

**RESOLUTION**  
of the  
**BOROUGH OF NEW PROVIDENCE**  
Resolution No. 2026-096

Council Meeting Date: 03-10-2026

Date Adopted: 03-10-2026

TITLE: RESOLUTION OF THE BOROUGH OF NEW PROVIDENCE  
COMMITTING TO THE ADOPTION OF IMPLEMENTING ORDINANCES  
FOR THE SATISFACTION OF FOURTH ROUND AFFORDABLE  
HOUSING OBLIGATIONS

Councilperson Cumiskey submitted the following resolution, which was duly seconded  
by Councilperson Geoffroy.

**WHEREAS**, an Order was entered by the Superior Court on April 14, 2025  
setting the Borough's Fourth Round Fair Share obligations; and

**WHEREAS**, the Borough filed a Housing Element and Fair Share Plan on June  
19, 2025; and

**WHEREAS**, VW Murray Hill, LLC filed a challenge to the Borough's plan on  
August 28, 2025; New Providence Mountain Developers, LLC filed a challenge on  
August 29, 2025; and Fair Share Housing Corporation (FSHC), 2100 New Providence  
LLC, and Toll NJ I, LLC filed challenges to the Borough's plan on August 31, 2025;  
and

**WHEREAS**, the Borough participated in the Affordable Housing Dispute  
Resolution Program established by the State; and

**WHEREAS**, the Borough and FSHC and agreed to amicably resolve the issues  
set forth in the challenge of FSHC; VW Murray Hill, LLC and Toll NJ I withdrew their  
challenges; and New Providence Mountain Developers, LLC and 2100 New  
Providence, LLC have continued their challenges; and

**WHEREAS**, pursuant to its agreement, the Borough has provided FSHC with  
drafts of a proposed zoning ordinance and amended spending plan; and

**WHEREAS**, the Borough will introduce all enabling ordinances required in its  
agreement with FSHC on March 10, 2026, and shall submit such to the Borough's  
Planning Board which will consider such on March 17, 2026 and make any  
recommendations thereafter; and

**WHEREAS**, the Borough will adopt these implementing ordinances and resolutions at its meeting on March 24, 2026 while it continues in the dispute with New Providence Mountain Developers, LLC and 2100 New Providence, LLC;

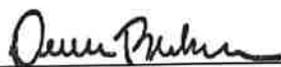
**NOW, THEREFORE, BE IT RESOLVED** by the Mayor and Council of the Borough of New Providence, County of Union, State of New Jersey that they do hereby commit to adopting the implementing ordinances and resolutions reflecting resolution of the challenge of FSHC in accordance with the schedule set forth herein and further commit to adopting any implementing ordinances and resolutions following resolution of the continuing challenges of New Providence Mountain Developers, LLC and 2100 New Providence, LLC, with any necessary adjustments to reflect resolution of such disputes.

APPROVED, this 10th day of March, 2026.

## RECORD OF VOTE

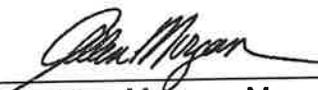
	AYE	NAY	ABSENT	NOT VOTING
CUMISKEY	X			
DOLAN	X			
GARDNER	X			
GEOFFROY	X			
LERNER	X			
MCKNIGHT	X			
MORGAN			TO BREAK COUNCIL TIE VOTE	

I hereby certify that the above resolution was adopted at a meeting of the Borough Council held on the 10th day of March, 2026.



Denise Brinkofski, Borough Clerk

Borough Of New Providence  
County Of Union  
State Of New Jersey



Allen Morgan, Mayor

**RESOLUTION**  
of the  
**BOROUGH OF NEW PROVIDENCE**  
Resolution No. 2026-097

Council Meeting Date: 03-10-2026

Date Adopted: 03-10-2026

TITLE: RESOLUTION OF THE BOROUGH OF NEW PROVIDENCE, COUNTY OF UNION, STATE OF NEW JERSEY, ADOPTING THE "AFFIRMATIVE MARKETING PLAN" FOR THE BOROUGH OF NEW PROVIDENCE

Councilperson Cumiskey submitted the following resolution, which was duly seconded by Councilperson Geoffroy.

**WHEREAS**, in accordance with the New Jersey Uniform Housing Affordability Controls pursuant to N.J.A.C. 5:80-26-1, et seq., as amended and supplemented, the Borough of New Providence is required to adopt an Affirmative Marketing Plan to ensure that all affordable housing units created, including those created by the rehabilitation of rental housing units within the Borough of New Providence, are affirmatively marketed to low and moderate income households, particularly those households living and/or working within Housing Region 2, the Housing Region encompassing the Borough of New Providence.

**NOW, THEREFORE, BE IT RESOLVED**, that the Mayor and Borough Council of the Borough of New Providence, County of Union, State of New Jersey, do hereby adopt the following Affirmative Marketing Plan:

**Affirmative Marketing Plan**

- A. All affordable housing units in the Borough of New Providence shall be marketed in accordance with the provisions herein.
- B. This Affirmative Marketing Plan shall apply to all developments that contain or will contain very-low, low, and moderate income units, including those that are part of the Borough's Prior Round, Third Round, and its current Fair Share Plan and those that may be constructed in future developments not yet anticipated by the Fair Share Plan. This Affirmative Marketing Plan shall also apply to any rehabilitated rental units that are vacated and re-rented during the applicable period of controls for rehabilitated rental units.
- C. The Affirmative Marketing Plan shall be implemented by one or more Administrative Agent(s) designated by and/or under contract to the Borough of New Providence. All of the costs of advertising and affirmatively marketing affordable housing units shall be borne by the developers/sellers/owners of

affordable unit(s), and all such advertising and affirmative marketing shall be subject to approval and oversight by the designated Administrative Agent.

- D. In implementing the Affirmative Marketing Plan, the Administrative Agent, acting on behalf of the Borough of New Providence, shall undertake, at the minimum, all of the following strategies:
1. Publication of an advertisement in one or more newspapers of general circulation within the housing region.
  2. Broadcasting of an advertisement by a radio or television station broadcasting throughout the housing region.
  3. At least one additional regional marketing strategy using one of the other sources listed below.
- E. The Affirmative Marketing Plan is a regional marketing strategy designed to attract buyers and/or renters of all majority and minority groups, regardless of race, creed, color, national origin, ancestry, marital or familial status, gender, affectional or sexual orientation, disability, age or number of children to housing units which are being marketed by a developer or sponsor of affordable housing. The Affirmative Marketing Plan is also intended to target those potentially eligible persons who are least likely to apply for affordable units in that region. It is a continuing program that directs all marketing activities toward the Housing Region in which the municipality is located and covers the entire period of the deed restriction for each restricted housing unit. The Borough of New Providence is located in Housing Region 2, consisting of Union, Morris, Essex, and Warren Counties.
- F. The Affirmative Marketing Plan is a continuing program intended to be followed throughout the entire period of restrictions and shall meet the following requirements:
1. All newspaper articles, announcements and requests for applications for very low, low and moderate income units shall appear in the *Star Ledger* and the *New York Times*.
  2. The primary marketing shall take the form of at least one press release and a paid display advertisement in the above newspapers once a week for four consecutive weeks. Additional advertising and publicity shall be on an "as needed" basis. The developer/owner shall disseminate all public service announcements and pay for display advertisements. The developer/owner shall provide proof of all publications to the Administrative Agent. All press releases and advertisements shall be approved in advance by the Administrative Agent.

3. The advertisement shall include a description of the:
  - a. Location of the units;
  - b. Directions to the units;
  - c. Range of prices for the units;
  - d. Size, as measured in bedrooms, of units;
  - e. Maximum income permitted to qualify for the units;
  - f. Location of applications;
  - g. Business hours when interested households may obtain an application; and
  - h. Application fees.
4. Newspaper articles, announcements and information on where to request applications for very low, low-, and moderate-income housing shall appear at least once a week for four consecutive weeks in at least three locally oriented newspapers serving the housing region, one of which shall be circulated primarily in Union County and the other two of which shall be circulated primarily outside of Union County but within the housing region.
5. The developer must provide satisfactory proof of public dissemination. See "Attachment A," ***Affirmative Fair Housing marketing Plan for Affordable Housing Region 2*** (attached to and hereby made part of this Resolution).
6. The following regional cable television stations or regional radio stations shall be used during the first month of advertising. The developer must provide satisfactory proof of public dissemination:
  - a. WKXW (101.5 FM)
  - b. WOR (710 AM)
  - c. WCBS (880 AM)
  - d. Comcast of Central New Jersey
  - e. Cablevision of Raritan Valley

G. Applications, brochure(s), sign(s) and/or poster(s) used as part of the affirmative marketing program shall be available/posted in the following locations:

1. New Providence Borough Hall
2. New Providence Borough Web Site
3. Developer's Sales/Rental Offices
4. Union County Administration Building
5. Morris County Administration Building
6. Essex County Administration Building
7. Warren County Administration Building
8. Union County Library (all branches)
9. Morris County Library (all branches)
10. Essex County Library (all branches)
11. Warren County Library (all branches)

Applications shall be mailed by the Administrative Agent and Municipal Housing Liaison to prospective applicants upon request. Also, applications shall be available at the developer's sales/rental office and multiple copies of application forms shall be mailed to Fair Share Housing Center (FSHC), the Latino Action Network, New Jersey NAACP, & the Northwest New Jersey Community Action Program Inc. for dissemination to their respective constituents.

H. The Administrative Agent shall develop, maintain and update a list of community contact person(s) and/or organizations(s) in Union, Morris, Essex, and Warren Counties that will aid in the affirmative marketing program with particular emphasis on contacts that will reach out to groups that are least likely to apply for housing within the region, including major regional employers identified in Attachment A, Part III, Marketing, Section 3e of DCA's ***Affirmative Fair Housing Marketing Plan for Affordable Housing in Region 2*** (attached to and hereby made part of this Resolution) as well as the following entities: Fair Share Housing Center (FSHC), the Latino Action Network, New Jersey NAACP, & the Northwest New Jersey Community Action Program Inc.

F

1. Quarterly informational flyers and applications shall be sent to each of the following agencies for publication in their journals and for circulation

among their members:

Union County Board of Realtors  
Morris County Board of Realtors  
Essex County Board of Realtors  
Warren County Board of Realtors

2. Quarterly informational circulars and applications shall be sent to the administrators of each of the following agencies within the counties of Union, Morris, Essex, and Warren:  
  
Welfare or Social Service Board (via the Director)  
Rental Assistance Office (local office of DCA)  
Office on Aging  
Housing Authority (municipal or county)  
Community Action Agencies  
Community Development Departments
  3. Quarterly informational circulars and applications shall be sent to the chief personnel administrators of all of the major employers within the region, as listed on Attachment A, Part III, Marketing, Section 3e.
  4. In addition, specific notification of the availability of affordable housing units in New Providence (along with copies of the application form) shall be provided to the following entities: Fair Share Housing Center (FSHC), the Latino Action Network, New Jersey NAACP, & the Northwest New Jersey Community Action Program Inc.
- J. A random selection method to select occupants of very low, low and moderate income housing will be used by the Administrative Agent, in conformance with N.J.A.C. 5:80-26.16. The Affirmative Marketing Plan shall provide a regional preference for very low, low and moderate income households that live and/or work in Housing Region 2, comprised of Union, Morris, Essex, and Warren Counties. Pursuant to the New Jersey Fair Housing Act (P.L. 2024 c.2), a preference for very low, low and moderate income veterans duly qualified under N.J.A.C. 54:4-8.10 may also be exercised, provided an agreement to this effect has been executed between the developer or landlord and the Borough prior to the affirmative marketing of the units.
- J. The Administrative Agent shall administer the Affirmative Marketing Plan. The Administrative Agent has the responsibility to income qualify very low, low-, and moderate-income households; to place income eligible households in very low, low-, and moderate-income units upon initial occupancy; to provide for the initial occupancy of very low, low-, and moderate-income units with income qualified households; to continue to qualify households for re-occupancy of units as they become vacant during the period of affordability controls; to assist with outreach

to very low, low-, and moderate-income households; and to enforce the terms of the deed restriction and mortgage loan as per N.J.A.C 5:80-26-1, et seq., as amended and supplemented.

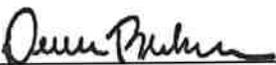
- K. The Administrative Agent shall provide or direct qualified very low, low and moderate income applicants to counseling services on subjects such as budgeting, credit issues, mortgage qualifications, rental lease requirements and landlord/tenant law and shall develop, maintain and update a list of entities and lenders willing and able to perform such services.
- L. All developers/owners of very low, low-, and moderate-income housing units shall be required to undertake and pay the costs of the marketing of the affordable units in their respective developments, subject to the direction and supervision of the Administrative Agent.
- M. The implementation of the Affirmative Marketing Plan for a development that includes affordable housing shall commence at least 120 days before the issuance of either a temporary or permanent certificate of occupancy. The implementation of the Affirmative Marketing Plan shall continue until all very low, low-, and moderate-income housing units are initially occupied and for as long as the affordable units remain deed restricted such that qualifying new tenants and/or purchasers continues to be necessary.
- N. The Administrative Agent shall provide the Affordable Housing Liaison with the information required to comply with monitoring and reporting requirements pursuant to N.J.A.C.5:80-26-1, et seq., as amended and supplemented.

APPROVED, this 10th day of March, 2026.

RECORD OF VOTE

	AYE	NAY	ABSENT	NOT VOTING
CUMISKEY	X			
DOLAN	X			
GARDNER	X			
GEOFFROY	X			
LERNER	X			
MCKNIGHT	X			
MORGAN			TO BREAK COUNCIL TIE VOTE	

I hereby certify that the above resolution was adopted at a meeting of the Borough Council held on the 10th day of March, 2026.

  
 Denise Brinkofski, Borough Clerk

Borough Of New Providence  
 County Of Union  
 State Of New Jersey

  
 Allen Morgan, Mayor

**Attachment A**  
**AFFIRMATIVE FAIR HOUSING MARKETING PLAN**  
 For Affordable Housing in **(REGION 2)**

**I. APPLICANT AND PROJECT INFORMATION**

(Complete Section I individually for all developments or programs within the municipality.)

Ia. Administrative Agent Name, Address, Phone Number		Ib. Development or Program Name, Address	
Ic. Number of Affordable Units:  Number of Rental Units:  Number of For-Sale Units:	Id. Price or Rental Range  From  To	Ie. State and Federal Funding Sources (if any)	
If. <input type="checkbox"/> Age Restricted  <input type="checkbox"/> Non-Age Restricted	Ig. Approximate Starting Dates  Advertising: <span style="float: right;">Occupancy:</span>		
Ih. County <b>Essex, Morris, Union, Warren</b>		Ii. Census Tract(s):	
Ij. Managing/Sales Agent's Name, Address, Phone Number			
Ik. Application Fees (if any):			

(Sections II through IV should be consistent for all affordable housing developments and programs within the municipality. Sections that differ must be described in the approved contract between the municipality and the administrative agent and in the approved Operating Manual.)

