

RESOLUTION NO. 103-2026

RESOLUTION OF THE BOROUGH OF MADISON, IN THE COUNTY OF MORRIS, STATE OF NEW JERSEY, ADOPTING AN AFFORDABLE HOUSING TRUST FUND SPENDING PLAN

WHEREAS, the Borough of Madison ("Borough") is authorized to collect affordable housing development fees and related revenues pursuant to N.J.S.A. 52:27D-329.1 et seq., and such revenues must be deposited into and expended from an Affordable Housing Trust Fund for eligible affordable housing purposes in accordance with law; and

WHEREAS, N.J.A.C. 5:99 requires municipalities collecting or anticipating collecting development fees to adopt a spending plan identifying projected revenues, eligible expenditures (including required set-asides and limitations), and an expenditure schedule, and to submit the spending plan to the New Jersey Department of Community Affairs ("DCA") for review/approval as applicable; and

WHEREAS, the Borough amended its development fee ordinance by adoption of Ordinance No. 10-2026 on March 9, 2026, has adopted a Fourth Round Housing Element and Fair Share Plan, and desires to adopt a Spending Plan consistent with these actions and applicable law; and

WHEREAS, the Borough has prepared an Affordable Housing Trust Fund Spending Plan, attached hereto as Exhibit A ("Spending Plan"), which sets forth projected revenues and a schedule for the commitment and expenditure of Trust Fund revenues for eligible affordable housing activities.

NOW, THEREFORE, BE IT RESOLVED by the Borough Council of the Borough of Madison, County of Morris, State of New Jersey, as follows:

1. Adoption of Spending Plan. The Borough Council hereby adopts the Affordable Housing Trust Fund Spending Plan attached hereto as Exhibit A and incorporated herein by reference.
2. Authorization to Submit to DCA. The Borough Council hereby authorizes and directs the Borough Administrator, Borough Clerk, and/or other appropriate Borough officials or professionals (including the Borough Planner and Borough Attorney as applicable) to submit the Spending Plan and any required supporting documentation to the New Jersey Department of Community Affairs for review/approval and to respond to DCA comments consistent with applicable law.
3. Implementation; No Authorization for Prohibited Costs. Trust Fund expenditures shall be made only for eligible activities consistent with N.J.A.C. 5:99 and other applicable law, and nothing in this Resolution or the Spending Plan authorizes the use of Trust Fund monies for prohibited costs, including attorney fees or court costs associated with obtaining a judgment of compliance or order of repose.
4. Effective Date. This Resolution shall take effect immediately upon adoption.

BE IT FURTHER RESOLVED that the Borough Clerk is hereby directed to maintain this Resolution and Exhibit A in the Borough's records and to provide certified copies as requested for submission and administration.

ADOPTED AND APPROVED
March 9, 2026

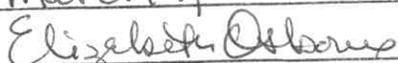


ROBERT H. CONLEY, Mayor

Attest: 

ELIZABETH OSBORNE, Borough Clerk

I, Elizabeth Osborne, Clerk of the Borough of Madison, hereby certify the foregoing to be a true and exact copy of a resolution adopted by the Council at a duly convened meeting

held March 9, 2026


Elizabeth Osborne, Borough Clerk

Exhibit A: Affordable Housing Trust Fund Spending Plan

Borough of Madison

Introduction

Pursuant to N.J.A.C. 5:99, a Spending Plan means “a method of allocating funds contained in an affordable housing trust fund account, which includes, but is not limited to, development fees collected and to be collected pursuant to an approved municipal development fee ordinance, or pursuant to N.J.S.A. 52:27D-329.1 et seq., for the purpose of meeting the housing needs of low- and moderate-income individuals.”

All residential and non-residential development fees, payment in lieu of constructing affordable units, barrier-free escrow funds, recapture funds, proceeds from the sale of affordable units, rental income, repayments from affordable housing program loans, enforcement fines, unexpended RCA funds remaining from a completed RCA project, application fees, and any other funds collected by the municipality in connection with its affordable housing programs are deposited into this interest-bearing Affordable Housing Trust Fund (AHTF). These funds shall be spent in accordance with N.J.A.C. 5:99 or applicable regulations.

