

ORDINANCE #: O2026-001

AN ORDINANCE OF THE BOROUGH OF CHESTER, COUNTY OF MORRIS, STATE OF NEW JERSEY, ADDRESSING THE REQUIREMENTS OF THE FAIR HOUSING ACT AND THE UNIFORM HOUSING AFFORDABILITY CONTROLS AND ENSURING THE BOROUGH'S COMPLIANCE WITH ITS AFFORDABLE HOUSING OBLIGATIONS, AND TO BE KNOWN AS THE "CHESTER BOROUGH FOURTH ROUND AFFORDABLE HOUSING ORDINANCE"

WHEREAS, the Borough of Chester (the "Borough" or "Chester") filed a Declaratory Judgment Action in the Superior Court of New Jersey, Morris County, captioned IMO Borough of Chester, Docket No MRS-L-252-25 (the "Declaratory Judgment Action"), in furtherance of the "Municipality"), pursuant to N.J.S.A. 52:27D-304.2, -304.3, and -304.1(f)(1)(c) of the New Jersey Fair Housing Act, N.J.S.A. 52:27D- 301, et seq. (collectively, the "FHA"), and in accordance with Section II.A of Administrative Directive #14-24 ("Directive #14-24") of the Affordable Housing Dispute Resolution Program (the "Program"), seeking a certification of compliance with the FHA; and

WHEREAS, the Chester Borough Planning Board adopted a Housing Element and Fair Share Plan (HEFSP) on June 27, 2025, which was endorsed by the Borough of Chester Council on June 27, 2025, in compliance with the Fair Housing Act and Administrative Directive #14-24 and pursuant to the Municipal Land Use Law, N.J.S.A. 40:55D-1, et seq.; and

WHEREAS, Fair Share Housing Center ("FSHC") filed a challenge pursuant to N.J.S.A. 52:27D-304.1(f)(2)(b) to the Borough's Housing Element and Fair Share Plan on August 29, 2025; and

WHEREAS, the Borough and FSHC entered into a Settlement Agreement dated December 2, 2025, arising out of the Declaratory Judgment that determines the Borough's affordable housing obligation and the mechanisms for how the obligation will be addressed ("Settlement Agreement"); and

WHEREAS, the Settlement Agreement was approved by the Affordable Housing Dispute Resolution Program on January 6, 2026 with a recommendation to the Superior Court of New Jersey, Morris County Law Division for Certification of Chester Borough's 2025 HEFSP; and

WHEREAS, pursuant to and consistent with the terms of the Mediation Agreement and Housing Plan Element and Fair Share Plan, the Borough is required to adopt one or more ordinances to address compliance issues on or before March 15, 2026; and

WHEREAS, at this time, the Mayor and Council seek to adopt this ordinance which shall be known as the "Chester Borough Fourth Round Affordable Housing Ordinance."

NOW, THEREFORE, BE IT ORDAINED by the Borough Council of the Borough of Chester, Mercer County, New Jersey, repealing Chapter 77: Affordable Housing and is replaced as follows:

Section 1. The following regulations are hereby enacted for purposes of compliance with the Borough of Chesters's Fourth Round Affordable Housing obligations:

§ 77-1. Affordable Housing Obligation

- (1) This chapter is intended to assure that low- and moderate-income units, referred to as affordable units, are created with controls on affordability over time and that low- and moderate-income households shall occupy these units in accordance with applicable laws and regulations. The provisions of this Ordinance shall apply to all affordable housing development and procedures in Chester. Where any provision of this Ordinance may be inconsistent or conflict with the provisions of the New Jersey Fair Housing Act (C.52:27D-301 et al.), as amended, Chapter 99 Fair Housing Act Regulations (N.J.A.C. 5:99-1 et seq.), as amended, and/or the New Jersey Uniform Housing and Affordability Controls (N.J.A.C. 5:80-26.1 et seq.), as amended, the provisions of the amended statute and/or regulation shall control.
- (2) This chapter shall apply except where inconsistent with applicable law. Where any provision of this chapter may be inconsistent or conflict with the provisions of the New Jersey Fair Housing Act (C.52:27D-301, et seq.), as amended, Chapter 99 Fair Housing Act Regulations (N.J.A.C. 5:99-1, et seq.), as amended, and/or the New Jersey Uniform Housing and Affordability Controls (N.J.A.C. 5:80-26.1, et seq.), as amended, the provisions of the amended statute and/or regulation shall control. The Chester Borough Planning Board has adopted a Housing Element and Fair Share Plan pursuant to the Municipal Land Use Law at N.J.S.A. 40:55D-1, et seq. The Housing Element and Fair Share Plan has been endorsed by the governing body. The Housing Element and Fair Share Plan describes the ways Chester Borough shall address its fair share of low- and moderate-income housing as determined by the Fair Housing Act, any applicable settlement agreements, judgments or orders of the Superior Court, the Affordable Housing Dispute Resolution Program, and other applicable State law and are documented in the Housing Element and Fair Share Plan.
- (3) This Ordinance implements and incorporates the Housing Element and Fair Share Plan and addresses the applicable statutory, regulatory, and court ordered requirements, as may be amended and supplemented.
- (4) Chester shall file such monitoring and evaluation reports as may be required by the Fair Housing Act, the Uniform Housing Affordability Controls at N.J.A.C. 5:80-26.1 et seq., any applicable settlement agreements, and any orders of the Superior Court or the Affordable Housing Dispute Resolution Program. Any such plan evaluation reports shall be available to the public at the Chester Municipal Building, Municipal Clerk's Office, 50 North Road, Chester, New Jersey, and on the municipality's website, if available.

§ 77-2. Definitions

The following terms when used in this Ordinance shall have the meanings given in this section:

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

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

“Adaptable” means constructed in compliance with the technical design standards of the Barrier Free Subcode, N.J.A.C. 5:23-7.

“Administrative agent” means the entity responsible for the administration of affordable units in accordance with this Ordinance and the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.1 et seq., as may be amended and supplemented, including any successor rules adopted by the New Jersey Housing and Mortgage Finance Agency.

“Affirmative marketing” means a regional marketing strategy designed to attract buyers and/or renters of affordable units in accordance with N.J.A.C. 5:80-26.16, as may be amended and supplemented.

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

“Affordable” means a sales price or rent within the means of a low or moderate income household; 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, as may be amended and supplemented, 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, as may be amended and supplemented.

“Affordable development” means a housing development all or a portion of which consists of restricted units.

“Affordable housing development” means a development included in the Housing Element and Fair Share Plan, and includes, but is not limited to, an inclusionary development, a municipal construction project, or a one hundred percent affordable development.

“Affordable housing program(s)” means any mechanism in the Housing Element and Fair Share Plan prepared or implemented to address the municipality’s fair share obligation.

“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” or “restricted unit” means a dwelling unit, whether a rental unit or ownership unit, that is subject to the affordability controls of N.J.A.C. 5:80-26.1 et seq., as may be amended and supplemented, but does not include a market rate unit financed under UHORP, MONI, CHOICE, or similar programs.

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

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

“Assisted living residence” means a facility licensed by the New Jersey Department of Health to provide apartment-style housing and congregate dining and to assure that assisted living services are available 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.

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

“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 load bearing structural systems.

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

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

“Inclusionary development” means a development containing both affordable units and market rate units. This term includes, but is not limited to, new construction, the conversion of a non-residential structure to residential use, and the creation of new affordable units through the reconstruction of a vacant residential structure.

“Low income household” means a household with a total gross annual household income equal to 50 percent or less of 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, including weatherization, roofing, plumbing (including wells), heating, electricity, sanitary plumbing (including septic systems), lead paint abatement and load bearing structural systems.

“Market rate units” means housing not restricted to low and moderate income households that may sell or rent at any price.

“Median income” means the median income by household size for the applicable housing region or county, as adopted annually by the New Jersey Housing and Mortgage Finance Agency or the New Jersey Department of Community Affairs, as applicable.

“Moderate income household” means a household with a total gross annual household income in excess of 50 percent but less than or equal to 80 percent of regional median income.

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

“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.

“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. 5:80-26.17(k)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.

“UHAC” means the Uniform Housing Affordability Controls set forth in N.J.A.C. 5:80-26.1 et seq., as may be amended and supplemented.

“Very low income household” means a household with a total gross annual household income equal to 30 percent or less of regional median income.