**II. RANDOM SELECTION**

2. Describe the random selection process that will be used once applications are received.

### III. MARKETING

3a. Direction of Marketing Activity: (indicate which group(s) in the housing region are least likely to apply for the housing without special outreach efforts because of its location and other factors)

White (non-Hispanic)   
  Black (non-Hispanic)   
  Hispanic   
  American Indian or Alaskan Native  
 Asian or Pacific Islander   
  Other group:

3b. HOUSING RESOURCE CENTER ([www.njhousing.gov](http://www.njhousing.gov)) A free, online listing of affordable housing

3c. Commercial Media (required) (Check all that applies)

	DURATION & FREQUENCY OF OUTREACH	NAMES OF REGIONAL NEWSPAPER(S)	CIRCULATION AREA
<b>TARGETS ENTIRE HOUSING REGION 2</b>			
Daily Newspaper			
<input type="checkbox"/>		Star-Ledger	
<input type="checkbox"/>		New York Times	
<b>TARGETS PARTIAL HOUSING REGION 2</b>			
Daily Newspaper			
<input type="checkbox"/>		Daily Record	Morris
<input type="checkbox"/>		Express Times	Warren
Weekly Newspaper			
<input type="checkbox"/>		Belleville Post	Essex
<input type="checkbox"/>		Belleville Times	Essex
<input type="checkbox"/>		Bloomfield Life	Essex
<input type="checkbox"/>		East Orange Record	Essex
<input type="checkbox"/>		Glen Ridge Paper	Essex
<input type="checkbox"/>		Glen Ridge Voice	Essex
<input type="checkbox"/>		Independent Press	Essex
<input type="checkbox"/>		Irvington Herald	Essex
<input type="checkbox"/>		Item of Millburn and Short Hills	Essex
<input type="checkbox"/>		Montclair Times	Essex
<input type="checkbox"/>		News-Record	Essex
<input type="checkbox"/>		Nutley Journal	Essex
<input type="checkbox"/>		Nutley Sun	Essex

<input type="checkbox"/>		Observer	Essex
<input type="checkbox"/>		Orange Transcript	Essex
<input type="checkbox"/>		Progress	Essex
<input type="checkbox"/>		Vailsburg Leader	Essex
<input type="checkbox"/>		Verona-Cedar Grove Times	Essex
<input type="checkbox"/>		West Essex Tribune	Essex
<input type="checkbox"/>		West Orange Chronicle	Essex
<input type="checkbox"/>		Atom Tabloid & Citizen Gazette	Middlesex, Union
<input type="checkbox"/>		Chatham Courier	Morris
<input type="checkbox"/>		Chatham Independent Press	Morris
<input type="checkbox"/>		Citizen of Morris County	Morris
<input type="checkbox"/>		Florham Park Eagle	Morris
<input type="checkbox"/>		Hanover Eagle	Morris
<input type="checkbox"/>		Madison Eagle	Morris
<input type="checkbox"/>		Morris News Bee	Morris
<input type="checkbox"/>		Mt. Olive Chronicle	Morris
<input type="checkbox"/>		Neighbor News	Morris
<input type="checkbox"/>		Randolph Reporter	Morris
<input type="checkbox"/>		Roxbury Register	Morris
<input type="checkbox"/>		Parsippany Life	Morris
<input type="checkbox"/>		Clark Patriot	Union
<input type="checkbox"/>		Cranford Chronicle	Union
<input type="checkbox"/>		Echo Leader	Union
<input type="checkbox"/>		Elizabeth Reporter	Union
<input type="checkbox"/>		Hillside Leader	Union
<input type="checkbox"/>		Leader of Kenilworth & Roselle Park	Union
<input type="checkbox"/>		Madison Independent Press, The	Union
<input type="checkbox"/>		Millburn and Short Hills Independent Press	Union
<input type="checkbox"/>		News Record	Union
<input type="checkbox"/>		Record-Press	Union

<input type="checkbox"/>		Scotch Plains Times (Fanwood Times)	Union
<input type="checkbox"/>		Spectator Leader	Union
<input type="checkbox"/>		Union Leader	Union
<input type="checkbox"/>		Warren Reporter	Warren
<b>DURATION &amp; FREQUENCY OF OUTREACH</b>			
<b>DURATION &amp; FREQUENCY OF OUTREACH</b>		<b>NAMES OF REGIONAL TV STATION(S)</b>	<b>CIRCULATION AREA AND/OR RACIAL/ETHNIC IDENTIFICATION OF READERS/AUDIENCE</b>
<b>TARGETS ENTIRE HOUSING REGION 2</b>			
<input type="checkbox"/>		2 WCBS-TV Cbs Broadcasting Inc.	
		3 KYW-TV Cbs Broadcasting Inc.	
<input type="checkbox"/>		4 WNBC NBC Telemundo License Co. (General Electric)	
<input type="checkbox"/>		5 WNYW Fox Television Stations, Inc. (News Corp.)	
<input type="checkbox"/>		7 WABC-TV American Broadcasting Companies, Inc (Walt Disney)	
<input type="checkbox"/>		9 WWOR-TV Fox Television Stations, Inc. (News Corp.)	
<input type="checkbox"/>		11 WPIX Wpix, Inc. (Tribune)	
<input type="checkbox"/>		13 WNET Educational Broadcasting Corporation	
<input type="checkbox"/>		25 WNYE-TV New York City Dept. Of Info Technology & Telecommunications	
<input type="checkbox"/>		31 WPXN-TV Paxon Communications License Company, Llc	
<input type="checkbox"/>		41 WXTV Wxtv License Partnership, G.p. (Univision Communications Inc.)	
<input type="checkbox"/>		47 WNJU NBC Telemundo License Co. (General Electric)	
<input type="checkbox"/>		50 WNJN New Jersey Public Broadcasting Authority	
<input type="checkbox"/>		52 WNJT New Jersey Public Broadcasting Authority	
<input type="checkbox"/>		54 WTBY-TV Trinity Broadcasting Of New York, Inc.	
<input type="checkbox"/>		58 WNJB New Jersey Public Broadcasting Authority	

<input type="checkbox"/>		62 WRNN-TV Wrnn License Company, Llc	
<input type="checkbox"/>		63 WMBC-TV Mountain Broadcasting Corporation	
<input type="checkbox"/>		68 WFUT-TV Univision New York Llc	Spanish
<b>TARGETS PARTIAL HOUSING REGION 2</b>			
<input type="checkbox"/>		42 WKOB-LP Nave Communications, Llc	Essex
<input type="checkbox"/>		22 WMBQ-CA Renard Communications Corp.	Essex, Morris, Union
<input type="checkbox"/>		66 WFME-TV Family Stations Of New Jersey, Inc.	Essex, Morris, Union
<input type="checkbox"/>		21 WLIW Educational Broadcasting Corporation	Essex, Union
<input type="checkbox"/>		60 W60AI Ventana Television, Inc	Essex, Union
<input type="checkbox"/>		36 W36AZ New Jersey Public Broadcasting Authority	Morris
<input type="checkbox"/>		6 WPVI-TV American Broadcasting Companies, Inc (Walt Disney)	Morris, Union, Warren
<input type="checkbox"/>		65 WUVP-TV Univision Communications, Inc.	Morris, Union, Warren
<input type="checkbox"/>		23 W23AZ Centenary College	Morris, Warren
<input type="checkbox"/>		28 WBRE-TV Nexstar Broadcasting, Inc.	Morris, Warren
<input type="checkbox"/>		35 WYBE Independence Public Media Of Philadelphia, Inc.	Morris, Warren
<input type="checkbox"/>		39 WLVT-TV Lehigh Valley Public Telecommunications Corp.	Morris, Warren
<input type="checkbox"/>		44 WVIA-TV Ne Pa Ed Tv Association	Morris, Warren
<input type="checkbox"/>		56 WOLF-TV Wolf License Corp	Morris, Warren
<input type="checkbox"/>		60 WBPH-TV Sonshine Family Television Corp	Morris, Warren
<input type="checkbox"/>		69 WFMZ-TV Maranatha Broadcasting Company, Inc.	Morris, Warren
<input type="checkbox"/>		10 WCAU NBC Telemundo License Co. (General Electric)	Warren
<input type="checkbox"/>		16 WNEP-TV New York Times Co.	Warren
<input type="checkbox"/>		17 WPHL-TV Tribune Company	Warren
<input type="checkbox"/>		22 WYOU Nexstar Broadcasting, Inc.	Warren
<input type="checkbox"/>		29 WTXF-TV Fox Television Stations, Inc. (News Corp.)	Warren

<input type="checkbox"/>		38 WSWB Mystic Television of Scranton Llc	Warren
<input type="checkbox"/>		48 WGTW-TV Trinity Broadcasting Network	Warren
<input type="checkbox"/>		49 W49BE New Jersey Public Broadcasting Authority	Warren
<input type="checkbox"/>		55 W55BS New Jersey Public Broadcasting Authority	Warren
<input type="checkbox"/>		57 WPSG Cbs Broadcasting Inc.	Warren
<input type="checkbox"/>		61 WPPX Paxson Communications License Company, Llc	Warren

	DURATION & FREQUENCY OF OUTREACH	NAMES OF CABLE PROVIDER(S)	BROADCAST AREA
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**TARGETS PARTIAL HOUSING REGION 2**

<input type="checkbox"/>		Cablevision of Newark	Partial Essex
<input type="checkbox"/>		Comcast of NJ (Union System)	Partial Essex, Union
<input type="checkbox"/>		Cablevision of Oakland	Partial Essex, Morris
<input type="checkbox"/>		Cable Vision of Morris	Partial Morris
<input type="checkbox"/>		Comcast of Northwest NJ	Partial Morris, Warren
<input type="checkbox"/>		Patriot Media & Communications	Partial Morris
<input type="checkbox"/>		Service Electric Broadband Cable	Partial Morris, Warren
<input type="checkbox"/>		Cablevision of Elizabeth	Partial Union
<input type="checkbox"/>		Comcast of Plainfield	Partial Union
<input type="checkbox"/>		Cable Vision of Morris	Partial Warren
<input type="checkbox"/>		Service Electric Cable TV of Hunterdon	Partial Warren

	DURATION & FREQUENCY OF OUTREACH	NAMES OF REGIONAL RADIO STATION(S)	BROADCAST AREA AND/OR RACIAL/ETHNIC IDENTIFICATION OF READERS/AUDIENCE
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**TARGETS ENTIRE HOUSING REGION 2**

<b>AM</b>			
<input type="checkbox"/>		WFAN 660	
<input type="checkbox"/>		WOR 710	
<input type="checkbox"/>		WABC 770	
<b>FM</b>			
<input type="checkbox"/>		WFNY-FM 92.3	
<input type="checkbox"/>		WPAT-FM 93.1	Spanish

<input type="checkbox"/>		WNYC-FM 93.9	
<input type="checkbox"/>		WFME 94.7	Christian
<input type="checkbox"/>		WPLJ 95.5	
<input type="checkbox"/>		WQXR-FM 96.3	
<input type="checkbox"/>		WQHT 97.1	
<input type="checkbox"/>		WRKS 98.7	
<input type="checkbox"/>		WAWZ 99.1	Christian
<input type="checkbox"/>		WHTZ 100.3	
<input type="checkbox"/>		WCBS-FM 101.1	
<input type="checkbox"/>		WKXW-FM 101.5	
<input type="checkbox"/>		WQCD 101.9	
<input type="checkbox"/>		WNEW 102.7	
<input type="checkbox"/>		WKTU 103.5	
<input type="checkbox"/>		WAXQ 104.3	
<input type="checkbox"/>		WWPR-FM 105.1	
<input type="checkbox"/>		WLTW 106.7	
<b>TARGETS PARTIAL HOUSING REGION 2</b>			
AM			
<input type="checkbox"/>		WWRL 1600	Essex
<input type="checkbox"/>		WXMC 1310	Essex, Morris
<input type="checkbox"/>		WWRV 1330	Essex, Morris (Spanish)
<input type="checkbox"/>		WZRC 1480	Essex, Morris (Chinese/Cantonese)
<input type="checkbox"/>		WMCA 570	Essex, Morris, Union (Christian)
<input type="checkbox"/>		WNYC 820	Essex, Morris, Union
<input type="checkbox"/>		WCBS 880	Essex, Morris, Union
<input type="checkbox"/>		WPAT 930	Essex, Morris, Union (Caribbean, Mexican, Mandarin)
<input type="checkbox"/>		WWDJ 970	Essex, Morris, Union (Christian)
<input type="checkbox"/>		WINS 1010	Essex, Morris, Union
<input type="checkbox"/>		WEPN 1050	Essex, Morris, Union
<input type="checkbox"/>		WKMB 1070	Essex, Morris, Union (Christian)

<input type="checkbox"/>		WBBR 1130	Essex, Morris, Union
<input type="checkbox"/>		WLIB 1190	Essex, Morris, Union (Christian)
<input type="checkbox"/>		WMTR 1250	Essex, Morris, Union
<input type="checkbox"/>		WADO 1280	Essex, Morris, Union (Spanish)
<input type="checkbox"/>		WNSW 1430	Essex, Morris, Union (Portuguese)
<input type="checkbox"/>		WJDM 1530	Essex, Morris, Union (Spanish)
<input type="checkbox"/>		WQEW 1560	Essex, Morris, Union
<input type="checkbox"/>		WWRU 1660	Essex, Morris, Union (Korean)
<input type="checkbox"/>		WCTC 1450	Union
		WCHR 1040	Warren
		WEEX 1230	Warren
		WNNJ 1360	Warren
		WRNJ 1510	Warren
FM			
<input type="checkbox"/>		WMSC 90.3	Essex
<input type="checkbox"/>		WFUV 90.7	Essex
<input type="checkbox"/>		WBGO 88.3	Essex, Morris, Union
<input type="checkbox"/>		WSOU 89.5	Essex, Morris, Union
<input type="checkbox"/>		WKCR-FM 89.9	Essex, Morris, Union
<input type="checkbox"/>		WFMU 91.1	Essex, Morris, Union
<input type="checkbox"/>		WNYE 91.5	Essex, Morris, Union
<input type="checkbox"/>		WSKQ-FM 97.9	Essex, Morris, Union (Spanish)
<input type="checkbox"/>		WBAI 99.5	Essex, Morris, Union
<input type="checkbox"/>		WDHA -FM 105.5	Essex, Morris, Union
<input type="checkbox"/>		WCAA 105.9	Essex, Morris, Union (Latino)
<input type="checkbox"/>		WBLS 107.5	Essex, Morris, Union
<input type="checkbox"/>		WHUD 100.7	Essex, Morris, Warren
<input type="checkbox"/>		WPRB 103.3	Essex, Union, Warren
<input type="checkbox"/>		WMNJ 88.9	Morris
<input type="checkbox"/>		WJSV 90.5	Morris

<input type="checkbox"/>		WNNJ-FM 103.7	Morris, Warren
<input type="checkbox"/>		WMGQ 98.3	Union
<input type="checkbox"/>		WCTO 96.1	Union, Warren
<input type="checkbox"/>		WNTI 91.9	Warren
<input type="checkbox"/>		WSBG 93.5	Warren
<input type="checkbox"/>		WZZO 95.1	Warren
<input type="checkbox"/>		WAEB-FM 104.1	Warren
<input type="checkbox"/>		WHCY 106.3	Warren
3d. Other Publications (such as neighborhood newspapers, religious publications, and organizational newsletters) (Check all that applies)			
	<b>NAME OF PUBLICATIONS</b>	<b>OUTREACH AREA</b>	<b>RACIAL/ETHNIC IDENTIFICATION OF READERS/AUDIENCE</b>
<b>TARGETS ENTIRE HOUSING REGION 2</b>			
Monthly			
<input type="checkbox"/>	Sino Monthly	North Jersey/NYC area	Chinese-American
<b>TARGETS PARTIAL HOUSING REGION 2</b>			
Daily			
<input type="checkbox"/>	24 Horas	Bergen, Essex, Hudson, Middlesex, Passaic, Union Counties	Portuguese-Language
Weekly			
<input type="checkbox"/>	Arab Voice Newspaper	North Jersey/NYC area	Arab-American
<input type="checkbox"/>	Brazilian Voice, The	Newark	Brazilian-American
<input type="checkbox"/>	Catholic Advocate, The	Essex County area	Catholic
<input type="checkbox"/>	La Voz	Hudson, Union, Middlesex Counties	Cuban community
<input type="checkbox"/>	Italian Tribune	North Jersey/NYC area	Italian community
<input type="checkbox"/>	New Jersey Jewish News	Northern and Central New Jersey	Jewish
<input type="checkbox"/>	El Nuevo Coqui	Newark	Puerto Rican community
<input type="checkbox"/>	Banda Oriental Latinoamérica	North Jersey/NYC area	South American community
<input type="checkbox"/>	El Especialito	Union City	Spanish-Language
<input type="checkbox"/>	La Tribuna Hispana	Basking Ridge, Bound Brook, Clifton, East Rutherford, Elizabeth, Fort Lee, Greebrook, Linden, Lydenhurst, Newark, North	Spanish-Language

			Plainfield, Orange, Passaic, Paterson, Plainfield, Roselle, Scotch Plains, Union, Union City, West NY	
<input type="checkbox"/>		Ukranian Weekly	New Jersey	Ukranian community
3e. Employer Outreach (names of employers throughout the housing region that can be contacted to post advertisements and distribute flyers regarding available affordable housing) (Check all that applies)				
<b>DURATION &amp; FREQUENCY OF OUTREACH</b>		<b>NAME OF EMPLOYER/COMPANY</b>		<b>LOCATION</b>
<b>Essex County</b>				
<input type="checkbox"/>		Newark Liberty International Airport		Newark Airport, Newark, NJ
<input type="checkbox"/>		Verizon Communications		540 Broad St Newark, NJ 07102
<input type="checkbox"/>		Prudential Financial, Inc.		751 Broad St Newark, NJ 07102
<input type="checkbox"/>		Continental Airlines		1 Newark Airport, Newark, NJ
<input type="checkbox"/>		University of Medicine/Dentistry		Office of Marketing & Media Relations 150 Bergen Street Room D347 Newark, NJ 07103
<input type="checkbox"/>		Public Service Enterprise Group		80 Park Plz Newark, NJ 07102
<input type="checkbox"/>		Prudential Insurance		751 Broad Street, Newark, NJ 07102-3777
<input type="checkbox"/>		Horizon Blue Cross & Blue Shield of NJ		3 Raymond Plz W Newark, NJ 07102
<input type="checkbox"/>		Newark Liberty International Airport		Newark Airport, Newark, NJ
<input type="checkbox"/>		Horizon Blue Cross & Blue Shield of NJ		540 Broad St Newark, NJ 07102
<b>Morris County</b>				
<input type="checkbox"/>		Atlantic Health System-Morristown Memorial Hospital		100 Madison Avenue Morristown, NJ 07962
<input type="checkbox"/>		AT&T		295 N Maple Ave, Basking Ridge, NJ and 180 Park Ave, Florham Park, NJ
<input type="checkbox"/>		US Army Armament R&D		21 Picatinny Arsenal, Picatinny Arsnl, NJ
<input type="checkbox"/>		Lucent Technologies		67 Whippany Rd, Whippany, NJ and 475 South St, Morristown, NJ and 5 Wood Hollow Rd, Parsippany, NJ and 24 Mountain Ave, Mendham, NJ
<input type="checkbox"/>		Pfizer		Morris Plains/Parsippany
<input type="checkbox"/>		Novartis Pharmaceutical		59 State Route 10, East Hanover, NJ
<input type="checkbox"/>		Kraft foods		200 Deforest Ave, East Hanover, NJ and 7 Campus Dr, Parsippany, NJ
<input type="checkbox"/>		Mennen Sports Arena		161 E Hanover Ave, Morristown, NJ