Article VIII “Affordable Housing Development Fees” of Chapter 195 – Land Development of The Code of the Borough of Madison, New Jersey was established by Ordinance No. 19-2005 (June 13, 2005) and amended by Ordinance No. 10-2026 (adopted March 9, 2026). The purpose of this Spending Plan is to direct revenue generated from this source in a manner that addresses the Borough’s regional fair share of the affordable housing need in accordance with the Municipal Land Use Law (N.J.S.A. 40:55D-1 et seq.), the Fair Housing Act (N.J.S.A. 52:27D-301) and the regulations governing affordable housing trust fund entitled N.J.A.C. 5:99.

Authorization of Affordable Housing Trust Fund

A municipality shall not spend, or commit to spend, any affordable housing trust funds, including Statewide non-residential fees collected and deposited into the municipal affordable housing trust fund, without first obtaining the approval of the expenditure as part of its compliance certification or by the Division pursuant to 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 affordable housing trust funds unless the Program has approved a plan for spending such funds in accordance with N.J.S.A. 52:27D-329.2.a(4) or the Division has approved spending plan expenditures for emergent opportunities to create affordable housing after a municipality has obtained compliance certification in conformance with N.J.A.C. 5:99-4.

Account Requirements and Use of Funds (5:99-2.2 to 2.8)

Account Requirements

(a) All affordable housing trust funds shall be deposited in a separate, interest-bearing account. In establishing the account, the municipality shall provide written authorization, in the form of a three-party escrow agreement between the municipality, the bank or other financial institution, and the Division, to permit the Division to direct the disbursement of the funds, as provided for at N.J.A.C. 5:99-5.6, shall be maintained at all times. This authorization shall be submitted to the

Division within 21 days from the opening of the trust fund account and/or within 21 days of any change in banks or other financial institutions in which trust funds are deposited.

(b) With the approval of the Department's Division of Local Government Services, the municipality may invest its affordable housing trust fund in the State of New Jersey cash management fund, provided that the amount of money in the cash management fund that comprises the funds and income attributable to such funds shall at all times be identifiable.

(c) 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.

(d) A municipality within the jurisdiction of the Program or a court of competent jurisdiction shall not spend affordable housing trust funds unless the Program or a court of competent jurisdiction has approved a plan for spending such funds in accordance with N.J.S.A. 52:27D-329.2.a(4) or the Division has approved spending plan expenditures for emergent opportunities to create affordable housing after a municipality has obtained compliance certification in conformance with N.J.A.C. 5:99-4.1.

(e) Any municipality with an affordable housing trust fund account shall be subject to N.J.A.C. 5:99-4.

(f) Municipal affordable housing trust funds shall not be expended:

1. To reimburse the municipality for activities that occurred prior to the authorization of a municipality to collect development fees;
2. On attorney fees or court costs to obtain a judgment of compliance or order of repose, including any associated administration costs;
3. On any costs in connection with a challenge to a determination of the municipality's fair share obligation; or
4. On any costs in connection with a challenge to the municipality's obligation, housing element, or fair share plan.

(g) In addition to the restrictions at (f) above, no more than 20 percent of all affordable housing trust funds, exclusive of those collected prior to July 17, 2008, to fund an RCA, may be expended on administration, in accordance with N.J.A.C. 5:99-2.4.

(h) A municipality shall set aside a portion of its affordable housing trust fund for the purpose of providing affordability assistance to low- and moderate-income households in affordable units included in a municipal fair share plan, in accordance with N.J.A.C. 5:99-2.5.

(i) Compliant municipalities, Qualified Urban Aid Municipalities, or municipalities that have previously collected such funds while under the protection of presumptive validity of their affordable housing plan or immunity from exclusionary zoning litigation and in accordance with an approved spending plan are authorized to commit or expend affordable housing trust funds in accordance with this chapter, UHAC, and the Act.