“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 units in relevant projects, as provided for at N.J.S.A. 52:27D-311j.

“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.

§ 77-3. Affordable Housing Programs

Chester has determined that it will use the following mechanisms to satisfy its affordable housing obligations, as identified in its Housing Element and Fair Share Plan:

A. Rehabilitation program.

- (1) The Chester rehabilitation program shall be designed to renovate deficient housing units occupied by low and moderate income households such that, after rehabilitation, these units will comply with the New Jersey State Housing Code pursuant to N.J.A.C. 5:28.
- (2) Both owner-occupied and renter-occupied units shall be eligible for rehabilitation funds.
- (3) All rehabilitated units shall remain affordable to low and moderate-income households for a period of ten years. For owner-occupied units, the control period will be enforced with a lien, and for renter-occupied units, the control period will be enforced with a deed restriction.

- (4) Chester shall dedicate a minimum of \$10,000 for each unit to be rehabilitated through this program, reflecting the minimum hard cost of rehabilitation for each unit.
- (5) The Chester shall adopt a resolution committing to fund any shortfall in the rehabilitation program for Chester.
- (6) Chester shall designate one or more administrative agents to administer the rehabilitation program. The administrative agent or agents shall provide a rehabilitation manual for the owner occupancy rehabilitation program and a rehabilitation manual for the rental occupancy rehabilitation program to be adopted by resolution of the governing body. Both rehabilitation manuals shall be available for public inspection in the Office of the Municipal Clerk and in the office or offices of the administrative agent or agents.
- (7) Units in a rehabilitation program shall be exempt from UHAC, but shall be administered in accordance with the following:
 - (a) If a unit is vacant, upon initial rental subsequent to rehabilitation, or if a renter occupied unit is re-rented prior to the end of the controls on affordability, the deed restriction shall require the unit to be rented to a low or moderate income household at an affordable rent and affirmatively marketed pursuant to UHAC.
 - (b) If a unit is renter occupied, upon completion of the rehabilitation, the maximum rent shall be the lesser of the current rent or the maximum permitted rent pursuant to UHAC.
 - (c) Rents in rehabilitated units may increase annually in accordance with standards established by the municipality consistent with affordable housing requirements.
 - (d) Applicant and tenant households shall be certified as income eligible in accordance with UHAC, except that households in owner occupied units shall be exempt from any regional asset limit requirement.

B. An Accessory Apartment program.

- (1) All accessory apartments shall meet the following conditions:
 - (a) Accessory apartments shall be permitted by the zoning ordinance for various zoning districts, provided the units are affordable to low and moderate income households. Accessory apartments may be developed as low income or moderate income units, consistent with the Housing Element and Fair Share Plan.
 - (b) Accessory apartments shall comply with all applicable statutes and regulations of the State of New Jersey, in addition to all applicable building codes.
 - (c) At the time of initial occupancy of the unit and for at least ten years thereafter, the accessory apartment shall be rented only to a low or moderate income household.

- (d) Rents of accessory apartments shall be affordable to low or moderate income households in accordance with UHAC.
 - (e) There shall be a recorded deed or declaration of covenants and restrictions applied to the property upon which the accessory apartment is located, running with the land and limiting the subsequent rental or sale of the unit and the accessory apartment.
 - (f) The appropriate utility authority must certify that there is water and sewer infrastructure with sufficient capacity to serve the proposed accessory apartment. Where the proposed location is served by an individual well and/or septic system, the additional capacity necessitated by the new unit must meet applicable New Jersey Department of Environmental Protection standards.
 - (g) The Chester accessory apartment program shall not restrict the number of bedrooms in any accessory apartment.
 - (h) No accessory apartment created under this section shall exceed the gross floor area of the existing principal dwelling on the lot.
 - (i) The governing body may waive municipal building permit fees in cases involving affordable accessory apartment development under this section and may establish an annual license and inspection fee, if required.
- (2) The maximum number of creditable accessory apartments shall be equal to no more than ten units or an amount equal to ten percent of Chester's fair share obligation, whichever is greater, unless a greater number is approved by the court or applicable State agency.
- (3) Chester shall designate an administrative entity to administer the accessory apartment program with responsibilities including advertising, income qualifying prospective renters, setting rents and annual rent increases, maintaining a waiting list, distributing any subsidy, securing certificates of occupancy, qualifying properties, handling application forms, filing deed restrictions and monitoring reports, and affirmatively marketing the accessory apartment program in accordance with UHAC.
- (c) A Market to Affordable program.
- (1) A market to affordable program is established to permit the purchase or subsidization of existing units by the municipality or its designee, through a written agreement with the property owner, to create restricted units sold or rented to low and moderate income households.
 - (2) The following provisions shall apply to the market to affordable program:
 - (a) At the time they are offered for sale or rental under this program, eligible units may be new, pre-owned, or vacant.

- (b) The units shall be certified to be in sound condition as a result of an inspection performed by a licensed building inspector.
 - (c) The municipality shall provide a minimum subsidy per unit in amounts consistent with the Housing Element and Fair Share Plan and any applicable settlement agreements, sufficient to reduce sales prices or rents to affordable levels for low and moderate income households.
 - (d) The maximum number of creditable market to affordable units shall be equal to no more than ten for-sale units and ten rental units, or a combined total of ten percent of the municipality's fair share obligation, whichever is greater, unless a greater number is approved by the court or applicable State agency.
- (3) Market to affordable units shall comply with UHAC, except as may be specifically approved by the court or applicable State agency.

D. Durational Adjustment Implementation Sites.

- (1) This Section implements the Borough's infrastructure-dependent affordable housing strategy in accordance with the Affordable Housing Dispute Resolution Program Settlement Recommendation dated January 6, 2026. That Recommendation identifies three areas to be rezoned and implemented once adequate public water and/or sanitary sewer capacity, or an approved wastewater alternative, becomes available to serve the site, consistent with the Recommendation and applicable law. The first site, 95 West Main Street (Block 133, Lot 4), will be addressed through its inclusion within the existing Chester Mall Overlay Zone. The remaining two sites are identified herein. Nothing in this Section shall be interpreted to require the Borough to fund, finance, construct, or guarantee infrastructure expansion, or to create any Borough funding commitment pursuant to N.J.S.A. 52:27D-311. Identified sites and minimum land use parameters.
- (a) 65 Maple Avenue (Block 131, Lot 4; 0.98 acres) (Former Meenan Oil Site).
 - (i) Site status: formerly commercial (fuel depot/distribution yard/office/retail); abandoned and remediated; office building remains; other former-use structures removed.
 - (ii) Existing sewer allocation: one (1) equivalent connection (300 gpd) dedicated to the site (sufficient to support one (1) residential dwelling unit)
 - (iii) Rezoning/implementation upon infrastructure availability: if and when additional public sewer capacity or an approved wastewater alternative becomes available, the Borough shall rezone and/or implement controls to permit redevelopment at 6 du/ac, consistent with the Mediation Agreement.
 - (b) 280 & 300 Main Street (Block 119, Lot 6; 2.5 acres and Lot 8; 2.0 acres).
 - (i) Site configuration: adjoining lots that may be redeveloped as a single unified development.

- (ii) Sewer context: Lot 8 is within the sewer service area, but there is currently no assigned equivalent connection.
- (iii) Rezoning/implementation upon infrastructure availability: the Borough shall designate the properties for redevelopment area implementation and, when and if public sewer capacity or an approved wastewater alternative becomes available, shall adopt implementing land use controls to facilitate redevelopment at 6 du/ac, consistent with the Mediation Agreement.

§ 77-4. Inclusionary Zoning.

A. Presumptive densities and set asides.

To ensure the efficient use of land through compact forms of development and to create realistic opportunities for the construction of affordable housing, inclusionary zoning in Chester shall be designed to provide a realistic opportunity for the construction of affordable units at densities and set asides consistent with the municipality’s Housing Element and Fair Share Plan, any applicable settlement agreements, and applicable law.

B. Phasing. In inclusionary developments the following phasing schedule shall be followed:

Maximum Percentage of Market-Rate Units Completed	Minimum Percentage of Low and Moderate Income Units Completed
No more than 10 percent	1 affordable unit
No more than 25 percent of market units plus 1	25 percent of affordable units
No more than 50 percent of market units	50 percent of affordable units
No more than 75 percent of market units	75 percent of affordable units
No more than 90 percent of market units	100 percent of affordable units

C. Design. In inclusionary developments, to the extent possible and practical, low and moderate-income units shall be integrated with the market-rate units.