<input type="checkbox"/>		Honeywell	101 Columbia Rd Morristown, NJ 07960
<input type="checkbox"/>		Pfizer	5 Woodhollow Rd, Parsippany and 175 Tabor Rd, Morris Plains
<input type="checkbox"/>		St. Clare's Hospital	130 Powerville Road Boonton Township, NJ 07005 and 25 Pocono Road Denville, NJ 07834 and 400 West Blackwell Street Dover, NJ 07801 and 3219 Route 46 East, Suite 110 Parsippany, NJ 07054
<b>Union County</b>			
<input type="checkbox"/>		A&M Industrial Supply Co	1414 Campbell St Rahway
<input type="checkbox"/>		A.J. Seabra inc,	574 Ferry St Newark
<input type="checkbox"/>		Bristol-myers Products Research & Dev	1350 Liverty Ave Hillside
<input type="checkbox"/>		Cede Candy Inc	1091 Lousons Road PO Box 271 Union, NJ
<input type="checkbox"/>		Comcast Network	800 Rahway Ave Union, NJ
<input type="checkbox"/>		HoneyWell Inc.	1515 West Blancke Street Bldgs 1501 and 1525 Linden, NJ
<input type="checkbox"/>		IBM Corporation	27 Commerce Drive Cranford, nj
<input type="checkbox"/>		Howard Press	450 West First Ave Roselle,nj
<input type="checkbox"/>		Lucent Technologies	600 Mountain Ave Murray Hill,NJ
<input type="checkbox"/>		Merck & Co. Inc	1 Merck Drive PO Box 2000 (RY60-200E) Rahway, NJ
<input type="checkbox"/>		Rahway Hospital	865 Stone Street Rahway, NJ
<input type="checkbox"/>		Rotuba Extruders, Inc	1401 Park Ave South Linden
<input type="checkbox"/>		Union County College	1033 Springfield Ave Cranford,NJ
<b>Warren County</b>			
<input type="checkbox"/>		Masterfoods USA	800 High Street Hackettstown, NJ
<input type="checkbox"/>		Warren Hospital	185 Roseberry St Phillipsburg, NJ
<input type="checkbox"/>		Roche Vitamins	206 Roche Drive Belvidere, NJ
<input type="checkbox"/>		Hackettstown Hospital	651 Willow Grove St. Hackettstown, NJ
<input type="checkbox"/>		Pechiney	191 Route 31 North Washington, NJ
<input type="checkbox"/>		Lopatcong Care Center	390 Red School Lane Phillipsburg, NJ
<input type="checkbox"/>		Mallinckrodt/Baker, Inc	222 Red School Lane Phillipsburg, NJ

3f. Community Contacts (names of community groups/organizations throughout the housing region that can be contacted to post advertisements and distribute flyers regarding available affordable housing)			
Name of Group/Organization	Outreach Area	Racial/Ethnic Identification of Readers/Audience	Duration & Frequency of Outreach

**IV. APPLICATIONS**

Applications for affordable housing for the above units will be available at the following locations:	
4a. County Administration Buildings and/or Libraries for all counties in the housing region (list county building, address, contact person) (Check all that applies)	
<input type="checkbox"/>	<b>BUILDING</b> Morris County Library
<input type="checkbox"/>	Warren County Library Headquarters
<input type="checkbox"/>	Essex County/Hall of Records
<input type="checkbox"/>	Union County/Administration Building
<b>LOCATION</b> 30 East Hanover Avenue, Whippany, NJ 07981	
199 Hardwick Street, Belvidere, NJ 07823	
465 Dr. Martin Luther King, Jr. Blvd, Newark, NJ 07102 (973)621-4400	
Elizabethtown Plaza, Elizabeth, NJ 07207 (908)527-4100	
4b. Municipality in which the units are located (list municipal building and municipal library, address, contact person)	
4c. Sales/Rental Office for units (if applicable)	

**V. CERTIFICATIONS AND ENDORSEMENTS**

I hereby certify that the above information is true and correct to the best of my knowledge. I understand that knowingly falsifying the information contained herein may affect the (select one: Municipality's substantive certification or DCA Balanced Housing Program funding or HMFA UHORP/MONI/CHOICE funding).	
_____ Name (Type or Print)	
_____ Title/Municipality	
_____ Signature	_____ Date

**RESOLUTION**  
Of the  
**BOROUGH OF NEW PROVIDENCE**  
Resolution No. 2026-098

Council Meeting Date: 03-10-2026

Date Adopted: 03-10-2026

TITLE: RESOLUTION OF THE COUNCIL OF BOROUGH OF NEW PROVIDENCE, COUNTY OF UNION, STATE OF NEW JERSEY ADOPTING THE AFFORDABLE HOUSING TRUST FUND SPENDING PLAN FOR THE BOROUGH OF NEW PROVIDENCE

Councilperson Cumiskey submitted the following resolution, which was duly seconded by Councilperson Geoffroy.

WHEREAS, the Borough of New Providence has prepared a Fourth Round Housing Element and Fair Share Plan that addresses its fair share of affordable housing in accordance with the Amended Fair Housing Act, N.J.S.A. 52:27D-329.2 and the Uniform Housing Affordability Controls N.J.A.C. 5:80-26.1 et. seq; and

WHEREAS, a Development Fee Ordinance was originally approved by the Council on Affordable Housing ("COAH") in 2008, subsequently amended and approved by the Court in 2017, and amended and proposed by the Borough in 2026; and

WHEREAS, the Development Fee Ordinance established an affordable housing trust fund which includes but is not limited to development fees, payments from developers in lieu of construction of affordable housing units on-site, barrier-free escrow funds, repayments from affordable housing program loans, recapture funds, and proceeds from the sale of affordable units; and

WHEREAS, in accordance with the Amended Fair Housing Act, the Borough has prepared an updated Spending Plan (attached hereto as Exhibit A), which accounts for the collection and expenditures of all current and future affordable housing trust fund monies that will contribute to the development of affordable housing within the Borough; and

and  
affordable housing planner drafted a Fourth Round Housing Element and Fair Share Plan; and

WHEREAS, the Borough desires to submit its Spending Plan to the Affordable Housing Resolution Dispute Program for its review and approval;

NOW, THEREFORE, BE IT RESOLVED, the Borough Council of the Borough of New Providence in the County of Union and the State of New Jersey hereby adopts the Spending Plan that is attached hereto as Exhibit A.

APPROVED, this 10th day of March, 2026.

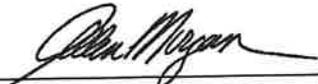
RECORD OF VOTE

	AYE	NAY	ABSENT	NOT VOTING
CUMISKEY	X			
DOLAN	X			
GARDNER	X			
GEOFFROY	X			
LERNER	X			
MCKNIGHT	X			
MORGAN			TO BREAK COUNCIL TIE VOTE	

I hereby certify that the above resolution was adopted at a meeting of the Borough Council held on the 10th day of March, 2026.

  
 Denise Brinkofski, Borough Clerk

Borough Of New Providence  
 County Of Union  
 State Of New Jersey

  
 Allen Morgan, Mayor

**EXHIBIT A**  
**SPENDING PLAN**

# **AFFORDABLE HOUSING TRUST FUND SPENDING PLAN**

Borough of New Providence  
Union County, New Jersey

February 12, 2026  
Approved by Borough Council on March X, 2026

Prepared By:

**H|G|A**

**Heyer, Gruel & Associates**

Community Planning Consultants 236 Broad Street,  
Red Bank, NJ 07701  
(732) 741-2900

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

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Lindsey Massih, AICP, P.P. #6473

With assistance from Jonathan Hansel, Associate Planner



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## **INTRODUCTION**

The Borough of New Providence, Union County has prepared and will adopt a Fourth Round Housing Element and Fair Share plan that addresses its 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.) and the Fair Housing Act (N.J.S.A. 52:27D-301) as amended.

The Borough received First Round certification from the Council on Affordable Housing (“COAH”) on September 18, 1989. New Providence participated in the Second Round and petitioned COAH for substantive certification on July 7, 1997, and received their substantive certification on August 5, 1998, with an extended certification date of May 11, 2005. The Borough petitioned twice for Third Round substantive certification as a result of COAH’s revised methodologies, on December 30, 2008, and again on July 16, 2010; the Borough was deemed complete on October 4, 2010. Subsequent to Mount Laurel IV, a Conditional Judgment of Compliance and Repose for the Borough was granted on November 13, 2019, and the Final Judgment of Compliance and Repose was granted on August 25, 2020.

A development fee ordinance creating a dedicated revenue source for affordable housing was approved by COAH on January 4, 2008, and adopted by the Borough on March 10, 2008. This ordinance was subsequently amended by Ordinance 2017-07 (adopted May 22, 2017) and again by Ordinance 2019-10 (adopted October 15, 2019). In response to the most recent UHAC regulations and the Fourth Round Rules (N.J.A.C. 5:99), effective as of December 15, 2025, New Providence amended its development fee ordinance to ensure it meets current standards.

As part of the Borough’s efforts to address its Third Round obligation, New Providence’s first Third Round Spending Plan was adopted on August 9, 2019. The Plan was subsequently amended in October of 2019 and in September of 2023. Resolution 2023-280, which outlines the adoption of the most recent Spending Plan, was adopted by the Borough Council on October 10, 2023 and approved by the Court on March 28, 2024. Pursuant to the settlement agreement with Fair Share Housing Center (FSHC) which was executed on April 1, 2019, annual monitoring reports were submitted to the New Jersey Department of Community Affairs, FSHC, and posted to the Borough website. These reports provided updates on the Borough’s Affordable Housing Trust Fund. This 2026 Spending Plan supersedes all prior Spending Plans.

Since the inception of the trust fund in 2006, the Borough had collected more than \$1.7 million in development fees, payments in lieu of construction, interest, and other income. New Providence has spent nearly \$1 million on administrative costs, housing activity, and affordability assistance. The balance of the Borough’s Trust Fund was \$889,577, as of December 31, 2025.

All development fees, payments in lieu of constructing affordable units on site, interest generated by the fees as well as any other source of income are deposited into this separate, interest-bearing affordable





housing trust fund for the purposes of affordable housing. These funds shall be spent in accordance with N.J.A.C. 5:99, or applicable regulations, as described in the sections that follow.

This Fourth Round Spending Plan is submitted for approval to expend all current and future affordable housing trust fund monies, as necessary, that will contribute to the development of new affordable housing units.





## 1. REVENUES FOR CERTIFICATION PERIOD

To calculate a projection of revenue anticipated during the period of Fourth Round "Substantive Certification," the Borough of New Providence considered the following:

### (a) Development fees

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

### (b) Payment in lieu (PIL)

Actual and committed payments in lieu (PIL) of construction from developers.

### (c) Other funding sources

Funds from other sources, including, but not limited to, the sale of units with extinguished controls, repayment of affordable housing program loans, rental income, proceeds from the sale of affordable units.

### (d) Projected interest

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

### (e) Projected Revenues

	Current Balance	(a) Projected Development Fees:	(d) Interest	TOTAL
Trust Fund Balance as of 12/31/2025	\$889,577	-	-	\$889,577
2026	-	\$200,000	\$900	\$200,900
2027	-	\$200,000	\$900	\$200,900
2028	-	\$200,000	\$900	\$200,900
2029	-	\$200,000	\$900	\$200,900
2030	-	\$200,000	\$900	\$200,900
2031	-	\$200,000	\$900	\$200,900
2032	-	\$200,000	\$900	\$200,900
2033	-	\$200,000	\$900	\$200,900
2034	-	\$200,000	\$900	\$200,900
2035	-	\$100,000	\$450	\$100,450
<b>TOTAL</b>	<b>\$889,577</b>	<b>\$1,900,000</b>	<b>\$8,550</b>	<b>\$2,798,127</b>





To calculate the projection of revenue anticipated from the general development fees, 11 years (2013 through 2023) of construction data (for both residential and non-residential construction) for the Borough, acquired from the New Jersey Department of Community Affairs, was examined. The historic activities of Borough's existing affordable housing trust fund were also analyzed, and the projected development fees reflect both trends.

The Borough projects a total of \$1,900,000 will be collected between January 1, 2026, and June 30, 2035. An additional \$8,550 in interest is projected to be earned through June of 2035. Interest calculations are based on a historic average of the interest earned in the Borough's trust fund. All interest earned on the account shall accrue to the account to be used only for the purposes of affordable housing. Including the existing trust fund balance, the Borough projects a total of \$2,798,127 through June 30, 2035.





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

The following procedural sequence for the collection and distribution of development fee revenues shall be followed by the Borough of New Providence:

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

Collection of development fee revenues shall be consistent with New Providence's development fee ordinance for both residential and non-residential developments.

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

The Administrative Agent and the Municipal Housing Liaison will manage the projects outlined in this Spending Plan and the Housing Element and Fair Share Plan.

The release of funds requires the adoption of a resolution by the Borough Council. Once a request is approved by resolution, the Chief Financial Officer releases the requested revenue from the trust fund for the specific use approved in the Borough Council resolution.

### **(c) Collection and distribution of barrier free funds:**

Collection and distribution of barrier free funds shall be consistent with the Borough's Affordable Housing Ordinance (Chapter 275 of the Borough's Revised General Code) and in accordance with applicable regulations. A process describing the collection and distribution procedures for barrier free escrow is detailed within the Borough's Affordable Housing Ordinance.





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

The following sections represent the anticipated affordable housing expenditures within the Borough of New Providence, that will utilize trust fund monies.

#### (a) Rental Rehabilitation Program and New Construction Projects (N.J.A.C. 5:99-2.3)

Additional information on each of the programs and projects below can be found in the Housing Element and Fair Share Plan.

As part of New Providence's Third Round Compliance, the Borough agreed to implement a rental rehabilitation program to supplement the County owner rehabilitation program. New Providence will continue to administer this rental rehabilitation program in the Fourth Round through its Administrative Agent, CGP&H. As there has not been significant interest in the rental rehabilitation program since it was implemented during the Third Round, the Borough will dedicate any additional funds to support the rehabilitation of owner-occupied units as well.

Further, the Borough is interested in supporting ongoing operations of alternative living arrangements/group homes. As outlined in the Fair Share Plan, several group homes have been operating in New Providence for decades. The Borough will prioritize spending funds on necessary renovations to existing group homes and the creation of new alternative living arrangements within the Borough.

The Borough will dedicate \$1,414,596.13 to the rehabilitation of substandard units and new construction within the Borough.

#### (b) Affordability Assistance (N.J.A.C. 5:99-2.5)

As per the requirements regarding the use of funds for affordability assistance laid out in N.J.A.C. 5:99-2.5, the Borough is required to dedicate at least 30% of all development fees collected and interest earned to provide affordability assistance to low- and moderate-income households. In addition, at least one-third of the affordability assistance shall be used to provide affordability assistance to very-low-income households.

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





The Borough of New Providence has collected \$1,917,431.25 in gross development fees and interest through December 31, 2025. The Borough projects an additional \$1,900,000 in development fees and \$8,550 in interest through 2035. The Borough has spent \$760,345 on housing activities to date. The Borough's appointed Administrative Agent, Community Planning Grants & Housing (CGP&H) is in the process of completing an updated Affordability Assistance Manual. Until such time as an updated manual is completed and adopted, the previous manual, adopted in 2019 and 2023 and approved by the Court, remains in effect.

Affordability Assistance Projection

<b>Table 2. Affordability Assistance (N.J.A.C. 5:99-2.5)</b>		
Gross development fees and interest earned through 12/31/2025		\$1,917,431.25
Projected Development fees 2026-2035	+	\$1,900,000.00
Projected Trust Fund Interest 2026-2035	+	\$8,550.00
Less Housing Activity through 12/31/2025 (including new construction and rehabilitation)	-	\$760,345.00
<b>Total</b>	=	\$3,065,636.25
30% Affordability Assistance Contribution	x 0.30 =	\$919,690.88
Less Affordability Assistance Expenditures through 12/31/2025	-	\$12,701.00
<b>Projected Affordability Assistance through 06/30/2035</b>	=	<b>\$906,989.88</b>

Housing Activity History

Since the inception of the trust fund in 2006, the Borough has spent \$760,345 on housing activity. This includes new construction, property acquisition, and renovations. In the same period, the Borough spent \$12,701 on affordability assistance. Since the previous Court-approved Spending Plan, the Elizabeth Barabash Manor has undergone extensive renovations. Funds from the Borough's Affordable Housing Trust Fund were expended in March 2024 for the rehabilitation of the building's roof, and in July of 2024 to add new refrigerators, stoves, and range hoods within each apartment. In May of 2024, the facility's mortgage was paid off. Further, New Providence has received grant money toward the replacement of the facility's elevator, and is currently in the process of bidding the new elevator.