(j) A non-compliant Qualified Urban Aid Municipality meeting the criteria set forth in paragraph (1) of subsection c. of section 7 at P.L. 2024, c. 2, which has been authorized to collect residential development fees pursuant to N.J.A.C. 5:99-3.5(b), may not spend, or commit to spend, any affordable housing development fees, without first obtaining the Division's approval of the expenditure by submitting a spending plan for current funds in the municipal affordable housing trust fund and projected funds through the current round. The Division shall review the spending plan for consistency with N.J.A.C. 5:99-2 and shall notify the municipality upon the approval of the spending plan.

Use of Funds for Housing Activity

(a) A municipality may use affordable housing trust funds for any housing activity as itemized in the spending plan and approved by the Program or as approved by the Division as an emergent opportunity to create affordable housing. Such activities include, but are not limited to:

1. A rehabilitation program whose purpose is to renovate deficient housing units that are occupied by low- and moderate-income households, in accordance with the New Jersey State Housing Code, N.J.A.C. 5:28, or the requirements of the Rehabilitation Subcode, N.J.A.C. 5:23-6, as applicable. Any recaptured funds from a rehabilitation program shall be deposited into a municipality's affordable housing trust fund and subject to the provisions thereof;
2. New construction of affordable housing units and related development costs; in the case of inclusionary developments, eligible costs shall be prorated based on the proportion of affordable housing units included in the development;
3. Creation of a market to affordable program to pay down the cost of unrestricted units and offer them in sound condition, for sale or rent, at affordable prices to low- and moderate-income households to address all or a portion of the affordable housing obligation;
4. Extensions or improvements of roads and infrastructure directly serving affordable housing development sites; in the case of inclusionary developments, costs shall be prorated based on the proportion of affordable housing units included in the development;
5. RCAs, approved prior to July 17, 2008;
6. Acquisition and/or improvement of land to be used for affordable housing;
7. Accessory dwelling units;
8. The extension of expiring controls;
9. The construction of group homes and supportive and special needs housing;
10. Maintenance and repair of affordable housing units;
11. To defray the costs of structured parking; in the case of inclusionary developments, eligible costs shall be prorated based on the proportion of affordable housing units included in the development;

12. Affordability assistance in accordance with N.J.A.C. 5:99-2.5;
13. Repayment of municipal bonds issued to finance low- and moderate-income housing activity;
14. Any other activity as specified in the approved spending plan or as approved by the Division as an emergent affordable housing opportunity; or
15. Any other activity approved by the Division.

Use of Funds for Administrative Expenses

- (a) No more than 20 percent of all affordable housing trust funds, exclusive of those collected prior to July 17, 2008, to fund an RCA, shall be expended on administration.
- (b) Administrative expenses may include costs reasonably related to the determination of the fair share obligation and the development of a municipal housing element and fair share plan and may include fees necessary to develop or implement affordable housing programs, an affirmative marketing program, and/or expenses that are reasonably necessary for compliance with the processes of the Program, including, but not limited to, the costs to the municipality of resolving a challenge pursuant to the Program.
- (c) Administrative expenses may also include costs associated with functions carried out in compliance with UHAC, including activities related to the marketing program and waitlist management, administering the placement of occupants in housing units, income qualification of households, monitoring the turnover of sale and rental units, preserving existing affordable housing, and compliance with the Division's monitoring requirements.
- (d) The proportion of a municipal employee's salary related to the MHL or RCA administrator functions and fees for required educational programs, may be paid as an administrative expense from the municipal affordable housing trust fund.

Use of Funds for Affordability Assistance

- (a) A municipality shall set aside a portion of all development fees collected and interest earned for the purpose of providing affordability assistance to low- and moderate-income households in affordable units included in the municipality's fair share plan.
 1. Affordability assistance for very-low-income households may include offering a subsidy to developers of inclusionary or 100 percent affordable housing developments or buying down the cost of low- or moderate-income units in a municipal fair share plan to make them affordable to very low-income households, including special needs and supportive housing opportunities.
- (b) A municipality 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, or any program or activity for which the municipality expends development fee proceeds.