D. Payments in lieu and off-site construction. Standards for the collection of payments in lieu of constructing affordable units or standards for constructing affordable units off site shall be in accordance with applicable law, including the Fair Housing Act and any requirements of the Affordable Housing Dispute Resolution Program.

E. Utilities. Affordable units shall utilize the same type of heating source and generally the same utility systems as market rate units within the affordable development, except where otherwise approved for energy efficiency or affordability.

§ 77-5. New Construction

The following general guidelines apply to all newly constructed developments that contain very low, low- and moderate-income housing units, including any currently unanticipated future developments that will provide very low, low- and moderate-income housing units.

- A. For the purposes of determining affordability averages and bedroom distributions, all restricted units within any single-family development in a municipality are treated as one scattered-site affordable development. This treatment affects only the calculations of affordability and bedroom counts for single-family developments, is not to be construed to require that the restricted units be developed or administered as one scattered-site affordable development, and does not affect multifamily developments.
- B. For the purposes of determining affordability averages and bedroom distributions, unless stated otherwise, non-integer values calculated pursuant to this subsection are to be rounded up to the nearest whole number. However, non-integer values calculated pursuant to D.3, D.4, D.5, F.2, F.3, or F.5 below may be rounded down or up to the nearest whole number in either direction. For example, 33.1901 will typically be rounded up to 34, but may be rounded down to 33 or up to 34 if calculated pursuant to D.3, D.4, D.5, F.2, F.3, or F.5 below.
- C. The average rent for all restricted units within each affordable development is affordable to households earning no more than 52 percent of median income;
- D. Unless otherwise approved pursuant to (k) below, in each affordable development, restricted units that are not age-restricted or supportive housing must be structured in conjunction with realistic market demands such that:
- (1) At a minimum, the number of bedrooms within the restricted units equals twice the number of restricted units;
 - (2) Two-bedroom and/or three-bedroom units compose at least 50 percent of all restricted units;
 - (3) No more than 20 percent of all restricted units, rounded up or down to the nearest whole number in either direction, are efficiency or one-bedroom units;
 - (4) At least 30 percent of all restricted units, rounded up or down to the nearest whole number in either direction, are two-bedroom units;
 - (5) At least 20 percent of all restricted units, rounded up or down to the nearest whole number in either direction, are three-bedroom units; and
 - (6) The remainder of the restricted units, if any, are allocated at the discretion of the developer in accordance with the municipality's housing element and fair share plan.
- E. Unless otherwise approved pursuant to K. below, in each affordable development, restricted units that are age-restricted or supportive housing must be structured such that, at a minimum, the number of bedrooms within the restricted units equals the number of restricted units. For example, the standard may be met by creating a two-bedroom unit for each efficiency unit. In affordable developments with 20 or more restricted units that are age-restricted or supportive housing, two-bedroom and three-bedroom units must compose at least five percent of those restricted units.
- F. Unless otherwise approved pursuant to K. below, in each affordable development, the following income distribution requirements must be satisfied by all of the restricted units in the development as well as by, considered in isolation, the restricted units that are age-

restricted, the restricted units that are supportive housing, and the restricted units that are neither age-restricted nor supportive housing:

- (1) At least 50 percent of all restricted units are low-income or very-low-income units;
 - (2) At least 50 percent of all restricted efficiency or one-bedroom units, rounded up or down to the nearest whole number in either direction, are low-income units or very-low-income units;
 - (3) At least 50 percent of all restricted two-bedroom units, rounded up or down to the nearest whole number in either direction, are low-income units or very-low-income units;
 - (4) At least 50 percent of all restricted three-bedroom units are low-income units or very-low-income units;
 - (5) At least 50 percent of all restricted units with four or more bedrooms, rounded up or down to the nearest whole number in either direction, are low-income units or very-low-income units; and
 - (6) Any very-low-income units are distributed between each bedroom count as proportionally as possible, to the nearest whole unit, to the total number of restricted
 - (7) units within each bedroom count. For example, if half of the restricted units are two-bedroom units, then half of the very-low-income units should be two-bedroom units.
- G. For the purposes of determining bonus credits pursuant to N.J.S.A. 52:27D-311k(5), the minimum number of three-bedroom units required pursuant to this subchapter is determined by taking 20 percent of the total number of family housing units in the municipal fair share plan and housing element, not by summing up the three-bedroom-unit requirements calculated for each affordable development.
- H. In determining the initial rents and initial sale prices for compliance with the affordability average requirements for restricted units other than age-restricted units and assisted living facilities, the following standards apply:
- (1) An efficiency unit is affordable to a one-person household;
 - (2) A one-bedroom unit is affordable to a one-and-one-half-person household;
 - (3) A two-bedroom unit is affordable to a three-person household;
 - (4) A three-bedroom unit is affordable to a four-and-one-half-person household; and
 - (5) A four-bedroom unit is affordable to a [six person] six-person household.
- I. For age-restricted units and assisted living facilities, the following standards apply:
- (1) An efficiency unit is affordable to a one-person household;
 - (2) A one-bedroom unit is affordable to a one-and-one-half-person household;

- (3) A two-bedroom unit is affordable to a two-person household or to two one-person households; and
 - (4) A three-bedroom unit is affordable to a two-and-one-half-person household.
- J. The provisions of this section do not apply to affordable developments financed pursuant to UHORP, MONI, or CHOICE or to assisted living residences, each of which must comply with applicable Agency regulations.
- K. The requirements of D, F, and H. above must be satisfied by all restricted units in the municipality, considered in the aggregate. The individual requirements of D, F, and H above may be waived or altered for a specific affordable development with written approval from the Division if such waiver or alteration would not result in a material deviation from the municipal housing element and fair share plan. Any waiver or alteration that would result in a material deviation from the municipal housing element and fair share plan must receive written approval from the Dispute Resolution Program or, if the municipality does not participate in the Dispute Resolution Program, from a county-level housing judge.
- L. Accessibility requirements.
- M. The first floor of all restricted townhouse dwelling units and all restricted units in all other multistory buildings shall be subject to the technical design standards of the Barrier Free Subcode, N.J.A.C. 5:23-7, and all applicable accessibility requirements.
- N. All restricted townhouse dwelling units and all restricted units in other multistory buildings in which a restricted dwelling unit is attached to at least one other dwelling unit shall have:
- (a) An adaptable toilet and bathing facility on the first floor.
 - (b) An adaptable kitchen on the first floor.
 - (c) An interior accessible route of travel on the first floor.
 - (d) An adaptable room that can be used as a bedroom, with a door or the casing for the installation of a door, on the first floor.
 - (e) An accessible entranceway as set forth at 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.
 - (f) 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, using funds deposited by the developer in the municipal affordable housing trust fund for this purpose, consistent with applicable law.
 - (g) Full compliance with these provisions shall not be required where an entity demonstrates that it is site impracticable to meet the requirements, as determined in accordance with the Barrier Free Subcode.

O. Maximum 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, 26.6, 26.7, and 26.13, as may be amended and supplemented, utilizing the regional income limits established by the New Jersey Housing and Mortgage Finance Agency or applicable State agency.
- (2) The average rent for all restricted rental units within each affordable development shall be affordable to households earning no more than 52 percent of regional median income. The maximum rent for all restricted rental units within each affordable development shall be affordable to households earning no more than 60 percent of regional median income, except as permitted where an enhanced very low income set aside is provided in accordance with N.J.A.C. 5:80-26.4.
- (3) The developers and municipal sponsors of restricted rental units shall establish at least one rent for each bedroom count for very low income, low income, and moderate income units, provided that at least 13 percent of all restricted units within the municipality are affordable to very low income households.
- (4) At least 50 percent of the restricted rental units in each affordable development shall be affordable to low income households, and at least 13 percent of all restricted rental units shall be affordable to very low income households, consistent with N.J.S.A. 52:27D-329.1 and N.J.A.C. 5:80-26.4.
- (5) The maximum sale price of restricted ownership units within each affordable development shall be affordable to households earning no more than 70 percent of regional median income, and each affordable development must achieve an affordability average of no more than 55 percent of regional median income for restricted ownership units.
- (6) At least 50 percent of the restricted ownership units in each affordable development shall be affordable to low income households, and at least 13 percent of all restricted ownership units shall be affordable to very low income households.
- (7) 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 an interest rate consistent with the Federal Reserve H.15 rate, together with taxes, homeowner and private mortgage insurance, and condominium or homeowner association fees, does not exceed 28 percent of the eligible monthly income of the appropriate size household, subject to the affordability average requirements of UHAC.
- (8) The initial rent for a restricted rental unit shall be calculated so as not to exceed 30 percent of the eligible monthly income of the appropriate size household, subject to the affordability average requirements of UHAC.