**(c) Administrative Expenses (N.J.A.C. 5:99-2.4)**

No more than 20% of revenues collected from development fees shall be expended on administration, including, but not limited to, salaries and benefits for municipal employees or consultant fees necessary to develop and implement: a new construction program; a housing element; and an affirmative marketing





program. Administrative funds may be used for: income qualification of households; monitor the turnover of sale and rental units; and compliance with monitoring requirements.

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

The Borough has collected \$1,917,431.25 in gross development fees and interest from inception through December 31, 2025. The Borough projects an additional \$1,900,000 in development fees and \$8,550 in interest through 2035. The Borough has never taken part in an RCA. New Providence has spent \$288,655.25 on administrative expenses through December 31, 2025.

Gross development fees collected and interest earned through 12/31/2025		\$1,917,431.25
Projected Development fees 2026-2035	+	\$1,900,000.00
Projected Trust Fund Interest 2026-2035	+	\$8,550.00
RCA Contributions	-	\$0
<b>Total</b>	=	<b>\$3,825,981.25</b>
20% Maximum Permitted on Administrative Expenses through 6/30/2035	x 0.20 =	\$765,196.25
Less Administrative Expenditures through 12/31/2025	-	\$288,655.25
Projected Allowed Administrative Expenditures	=	<b>\$476,541.00</b>

Moving forward, the Borough projects that \$476,541 will be available from the affordable housing trust fund for administrative expenses for the time period of January 1, 2026, through June 30, 2035. Because the actual administrative expense maximum is calculated on an ongoing basis based on actual revenues, the Borough shall be permitted to spend 20% of the actual balance at any given time on administrative fees. Money becomes available for administrative expenses as additional income is collected.

Projected administrative expenditures, subject to the 20 percent cap, include but are not limited to:

- Administration and expenses associated with the Borough's affordable housing units;





- Expenses associated with the preparation and implementation of the Housing and Fair Share Plan and monitoring of the current and future housing programs for the Borough of New Providence
- Affirmative Marketing;
- Income qualification; and
- Administration of the Borough's affordable housing units.

Legal or other fees related to litigation opposing affordable housing sites are not eligible uses of the affordable housing trust fund.

#### 4. EXPENDITURE SCHEDULE

<b>TABLE 4: PROJECTED EXPENDITURE SCHEDULE JANUARY 2026 THROUGH JULY 2035</b>				
<b>Year</b>	<b>Program</b>			
	<b>Affordability Assistance</b>	<b>Administration</b>	<b>Rehabilitation</b>	<b>Total</b>
2026	\$95,472.62	\$50,162.21	\$148,904.86	\$294,539.68
2027	\$95,472.62	\$50,162.21	\$148,904.86	\$294,539.68
2028	\$95,472.62	\$50,162.21	\$148,904.86	\$294,539.68
2029	\$95,472.62	\$50,162.21	\$148,904.86	\$294,539.68
2030	\$95,472.62	\$50,162.21	\$148,904.86	\$294,539.68
2031	\$95,472.62	\$50,162.21	\$148,904.86	\$294,539.68
2032	\$95,472.62	\$50,162.21	\$148,904.86	\$294,539.68
2033	\$95,472.62	\$50,162.21	\$148,904.86	\$294,539.68
2034	\$95,472.62	\$50,162.21	\$148,904.86	\$294,539.68
2035	\$47,736.31	\$25,081.11	\$74,452.43	\$147,269.84
<b>TOTAL</b>	<b>\$906,989.88</b>	<b>\$476,541.00</b>	<b>\$1,414,596.13</b>	<b>\$2,798,127.00</b>

#### 5. EXCESS OR SHORTFALL OF FUNDS

In the event funding sources as identified within this Spending Plan for the projects detailed in the Housing Element and Fair Share Plan prove inadequate to complete the affordable housing programs, the Borough shall provide sufficient funding to address any shortfalls through bonding.

In the event that more funds than anticipated are collected or projected funds exceed the amount necessary to implement the Borough's affordable housing projects, these excess funds will be used to fund eligible affordable housing activity pursuant to applicable rules and regulations.





### **SUMMARY**

The Borough of New Providence intends to spend affordable housing trust fund revenues pursuant to N.J.A.C. 5:99 and consistent with the housing programs outlined in its adopted Housing Element and Fair Share Plan.

The Borough's trust fund has a balance of \$889,577 as of December 31, 2025. New Providence anticipates an additional \$2,798,127 in revenues and interest by June 30, 2035. The Borough will expend:

- Rental rehabilitation program and new construction: \$1,414,596
- Affordability Assistance: \$906,989.88, which includes \$302,329.96 for the very low-income requirement
- Administration: \$476,541

<b>Table 5: SPENDING PLAN SUMMARY</b>		
Balance as of December 31, 2025		\$889,577.00
<b>Projected REVENUE 2026 to June 30, 2035</b>		
Development fees	+	\$1,900,000.00
Other funds	+	\$0.00
Interest	+	\$8,550.00
<b>TOTAL REVENUE + CURRENT BALANCE</b>	<b>=</b>	<b>\$2,798,127.00</b>
<b>EXPENDITURES</b>		
Affordability Assistance	-	\$906,989.88
Administration	-	\$476,541.00
Rehabilitation	-	\$1,414,596.13
Excess Funds for Additional Housing Activity	=	\$0.00
<b>TOTAL PROJECTED EXPENDITURES</b>	<b>=</b>	<b>\$2,798,127.00</b>
<b>REMAINING BALANCE</b>	<b>=</b>	<b>\$0.00</b>



**BOROUGH OF NEW PROVIDENCE  
ORDINANCE 2026-01**

**AN ORDINANCE OF THE BOROUGH OF NEW PROVIDENCE, COUNTY OF UNION,  
STATE OF NEW JERSEY, AMENDING ZONING ORDINANCE**

WHEREAS, the Municipal Land Use Law ("MLUL") (N.J.S.A. 40:55D-1 et seq.) enables municipalities to adopt, and subsequently amend, zoning ordinances relating to the nature and extent of the uses of land, buildings, and structures within a municipality; and

WHEREAS, on January 27, 2026, the Mayor and Borough Council of the Borough of New Providence approved a Mediation Agreement regarding the Borough's participation in the Affordable Housing Dispute Resolution Program; and

WHEREAS, such Mediation Agreement included the rezoning of several properties and expanding the Affordable Housing Overlay (AHO);

WHEREAS, the Mayor and Borough Council would like to amend the zoning ordinance to enable the development of affordable housing as outlined in the Housing Element and Fair Share Plan dated May 23, 2025, and adopted by the Planning Board on June 3, 2025; and

BE IT ORDAINED by the Mayor and Borough Council of the Borough of New Providence, County of Union, and State of New Jersey, as follows:

For amended sections, proposed text is **bold and underlined**, and repealed text is ~~strikethrough~~.

**SECTION 1.**

Article II Section 310-6 of Chapter 310 of the Code of the Borough of New Providence, entitled Definitions, shall be amended as follows:

**AGE-RESTRICTED UNIT**

A housing unit designed to meet the needs of, and exclusively for, the residents of an age-restricted segment of the population where the head of household is a minimum of 62 years, ~~or 55~~ and meets the provisions of the 42 U.S.C. §§3601 et seq., except that due to death, a remaining spouse of less than ~~55~~ **62** years of age shall be permitted to continue to reside

**STACKED TOWNHOUSES**

A building consisting of more than two attached single-family residences, each with separate outside access and separated by either vertical and/or horizontal construction.

**SECTION 2.**

Article III Section 310-9 of Chapter 310 of the Code of the Borough of New Providence, entitled Zoning Map, shall be amended as follows:

- A. The location and boundaries of districts are hereby established as shown on the Zoning Map of the Borough of New Providence, dated ~~October 22~~ **March 9, 2026**, which map is hereby made a part of this Chapter and incorporated herein by reference. Such map and all notations, references, and designations shown thereon shall be a part of this Chapter as if the same were all fully described and set forth herein, and copies thereof are maintained on file in the Borough Clerk's office

**SECTION 3.**

Article IV Section 310-40 of Chapter 310 of the Code of the Borough of New Providence, entitled "AHO Affordable Housing Overlay" shall be amended to read as follows:

- A. Purpose  
The purpose of the Affordable Housing Overlay (AHO) District, which applies to Block 210: Lots 21, 23, 33; Block 221: Lots 2.01 and 6; and Block 340: Lots 4, 6, and 8; **and Block 320: Lot 18.01**; is to provide areas within the Borough designated for multifamily and affordable housing opportunities. This district constitutes an overlay, providing property owners with the option of continuing the use of the property as permitted in the underlying zone (~~TBI-1, TBI-2,~~ **CCRCO**), or to redevelop with residential and affordable housing components.
- B. *No change proposed.*  
C. *No change proposed.*  
D. *No change proposed.*

- E. Minimum Off-Street Parking:
- (1) Townhouses: 2 spaces per dwelling unit, 1 of which shall be in a garage **and 1 in a driveway.**
  - (2) Multifamily: RSIS
  - ~~(3) A garage and driveway space shall count as two spaces, as well as a dedicated tandem space in a covered garage.~~
  - ~~(34) To the extent feasible, all off-street parking shall be located interior to the property and have limited visibility from the public rights-of-way.~~
  - (4) Additional parking design standards can be found in Article V.**
- F. Maximum Number of Units
- (1) Block 210 Lot 21: 9.5 units/acre
  - (2) Block 210 Lot 23: 9.5 units/acre
  - (3) Block 210 Lot 33: 9.5 units/acre
  - (4) Block 340 Lot 4: 16 units/acre
  - (5) Block 340 Lot 6: 17 units/acre
  - (6) Block 340 Lot 8: 9.5 units/acre
  - (7) Block 221 Lot 2.01: 15 units/acre
  - (8) Block 221 Lot 6: 16 units/acre
  - (9) Block 320 Lot 18.01: 14 units/acre**
  - ~~(10) At least 20% of all units created shall be set-aside to be occupied by households qualified as very low-, low-, or moderate-income, in accordance with current standards~~
- G. Affordable Housing
- (1) Very low-, low-, and moderate-income housing shall be constructed in accordance with the Council on Affordable Housing rules at N.J.A.C. 5:993-1 et seq. and the Uniform Housing Affordability Controls (UHAC) at N.J.A.C. 5:80-26.1 et seq. ~~including standards for the split between very low-, low-, and moderate-income housing, provided a minimum of 13% of the affordable units are very low-income units at 30% of the median income and 37% of the affordable units are low-income units with the (up to) 50% balance of units allowed at moderate-income; bedroom distribution; range of affordability; pricing and rent of units; affirmative marketing; 30-year minimum affordability controls and construction phasing with the market rate units developed on the tract.~~
- H. *No change proposed.*
- I. Additional Standards
- (1) Two or more principal uses are permitted on a single tract.
  - (2) Surface parking lots shall include landscaped medians and/or islands when any expanse of pavement exceeds 108 feet in width; otherwise, landscaping along the perimeter is required.
  - (3) For surface parking areas associated with multi-family structures, a minimum of 10% of the surface area shall be landscaped and shall include one shade tree for every 20 parking spaces.
  - (4) Each multifamily building shall not contain more than 48 units.
  - (5) No building shall be in excess of 200 feet in length.
  - (6) No dwelling unit and/or room intended for human habitation shall be located in a basement, cellar, or attic, with the exception that a townhouse structure and multifamily buildings may have a basement/cellar that contains a general-purpose room such as a family room or recreation room.
  - (7) Generators are required for all common areas in multifamily buildings.
  - (9) All developments shall include common open space in accordance with §310-51.**
  - ~~(810) Design standards can be found in Article V.~~

#### SECTION 4.

Article IV Section 310-32 of Chapter 310 of the Code of the Borough of New Providence, entitled "SAC Saint Andrew's Church Affordable Housing District" shall be established to read as follows:

#### §310.32

- A. Purpose
- The Saint Andrew's Church (SAC) Affordable Housing District is intended to provide an area within the Borough designated for affordable housing, while maintaining the place of worship in the zone. Should any other section of this Chapter conflict with the standards found herein, the standards of this section shall govern.
- B. Principal permitted uses
1. Single-family detached dwellings
  2. Two-family dwellings
  3. Multi-family
  4. Places of worship

- 5. Child-care centers
- C. Permitted accessory uses
  - 1. Home offices/Occupations
  - 2. Family day care homes
  - 3. Private parks and playgrounds
  - 4. Garages and off-street parking facilities
  - 5. Solar Installations
  - 6. Electric Vehicle Charging Stations
  - 7. Uses customary and incidental to the principal use
- D. Bulk standards  
The following bulk standards shall apply

<b>SAC Saint Andrew's Church Affordable Housing District Bulk Standards</b>	
Minimum Lot Area	3 Acres
Minimum Setbacks	
From South Street	25 feet
From Ethan Drive	40 feet
From R-1 Zone	25 feet
Maximum Lot Coverage	60%
Maximum Building Coverage	35%
Maximum Building Height	
Single-family, Two-family	2.5 Stories / 30 feet average grade to mean level of slope of roof; max 35 feet to peak
Places of worship	No building shall exceed 35 feet in height, with the exception of the height exceptions pursuant to §310-18
Multifamily	3 Stories / 38 feet

- E. Minimum Off-Street Parking
  - 1. Single-family, Two-family, Multifamily: RSIS
  - 2. For all other uses, See Schedule IV
- F. Maximum of 27 total dwelling units
- G. Of the total number of units, 24 shall be affordable units.
- H. Affordable Housing
  - 1. Very low-, low-, and moderate-income housing shall be constructed in accordance with the Council on Affordable Housing rules at N.J.A.C. 5:99-1 et seq. and the Uniform Housing Affordability Controls (UHAC) at N.J.A.C. 5:80-26.1 et seq.
- I. Signage
  - 1. The provisions of §310-49, entitled "Signs", shall govern any provisions regarding signage not addressed herein. Where there is conflict between §310-49 and this section, this section shall take precedence.
  - 2. One freestanding sign is permitted at each entrance to the development. Each sign shall not exceed 50 square feet per side.
- J. Additional Standards
  - 1. Two or more principal uses are permitted on a single tract.
  - 2. Access to the site shall be provided on South Street and Ethan Drive.
  - 3. Generators are required for all common areas in multifamily buildings.
  - 4. Design standards can be found in Article V.

**SECTION 5.**

Article IV Section 310-33 of Chapter 310 of the Code of the Borough of New Providence, entitled "NAHD Nokia Affordable Housing District" shall be established to read as follows:

§310.33

- A. Purpose  
The Nokia Affordable Housing District, which applies to Block 310 Lot 2, Block 311 Lot 3, Block 321 Lots 1, 2, 3, 4 & 5 and Block 382 Lots 4, 5 & 6; is intended to provide an area within the Borough designated for a mixed-use development consisting of multi-family units, townhouses, retail, a hotel, affordable housing, and open space, while maintaining appropriate

setbacks and site circulation. The mixed-use development shall complement the design and programming for the remaining area of the Nokia property in Berkeley Heights. All parcels shall be considered one development tract. Subdivision may be permitted after the entire site is comprehensively planned. Should any other section of this Chapter conflict with the standards found herein, the standards of this section shall govern.

**B. Principal permitted uses**

1. Multi-family
2. Townhouses
3. Stacked Townhouses
4. Age-restricted multi-family units (55+)
5. Age-restricted townhouse units (55+)
6. Mixed-use building
7. Hotel with a minimum of 100 rooms (including historical display uses)
8. Eating and drinking establishments
9. Restaurants (no drive-throughs)
10. Brewery
11. Brewpubs
12. Micro Distillery
13. Arts center
14. Educational Use: Specialized or Vocational Schools
15. Essential services
16. Ambulatory health care facility
17. Health care testing service facility
18. Veterinary clinic
19. Veterinary hospital
20. Financial Institutions
21. Co-working office space
22. Flex office space
23. Professional office space
24. Personal services
25. Retail sales
26. Retail sales, food
27. Retail services
28. Public open space
29. Recreation/sports facility
30. Child-care centers

**C. Permitted accessory uses**

1. Home Offices/Occupations
2. Private parks and playgrounds
3. Private dog parks
4. Garages and off-street parking facilities
5. Solar Installations
6. Electric Vehicle Charging Stations
7. Private recreational buildings associated with multifamily development only
8. Uses customary and incidental to the principal use

**D. Bulk standards**

The following bulk standards shall apply

<b>NAHD Nokia Affordable Housing District Bulk Standards</b>	
<b>Residential, Retail, Hotel, Mixed-Use Buildings:</b>	
Minimum Tract Area	40 Acres
Minimum Setbacks <sup>1</sup>	
From Mountain Avenue	75 feet
From Block 382 Lot 2	40 feet
From Glenside Road	75 feet
Maximum Lot Coverage <sup>2</sup>	65%
Maximum Building Coverage	40%
Maximum Building Height <sup>3</sup>	
Townhouses	3 Stories / 38 feet; If the residential structure contains a ground-level enclosed parking area, then the calculation of the height and number of stories shall exclude the ground-level parking area. The height of the structure shall be measured from the finished floor of the first floor above the ground level parking area to the mean level of the slope of the roof in the case of gabled, hip, and gambrel roofs with no other structures thereon except chimneys.