Barrier-Free Escrow

An affordable housing trust fund may include fees collected to adapt affordable unit entrances to be accessible in accordance with the Act and the Barrier Free Subcode, N.J.A.C. 5:23-7. The

municipality shall set forth the mechanism by which it will collect and distribute funds intended to convert adaptable entrances in compliance with the technical design standards of the Barrier Free Subcode at N.J.A.C. 5:23-7. Funds collected for this purpose shall at all times be identifiable from other funds. Collection and distribution of barrier free funds shall be consistent with the Borough of Madison's Affordable Housing Ordinance in accordance with N.J.A.C. 5:99 and applicable State requirements.

Payments in Lieu of Constructing Affordable Units On-Site (Legacy Funds, If Any)

(a) Pursuant to P.L. 2024, c.2, the statutory provisions previously addressing "payments in lieu of constructing affordable units on-site" (formerly C.52:27D-329.3) have been repealed. Accordingly, this Spending Plan does not anticipate the prospective assessment of payment-in-lieu fees unless and until expressly authorized by applicable law and accepted by the Program.

(b) To the extent the Borough has previously collected any payment-in-lieu funds, the Borough shall identify such receipts on its monitoring report pursuant to N.J.A.C. 5:99-5.2 and shall deposit such funds into the Affordable Housing Trust Fund, to be accounted for separately from other fees and expended only for eligible affordable housing purposes in accordance with applicable law.

(c) If any legacy payment-in-lieu receipts exist for a development, the Borough will continue to account for those receipts separately from other Trust Fund revenues and will avoid duplicative fee assessments for the same development to the extent required by applicable law and any applicable approvals.

Other Funds

(a) An affordable housing trust fund may also contain recaptured funds, proceeds from the sale of affordable units, rental income, repayments from affordable housing program loans, enforcement fines and application fees, and any other funds collected by the municipality in connection with its affordable housing programs. A municipality that collects, or anticipates collecting, such fees shall identify the funds on its monitoring report pursuant to N.J.A.C. 5:99-5 and include a plan for the use of the funds in its spending plan.

(b) An affordable housing trust fund shall also contain any excess RCA funds, where the RCA has been completed in accordance with the RCA project plan.

(c) A municipality that is not a compliant municipality may not retain excess RCA funds and shall transfer any such funds to the New Jersey Affordable Housing Trust fund established pursuant to N.J.S.A. 52:27D-320.

Administrative Mechanism To Collect And Distribute Funds

The Borough of Madison shall follow the following procedural sequence for the collection and distribution of development fee revenues:

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

Collection of development fee revenues shall be consistent with Madison's development fee ordinance for both residential and non-residential developments in accordance with

the Department’s rules and P.L.2008, c.46, sections 8 (C. 52:27D-329.2) and 32-38 (C. 40:55D-8.1 through 8.7).

(b) Distribution of development fee revenues:

Distribution of funds out of the affordable housing trust fund will only occur after authorization from the Mayor and Council.

Each request for funds will need to identify the type of project, the cost of the proposed improvement and the property involved.

Requests for security assistance, rental assistance or converting low-income units to very low-income rental units will be available only to qualified, affordable households. The Borough’s administrative agent will process and monitor all such requests.

Should the amount of funds in Madison’s affordable housing trust fund be less than anticipated, Madison will reduce anticipated future expenditures so the total amount of funds in the affordable housing trust fund does not drop below \$0.00. Madison anticipates it will periodically need to update and refine the Spending Plan to ensure expenditures never outstrip the resources contained within the affordable housing trust fund.

Revenues + Expenditures for Certification Period

Madison has considered the following AHTF revenue sources between the period of 2025-2035:

Development fees: Madison analyzed six years (2020 to 2025) of residential and nonresidential development fees deposited into the AHTF and averaged these annual incomes to determine the expected annual fee. Through this analysis of qualifying projects, we determined an annual average revenue fee of \$400,609 to determine potential developer fees for the years of 2025 to 2035.

2020	\$245,433
2021	\$232,613
2022	\$304,648
2023	\$463,746
2024	\$666,061
2025	\$491,153*
Average	\$400,609

- *Total revenue for 2025 was \$2,577,422, which included a one-time Congressional appropriation of \$2,086,269 for a specific project.
- Barrier-free escrow funds are not anticipated.
- Funds from other sources such as the sale of units with extinguished controls, repayment of affordable housing program loans, rental income, or proceeds from the sale of affordable units are not anticipated.