- (9) The resale price of restricted ownership units and increases in rents of restricted rental units shall be determined in accordance with UHAC.
- (10) 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 approved by the New Jersey Department of Community Affairs for its Section 8 program or other applicable guidance.

§ 77-6. Affirmative Marketing Requirements

- A. Chester shall adopt by resolution an Affirmative Marketing Plan, subject to approval of the Division of Housing and Community Resources or its successor, compliant with N.J.A.C. 5:80-26.16, as may be amended and supplemented.
- B. The affirmative marketing plan shall be a regional marketing strategy designed to attract buyers and renters of affordable units in the housing region in which the municipality is located. The plan shall attract persons of all majority and minority groups, regardless of race, color, national origin, religion, sex, familial status, gender identity or expression, affectional or sexual orientation, disability, age (except for housing for older persons as permitted by law), number of children, source of lawful income, or any other characteristic protected by the New Jersey Law Against Discrimination, and shall be intended to reach potentially eligible households that are least likely to apply for the units.
- C. The administrative agent shall ensure the affirmative marketing of affordable units. The municipality may designate a qualified municipal staff person approved by the State to serve as administrative agent for this purpose, or it may contract with one or more experienced administrative agents approved by the State.
- D. The affirmative marketing plan shall, at a minimum:
 - (a) Describe the random selection method that will be used to select occupants of affordable housing units and identify any occupancy preferences permitted by N.J.A.C. 5:80-26.17(k).
 - (b) Identify the media to be used in advertising and publicizing the availability of affordable units, including newspapers and other publications, online housing search websites, municipal and county websites, social media platforms, and non-digital means such as flyers or postings at public buildings and transportation locations.
 - (c) Identify specific community and regional organizations that will assist in the outreach to low and moderate income households, including but not limited to Fair Share Housing Center, the New Jersey State Conference of the NAACP, the Latino Action Network, local branches of the NAACP serving the housing region, senior citizen advocacy organizations, and supportive housing advocacy organizations.

- (d) Describe how the plan will provide language access, including outreach and materials in languages commonly spoken in the municipality and region.
- (e) Set forth application procedures and requirements, including any application fees, consistent with UHAC.

E. In implementing the affirmative marketing program, the administrative agent shall:

- (a) Post a listing of available affordable housing units on the New Jersey Housing Resource Center at least sixty days before the random selection process or lottery for such units, in accordance with applicable statutes and UHAC.
- (b) Within one business day of listing rental units that are reserved for individuals with special needs who are homeless, or that constitute permanent supportive housing, notify the local Continuum of Care of the availability of such units.
- (c) Publish at least one advertisement in a regional newspaper serving the housing region.
- (d) Advertise the units on at least one widely used housing search website.
- (e) Undertake at least two additional regional marketing strategies, one digital and one non-digital, using the sources identified in the affirmative marketing plan, and continue advertising and outreach until all units being brought to market at that time have been sold or rented or until sufficient applications have been received to fill the units plus anticipated turnover.

F. In carrying out the affirmative marketing process, the administrative agent shall comply with the Fair Chance in Housing Act, N.J.S.A. 46:8-52 through 64, and all applicable provisions of Federal and State fair housing law.

G. The Municipal Housing Liaison shall monitor the implementation of the affirmative marketing plan by each administrative agent and developer and shall report on affirmative marketing activities in any required municipal monitoring reports.

§ 77-7. Random Selection and Occupancy Preferences

- A. The administrative agent shall use a random selection process to select income eligible households for referral to restricted units, consistent with N.J.A.C. 5:80-26.17(k), as may be amended and supplemented. The random selection process may occur before or after household income certification and may divide the applicant pool into groups based on bedroom count, income category, or other factors expressly permitted by UHAC.
- B. Occupancy preferences shall be limited to those expressly permitted by N.J.A.C. 5:80-26.17(k), which may include:

- (a) A preference for very low, low, and moderate income households who live or work within the housing region.
 - (b) A subordinate preference, subject to the regional preference, for very low, low, and moderate income households who live or work in New Jersey.
 - (c) For preservation or replacement projects, a preference for income eligible households displaced by rehabilitation or demolition of restricted units.
 - (d) A veterans' preference for up to fifty percent of the restricted units in a particular project, if permitted by State law and UHAC.
- C. No residency preference limited solely to the municipality shall be used unless expressly permitted by statute, UHAC, and any applicable court order or mediation agreement.
- D. Any occupancy preferences shall be described in the affirmative marketing plan and in the administrative agent's operating manual.

§ 77-8. Occupancy Standards

- A. Any unit that, prior to the effective date of the amendments to this subchapter as promulgated pursuant to P.L. 2024, c.2 (N.J.S.A. 52:27D-304.1), received substantive certification from COAH, was part of a judgment of compliance from a court of competent jurisdiction, or became subject to a grant agreement or other contract with either the State or a political subdivision thereof, shall be subject to the regulations at this subchapter ("UHAC regulations") that were in effect prior to the effective date of the amendments promulgated pursuant to P.L. 2024, c.2.
- B. Developments approved as part of a compliance certification or that otherwise contain restricted units subject to the UHAC regulations shall satisfy the following occupancy standards:
- (1) For any 100-percent affordable development comprising one or more restricted units:
 - (a) 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 applicable municipal code or the Neighborhood Preservation Balanced Housing rules at N.J.A.C. 5:43-2.4, whichever is greater;
 - (b) Each bedroom in each restricted unit must have at least one window; and
 - (c) Restricted units must include adequate air conditioning and heating;
 - (2) For developments comprising market-rate rental units and restricted rental units:
 - (a) Restricted units must use the same building standards (for example, plumbing, insulation, siding) as market-rate units of the same unit type (for example, flat, townhome) within the same development, except that restricted units and market-rate units may use different interior finishes;

- (b) 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;
 - (c) 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;
 - (d) 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;
 - (e) Restricted units must include adequate air conditioning and heating and, if market-rate units provide cooling and heating, restricted units must use the same type of cooling and heating sources as market-rate units of the same unit type;
 - (f) Each bedroom in each restricted unit must have at least one window;
 - (g) Restricted units must be of the same unit type (for example, flat, townhome) as market-rate units within the same building; and
 - (h) Restricted units must be of at least the same size as the most common market-rate unit(s) of the same type and bedroom count within the same development, but under no circumstances shall any restricted unit or bedroom be less than 90 percent of the minimum size prescribed by the applicable municipal code or Neighborhood Preservation Balanced Housing rules at N.J.A.C. 5:43-2.4, whichever prescribes the greater minimum size;
- (3) For developments containing for-sale units, including those with a mix of rental and for-sale units, subsection B.2 above shall govern the rental units, while for-sale units shall adhere to the following:
- (a) Restricted units must use the same building standards as market-rate units of the same unit type (for example, flat, townhome, single-family home), except that restricted units and market-rate units may use different interior finishes;
 - (b) 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;
 - (c) Restricted units may be of different housing product types than market-rate units, provided that developments containing market-rate townhomes or single-family homes offer restricted housing options that also include townhomes or single-family homes;
 - (d) 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 applicable municipal code or the Neighborhood Preservation Balanced Housing rules at N.J.A.C. 5:43-2.4, whichever provides the greater minimum square footages;
 - (e) 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);

- (f) 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;
- (g) Each bedroom in each restricted unit must have at least one window; and
- (h) Restricted units must include adequate air conditioning and heating;

§ 77-9. Control Periods for Restricted Ownership Units and Enforcement Mechanisms

- A. Control periods for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.5 and 26.6, as may be amended and supplemented. Each restricted ownership unit shall remain subject to the requirements of this Ordinance until the municipal obligation to maintain controls under UHAC has expired.
- B. The deed restriction and mortgage lien securing the affordability controls for restricted ownership units shall be in the form required by UHAC and shall be recorded as a first or second lien on the property, as required by UHAC.
- C. The administrative agent shall have the responsibility to ensure that deed restrictions, mortgage liens, and all other affordability controls required by UHAC and this Ordinance are properly executed and recorded and shall monitor compliance.
- D. Enforcement mechanisms, including but not limited to restrictions on refinancing, capital improvements, resale, and transfer, shall be in accordance with UHAC.