Stacked Townhouses	3 stories / 45 feet; The height of the structure shall be measured from the finished floor of the first floor above the ground level parking area to the mean level of the slope of the roof in the case of gabled, hip, and gambrel roofs with no other structures thereon except chimneys.
Multifamily	4 stories / 50 feet. If the residential structure contains any ground-level enclosed parking area, then the calculation of the height and number of stories shall exclude the ground-level parking, retail, or amenity area. The height of the structure shall be measured from the finished floor of the first floor above the ground level parking, retail, or amenity area.
Retail	3 Stories / 38 feet
Hotel	66 feet
Minimum Distance Between Buildings	No portion of a building shall be closer to another building than 50% of its height. In the event the adjacent buildings are different heights, the higher height shall govern.
Minimum Parking Setback for Multifamily <sup>4</sup>	Surface parking areas shall be set back a minimum of 10 feet from the principal building.
<b>Public Open Space:</b>	
Minimum Lot Area	1 Acre
<p>1. Setbacks shall be measured from the existing right-of-way (ROW) at the time of adoption of this ordinance.</p> <p>2. To allow design flexibility, there shall be no minimum or maximum lot area, coverage, depth, width, yard, or any other bulk requirements for the individual subdivided lots, provided that the project as a whole complies with the District's requirements.</p> <p>3. Appurtenances attached to principal structures such as Parapets, penthouses (not for human occupancy), chimneys, ventilators, skylights, stair tower, elevators, bulkheads and necessary mechanical appurtenances usually carried above roof level shall not be considered when determining the height of the building, and are not subject to height limitations, except that such features shall not exceed 20% of total roof area and shall not exceed a height such as is necessary to accomplish the purpose for which it is intended to serve.</p> <p>4. With the exception of driveways.</p>	

E. Minimum Off-Street Parking

1. Single-family, Two-family: RSIS
2. Multifamily, Stacked Townhomes: 1.7 spaces per unit
3. Townhouses: 2 spaces per unit, one of which shall be located in a garage and one in a driveway
4. For all other uses, See Schedule IV
5. To the extent feasible, all off-street parking and loading areas shall be located interior to the property and have limited visibility from the public rights-of-way. No parking shall be permitted between the building line and the Mountain Ave public right-of-way.

F. Maximum Number of Units

1. 500 dwelling units
2. Of the total number of units, 100 shall be affordable units. In no event shall this zone produce less than 100 affordable units.

G. Affordable Housing

1. Very low-, low-, and moderate-income housing shall be constructed in accordance with the Council on Affordable Housing rules at N.J.A.C. 5:99-1 et seq. and the Uniform Housing Affordability Controls (UHAC) at N.J.A.C. 5:80-26.1 et seq.

H. Buffers

1. There shall be a buffer area along Mountain Avenue and Glenside Road. The buffer area shall be 60 feet off Mountain Avenue and 60feet off Glenside Road.
2. Buffering shall be located to minimize the headlights of vehicles, noise, light from structures, the movement of people and vehicles, and to shield activities from adjacent properties when necessary. Buffering may include, but not be limited to, evergreens,

shrubs, landscaping, berms, rocks, boulders, open space, ponds, stormwater management facilities, steep slopes, sidewalks, walking trails, deciduous trees, or combinations thereof to achieve the stated objectives. Existing natural vegetation, if appropriate for the above stated purposes, shall be retained.

3. Extensive buffering shall be required where intensive land uses abut less intensive uses (i.e. single-family to multifamily).
4. No buildings, signs, structures, storage of materials, roadways or parking shall be permitted within the buffer areas, with the exception of access roads into the development and freestanding signs, in accordance this section.

I. Provisions for Block 310 and 311

1. Block 310, Lot 2 and Block 311, Lot 3 are intended for the development of public open space.

J. Signage

1. The provisions of §310-49, entitled "Signs," shall govern any provisions regarding signage not addressed herein. Where there is conflict between §310-49 and this section, this section shall take precedence.
2. Freestanding signs may be internally illuminated and may also be illuminated by an exterior light source, facing down, not upwards toward the sky.
3. Freestanding signs shall be setback a minimum of 15 feet from the lot line.
4. Freestanding signs shall be setback a minimum of 12 feet from internal roadways.
5. Directional signs are permitted on all internal roadways. Directional signs shall be consistent with each other and the tract's other signage.
6. Numbers indicating the addresses of the multifamily residential buildings are permitted to be hung on the exterior walls, not to exceed 8 square feet and not to protrude more than 6 inches from the building's surface.
7. Notwithstanding the provisions set forth above, and in addition to any new signage permitted herein, the development may reconstruct, repair, or replace its legally established signage, provided that the total sign area of the proposed signage does not exceed the sign area of the existing signage being replaced.

K. Additional Standards

1. Two or more principal uses are permitted on a single tract.
2. For surface parking areas, a minimum of 10% of the surface area shall be landscaped and shall include one shade tree for every 20 parking spaces.
3. All loading areas shall be appropriately screened from public view.
4. Drive-throughs are not permitted.
5. Sidewalks shall be provided along Mountain Avenue and Glenside Road and at a minimum along one side of the internal roads, providing access to all structures and parking areas.
6. Sidewalks shall be a minimum of 4 feet in width. In no event shall sidewalk clearance be less than the minimum levels set by the Americans with Disabilities Act.
7. To the extent feasible, the mature trees on site shall remain within the buffer.
8. No dwelling unit and/or room intended for human habitation shall be located in a basement, cellar or attic, with the exception that a townhouse structure and multifamily buildings may have a basement/cellar that contains a general-purpose room such as a family room or recreation room.
9. All multi-family developments shall include common open space in accordance with §310-51.
10. Generators are required for life safety and lighting for all common areas in multifamily buildings.
11. To the extent feasible, design standards found in Article V will be adhered to.

**SECTION 6.**

Article V Section 310-53 of Chapter 310 of the Code of the Borough of New Providence, entitled Residential Building and Site Design Standards, shall be amended as follows:

C. Specific Design Standards Applicable to the A4, AH-ARO, ~~and~~ AHO, and NAHD Districts.

**SECTION 7.**

Article V Section 310-57 of Chapter 310 of the Code of the Borough of New Providence, entitled Off-Street Parking and Loading Design Standards, shall be amended as follows:

- A. No change proposed.
- B. Size of Space
  - (1) Standard off-street parking space serving uses other than one- and two-family units shall measure not less than nine by eighteen (9 x 18) feet, exclusive of access drives and aisles, and shall be of usual shape and condition.
  - (2) Townhouse driveways shall be a minimum of 18 feet from the garage door to the sidewalk.

- ~~(3) Where front overhang of the vehicle is possible onto a paved or grass area not used for circulation, parking or landscaping, the space may be reduced to nine by seventeen (9 x 17) feet.~~
- (4) The size and number of handicap spaces shall be as required by law.
- (5) Loading Space Dimensions.
- Loading spaces for multifamily or office uses shall measure a minimum of 10 feet in width and 35 feet in length (10' x 35').
  - Loading spaces for all other nonresidential uses shall measure 12 feet in width and 60 feet in length (12' x 60')

### SECTION 8.

Article V Section 310-48 of Chapter 310 of the Code of the Borough of New Providence, entitled Off-Street Parking and Loading Requirements shall be amended as follows:

A-H *No change proposed.*

#### I. Electric Vehicle Supply/Service Equipment

1-5 *No change proposed*

#### (6) Reasonable Standards for All New EVSE and Make-Ready Parking Space

a-c *No change proposed*

#### (d) Safety

- Each publicly accessible EVSE shall be located at a parking space that is designated for electric vehicles only and identified by green painted pavement and/or curb markings, a green painted charging pictograph symbol, and appropriate signage pursuant to subparagraph (e) below.
- Where EVSE is installed, adequate site lighting and landscaping shall be provided in accordance with New Providence's ordinances and regulations.
- Adequate EVSE protection such as concrete-filled steel bollards shall be used for publicly accessible EVSE. Non-mountable curbing may be used in lieu of bollards if the EVSE is setback a minimum of 24 inches from the face of the curb. Any stand-alone EVSE bollards should be 3 to 4-feet high with concrete footings placed to protect the EVSE from accidental impact and to prevent damage from equipment used for snow removal.
- EVSE outlets and connector devices shall be no less than 36 inches and no higher than 48 inches from the ground or pavement surface where mounted and shall contain a cord management system as described in 5. below. Equipment mounted on pedestals, lighting posts, bollards, or other devices shall be designated and located as to not impede pedestrian travel, create trip hazards on sidewalks, or impede snow removal.
- Each EVSE shall incorporate a cord management system or method to minimize the potential for cable entanglement, user injury, or connector damage. Cords shall be retractable or have a place to hang the connector and cord a safe and sufficient distance above the ground or pavement surface. Any cords connecting the charger to a vehicle shall be configured so that they do not cross a driveway, sidewalk, or passenger unloading area.
- Where EVSE is provided within a pedestrian circulation area, such as a sidewalk or other accessible route to a building entrance, the EVSE shall be located so as not to interfere with accessibility requirements of the Uniform Construction Code, N.J.A.C. 5:23, and other applicable accessibility standards.
- Publicly accessible EVSEs shall be maintained in all respects, including the functioning of the equipment. A 24-hour on-call contact shall be provided on the equipment for reporting problems with the equipment or access to it. To allow for maintenance and notification, New Providence shall require the owners/designee of publicly accessible EVSE to provide information on the EVSE's geographic location, date of installation, equipment type and model, and owner contact information.
- EV charging in private garages must include smoke and temperature alarms, subject to review by the Borough's Fire Code Official.**
- For fire safety purposes, EV charging in non-private garages shall be located near the entrance.**
- To the maximum extent practicable, electric bikes and scooters shall be stored in a covered outdoor area. Pathways for egress, such as a corridor, hallway, or staircase, shall not be utilized for the storage of electric bikes or scooters.**

### SECTION 9.

If any term or provision of this Ordinance is held to be illegal, invalid, or unenforceable by a court of competent jurisdiction, in whole or in part, such determination shall not affect the validity of the remaining terms and provisions of this Ordinance.

**SECTION 10.**

To the extent that any provision of the Code of the Borough of New Providence is found to conflict with this Ordinance, in whole or in part, this Ordinance shall control. In all other respects, the Zoning and Land Use Regulations Ordinance of the Borough of New Providence shall remain unchanged.

**SECTION 11.**

In order to avoid accidental repeal of existing provisions, the Borough Clerk and the Borough Counsel are hereby authorized to change any chapter numbers, article numbers and/or section numbers in the event that the codification of this Ordinance reveals that there is a conflict between those numbers and the existing Code.

**SECTION 12.**

This Ordinance shall take effect upon passage and publication as required by law.

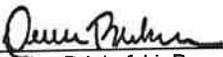
INTRODUCTION: March 10, 2026

PUBLIC HEARING: March 24, 2026

ADOPTION: March 24, 2026

BOROUGH OF NEW PROVIDENCE  
COUNTY OF UNION  
STATE OF NEW JERSEY

Attest:

  
\_\_\_\_\_  
Denise Brinkofski, Borough Clerk

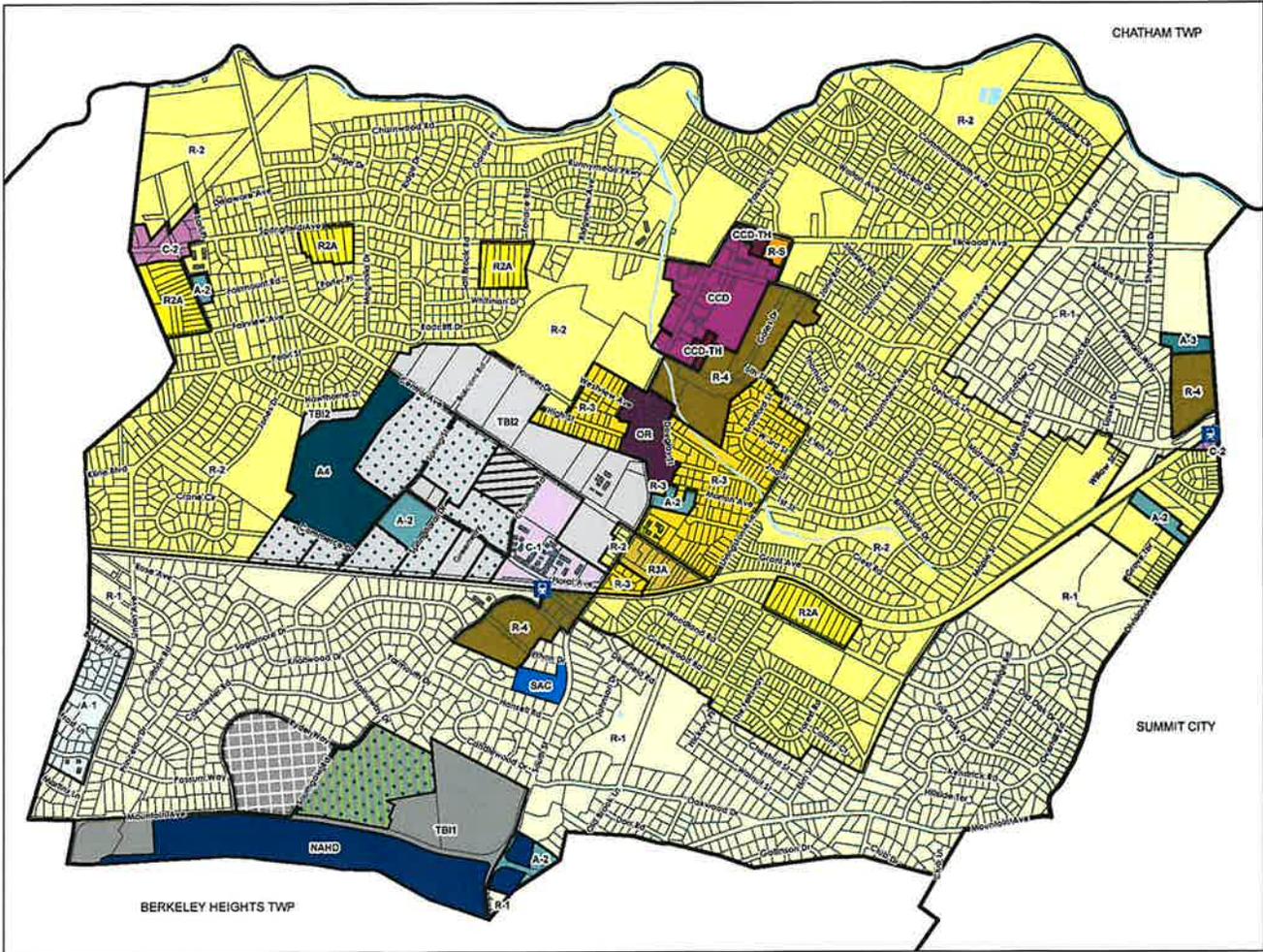
  
\_\_\_\_\_  
Allen Morgan, Mayor

### Zoning New Providence, NJ

- Zoning**
- A1: Affordable Housing District 6 units/acre
  - A2: Affordable Housing District 10 units/acre
  - A3: Affordable Housing District 14 units/acre
  - A4: Affordable Housing Zone
  - SAC: Saint Andrew's Church Affordable Housing District
  - NAHD: Nokia Affordable Housing District
  - C1: Specialty Commercial District
  - C2: Neighborhood Commercial District
  - CCD: Central Commercial District
  - CCD-TH: Central Commercial Town House District
  - OR: Office & Residential District
  - R1: Single Family Residential
  - R2: Single Family Residential
  - R2A: Single Family District
  - R3: Two Family Residential
  - R3A: Single and Two Family District
  - R4: Multi Family
  - RS: Residential Senior Citizen
  - TBI 1: Technology and Business Innovation Zone I
  - TBI 2: Technology and Business Innovation Zone II
- Zoning Overlays**
- AH-ARC: Affordable Housing Age-Restricted Overlay
  - AHO: Affordable Housing Overlay
  - PACO: Planned Adult Community Overlay
  - CCRCO: Continuing Care Retirement Community Overlay



Source: NJGIN, NJGIS, NJDEP, Borough of New Providence



**BOROUGH OF NEW PROVIDENCE  
ORDINANCE 2026-02**

**AN ORDINANCE OF THE BOROUGH OF NEW PROVIDENCE, COUNTY OF UNION, STATE OF NEW JERSEY, AMENDING THE CODE OF THE BOROUGH BY REPEALING AND REPLACING CHAPTER 275 (HOUSING) IN ITS ENTIRETY**

**WHEREAS**, on March 20, 2024, Governor Murphy signed into law an Amendment of the Fair Housing Act (N.J.S.A. 52:27D-301 et seq.) (hereinafter "Amended FHA"); and

**WHEREAS**, the Amended FHA authorized the Department of Community Affairs ("DCA") and the New Jersey Housing and Mortgage Finance Agency ("NJHMFA") as administrative rulemaking entities to amend and update the regulations related to the collection of residential and non-residential development fees and the Uniform Housing Affordability Controls ("UHAC") respectively; and

**WHEREAS**, the DCA Division of Local Planning Services promulgated new rules at N.J.A.C. 5:99-1 et sq. for the collection of residential and non-residential development fees, which became effective on December 15, 2025; and

**WHEREAS**, the NJHMFA promulgated new UHAC rules at N.J.A.C. 5:80-1 et seq., which became effective November 6, 2025; and

**WHEREAS**, the Amended FHA and the Affordable Housing Dispute Resolution Program Administrative Directive #14-24 require that municipal ordinances related to the collection of development fees and the application of the UHAC be updated to be consistent with the new rules; and

**WHEREAS**, the Borough Council of the Borough of New Providence, Union County, New Jersey, desires to repeal and replace Chapter 275 (Affordable Housing), of the Code of the Borough of New Providence in its entirety to include provisions addressing the Borough's constitutional obligation to provide for its fair share of very low-, low-, and moderate-income housing, as required by the Amended FHA; and

**WHEREAS**, this Ordinance implements and incorporates the Borough's Housing Element and Fair Share Plan and addresses the requirements of the Amended FHA, N.J.A.C. 5:80-1 et seq., as amended and supplemented, and N.J.A.C. 5:99-1 et seq., as amended and supplemented.