Based on existing funds and anticipated revenue as described above, the municipality estimates the AHTF's funds to amount to an annual revenue of **\$400,609**.

As such, Madison intends to use affordable housing trust fund revenues in accordance with 5:99-2.2 to 2.8, as follows:

Revenues		
Current cash on hand as of December 31, 2025		\$3,525,395
Projected developer fee revenue (Average annual developer fees x 10 years)	+	\$4,006,090
Projected payment in lieu of constructing affordable units	+	\$0
Projected barrier-free escrow funds	+	\$0
Projected recapture funds, sale of affordable units, rental income, repayments from affordable housing program loans, enforcement fines, unexpended RCA funds remaining from a completed RCA project, application fees, or any other funds collected by the municipality in connection with its affordable housing programs	+	\$0
Projected Interest (Average annual interest of \$95,834 x 10 years) ¹	+	\$958,340
Projected Revenues	=	\$8,489,825
Expenditures		
Rehabilitation program whose purpose is to renovate deficient housing units that are occupied by low- and moderate-income households	-	(\$0 ²)
Affordability Assistance (set-aside – minimum 30%)	-	(\$2,546,948)
New construction of affordable housing units and related eligible development costs	-	(\$4,244,912)
Total Administration (Max 20%)	-	(\$1,697,965)
Total Projected Expenditures	=	\$8,489,825
Remaining Balance	=	\$0

¹ Estimate based on interest earned in AHTF during 2024.

² The Borough has no rehabilitation obligation.

- Administration (up to the 20% cap) focused on HEFSP implementation and UHAC/Program compliance (affirmative marketing, waitlist management, income qualification, monitoring, reporting, and related implementation tasks).
- Production support for new affordable units (remaining program funds after the affordability-assistance set-aside and administration), including municipal contribution/gap financing for non-profit or 100% affordable projects and other eligible costs that help implement the HEFSP's credited and "likely to redevelop" mechanisms (for example, project-based subsidies, eligible site/soft-cost assistance, or direct infrastructure serving affordable housing sites, where applicable and approved).
- Affordability assistance set-aside (minimum 30%) for units included in the HEFSP, including very-low-income (VLI) affordability assistance and assistance that supports supportive/special-needs housing when eligible.

Planned use of Affordable Housing Trust Fund (AHTF) revenues during the 2025–2035 certification period includes:

This Spending Plan is intended to implement the Borough's adopted Fourth Round Housing Element and Fair Share Plan (HEFSP) by reserving funds for affordability assistance and by making funds available, as needed and subject to Program/Division approval, to support the HEFSP's compliance mechanisms (including the 1 Giralda compliance mechanism and the Borough's "likely to redevelop" zoning strategies).

Alignment with Adopted Fourth Round Housing Element & Fair Share Plan

Potential Spending Strategies to Support Affordability Assistance

Madison will reserve at least 30 percent of projected Affordable Housing Trust Fund revenues for affordability assistance benefiting affordable units included in the Borough's adopted Fourth Round HEFSP. Affordability assistance may include very-low-income (VLI) buy-downs or rental differential subsidies, security deposit assistance, limited rental assistance where eligible, and other assistance permitted under N.J.A.C. 5:99-2.5.

Where feasible and approved, affordability assistance may be provided as project-based support, such as an upfront payment reflecting the rent differential needed to make certain units affordable to very-low-income households over the control period, including units in supportive or special-needs housing opportunities, with appropriate deed restrictions and compliance controls.

Madison may also continue and refine targeted assistance offerings that address health and safety risks for residents of affordable units (for example, emergency assistance and emergency power improvements where eligible), consistent with N.J.A.C. 5:99 and any Program/Division approvals.