§ 77-10. Price Restrictions for Restricted Ownership Units, Homeowner Association Fees and Resale Prices

- A. Price restrictions and resale prices for restricted ownership units shall be governed by N.J.A.C. 5:80-26.6 and 26.7, as may be amended and supplemented.
- B. Homeowner association fees for restricted ownership units shall be treated in accordance with UHAC, and the administrative agent shall approve homeowner association fee schedules to ensure that affordability is maintained.
- C. The administrative agent shall establish resale prices for restricted ownership units based upon the formula required by UHAC and this Ordinance.

§ 77-11. Capital Improvements to Restricted Ownership Units

- A. The administrative agent shall review and approve requests for capital improvements by owners of restricted ownership units prior to the commencement of the improvements, consistent with N.J.A.C. 5:80-26.9.

- B. Eligible capital improvements and treatment of capital improvement costs in calculating resale prices shall be as set forth in UHAC and this Ordinance.

§ 77-12. Control Periods for Restricted Rental Units

- A. Control periods for restricted rental units shall be in accordance with N.J.A.C. 5:80-26.11 and 26.12, as may be amended and supplemented.
- B. Each restricted rental unit shall remain subject to the requirements of this Ordinance until the municipal obligation to maintain controls under UHAC has expired.

§ 77-13. Rent Restrictions for Rental Units

- A. Rent restrictions for restricted rental units shall be governed by N.J.A.C. 5:80-26.13, as may be amended and supplemented.
- B. Annual increases in rents shall be consistent with UHAC and any applicable settlement agreements or court orders.
- C. The administrative agent shall annually review and approve proposed rent increases for restricted rental units.

§ 77-14. Tenant Income Eligibility

- A. Tenant income eligibility shall be in accordance with N.J.A.C. 5:80-26.14 and 26.16, as may be amended and supplemented, and shall be determined as follows:
 - (1) Very low income rental units shall be reserved for households with a gross household income less than or equal to 30 percent of regional median income.
 - (2) Low income rental units shall be reserved for households with a gross household income less than or equal to 50 percent of regional median income.
 - (3) Moderate income rental units shall be reserved for households with a gross household income less than or equal to 80 percent of regional median income.
- B. The administrative agent shall certify a household as eligible for a restricted rental unit when the household satisfies UHAC income eligibility requirements and the proposed rent does not exceed applicable affordability standards.

§ 77-15. Administration

- A. The position of Municipal Housing Liaison for Chester is established by this Ordinance. The Borough shall appoint the Municipal Housing Liaison by resolution or other appropriate action.

- B. The Municipal Housing Liaison must be either a full time or part time employee of Chester and shall meet all qualification and training requirements imposed by the State.
- C. The Municipal Housing Liaison shall be responsible for oversight and administration of the affordable housing program for Chester, including but not limited to:
 - (1) Serving as the municipality's primary point of contact for all inquiries from the State, affordable housing providers, administrative agents, and interested households.
 - (2) Coordinating the implementation of the affirmative marketing plan and affordability controls.
 - (3) Supervising any contracted administrative agent.
 - (4) Monitoring the status of all restricted units in the municipality's Housing Element and Fair Share Plan.
 - (5) Preparing monitoring and reporting forms as required by the State or the court.
- D. Chester shall appoint one or more administrative agents for ownership units and one or more administrative agents for rental units, which may or may not be the same entity, to carry out the responsibilities of an administrative agent as set forth in UHAC and this Ordinance.

§ 77-16. Enforcement of Affordable Housing Regulations

- A. The provisions of this Ordinance shall be enforceable by the municipality, the State, or any other party entitled by law to enforce affordable housing controls, in accordance with UHAC, the Fair Housing Act, and applicable case law.
- B. A violation of the requirements of this Ordinance, including but not limited to failure to file required reports, failure to comply with affirmative marketing requirements, or unauthorized transfer or rental of a restricted unit, shall be subject to enforcement action, which may include legal or equitable relief, fines, or other remedies as authorized by law.
- C. The municipality may, to the extent permitted by law, pursue any remedies available at law or in equity to enforce the provisions of this Ordinance, UHAC, and any deed restriction or mortgage instrument used to secure affordability controls.

§ 77-17. Appeals

Appeals from all decisions of an administrative agent designated pursuant to this Ordinance shall be filed in writing with the Superior Court of New Jersey or such other body or agency as may be authorized by law.

§ 77-18. Repealer, Severability, and Effective Date

- A. All ordinances or parts of ordinances inconsistent with this Ordinance are repealed as to such inconsistencies.
- B. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions of this Ordinance.
- C. This Ordinance shall take effect upon passage and publication as provided by law.

Section 2. RENUMBERING. This ordinance may be renumbered for codification purposes.

Section 3. SEVERABILITY. The various parts, sections and clauses of this Ordinance are hereby declared to be severable. If any part, sentence, paragraph, section or clause is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder off this Ordinance shall not be affected thereby.

Section 4. REPEALER. Any Ordinances or parts thereof in conflict with the provisions of these Ordinance are hereby repealed as to their inconsistencies only.

Section 5. EFFECTIVE DATE. This Ordinance shall take effect following publication in accordance with the Law.

NOTICE

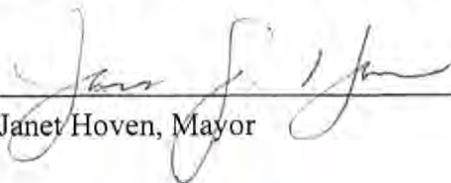
NOTICE is hereby given that the foregoing Ordinance was introduced to pass on first reading at a regular meeting of the Governing Body of Chester Borough held on February 17, 2026, and ordered published in accordance with the law. Said Ordinance was considered for final reading and adoption at a special remote meeting of the Governing Body held on March 11, 2026 at 12:00 p.m. at which time all persons interested were able to log on and appear for or against the passage of said Ordinance.



Dena Dziergoski, Acting Borough Clerk

03/11/2026

Date:



Janet Hoven, Mayor

3-13-2026

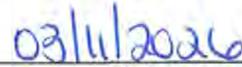
Date:

Adopted: 03/11/2026

Attest: I herein certify that the foregoing ordinance was duly adopted by the Governing Body of the Borough of Chester at a special remote meeting held by the Governing Body on March 11, 2026.



Dena Dziergoski, Acting Borough Clerk



Date:

ORDINANCE # O2026-002

**AN ORDINANCE OF THE BOROUGH OF CHESTER,
COUNTY OF MORRIS, STATE OF NEW JERSEY,
ADDRESSING THE REQUIREMENTS OF THE FAIR
HOUSING ACT AND THE UNIFORM HOUSING
AFFORDABILITY CONTROLS AND REGULATING
DEVELOPMENT FEES AND MANDATORY SETASIDE**

WHEREAS, the Borough of Chester (the "Borough") filed a Declaratory Judgment Action in the Superior Court of New Jersey, Morris County, captioned IMO Borough of Chester, Docket No MRS-L-252-25 (the "Declaratory Judgment Action"), in furtherance of the "Municipality"), pursuant to N.J.S.A. 52:27D-304.2, -304.3, and -304.1(f)(1)(c) of the New Jersey Fair Housing Act, N.J.S.A. 52:27D- 301, et seq. (collectively, the "FHA"), and in accordance with Section II.A of Administrative Directive #14-24 ("Directive #14-24") of the Affordable Housing Dispute Resolution Program (the "Program"), seeking a certification of compliance with the FHA; and

WHEREAS, the Chester Borough Planning Board adopted a Housing Element and Fair Share Plan (HEFSP) on June 27, 2025, which was endorsed by the Borough of Chester Council on June 27, 2025, in compliance with the Fair Housing Act and Administrative Directive #14-24 and pursuant to the Municipal Land Use Law, N.J.S.A. 40:55D-1, et seq.; and

WHEREAS, Fair Share Housing Center ("FSHC") filed a challenge pursuant to N.J.S.A. 52:27D-304.1(f)(2)(b) to the Borough's Housing Element and Fair Share Plan on August 29, 2025; and

WHEREAS, the Borough and FSHC entered into a Settlement Agreement dated December 2, 2025, arising out of the Declaratory Judgment that determines the Borough's affordable housing obligation and the mechanisms for how the obligation will be addressed ("Settlement Agreement"); and

WHEREAS, the Settlement Agreement was approved by the Affordable Housing Dispute Resolution Program on January 6, 2026 with a recommendation to the Superior Court of New Jersey, Morris County Law Division for Certification of Chester Borough's 2025 HEFSP; and

WHEREAS, pursuant to and consistent with the terms of the Mediation Agreement and Housing Plan Element and Fair Share Plan, the Borough is required to adopt one or more ordinances to address compliance issues on or before March 15, 2026; and

WHEREAS, at this time, the Mayor and Council seek to adopt this ordinance to be known as the "Development Fee Ordinance."