**NOW, THEREFORE BE IT ORDAINED**, by the Mayor and Council of the Borough of New Providence, County of Union, State of New Jersey, as follows:

**SECTION 1.** Chapter 275, Article I of the Code of the Borough of New Providence shall be repealed and replaced in its entirety to read as follows:

## **Article I Affordable Housing Obligation**

### **§275-1 Introduction & Applicability**

- A. This section of the Code sets forth regulations regarding the very low-, low- and moderate-income housing units in the Borough of New Providence consistent with the provisions outlined in P.L 2024, Chapter 2, including the amended Fair Housing Act ("FHA") at N.J.S.A. 52:27D-301 et seq., as well as the Department of Community Affairs, Division of Local Planning Services ("LPS") at N.J.A.C. 5:99 et seq., statutorily upheld existing regulations of the now-defunct Council on Affordable Housing ("COAH") at N.J.A.C. 5:93 and 5:97, the Uniform Housing Affordability Controls ("UHAC") at N.J.A.C. 5:80-26.1 et seq., and as reflected in the adopted municipal Fourth Round Housing Element and Fair Share Plan ("HEFSP").
- B. This Ordinance is intended to ensure that very low-, low- and moderate-income units ("affordable units") are created with controls on affordability over time and that very low-, low- and moderate-income households shall occupy these units pursuant to statutory requirements. This Ordinance shall apply to all inclusionary developments, individual affordable units, and 100% affordable housing developments except where inconsistent with applicable law. Low-Income Housing Tax Credit financed developments shall adhere to the provisions set forth below in item 5.c. below.
- C. The Borough of New Providence Planning Board has adopted a HEFSP pursuant to the Municipal Land Use Law at N.J.S.A. 40:55D-1, et seq. The Fair Share Plan describes the ways the municipality shall address its fair share of very low-, low- and moderate-income housing as approved by the Superior Court and documented in the Housing Element.
- D. This Ordinance implements and incorporates the relevant provisions of the HEFSP and addresses the requirements of P.L 2024, Chapter 2, the FHA, N.J.A.C. 5:99, NJ Supreme Court upheld COAH regulations at N.J.A.C. 5:93 and 5:97, and UHAC at N.J.A.C. 5:80-26.1, as may be amended and supplemented.
- E. Applicability
  - (1) The provisions of this Ordinance shall apply to all affordable housing developments and affordable housing units that currently exist and that are proposed to be created pursuant to the municipality's most recently adopted HEFSP.
  - (2) This Ordinance shall apply to all developments that contain very low-, low- and moderate-income housing units included in the Municipal HEFSP, including any unanticipated future developments that will provide very low-, low- and moderate-income housing units.
  - (3) Projects receiving federal Low Income Housing Tax Credit financing and are proposed for credit shall comply with the low/moderate split and bedroom

distribution requirements, maximum initial rents and sales prices requirements, affirmative fair marketing requirements of UHAC at N.J.A.C. 5:80-26.16 and the length of the affordability controls applicable to such projects shall be not less than a 30-year compliance period plus a 15-year extended-use period, for a total of not less than 45 years.

## **§275-2 Definitions**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Affordable Housing Trust Fund" or "AHTF" means that non-lapsing, revolving trust fund established in DCA pursuant to N.J.S.A. 52:27D-320 and N.J.A.C. 5:43 to be the repository of all State funds appropriated for affordable housing purposes. All references to the "Neighborhood Preservation Nonlapsing Revolving Fund" and "Balanced Housing" mean the AHTF.

"Affordable unit" means a housing unit proposed or developed pursuant to the Act, including units created with municipal affordable housing trust funds.

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

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

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

unfurnished room, a private bathroom, a kitchenette, and a lockable door on the unit entrance.

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

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

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

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

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

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

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

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

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

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

"Deficient housing unit" means a housing unit with health and safety code violations that require the repair or replacement of a major system. A major system includes weatherization, roofing, plumbing (including wells), heating, electricity, sanitary

plumbing (including septic systems), lead paint abatement and/or load bearing structural systems.

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

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

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

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

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

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

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

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

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

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

"Exclusionary zoning litigation" means litigation challenging the fair share plan, housing element, ordinances, or resolutions that implement the fair share plan or

housing element of a municipality based on alleged noncompliance with the Act or the Mount Laurel doctrine, which litigation shall include, but shall not be limited to, litigation seeking a builder's remedy.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"New Jersey Housing Resource Center" or "Housing Resource Center" means the online affordable housing listing portal, or its successor, overseen by the Agency pursuant to N.J.S.A. 52:27D-321.3 et seq.

"95/5 restriction" means a deed restriction governing a restricted ownership unit that is part of a housing element that received substantive certification from COAH pursuant to N.J.A.C. 5:93, as it was in effect at the time of the receipt of substantive certification, before October 1, 2001, or any other deed restriction governing a restricted ownership unit with a seller repayment option requiring 95 percent of the price differential to be paid to the municipality or an instrument of the municipality at the closing of a sale at market price.

"Non-exempt sale" means any sale or transfer of ownership of a restricted unit to one's self or to another individual other than the transfer of ownership between spouses or civil union partners; the transfer of ownership between former spouses or civil union partners ordered as a result of a judicial decree of divorce or judicial separation, but not including sales to third parties; the transfer of ownership between family members as a result of inheritance; the transfer of ownership through an executor's deed to a class A beneficiary; and the transfer of ownership by court order.

"Nonprofit" means an organization granted nonprofit status in accordance with section 501(c)(3) of the Internal Revenue Code.

"Non-residential development" means:

Any building or structure, or portion thereof, including, but not limited to, any appurtenant improvements, which is designated to a use group other than a residential use group according to the State Uniform Construction Code, N.J.A.C. 5:23, promulgated to effectuate the State uniform Construction Code Act, N.J.S.A. 52:27D-119 et seq., including any subsequent amendments or revisions thereto;

Hotels, motels, vacation timeshares, and child-care facilities; and

The entirety of all continuing care facilities within a continuing care retirement community which is subject to the Continuing Care Retirement Community Regulation and Financial Disclosure Act, N.J.S.A.52:27D-330 et seq.

"Non-residential development fee" means the fee authorized to be imposed pursuant to N.J.S.A. 40:55D-8.1 through 40:55D-8.7.

"Order for repose" means the protection a municipality has from a builder's remedy lawsuit for a period of time from the entry of a judgment of compliance by the Superior Court. A judgment of compliance often results in an order for repose.

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

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

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

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

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

"Prior round unit" means a housing unit that addresses a municipality's fair share obligation from a round prior to the fourth round of affordable housing obligations, including any unit that: (1) received substantive certification from COAH; (2) is part of a third-round settlement agreement or judgment of compliance approved by a court of competent jurisdiction, inclusive of units created pursuant to a zoning designation adopted as part of the settlement agreement or judgment of compliance to create a realistic opportunity for development; (3) is subject to a grant agreement or other contract with either the State or a political subdivision thereof entered into prior to July 1, 2025, pursuant to either item (1) or (2) above; or (4) otherwise addresses a municipality's fair share obligation from a round prior to the fourth round

of affordable housing obligations. A unit created after the enactment of P.L. 2024, c. 2 (N.J.S.A. 52:27D-304.1) on March 20, 2024, is not a prior round unit unless: (1) it is created pursuant to a prior round development plan or zoning designation that received COAH or court approval on or before the cutoff date of June 30, 2025, or the date that the municipality adopts the implementing ordinances and resolutions for the fourth round of affordable housing obligations, whichever occurs sooner; and (2) its siting and creation are consistent with the form of the prior round development plan or zoning designation in effect as of the cutoff date, without any amendment or variance.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Supportive housing household" means a very low-, low- or moderate-income household certified as income eligible by an administrative agent in accordance with N.J.A.C. 5:80-26.14, in which at least one member is an individual who requires supportive services to maintain housing stability and independent living and who is part of a population identified by federal or state statute, regulation, or program guidance as eligible for supportive or special needs housing. Such populations include, but are not limited to: persons with intellectual or developmental disabilities,

persons with serious mental illness, person with head injuries (as defined in Section 2 of P.L. 1977), persons with physical disabilities or chronic health conditions, persons who are homeless as defined by the U.S. Department of Housing and Urban Development at 24 C.F.R. Part 578, survivors of domestic violence, youth aging out of foster care, and other special needs populations recognized under programs administered by the U.S. Department of Housing and Urban Development, the Low-Income Housing Tax Credit Program, the McKinney–Vento Act, or the New Jersey Department of Human Services. A supportive housing household may include family members, unrelated individuals, or live-in aides, provided that the household meets the income eligibility requirements of this subchapter, except that in the case of unrelated individuals not operating as a family unit, income eligibility shall be tested on an individual basis rather than in the aggregate; the unit is leased or sold subject to the affordability controls established herein; and the supportive services available to the household are designed to promote housing stability, independent living, and community integration. The determination of whether unrelated individuals are operating as a family unit shall be made based on the applicant's self-identification of household members on the affordable housing application.

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

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

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

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

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

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

"Unit type" means type of dwelling unit with various building standards including but not limited to single-family detached, single-family attached/townhouse, stacked townhouse (attached building containing 2 units each with separate entrances), duplex (detached building containing 2 units each with separate entrances), triplex (3 units each with separate entrance), quadplex (4 units each with separate entrance), multifamily / flat (2 or more units with a shared entrance). Inclusion of a garage, or not, shall not define the unit type.

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

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

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

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

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

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

### **§275-3 Monitoring and Reporting Requirements**

A. The municipality shall comply with the following monitoring and reporting requirements regarding the status of the implementation of its court-approved Housing Element and Fair Share Plan:

- (1) The municipality shall provide electronic monitoring data with the Department pursuant to P.L 2024, Chapter 2 and N.J.A.C. 5:99 through the Affordable Housing Monitoring System (AHMS). All monitoring information required to be made public by the FHA shall be available to the public on the Department's website at <https://www.nj.gov/dca/dlps/hss/MuniStatusReporting.shtml>.

- (2) On or before February 15 of each year, the municipality shall provide annual reporting of its municipal Affordable Housing Trust Fund activity to the Department on the AHMS portal. The reporting shall include an accounting of all municipal Affordable Housing Trust Fund activity, including the sources and amounts of funds collected and the amounts and purposes for which any funds have been expended, for the previous year from January 1st to December 31st.
- (3) On or before February 15 of each year, the annual reporting of the status of all affordable housing activity shall be provided to the Department on the AHMS portal, for the previous year from January 1st to December 31st.

#### **§275-4 Affordable Housing Programs**

- A. Pursuant to amended UHAC regulations at N.J.A.C. 5:80-26.1 et seq. and, in addition, pursuant to P.L. 2024, c.2 and specifically to the amended FHA at N.J.S.A. 52:27D-311.m, "All parties shall be entitled to rely upon regulations on municipal credits, adjustments, and compliance mechanisms adopted by the Council on Affordable Housing unless those regulations are contradicted by statute, including but not limited to P.L. 2024, c.2, or binding court decisions." The following are many of the main provisions of the COAH regulations at either N.J.A.C. 5:93 or 5:97 that have been upheld by the NJ Supreme Court. Municipalities should consult the cited full COAH regulations when preparing the HEFSP for required documentation, etc. Additional compliance details may also be included in the specific municipal program manual.
- B. Rehabilitation Programs (per N.J.A.C. 5:93-5.2 with updated provisions herein per N.J.A.C. 5:97-6.2 related to credit towards a municipal present need obligation).
  - (1) The rehabilitation program, primarily participation in Union County rehabilitation programs and the Borough-wide rental rehabilitation program, shall be designed to renovate deficient housing units occupied or intended to be occupied by very low-, low- and moderate-income households such that, after rehabilitation, these units will comply with the New Jersey State Housing Code pursuant to N.J.A.C. 5:28-1.1 et seq or the Rehabilitation Subcode, N.J.A.C. 5:23-6 to the extent applicable.
  - (2) Both ownership and rental units shall be eligible for rehabilitation funds.
  - (3) All rehabilitated units shall remain affordable to very low-, low- and moderate-income households for a period of 10 years (the control period). For owner-occupied units, the control period shall be enforced with a mortgage and note and for renter-occupied units the control period will be enforced with a deed restriction.
  - (4) The municipality shall dedicate a minimum average hard cost of \$10,000 for each unit to be rehabilitated through this program and in addition shall dedicate associated rehabilitation program soft costs such as case management, inspection fees and work write-ups.

- (5) The municipality shall designate, subject to the approval of the Department, one or more Administrative Agents to administer the rehabilitation program in accordance with P.L 2024, Chapter 2. The Administrative Agent(s) shall provide rehabilitation manuals for ownership and rental rehabilitation programs. Manuals shall be adopted by resolution of the governing body. Both rehabilitation manuals shall be available for public inspection in the Office of the Municipal Clerk and on the municipal affordable housing web page.
- (6) Households determined to be very low-, low-, or moderate-income may participate in a rehabilitation program. Rehabilitated units shall be exempt from the very low-income requirements, low/mod split, and bedroom distribution requirements of UHAC, but shall be administered in accordance with the following:
  - (a) If a unit is vacant at the time of rehabilitation, or if a rehabilitated unit becomes vacant and is re-rented before the expiration of the affordability controls, the deed restriction shall require that the unit be rented to a low- or moderate-income household at an affordable rent.
  - (b) If a rental unit is occupied by a tenant at the time rehabilitation is completed, the rent charged after rehabilitation shall not exceed the lesser of the tenant's current rent or the maximum rent permitted under UHAC.
  - (c) Rents in rehabilitated units may increase annually based on the standards in UHAC.
  - (d) At the time of application, applicant households and/or tenant households shall be subject to income eligibility determinations in accordance with UHAC.

**§275-5 New Construction Programs**

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

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

75	75
90	100

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

(1) Design of 100 percent affordable developments:

- (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 Neighborhood Preservation Balanced Housing rules at N.J.A.C. 5:43-2.4.
- (b) Each bedroom in each restricted unit must have at least one window.
- (c) Restricted units must include adequate air conditioning and heating.

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

- (a) Restricted units must use the same building materials and architectural design elements (for example, plumbing, insulation, or siding) as market-rate units of the same unit type (for example, flat or townhome) within the same development, except that restricted units and market-rate units may use different interior finishes. This shall apply to prior round units.
- (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. Prior round affordable units shall be integrated with market rate units to the extent feasible.
- (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. This shall apply to prior round units.
- (e) Restricted units must include adequate air conditioning and heating and must use the same type of cooling and heating sources as market-rate units of the same unit type. This shall apply to prior round units.
- (f) Each bedroom in each restricted unit must have at least one window.

- (g) Restricted units must be of the same unit type as market-rate units within the same building.
  - (h) Restricted units and bedrooms must be no less than 90 percent of the minimum size prescribed by the Neighborhood Preservation Balanced Housing rules at N.J.A.C. 5:43-2.4.
- (3) Design of developments containing for-sale units, including those with a mix of rental and for-sale units. Restricted rental units shall meet the requirements of section b above. Restricted sale units shall comply with the below:
- (a) Restricted units must use the same building standards as market-rate units of the same unit type (for example, flat, townhome, or single-family home), except that restricted units and market-rate units may use different interior finishes. This shall apply to prior round units.
  - (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. Prior round affordable units shall be integrated with market rate units to the extent feasible.
  - (c) Restricted units may be of different unit housing product types than market-rate units, provided that there is a restricted option available for each market rate housing type. Developments containing market-rate duplexes, townhomes, and/or single-family homes shall offer restricted housing options that also include duplexes, townhomes, and/or single-family homes. At the discretion of the reviewing board, penthouses and higher priced end townhouses may be exempt from this requirement. The proper ratio for restricted to market-rate unit type shall be subject to municipal ordinance or, if not specified, shall be determined at the time of site plan approval.
  - (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 Neighborhood Preservation Balanced Housing rules at N.J.A.C. 5:43-2.4.
  - (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. This shall apply to prior round units.
  - (g) Each bedroom in each restricted unit must have at least one window; and
  - (h) Restricted units must include adequate air conditioning and heating.

#### D. Utilities.

- (1) Affordable units shall utilize the same type of cooling and heating source as market-rate units within the affordable housing development.
  - (2) Tenant-paid utilities that are included in the utility allowance shall be so stated in the lease and shall be consistent with the utility allowance in accordance with N.J.AC 5:80-26.13(e).
- E. Low/moderate split and bedroom distribution.
- (1) Affordable units shall be divided equally between low- and moderate-income units, except that where there is an odd number of affordable housing units, the extra unit shall be a low-income unit.
  - (2) In each affordable housing development, at least 50% of the restricted units within each bedroom distribution rounded up to the nearest whole number shall be very low- or low-income units. The municipality has chosen to allow rounding.
  - (3) Within rental developments, of the total number of affordable rental units, at least 13%, rounded up to the nearest whole number, shall be affordable to very low-income households. The very low-income units shall be distributed between each bedroom count as proportionally as possible, to the nearest whole unit, to the total number of restricted units within each bedroom count, and counted as part of the required number of low-income units within the development.
  - (4) Affordable housing developments that are not age-restricted or supportive housing shall be structured such that:
    - (a) At a minimum, the number of bedrooms within the restricted units equals twice the number of restricted units;
    - (b) Two-bedroom and/or three-bedroom units compose at least 50 percent of all restricted units;
    - (c) The combined number of efficiency and one-bedroom units shall be no greater than 20%, rounded down, of the total number of low- and moderate-income units. The municipality has chosen to allow rounding.
    - (d) At least 30% of all low- and moderate-income units, rounded up shall be two-bedroom units. The municipality has chosen to allow rounding.
    - (e) At least 20% of all low- and moderate-income units, rounded up shall be three-bedroom units. The municipality has chosen to allow rounding.
    - (f) The remaining units may be allocated among two- and three- bedroom units at the discretion of the developer.
  - (5) Affordable housing developments that are age-restricted or supportive housing, except those supportive housing units whose sponsoring program determines the unit arrangements, shall be structured such that, at a minimum, the number of bedrooms shall equal the number of age-restricted or supportive housing low- and moderate-income units within the inclusionary development. Supportive housing units whose sponsoring program determines the unit

arrangement shall comply with all requirements of the sponsoring program. The standard may be met by having all one-bedroom units or by having a two-bedroom unit for each efficiency unit. In affordable housing developments with 20 or more restricted units that are age-restricted or supportive housing, two-bedroom units must comprise at least 5% of those restricted units.

F. Accessibility requirements.

- (1) Any new construction shall be adaptable; however, elevators shall not be required in any building or within any dwelling unit for the purpose of compliance with this section. In buildings without elevator service, only ground floor dwelling units shall be required to be constructed to conform with the technical design standards of the barrier free subcode. "Ground floor" means the first floor with a dwelling unit or portion of a dwelling unit, regardless of whether that floor is at grade. A building may have more than one ground floor.
- (2) Notwithstanding the exemption for townhouse dwelling units in the barrier free subcode, the first floor of all townhouse dwelling units and of all other multifloor dwelling units that are attached to at least one other dwelling unit shall be subject to the technical design standards of the barrier free subcode and shall include the following features:
  - (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 however an interior accessible route of travel shall not be required between stories;
  - (d) An adaptable room that can be used as a bedroom, with a door, or the casing for the installation of a door that is compliant with the Barrier Free Subcode, on the first floor;
  - (e) If not all of the foregoing requirements in b.i. through b.iv. can be satisfied, then an interior accessible route of travel shall be provided between stories within an individual unit; and
  - (f) An accessible entranceway as set forth in P.L. 2005, c. 350 (N.J.S.A. 52:27D-311a et seq.) and the Barrier Free Subcode, N.J.A.C. 5:23-7, or evidence that the municipality has collected funds from the developer sufficient to make 10% of the adaptable entrances in the development accessible:
    - [1] 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.
    - [2] To this end, the builder of restricted units shall deposit funds within the Affordable Housing Trust Fund sufficient to install accessible entrances in 10% of the affordable units that have been constructed with adaptable entrances.

- [3] The funds deposited shall be expended for the sole purpose of making the adaptable entrance of an affordable unit accessible when requested to do so by a person with a disability who occupies or intends to occupy the unit and requires an accessible entrance.
  - [4] The developer of the restricted units shall submit to the Construction Official a design plan and cost estimate for the conversion from adaptable to accessible entrances.
  - [5] Once the Construction Official has determined that the design plan to convert the unit entrances from adaptable to accessible meets the requirements of the Barrier Free Subcode, N.J.A.C. 5:23-7, and that the cost estimate of such conversion is reasonable, payment shall be made to the Affordable Housing Trust Fund and earmarked appropriately.
- (g) Full compliance with the foregoing provisions shall not be required where an entity can demonstrate that it is "site-impracticable" to meet the requirements. If full compliance with this section would be site impracticable, compliance with this section for any portion of the dwelling shall be required to the extent that it is not site impracticable. Determinations of site impracticability shall comply with the Barrier Free Subcode at N.J.A.C. 5:23-7.
- G. Extension of Controls Program (for ownership units per N.J.A.C. 5:97-6.14 and UHAC at N.J.A.C. 5:80-26.6(h) through (k) and (m); and for rental units per N.J.A.C. 5:97-6.14 and N.J.A.C. 5:80-26.12(h) through (k)).
- (1) An extension of affordability controls program is established to maintain and extend the affordability of deed restricted units scheduled to come out of their affordability control period, subject to N.J.A.C. 5:97-6.14 and UHAC, including the following:
    - (a) The affordable unit meets the criteria for prior cycle (April 1, 1980 - December 15, 1986) or post December 15, 1986 credits set forth in N.J.A.C. 5:97.
    - (b) The affordability controls for the unit are scheduled to expire in the current round; or in the next round of housing obligations if the municipal election to extend controls is made no earlier than one year before the end of the current round;
    - (c) The municipality shall obtain a continuing certificate of occupancy or a certified statement from the municipal building inspector stating that the restricted unit meets all code standards.
    - (d) If a unit requires repair and/or rehabilitation work in order to receive a continuing certificate of occupancy or certified statement from the municipal building inspector, the municipality shall fund and complete the work.
    - (e) The municipality shall adhere to the process for extending controls pursuant to UHAC for extending ownership units and rental units, either inclusionary or 100% affordable developments.

(f) The deed restriction for the extended control period shall be filed with the County Clerk.

H. Assisted Living Residence (per N.J.A.C. 5:97-6.11).

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

I. Supportive Housing and Group Homes (per N.J.A.C. 5:97-6.10).

- (1) The following provisions shall apply to group homes, residential health care facilities, and supportive shared living housing:
  - (a) The unit of credit shall be the bedroom. However, the unit of credit shall be the unit if occupied by a single person or household.
  - (b) Housing that is age-restricted shall be included with the maximum number of units that may be age-restricted pursuant to the Act.
  - (c) Occupancy shall not be restricted to youth under 18 years of age.

- (d) In affordable developments with 20 or more restricted units that are supportive housing, two-bedroom units must compose at least five percent of those restricted units.
- (e) The bedrooms and/or units shall comply with UHAC with the following exceptions:
  - [1] Affirmative marketing; however, group homes, residential health care facilities, permanent supportive housing and supportive shared living housing shall be affirmatively marketed to broadest possible population of qualified individuals with special needs in accordance with a plan approved by the sponsoring program;
  - [2] Affordability average and bedroom distribution (N.J.A.C. 5:80-26.4).
- (f) With the exception of units established with capital funding through a 20-year operating contract with the Department of Human Services, Division of Developmental Disabilities, group homes, residential health care facilities, supportive shared living housing and permanent supportive housing shall have the appropriate controls on affordability in accordance with the Act. In the event that a supportive housing provider is unable to record or execute a long-term deed restriction, the units shall be subject to annual recertification by the Municipal Housing Liaison to confirm continued occupancy and compliance with this Section.
- (g) Objective standards shall be applied in the selection of tenants for supportive housing units and shall be designed to ensure that individuals are not excluded in an arbitrary or capricious manner.
- (h) The following documentation shall be submitted by the sponsor to the municipality prior to marketing the completed units or facility:
  - [1] An Affirmative Marketing Plan in accordance with D1 above; and
  - [2] If applicable, proof that the supportive and/or special needs housing is regulated by the New Jersey Department of Health and Senior Services, the New Jersey Department of Human Services or another State agency in accordance with the requirements of this section, which includes validation of the number of bedrooms or units in which low- or moderate-income occupants reside.

**The sponsor/owner shall complete annual monitoring as directed by the MHL. §275-6 Regional Income Limits**

- A. Administrative agents shall use the current regional income limits for the purpose of pricing affordable units and determining income eligibility of households.
- B. Regional income limits are based on regional median income, which is established by a regional weighted average of the "median family incomes" published by HUD. The procedure for computing the regional median income is detailed in N.J.A.C. 5:80-26.3.

- C. Updated regional income limits are effective as of the effective date of the regional Section 8 income limits for the year, as published by HUD, or 45 days after HUD publishes the regional Section 8 income limits for the year, whichever comes later. The new income limits may not be less than those of the previous year.

#### **§275-7 Maximum Initial Rents And Sales Prices**

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

and/or assessments different from those provided for in this subsection are governed by the ordinance.

- G. In determining the initial sales prices and rents for compliance with the affordability average requirements for restricted family units, the following standards shall be met:
- (1) A studio or efficiency unit shall be affordable to a one-person household;
  - (2) A one-bedroom unit shall be affordable to a one and one-half person household;
  - (3) A two-bedroom unit shall be affordable to a three-person household;
  - (4) A three-bedroom unit shall be affordable to a four and one-half person household; and
  - (5) A four-bedroom unit shall be affordable to a six-person household.
- H. In determining the initial rents and sales prices for compliance with the affordability average requirements for restricted units in assisted living facilities and age-restricted and special needs and supportive housing developments, the following standards shall be met:
- (1) A studio or efficiency unit shall be affordable to a one-person household;
  - (2) A one-bedroom unit shall be affordable to a one and one-half person household; and
  - (3) A two-bedroom unit shall be affordable to a two-person household or to two one-person households. Where pricing is based on two one-person households, the developer shall provide a list of units so priced to the Municipal Housing Liaison and the Administrative Agent.
- I. The initial purchase price for all restricted ownership units shall be calculated so that the monthly carrying cost of the unit, including principal and interest (based on a mortgage loan equal to 95 percent of the purchase price and the FreddieMac 30-Year Fixed Rate-Mortgage rate of interest), property taxes, homeowner and private mortgage insurance and condominium or homeowner association fees do not exceed 30 percent of the eligible monthly income of the appropriate size household as determined pursuant to N.J.A.C. 5:80-26.7, as may be amended and supplemented; provided, however, that the price shall be subject to the affordability average requirement of N.J.A.C. 5:80-26.4, as may be amended and supplemented.
- J. The initial rent for a restricted rental unit shall be calculated so that the total monthly housing expense, including an allowance for tenant-paid utilities, does not exceed 30 percent of the gross monthly income of a household of the appropriate size whose income is targeted to the applicable percentage of median income for the unit, as determined pursuant to N.J.A.C. 5:80-26.3, as may be amended and supplemented. The rent shall also comply with the affordability average requirement of N.J.A.C. 5:80-26.4, as may be amended and supplemented. The initial rent for a restricted rental unit shall be calculated so the eligible monthly

housing expenses/income, including an allowance for tenant-paid utilities does not exceed 30 percent of gross income of and the appropriate household size as determined pursuant to N.J.A.C. 5:80-26.3, as may be amended and supplemented.

- K. At the anniversary date of the tenancy of the certified household occupying a restricted rental unit, following proper notice provided to the occupant household pursuant to N.J.S.A. 2A:18-61.1.f, the rent may be increased to an amount commensurate with the annual percentage increase in the Consumer Price Index for All Urban Consumers (CPI-U), specifically U.S. Bureau of Labor Statistics Series CUUR0100SAH, titled "Housing in Northeast urban, all urban consumers, not seasonally adjusted." Rent increases for units constructed pursuant to Low-Income Housing Tax Credit regulations shall be indexed pursuant to the regulations governing Low-Income Housing Tax Credits.

### **§275-8 Affirmative Marketing**

- A. The municipality shall adopt, by resolution, an Affirmative Marketing Plan, subject to approval of the Superior Court, compliant with N.J.A.C. 5:80-26.16, as may be amended and supplemented.
- B. The Affirmative Marketing Plan is a regional marketing strategy designed to attract buyers and/or renters of all majority and minority groups, regardless of race, creed, color, national origin, ancestry, marital or familial status, gender, affectional or sexual orientation, disability, age, or number of children, to housing units which are being marketed by a developer, sponsor or owner of affordable housing. The Affirmative Marketing Plan is intended to target those potentially eligible persons who are least likely to apply for affordable units in that region. It is a continuing program that directs all marketing activities toward Housing Region 2 and is required to be followed throughout the period of deed restriction.
- C. The Affirmative Marketing Plan provides the following preferences, provided that units that remain unoccupied after these preferences are exhausted may be offered to households without regard to these preferences.
- (1) Where the municipality has entered into an agreement with a developer or residential development owner to provide a preference for very-low-, low-, and moderate-income veterans who served in time of war or other emergency, pursuant to N.J.S.A. 52:27D-311.j, there shall be a preference for veterans for up to 50 percent of the restricted rental units in a particular project.
  - (2) There shall be a regional preference for all households that live and/or work in Housing Region 2 comprising Essex, Morris, Union, & Warren Counties.
  - (3) Subordinate to the regional preference, there shall be a preference for households that live and/or work in New Jersey.
  - (4) With respect to existing restricted units undergoing approved rehabilitation for the purpose of preservation or to restricted units newly created to replace existing restricted units undergoing demolition, a preference for the very-low-,

low-, and moderate-income households that are displaced by the rehabilitation or demolition and replacement.

- D. The municipality has the ultimate responsibility for adopting the Affirmative Marketing Plan and for the proper administration of the Affirmative Marketing Process, including the marketing of initial sales and rentals and resales and re-rentals. The Administrative Agent designated by the municipality shall implement the Affirmative Marketing Process to ensure the Affirmative Marketing of all affordable units, with the exception of affordable programs that are exempt from Affirmative Marketing as noted herein.
- E. The Affirmative Marketing Process shall describe the media to be used in advertising and publicizing the availability of housing. In implementing the Affirmative Marketing Process, the Administrative Agent shall consider the use of language translations where appropriate.
- F. Applications for affordable housing or notices thereof, if offered online, shall be available in several locations, including, at a minimum, the County Administration Building and/or the County Library for each county within the housing region; the municipal administration building and municipal library in the municipality in which the units are located; and the developer's rental or sales office. The developer shall mail applications to prospective applicants upon request and shall make applications available through a secure online website address.
- G. In addition to other Affirmative Marketing strategies, the Administrative Agent shall provide specific notice of the availability of affordable housing units on the New Jersey Housing Resource Center website. Any other entities, including developers or persons or companies retained to implement the Affirmative Marketing Process, shall comply with this paragraph. The Affirmative Marketing Plan shall include the following community and regional organizations: FSHC, the Latino Action Network, New Jersey NAACP, & the Northwest New Jersey Community Action Program Inc.
- H. In implementing the Affirmative Marketing Process, the Administrative Agent shall provide a list of counseling services to low- and moderate-income applicants on subjects such as budgeting, credit issues, mortgage qualification, rental lease requirements, and landlord/tenant law.
- I. The Affirmative Marketing Process for available affordable units shall begin at least four months (120 days) prior to the expected date of occupancy.
- J. The cost to affirmatively market the affordable units shall be the responsibility of the developer, sponsor or owner, with the exception of Affirmative Marketing for resales.

#### **§275-9 Selection of Occupants of Affordable Housing Units**

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

**§275-10 Occupancy Standards**

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

**§275-11 Control Periods for Restricted Ownership Units and Enforcement Mechanisms**

- A. Control periods for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.6, as may be amended and supplemented, and each restricted ownership unit shall remain subject to the controls on affordability for a period of at least 30 years subject to the requirements of N.J.A.C. 5:80-26.6, as may be amended and supplemented.
- B. Rehabilitated housing units that are improved to code standards shall be subject to affordability controls for a period of not less than 10 years (crediting towards present need only).
- C. The affordability control period for a restricted ownership unit shall commence on the date the initial certified household takes title to the unit. The date of commencement shall be identified in the deed restriction.
- D. If existing affordability controls are being extended, the extended control period for a restricted ownership unit commences on the effective date of the extension, which is the end of the original control period.
- E. After the end of any control period, the restricted ownership unit remains subject to the affordability controls set forth in this subchapter until the owner gives notice of their intent to make an exit sale, at which point:
- (1) If the municipality exercises the right to extend the affordability controls on the unit, no exit sale occurs and a new control period commences; or
  - (2) If the municipality does not exercise the right to extend the affordability controls on the unit, the affordability controls terminate following the exit sale.
- F. Prior to the issuance of any building permit for the construction/rehabilitation of restricted ownership units, the developer/owner and the municipality shall record a preliminary instrument provided by the Administrative Agent.