Spending Strategies to Support New Construction of Affordable Housing Units

The Borough may use Affordable Housing Trust Fund revenues to provide municipal contributions that help create new affordable housing units consistent with the Borough's adopted Fourth Round HEFSP and N.J.A.C. 5:99. Such support may include eligible costs such as property

acquisition and/or construction-related development costs for affordable housing projects, including projects advanced by qualified non-profit affordable housing organizations. Any municipal contribution, including any maximum assistance amounts, eligibility requirements, and application procedures, shall be established by Governing Body resolution (or other duly authorized action), shall be subject to available Trust Fund resources, and shall be administered in a manner that ensures the units are creditable under UHAC and the Borough's compliance plan.

Potential Spending for Administrative Expenses

Projected administrative expenditures, subject to the 20 percent cap, are as follows:

Madison anticipates administrative expenditure withdrawals from the Affordable Housing Trust Fund will be used only for eligible administration costs under N.J.A.C. 5:99, subject to the 20 percent cap. Eligible costs may include preparation and periodic updating of the Housing Element and Fair Share Plan; Municipal Housing Liaison functions; administrative agent services (affirmative marketing, waitlist management, income qualification, unit marketing and placement, monitoring and compliance reporting); required training; and related office and professional services necessary to implement and monitor approved affordable housing programs. Affordable housing trust funds will not be used for attorney fees or court costs to obtain a judgment of compliance or order of repose, or for costs to challenge the Borough's fair share obligation, housing element, or fair share plan.

Excess or Shortfall of Funds

The Borough reserves the right to revise projections and anticipated funding commitments based upon actual revenues to the Affordable Housing Trust Fund and any revisions to the Housing Element and Fair Share Plan.

In the event that a shortfall of anticipated revenues occurs, the municipality reserves the right to revise its Spending Plan accordingly.

In the event of excess funds, any remaining funds above the amount necessary to satisfy the municipal affordable housing obligation will be used toward low- and moderate-income housing in accordance with 5:99-2.2 to 2.8 and the municipality reserves the right to revise its Spending Plan accordingly.

Barrier Free Escrow Funds

Collection and distribution of barrier free funds shall be consistent with Sections 195-47 and Section 195-48 of the Code of the Borough of Madison to the extent that such funds are paid pursuant to law to ensure the adaptability of low- and moderate-income units for barrier free accessibility in accordance with N.J.A.C. 5:99-2.2 through 2.8 and applicable State requirements.

Projected Expenditure Schedule

Upon approval by the Program, the Borough acknowledges that the expenditures of funds contemplated herein shall constitute the "commitment" for expenditure required pursuant to N.J.S.A. 52:27D-329.2 and -329.3 and the four-year time period provided therein, whereby funds shall be committed for expenditure within four years from the date of collection. Consistent with N.J.A.C. 5:99, the Borough intends to commit and expend Affordable Housing Trust Fund

revenues on eligible activities in accordance with this Spending Plan and subject to required approvals. The timing and amount of specific expenditures may be adjusted by the Borough to reflect project readiness, actual revenues, and implementation needs under the adopted Housing Element and Fair Share Plan. Nothing in this Spending Plan authorizes the use of Trust Fund monies for prohibited costs, including attorney fees or court costs associated with obtaining a judgment of compliance or order of repose.

Years	Administration	Affordability Assistance	New Construction	Total
2026	\$169,796.50	\$254,694.80	\$424,491.20	\$848,982.50
2027	\$169,796.50	\$254,694.80	\$424,491.20	\$848,982.50
2028	\$169,796.50	\$254,694.80	\$424,491.20	\$848,982.50
2029	\$169,796.50	\$254,694.80	\$424,491.20	\$848,982.50
2030	\$169,796.50	\$254,694.80	\$424,491.20	\$848,982.50
2031	\$169,796.50	\$254,694.80	\$424,491.20	\$848,982.50
2032	\$169,796.50	\$254,694.80	\$424,491.20	\$848,982.50
2033	\$169,796.50	\$254,694.80	\$424,491.20	\$848,982.50
2034	\$169,796.50	\$254,694.80	\$424,491.20	\$848,982.50
2035	\$169,796.50	\$254,694.80	\$424,491.20	\$848,982.50
Total	\$1,697,965	\$2,546,948	\$4,244,912	\$8,489,825