NOW, THEREFORE, BE IT ORDAINED by the Borough Council of the Borough of Chester, Morris County, New Jersey, as follows:

Section 1. Chapter 163 Land Development Procedures, Article IX Zoning – Zone Requirements, Section 163-78 Development fee ordinance is hereby repealed and replaced with the following regulations, and is hereby enacted to ensure the Borough of Chester’s compliance with its Fourth Round Affordable Housing obligations and more specifically to set forth requirements for development fees:

§ 163-78 Development fee ordinance.

A. Purpose.

- (1) In Holmdel Builder’s Association v. Holmdel Township, 121 N.J. 550 (1990), the New Jersey Supreme Court determined that mandatory development fees are authorized by the Fair Housing Act of 1985 (the “Act”), N.J.S.A. 52:27d-301 et seq., and the State Constitution, subject to the Council on Affordable Housing’s (“COAH”) adoption of rules.
- (2) Pursuant to P.L. 2008, c.46, § 8 (C. 52:27D-329.2) and the Statewide Non-Residential Development Fee Act (C. 40:55D-8.1 through 8.7), the Division of Local Planning Services in the New Jersey Department of Community Affairs is authorized to adopt and promulgate regulations necessary for the establishment, implementation, review, monitoring and enforcement of municipal affordable housing trust funds and corresponding spending plans. Municipalities that are under the jurisdiction of COAH or court of competent jurisdiction and have an approved spending plan may retain fees collected from non-residential development.
- (3) Where applicable, references to approvals or compliance certification are those issued through the Affordable Housing Dispute Resolution Program (the “Program”) or a court of competent jurisdiction, and/or approvals issued by the Division, as provided in N.J.A.C. 5:99.
- (4) This ordinance establishes standards for the collection, maintenance, and expenditure of development fees and other affordable housing trust fund revenues pursuant to P.L. 2008, c.46, the Act, and the regulations implementing the Act at N.J.A.C. 5:99. Fees collected pursuant to this ordinance shall be used solely for the purpose of providing low- and moderate-income housing in accordance with an approved spending plan and the requirements of N.J.A.C. 5:99.

B. Requirements.

- (1) Chester Borough shall not spend, or commit to spend, any affordable housing trust fund revenues unless the expenditure is approved as part of its compliance certification or otherwise approved as permitted by N.J.A.C. 5:99 and N.J.S.A. 52:27D-329.2.a(4). A municipality within the jurisdiction of the Program or a court of competent

jurisdiction shall not spend trust fund revenues unless the Program or court has approved a plan for spending such funds, or unless the Division has approved spending plan expenditures for emergent opportunities as provided in N.J.A.C. 5:99.

- (2) In the event any of the conditions described at N.J.A.C. 5:99-5.6 occur, the Division shall be authorized, on behalf of Chester, to direct the manner in which all funds in the affordable housing trust fund shall be expended, and the three-party escrow agreement shall be maintained at all times.

C. Definitions.

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

“Affordable housing development” means a development included in the Borough’s Housing Element and Fair Share Plan, and includes, but is not limited to, an inclusionary development, a municipal construction project or a 100 percent affordable development.

“AHMS” means the Affordable Housing Management System used for annual municipal monitoring submissions.

“COAH” or the “Council” means the former New Jersey Council on Affordable Housing established under the Fair Housing Act which previously had primary jurisdiction for the administration of housing obligations in accordance with sound regional planning consideration in the State. Pursuant to the Executive Reorganization Act of 1969, P.L. 1969, c. 203 (C. 52:14C-1 et seq.), the Governor abolished the Council and transferred all functions, powers, and duties to the Commissioner of the Department of Community Affairs, effective August 29, 2011.

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

“Compliant municipality” means a municipality maintaining compliant status for purposes of development fee retention and trust fund maintenance as provided in N.J.A.C. 5:99.

“Development fee” means money paid by a developer for the improvement of property as permitted in N.J.A.C. 5:99.

“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.

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

“Equalized assessed value” means the assessed value of a property divided by the current average ratio of assessed to true value for the municipality in which the property is

situated, as determined in accordance with sections 1, 5, and 6 of P.L. 1973, c.123 (C.54:1-35a through C.54:1-35c).

“Green building strategies” means those 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.

“Municipality” shall mean the Borough of Chester in Morris County, also referred to herein as “Chester” or the “Borough.”

“Program” means the Affordable Housing Dispute Resolution Program, where applicable.

D. Residential Development Fees.

(1) Imposed fees

- (a) Within the Borough, residential developers, except for developers of the types of development specifically exempted below, shall pay a fee of one and a half percent (1.5%) of the equalized assessed value for residential development provided no increased density is permitted.
- (b) When an increase in residential density pursuant to N.J.S.A. 40:55D-70d(5) (known as a “d” variance) has been permitted, developers may be required to pay a development fee of six percent (6%) of the equalized assessed value for each additional unit that may be realized. However, if the zoning on a site has changed during the two-year period preceding the filing of such a variance application, the base density for the purposes of calculating the bonus development fee shall be the highest density permitted by right during the two-year period preceding the filing of the variance application.

(2) Eligible exactions, ineligible exactions and exemptions for residential development

- (a) Affordable housing developments, developments where the developer is providing for the construction of affordable units elsewhere in Chester, and developments where the developer has made a payment in lieu of on-site construction of affordable units shall be exempt from development fees.
- (b) Developments that have received preliminary or final site plan approval prior to the adoption of a municipal development fee ordinance shall be exempt from development fees, unless the developer seeks a substantial change in the approval. Where a site plan approval does not apply, a zoning and/or building permit shall be synonymous with preliminary or final site plan approval for this purpose. The fee percentage shall be vested on the date that the building permit is issued.
- (c) Owner-occupied residential structures demolished and replaced as a result of a fire, flood, or natural disaster shall be exempt from paying a development fee.

- (d) Development fees shall be imposed and collected when an existing structure undergoes a change to a more intense use, is demolished and replaced, or is expanded, if the expansion is not otherwise exempt from the development fee requirement. The development fee shall be calculated on the increase in the equalized assessed value of the improved structure.

E. Non-Residential Development Fees.

(1) Imposed fees

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

(2) Eligible exactions, ineligible exactions and exemptions for non-residential development

- (a) The non-residential portion of a mixed-use inclusionary or market rate development shall be subject to the two and a half (2.5%) percent development fee, unless otherwise exempted below.
- (b) The two and a half (2.5%) percent fee shall not apply to an increase in equalized assessed value resulting from alterations, change in use within existing footprint, reconstruction, renovations and repairs.
- (c) Non-residential developments shall be exempt from the payment of non-residential development fees in accordance with the exemptions required pursuant to P.L.2008, c.46, as specified in the Form N-RDF "State of New Jersey Non-Residential Development Certification/Exemption" Form. Any exemption claimed by a developer shall be substantiated by that developer.

- (d) A developer of a non-residential development exempted from the non-residential development fee pursuant to P.L. 2008, c.46 shall be subject to it at such time the basis for the exemption no longer applies, and shall make the payment of the non-residential development fee, in that event, within three 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 which was exempted from the collection of a non-residential development fee thereafter ceases to be exempt from property taxation, the owner of the property shall remit the fees required pursuant to this section within 45 days of the termination of the property tax exemption. Unpaid non-residential development fees under these circumstances may be enforceable by Chester Borough as a lien against the real property of the owner.