- G. Prior to the issuance of the initial certificate of occupancy for a restricted ownership unit and upon each successive sale during the period of restricted ownership, the Administrative Agent shall determine the restricted price for the unit and shall also determine the nonrestricted, fair market value of the unit based on either an appraisal or the unit's equalized assessed value without the restrictions in place.
- H. At the time of the initial sale of the unit and upon each successive price-restricted sale, the initial purchaser shall execute and deliver to the Administrative Agent a recapture note obliging the purchaser, as well as the purchaser's heirs, successors, and assigns, to repay, upon the first non-exempt sale after the unit's release from the restrictions set forth in this Ordinance, an amount equal to the difference between the unit's non-restricted fair market value and its restricted price, and the recapture note shall be secured by a recapture lien evidenced by a duly recorded mortgage on the unit.
- I. The affordability controls set forth in this Ordinance shall remain in effect despite the entry and enforcement of any judgment of foreclosure with respect to price-restricted ownership units.

#### **§275-12 Price Restrictions for Restricted Ownership Units and Resale Prices**

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

excluding capital improvements paid for by the entity favored on the recapture note and recapture lien described at N.J.A.C. 5:80-26.6(d);

- (4) No increase for capital improvements is permitted if the maximum resale price prior to adjusting for capital improvements already exceeds whatever initial purchase price the unit would have if it were being offered for purchase for the first time at the initial affordability percentage. All adjustments for capital improvements are subject to 10-year, straight-line depreciation.
- B. Upon the resale of a restricted ownership unit, all items of property that are permanently affixed to the unit or were included when the unit was initially restricted (for example, refrigerator, range, washer, dryer, dishwasher, wall-to-wall carpeting) shall be included in the maximum allowable resale price. Other items may be sold to the purchaser at a reasonable price that has been approved by the Administrative Agent at the time of the signing of the agreement to purchase but shall be separate and apart from any contract of sale for the underlying real estate. The purchase of central air conditioning installed subsequent to the initial sale of the unit and not included in the base price may be made a condition of the unit resale provided the price of the air conditioning equipment, which shall be subject to 10-year, straight-line depreciation, has been approved by the Administrative Agent. Unless otherwise approved by the Administrative Agent, the purchase of any property other than central air conditioning shall not be made a condition of the unit resale. The seller and the purchaser must personally certify at the time of closing that no unapproved transfer of funds for the purpose of selling and receiving property has taken place at the time of or as a condition of resale.

### **§275-13 Buyer Income Eligibility**

- A. Buyer income eligibility for restricted ownership units shall be established pursuant to N.J.A.C. 5:80-26.17, as may be amended and supplemented, such that very low-income ownership units shall be reserved for occupancy by households with a gross household income less than or equal to 30% of median income, low-income ownership units shall be reserved for occupancy by households with a gross household income less than or equal to 50% of median income and moderate-income ownership units shall be reserved for occupancy by households with a gross household income less than 80% of median income.
- B. Notwithstanding the foregoing, the Administrative Agent may, upon approval by the municipality, and subject to the Division's approval, permit a moderate-income purchaser to buy a low-income unit if and only if the Administrative Agent can demonstrate that there is an insufficient number of eligible low-income purchasers in the housing region to permit prompt occupancy of the unit and all other reasonable efforts to attract a low-income purchaser, including pricing and financing incentives, have failed. Any such low-income unit that is sold to a moderate-income household shall retain the required pricing and pricing restrictions for a low-income unit. Similarly, the administrative agent may permit low-income purchasers to buy very-low-income units in housing markets where, as determined by the Division, units are reserved for very-low-income purchasers,

but there is an insufficient number of very-low-income purchasers to permit prompt occupancy of the units. In such instances, the purchased unit must be maintained as a very-low-income unit and sold at a very-low-income price point such that on the next resale the unit will still be affordable to very-low-income households and able to be purchased by a very-low-income household. A very-low-income unit that is seeking bonus credit pursuant to N.J.S.A. 52:27D-311.k(9) must first be advertised exclusively as a very-low-income unit according to the Affirmative Marketing requirements at N.J.A.C. 5:80-26.16, then advertised as a very-low-income or low-income unit for at least 30 additional days prior to referring any low-income household to the unit.

- C. A certified household that purchases a restricted ownership unit must occupy it as the certified household's principal residence and shall not lease the unit; provided, however, that the Administrative Agent may permit the owner of a restricted ownership unit, upon application and a showing of hardship, to lease the restricted unit to another certified household for a period not to exceed one year.
- D. The Administrative Agent shall certify a household as eligible for a restricted ownership unit when the household is a low-income household or a moderate-income household, as applicable to the unit, and the estimated monthly housing cost for the particular unit (including principal, interest, property taxes, homeowner and private mortgage insurance and condominium or homeowner association fees, as applicable) does not exceed 35 percent of the household's eligible monthly income; provided, however, that this limit may be exceeded if one or more of the following circumstances exists:
  - (1) The household currently pays more than 35% (40% for households eligible for age-restricted units) of its gross household income for housing expenses, and the proposed housing expenses will reduce its housing costs;
  - (2) The household has consistently paid more than 35% (40% for households eligible for age-restricted units) of eligible monthly income for housing expenses in the past and has proven its ability to pay; or
  - (3) The household is currently in substandard or overcrowded living conditions;
  - (4) The household documents the existence of assets, within the asset limitation otherwise applicable, with which the household proposes to supplement the rent payments

#### **§275-14 Limitations on Indebtedness Secured by Ownership Unit; Subordination**

- A. Prior to incurring any indebtedness to be secured by a restricted ownership unit, the owner shall apply to the Administrative Agent for a determination in writing that the proposed indebtedness complies with the provisions of this Section, and the Administrative Agent shall issue such determination prior to the owner incurring such indebtedness.
- B. With the exception of original purchase money mortgages, neither an owner nor a lender shall at any time during the control period cause or permit the total

indebtedness secured by a restricted ownership unit to exceed 95% of the maximum allowable resale price of that unit, as such price is determined by the Administrative Agent in accordance with N.J.A.C. 5:80-26.7(c).

### **§275-15 Control Periods for Restricted Rental Unit**

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

### **§275-16 Rent Restrictions for Rental Units; Leases and Fees**

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

### **§275-17 Tenant Income Eligibility**

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

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

### **§275-18 Municipal Housing Liaison**

- A. The Municipal Housing Liaison shall be approved by municipal resolution.
- B. The Municipal Housing Liaison shall be approved by the Division, or is in the process of getting approval, and fully or conditionally meets the requirements for qualifications, including initial and periodic training as set forth in N.J.A.C. 5:99-1 et seq.
- C. The Municipal Housing Liaison shall be responsible for oversight and administration of the affordable housing program, including the following responsibilities, which may not be contracted out to the Administrative Agent:

- (1) Serving as the primary point of contact for all inquiries from the Affordable Housing Dispute Resolution Program, the State, affordable housing providers, administrative agents and interested households.
- (2) The oversight of the Affirmative Marketing Plan and affordability controls.
- (3) When applicable, overseeing and monitoring any contracting Administrative Agent.
- (4) Overseeing the monitoring of the status of all restricted units listed in the Fair Share Plan.
- (5) Verifying, certifying and providing annual information within AHMS at such time and in such form as required by the Division.
- (6) Coordinating meetings with affordable housing providers and administrative agents, as needed.
- (7) Attending continuing education opportunities on affordability controls, compliance monitoring, and affirmative marketing as offered or approved by the Division.
- (8) Overseeing the recording of a preliminary instrument in the form set forth at N.J.A.C. 5:80-26.1 for each affordable housing development.
- (9) Coordinating with the Administrative Agent, municipal attorney and municipal Construction Code Official to ensure that permits are not issued unless the document required in C.8. above has been duly recorded.
- (10) Listing on the municipal website contact information for the MHL and Administrative Agents.

### **§275-19 Administrative Agent**

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

- C. An Operating Manual for each affordable housing program shall be provided by the Administrative Agent(s). The Operating Manual(s) shall be available for public inspection in the Office of the Clerk and in the office(s) of the Administrative Agent(s). Operating manuals shall be adopted by resolution of the Governing Body.
- D. Subject to the role of the Administrative Agent(s), the duties and responsibilities as are set forth in N.J.A.C. 5:99-7 and which are described in full detail in the Operating Manual, including those set forth in UHAC, include:
- (1) Attending continuing education opportunities on affordability controls, compliance monitoring, and affirmative marketing as offered or approved by the Division;
  - (2) Affirmative marketing:
    - (a) Conducting an outreach process to affirmatively market affordable housing units in accordance with the Affirmative Marketing Plan of the municipality and the provisions of N.J.A.C. 5:80-26.16.
    - (b) Providing counseling, or contracting to provide counseling services, to low- and moderate-income applicants on subjects such as budgeting, credit issues, mortgage qualification, rental lease requirements; and landlord/tenant law.
  - (3) Household certification.
    - (a) Soliciting, scheduling, conducting and following up on interviews with interested households.
    - (b) Conducting interviews and obtaining sufficient documentation of gross income and assets upon which to base a determination of income eligibility for a low- or moderate-income unit;
    - (c) Providing written notification to each applicant as to the determination of eligibility or non-eligibility within 5 days of the determination thereof.
    - (d) Requiring that all certified applicants for restricted units execute a certificate substantially in the form, as applicable, of either the ownership or rental certificates set forth in the Appendices J and K of N.J.A.C. 5:80-26.1 et seq.
    - (e) Creating and maintaining a referral list of eligible applicant households living in the housing region, and eligible applicant households with members working in the housing region, where the units are located.
    - (f) Employing a random selection process as provided in the Affirmative Marketing Plan when referring households for certification to affordable units.
  - (4) Affordability controls.
    - (a) Furnishing to attorneys or closing agents forms of deed restrictions and mortgages for the recording at the time of conveyance of title of each restricted unit.

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

notifying all such owners that they must either move back to their unit or sell it;

- (b) Securing from all developers and sponsors of restricted units, at the earliest point of contact in the processing of the project or development, written acknowledgement of the requirement that no restricted unit can be offered, or in any other way committed, to any person, other than a household duly certified to the unit by the Administrative Agent;
  - (c) Sending annual mailings to all owners of affordable dwelling units reminding them of the notices and requirements outlined in N.J.A.C. 5:80-26.19(d)4;
  - (d) Establishing a program for diverting unlawful rent payments to the municipal Affordable Housing Trust Fund; and
  - (e) Creating and publishing a written operating manual for each affordable housing program administered by the Administrative Agent setting forth procedures for administering the affordability controls.
- (9) The Administrative Agent(s) shall, as delegated by the municipality, have the authority to take all actions necessary and appropriate to carry out its/their responsibilities, herein.

#### **§275-20 Responsibilities of The Owner of a development containing affordable units**

- A. The owner of all developments containing affordable units subject to this subchapter or the assigned management company thereof shall provide to the administrative agent:
- (1) Site plan, architectural plan, or other plan that identifies the location of each affordable unit, if subject to the site plan approval, settlement agreement, or other applicable document regulating the location of affordable units. The administrative agent shall determine the location of affordable units if not set forth in the site plan approval, settlement agreement, or other applicable document.
  - (2) The total number of units in the project and the number of affordable units.
  - (3) The breakdown of the affordable units by or identification of affordable unit locations by bedroom count and income level, including street addresses / unit numbers, if subject to the site plan approval, settlement agreement, or other applicable document regulating the breakdown of affordable units. The administrative agent shall determine the bedroom and income distribution if not set forth in the site plan approval, settlement agreement, or other applicable document.
  - (4) Floor plans of all affordable units, including complete and accurate identification of all rooms and the dimensions thereof.
  - (5) A projected construction schedule.

- (6) The location of any common areas and elevators.
  - (7) The name of the person who will be responsible for official contact with the administrative agent for the duration of the project, which must be updated if the contact changes.
- B. In addition to A above, the owner of rental developments containing affordable rental units subject to this subchapter or the assigned management company thereof shall:
- (1) Send to all current tenants in all restricted rental units an annual mailing containing a notice as to the maximum permitted rent and a reminder of the requirement that the unit must remain their principal place of residence, which is defined as residing in the unit at least 260 days out of each calendar year, together with the telephone number, mailing address, and email address of the administrative agent to whom complaints of excess rent can be issued.
  - (2) Provide to the administrative agent a description of any applicable fees.
  - (3) Provide to the administrative agent a description of the types of utilities and which utilities will be included in the rent.
  - (4) Agree and ensure that the utility configuration established at the start of the rent-up process not be altered at any time throughout the restricted period.
  - (5) Provide to the administrative agent a proposed form of lease for any rental units.
  - (6) Ensure that the tenant selection criteria for the applicants for affordable units not be more restrictive than the tenant selection criteria for applicants for non-restricted units.
  - (7) Strive to maintain the continued occupancy of the affordable units during the entire restricted period.
- C. In addition to A, above, the owner of affordable for-sale developments containing affordable for-sale units subject to this subchapter or the assigned management company thereof shall provide the administrative agent:
- (1) Proposed pricing for all units, including any purchaser options and add-on items.
  - (2) Condominium or homeowner association fees and any other applicable fees.
  - (3) Estimated real property taxes.
  - (4) Sewer, water, trash disposal, and any other utility assessments.
  - (5) Flood insurance requirement, if applicable.
  - (6) The State-approved planned real estate development public offering statement and/or master deed, where applicable, as well as the full build-out budget.

## **§275-21 Enforcement of Affordable Housing Regulations**

- A. Upon the occurrence of a breach of any of the regulations governing the affordable unit by an owner, developer or tenant, the municipality shall have all remedies provided at law or equity, including but not limited to foreclosure, tenant eviction, municipal fines, a requirement for household recertification, acceleration of all sums due under a mortgage, recoupment of any funds from a sale in the violation of the regulations, injunctive relief to prevent further violation of the regulations, entry on the premises, and specific performance.
- B. After providing written notice of a violation to an owner, developer or tenant of an affordable unit and advising the owner, developer or tenant of the penalties for such violations, the municipality may take the following action against the owner, developer or tenant for any violation that remains uncured for a period of 60 days after service of the written notice:
- (1) The municipality may file a court action pursuant to N.J.S.A. 2A:58-11 alleging a violation, or violations, of the regulations governing the affordable housing unit. If the owner, developer or tenant is found by the Court to have violated any provision of the regulations governing affordable housing units the owner, developer or tenant shall be subject to one or more of the following penalties, at the discretion of the Court:
    - (a) A fine of not more than \$500 or imprisonment for a period not to exceed 90 days, or both, unless otherwise specified below, provided that each and every day that the violation continues or exists shall be considered a separate and specific violation of these provisions and not a continuation of the initial offense;
    - (b) In the case of an owner who has rented his or her low- or moderate-income unit in violation of the regulations governing affordable housing units, payment into the Affordable Housing Trust Fund of the gross amount of rent illegally collected;
    - (c) In the case of an owner who has rented his or her affordable unit in violation of the regulations governing affordable housing units, payment of an innocent tenant's reasonable relocation costs, as determined by the Court.
- C. The municipality shall have the authority to levy fines against the owner of the development for instances of noncompliance with NJHRC advertising requirements (N.J.S.A. 52:27D-321.6.e.(2)), following written notice to the owner. The fine for the first offense of noncompliance shall be \$5,000, the fine for the second offense of noncompliance shall be \$10,000, and the fine for each subsequent offense of noncompliance shall be \$15,000.
- D. The municipality may file a court action in the Superior Court seeking a judgment, which would result in the termination of the owner's equity or other interest in the unit, in the nature of a mortgage foreclosure. Any judgment shall be enforceable as if the same were a judgment of default of the first purchase money mortgage and shall constitute a lien against the low- or moderate-income unit.
- (1) Such judgment shall be enforceable, at the option of the municipality, by means of an execution sale by the Sheriff, at which time the affordable unit of the

violating owner shall be sold at a sale price which is not less than the amount necessary to fully satisfy and pay off any first purchase money mortgage and prior liens and the costs of the enforcement proceedings incurred by the municipality, including attorney's fees. The violating owner shall have the right to possession terminated as well as the title conveyed pursuant to the Sheriff's sale.

- (2) The proceeds of the Sheriff's sale shall first be applied to satisfy the first purchase money mortgage lien and any prior liens upon the low- or moderate-income unit. The excess, if any, shall be applied to reimburse the municipality for any and all costs and expenses incurred in connection with either the court action resulting in the judgment of violation or the Sheriff's sale. In the event that the proceeds from the Sheriff's sale are insufficient to reimburse the municipality in full as aforesaid, the violating owner shall be personally responsible for the full extent of such deficiency, in addition to any and all costs incurred by the municipality in connection with collecting such deficiency. In the event that a surplus remains after satisfying all of the above, such surplus shall be placed in escrow by the municipality for the owner and shall be held in such escrow for a maximum period of two years or until such earlier time as the owner shall make a claim with the municipality for such. