided an agreement for execution.

Recipients of Downpayment Assistance Program funds are required to maintain the unit as their principal place of residence, which is defined as residing in the unit at least 260 days out of each calendar year, for the duration of the deed restriction and abide by all other requirements of their deed restriction (located in their deed or Affordable Housing Agreement) and the Uniform Housing Affordability Controls (N.J.A.C. 5:80-26.1 et seq.). The deed restriction, recapture note and mortgage shall be approved by the Borough Attorney and the Borough's Affordable Housing Administrative Agent, and the deed restriction and mortgage shall be recorded in the chain-of-title by the recipient as a condition of any funding assistance from the Borough.

The program is not limited to one or more specific housing types or property locations in Little Silver Borough.

Very-low Income Conversion Program

The Borough will provide a grant to the 43 Birch Avenue development and will consider other requests for 100 percent affordable housing developments, to buy down the cost of low- or moderate-income units to make them affordable to very low-income households, which may include special needs and supportive housing opportunities. The goal of the program is to expand affordable housing opportunities for very low income households. The affordability assistance will result in additional very low-income units beyond what is required by state affordable housing rules. The Borough may negotiate with developers on a case-by-case basis to determine the appropriate amount of subsidy required to make the unit affordable to a very low-income household.

A condition of any subsidy shall require the developer to accept, execute and record a Borough approved affordable housing deed restriction and recapture mortgage in favor of the Borough, and require the developer execute a Borough approved recapture note in favor of the Borough. Affordability controls shall be embodied in the deed restriction, recapture note and recapture mortgage, which shall conform to the Uniform Housing Affordability Controls (N.J.A.C. 5:80-26.1 et seq.) in effect at the time of issuance of the subsidy to the developer. The term of the initial affordability control period set forth in the deed restriction, recapture note and mortgage shall be for a period of at least 30 years, and shall include a reservation of the Borough's right and option to extend the control period for an additional term at the time the initial 30-year control period is set to expire consistent with the requirements of the version of the Uniform Housing Affordability Controls or any successor regulation(s) in effect at the time the initial 30 year control period is set to end.

The program is not limited to one or more specific housing types or property locations in Little Silver Borough.

**BOROUGH OF LITTLE SILVER
RESOLUTION # 2026-058**

**RESOLUTION INTENT TO FUND SPENDING PLAN SHORTFALL FOR AFFORDABLE
HOUSING PROGRAMS**

WHEREAS, the Borough of Little Silver Planning Board adopted the Fourth Round Housing Element and Fair Share Plan on June 12, 2025 following a public hearing thereon all in accordance with the requirements of the New Jersey Open Public Meetings Act, N.J.S.A. 10:4-6 et seq., and the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq; and

WHEREAS, certain portions of the Fourth Round Housing Element and Fair Share Plan adopted by the Planning Board require a financial commitment by the municipality; and

WHEREAS, the municipality anticipates that funding will come from the following sources to satisfy said obligation: sources including, but not limited to, the affordable housing trust fund – development fee payments and in-lieu payments; and governmental sources such as the Federal Law Income Housing Tax Credits, New Jersey Balanced Housing funding, Federal Home Loan Bank Board financing, HMFA bond financing, Small Cities funds and other governmental transfers; and

WHEREAS, in the event that the above funding sources prove inadequate to meet the municipal funding obligation, the municipality shall provide sufficient funding to address any shortfalls;

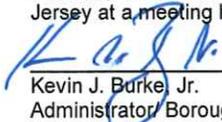
NOW THEREFORE BE IT RESOLVED by the Governing Body of the Little Silver, County of Monmouth, State of New Jersey, does hereby agree to fund any shortfalls in its affordable housing program that may arise whether due to inadequate funding from other sources or for any other reason; and

BE IT FURTHER RESOLVED that said shortfall shall be funded by bonding if there are no other resources available.

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.

I Kevin J. Burke, Jr., Borough Administrator/ Borough Clerk of the Borough of Little Silver do hereby certify that the foregoing is a true copy of resolution #2026-058 passed by the Borough Council of the Borough of Little Silver, County of Monmouth, State of New Jersey at a meeting held on March 9, 2026.



Kevin J. Burke, Jr.
Administrator/ Borough Clerk