F. Collection Procedures.

- (1) Upon the granting of a preliminary, final or other applicable approval, for a development, the applicable approving authority shall direct its staff to notify the construction official responsible for the issuance of a building permit.
- (2) For non-residential developments only, the developer shall also be provided with a copy of Form N-RDF "State of New Jersey Non-Residential Development Certification/Exemption" to be completed as per the instructions provided. The developer of a non-residential development shall complete Form N-RDF as per the instructions provided. The construction official shall verify the information submitted by the non-residential developer as per the instructions provided in the Form N-RDF. The tax assessor shall verify exemptions and prepare estimated and final assessments as per the instructions provided in Form N-RDF.
- (3) The construction official responsible for the issuance of a building permit shall notify the local tax assessor of the issuance of the first building permit for a development which is subject to a development fee.
- (4) Within 90 days of receipt of that notice, the municipal tax assessor, based on the plans filed, shall provide an estimate of the equalized assessed value of non-residential development.
- (5) The construction official responsible for the issuance of a final certificate of occupancy notifies the local assessor of any and all requests for the scheduling of a final inspection on property which is subject to a development fee.
- (6) Within 10 business days of a request for the scheduling of a final inspection, the municipal assessor shall confirm or modify the previously estimated equalized assessed value of the improvements of the development; calculate the development fee; and thereafter notify the developer of the amount of the fee.

- (7) Should Chester Borough fail to determine or notify the developer of the amount of the development fee within 10 business days of the request for final inspection, the developer may estimate the amount due and pay that estimated amount consistent with the dispute process set forth in subsection b. of section 37 of P.L.2008, c.46 (C.40:55D-8.6).
- (8) Fifty percent of the development fee shall be collected at the time of issuance of the building permit. The remaining portion shall be collected at the issuance of the certificate of occupancy. The developer shall be responsible for paying the difference between the fee calculated at building permit and that determined at issuance of certificate of occupancy.

G. Appeal of development fees

- (1) For residential developments, imposed and collected residential development fees that are contested shall be deposited under protest in an interest-bearing escrow account by Chester. The local code enforcement official shall thereafter issue the certificate of occupancy provided that the construction is otherwise eligible for a certificate of occupancy. If all or a portion of the contested fees are returned to the developer, the accrued interest on the returned amount shall also be returned.
- (2) A developer may challenge non-residential development fees by filing a challenge with the Director of the Division of Taxation. Collected fees shall be placed in an interest-bearing escrow account by Chester if Chester is authorized to retain the fees, or by the State if Chester is not authorized to retain the fees. The local code enforcement official shall thereafter issue the certificate of occupancy provided that the construction is otherwise eligible for a certificate of occupancy. Appeals from a determination of the Director may be made to the Tax Court in accordance with N.J.S.A. 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.

H. Affordable Housing Trust Fund.

- (1) There is hereby created a separate, interest-bearing housing trust fund to be maintained by the chief financial officer for the purpose of depositing development fees collected from residential and non-residential developers and proceeds from the sale of units with extinguished controls ("Affordable Housing Trust Fund").
- (2) The following additional funds shall be deposited in the Affordable Housing Trust Fund and shall at all times be identifiable by source and amount:
 - (a) Payments in lieu of on-site construction of affordable units;
 - (b) Developer contributed funds to make ten percent (10%) of the adaptable entrances in a townhouse or other multistory attached development accessible;
 - (c) Rental income from municipally operated units;
 - (d) Repayments from affordable housing program loans;

- (e) Recapture funds;
 - (f) Proceeds from the sale of affordable units; and
 - (g) Any other funds collected in connection with Chester's affordable housing program.
- (3) Within 21 days from the opening of the Affordable Housing Trust Fund account, and within 21 days of any change in the bank or other financial institution in which trust funds are deposited, Chester shall provide the Division with written authorization, in the form of a three-party escrow agreement between Chester, the bank or other financial institution, and the Division, to permit the Division to direct the disbursement of the funds as provided for in N.J.A.C. 5:99-5.6. This escrow agreement shall be maintained at all times.
- (4) All interest accrued in the Affordable Housing Trust Fund shall only be used on eligible affordable housing activities included in an approved spending plan or an emergent opportunity authorized by the Division.

I. Use of Funds

- (1) The expenditure of all funds shall conform to a spending plan approved by the Program or a court of competent jurisdiction, or as approved by the Division for an emergent opportunity to create affordable housing, as permitted by N.J.A.C. 5:99 and N.J.S.A. 52:27D-329.2.a(4). Such activities include, but are not limited to: preservation or purchase of housing for the purpose of maintaining or implementing affordability controls, rehabilitation, new construction of affordable housing units and related costs, accessory apartment, market to affordable, or regional housing partnership programs, conversion of existing 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, or any other activity as permitted and specified in the approved spending plan.
- (2) Funds shall not be expended to reimburse Chester for past housing activities.
- (3) Chester shall set aside a portion of all development fees collected and interest earned for the purpose of providing affordability assistance to very low-, low-, and moderate-income households in affordable units included in the municipality's fair share plan. Affordability assistance for very-low-income households may include offering a subsidy to developers of inclusionary or 100 percent affordable developments or buying down the cost of low- or moderate-income units to make them affordable to very-low-income households, including special needs and supportive housing opportunities.

- (4) Payments in lieu of constructing affordable units shall be deposited into the Affordable Housing Trust Fund and accounted for separately, identified in annual monitoring submissions, and included in the municipal spending plan. Whenever a payment-in-lieu fee is assessed for a development, a development fee shall not be charged in connection with the same development.
- (5) Chester may contract with a private or public entity to administer any part of its Housing Element and Fair Share Plan, including the requirement for affordability assistance, in accordance with N.J.A.C. 5:99-7.
- (6) No more than 20 percent of all revenues collected from development fees, may be expended on administration, including, but not limited to, salaries and benefits for municipal employees or consultant fees necessary to develop or implement a new construction program, a Housing Element and Fair Share Plan, and/or an affirmative marketing program. In the case of a rehabilitation program, no more than 20 percent of the revenues collected from development fees shall be expended for such administrative expenses. Administrative funds may be used for income qualification of households, monitoring the turnover of sale and rental units, and compliance with the Department's monitoring requirements. Municipal affordable housing trust funds shall not be expended on attorney fees or court costs to obtain a judgment of compliance or order of repose (including associated administration costs), on any costs in connection with a challenge to the municipality's fair share obligation, or on any costs in connection with a challenge to the municipality's obligation, housing element, or fair share plan, as provided in N.J.A.C. 5:99.

J. Monitoring.

- (1) Chester shall submit all required monitoring information through the online AHMS in the time and form required by the Division. Monitoring information for each calendar year shall be submitted in the form of a certification by the municipal housing liaison, or their designee (who shall be a municipal employee), and shall be accompanied by a year-end bank or other financial institution statement used to reconcile municipal reporting. Municipal monitoring information certifications shall be submitted through AHMS by February 15 of each year for trust fund activity through December 31 of the previous year.

K. Ongoing Collection of Fees.

- (1) The ability for Chester to impose and collect and retain residential development fees, retain non-residential development fees, and maintain an affordable housing trust fund is subject to maintaining its status as a compliant municipality, except as otherwise provided by law for Qualified Urban Aid Municipalities. If a court of competent jurisdiction finds that Chester has failed to maintain its status as a compliant municipality, Chester may be subject to forfeiture of any or all funds remaining within the Affordable Housing Trust Fund, and any funds so forfeited shall be deposited into

the New Jersey Affordable Housing Trust Fund established pursuant to N.J.S.A. 52:27D-320.

Section 2. Chapter 163 Land Development Procedures, Article XIV Mandatory Affordable Housing Set-Aside Regulations, Section 163-100 is hereby amended with the following regulations, and is hereby enacted to ensure the Borough of Chester's compliance with its Fourth Round Affordable Housing obligations and more specifically to set forth requirements for mandatory affordable housing set-aside for multi-family dwellings: [Deletions are indicated in strikethrough text and insertions are indicated in underlined text]

§ 163-100 Mandatory affordable housing set-aside for multifamily dwellings.

A. In addition to specific zoning districts with required income restrictions intended to create affordable housing, there shall apply Borough-wide within any zoning district a mandatory set-aside of affordable housing that shall apply to any multiple dwelling or townhouse development, including the residential portion of a mixed-use project, meeting the following criteria:

- (1) Any future development of five (5) or more residential units, at six (6) dwelling units per acre or greater in the Township, including the IC-AH and E-AR-AH affordable housing overlay zones, developed through planning board approval, zoning board approval, redevelopment or rehabilitation plan requires an affordable housing set aside of at least 20% of all units in compliance with the 2024 FHA Amendments requiring a 20% se aside in the Highlands Region, with at least 50% of the restricted units in each development being affordable to low-income households including 13% to very low-income households. All such affordable units including the required bedroom distribution, shall be governed by controls on affordability and affirmatively marketed in conformance with the Uniform Housing Affordability Controls ("UHAC"), N.J.A.C. 5:80-26.1 et seq. or any successor regulation, and all other applicable law.
- (2) A mandatory 20% affordable housing set aside shall be provided in all developments of five (5) or more new residential units.

B. This requirement shall not apply to residential expansions, additions, renovations, replacement, single-family detached, single-family semidetached, or any other type of residential development that does not result in a net increase in the number of dwellings or gross density as established in Subsection A, above; or any property specifically identified as providing affordable housing in the duly adopted Housing Element and Fair Share Plan of the municipality.

Section 3. REPEALER, SEVERABILITY, AND EFFECTIVE DATE.

- (1) All ordinances or parts of ordinances inconsistent with this ordinance are repealed as to such inconsistencies.

- (2) If any section, subsection, sentence, clause, phrase, or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions of this ordinance.
- (3) This ordinance shall take effect upon passage and publication as provided by law.

NOTICE

NOTICE is hereby given that the foregoing Ordinance was introduced to pass on first reading at a regular meeting of the Governing Body of Chester Borough held on February 17, 2026, and ordered published in accordance with the law. Said Ordinance was considered for final reading and adoption at a special remote meeting of the Governing Body held on March 11, 2026 **at 12:00 p.m.** at which time all persons interested were able to log on and appear for or against the passage of said Ordinance.



Dena Dziergoski, Acting Borough Clerk

03/11/2026
Date:



Janet Hoven, Mayor

3/13/2026
Date:

Adopted: 03/11/2026

Attest: I herein certify that the foregoing ordinance was duly adopted by the Governing Body of the Borough of Chester at a special remote meeting held by the Governing Body on March 11, 2026.



Dena Dziergoski, Acting Borough Clerk

03/11/2026
Date:

Explanatory Statement: This ordinance adds Block 133, Lot 4 on West Main Street to the B-3-IMUO Regional Commercial Inclusionary Mixed-use Overlay Zone designation in response to Fourth Round Affordable Housing Obligations compliance. The B-3-IMUO permits redevelopment of Block 133, Lot 5 with mixed-use Regional Commercial and Residential Development at a maximum residential density of 10 dwelling units per acre provided that twenty percent (20%) of the residential dwelling units constructed are affordable housing. The B-3-IMUO Zone continues to permit existing "B-3" Regional Commercial Zone nonresidential development as currently permitted. Existing non-residential developed lots may continue to exist with lawfully existing structures and permitted uses in accordance with underlying zoning and may change in accordance with existing non-residential development ordinance standards.

ORDINANCE # O2026-003

AN ORDINANCE OF THE BOROUGH OF CHESTER, COUNTY OF MORRIS, STATE OF NEW JERSEY AMENDING THE CODE OF THE BOROUGH OF CHESTER, CHAPTER 163, LAND DEVELOPMENT AND PROCEDURES, ARTICLE IX ZONING - ZONE REQUIREMENTS, SECTION 163-72 BUSINESS ZONES TO REZONE BLOCK 133, LOT 4 BY ADDING THE PARCEL TO THE B-3-IMUO REGIONAL COMMERCIAL INCLUSIONARY MIXED-USE OVERLAY ZONE IN ACCORDANCE WITH CHESTER BOROUGH'S ROUND FOUR HOUSING PLAN ELEMENT AND FAIR SHARE PLAN AND ROUND FOUR COMPLIANCE CERTIFICATION RECOMMENDED TO THE MOUNT LAUREL COURT BY THE AFFORDABLE HOUSING DISPUTE RESOLUTION PROGRAM

WHEREAS, Chester Borough has maintained full compliance in addressing its constitutional Mount Laurel affordable housing obligations, first through the New Jersey Council on Affordable Housing (COAH) substantive certification process for Rounds One and Two, then through the Court Process in Round Three, and presently again through the Court Process, including the Affordable Housing Dispute Resolution Program (AHDRP) review and approval of the Borough's Round Four Housing Element and Fair Share Plan (HEFSP); and .

WHEREAS, through the AHDRP approval process, Chester Borough has entered an agreement entitled "MEDIATION AGREEMENT BEFORE THE AFFORDABLE HOUSING DISPUTE RESOLUTION PROGRAM In the Matter of the Application of the Borough of Chester, County of Morris Docket No. MRS-L-252-25 ("Mediation Agreement"), dated December 2, 2025, with the Fair Share Housing Center (FSHC) to resolve issues by FSHC in connection with the Borough's Round Four HEFSP that include adding the B-3-IMU overlay zoning designation to Block 133, Lot 4; and

WHEREAS, AHDRP Member, Hon. Thomas C. Miller, AJSC (ret.) approved Chester Borough Mediation Agreement with FSHC on January 2, 2026 requiring, in part, the B-3-IMUO overlay zoning designation to Block 133, Lot 4 as part of the AHDRP recommendation to the Mount Laurel Court to Certify Chester Borough's 2025 HEFSP;

NOW, THEREFORE, BE IT ORDAINED, by the Governing Body of the Borough of Chester, County of Morris, and State of New Jersey, as follows:

SECTION I. Chapter 163, Land Development and Procedures, Article IX, Zoning - Zone Requirements, § 163-72. F. B-3-IMUO is hereby amended by designating Block 133, Lot 4 within the B-3-IMU overlay zoning designation as indicated below (Note to Codifier: text to be added to this section is shown in underlined text (thus), text to be deleted is shown in strikethrough, (~~thus~~));

§ 163-72. F. B-3-IMUO Regional Commercial Inclusionary Mixed-use Overlay Zone. Purpose Statement: The purpose of the B-3-IMUO Regional Commercial Inclusionary Mixed-use Overlay Zone is to address a portion of the Borough of Chester's affordable housing obligations by adding an inclusionary residential development option to the existing B-3 Regional Commercial development and use provisions on Block 133, Lot 5 and Block 133, Lot 4 to encourage ~~the redevelopment of the site~~ with residential inclusionary development and permitted Regional Commercial uses. This zone permits Regional Commercial uses on the ground/first floor and inclusionary residential development above ground/first floor permitted Regional Commercial uses.

SECTION II. Amend the Code of the Borough of Chester, Chapter 163, Land Development and Procedures, Article IX, Zoning - Zone Requirements, by amending and supplementing Section 163-68 Zone Map, by designating Block 133, Lot 4 within the B-3-IMUO Regional Commercial Inclusionary Mixed-use Overlay Zone on the Borough of Chester Zoning Map.

SECTION III. RENUMBERING. This ordinance may be renumbered for codification purposes.

SECTION V. SEVERABILITY. The various parts, sections and clauses of this Ordinance are hereby declared to be severable. If any part, sentence, paragraph, section or clause is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this Ordinance shall not be affected thereby.

SECTION VI. REPEALER. Any Ordinances or parts thereof in conflict with the provisions of these Ordinance are hereby repealed as to their inconsistencies only.

SECTION VII. EFFECTIVE DATE. This Ordinance shall not take effect until approved by the Court and as may be required by the New Jersey Highlands Council.

NOTICE

NOTICE is hereby given that the foregoing Ordinance was introduced to pass on first reading at a regular meeting of the Governing Body of Chester Borough held on February 17, 2026, and ordered published in accordance with the law. Said Ordinance was considered for final reading and adoption at a special remote meeting of the Governing Body held on March 11, 2026 at **12:00 p.m.** at which time all persons interested were able to log on and appear for or against the passage of said Ordinance.



Dena Dziergoski, Acting Borough Clerk

03/11/2026

Date:



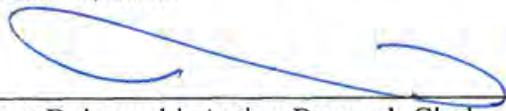
Janet Hoven, Mayor

3-13-2026

Date:

Adopted: 03/11/2026

Attest: I herein certify that the foregoing ordinance was duly adopted by the Governing Body of the Borough of Chester at a special remote meeting held by the Governing Body on March 11, 2026.



Dena Dziergoski, Acting Borough Clerk

03/11/2026

Date: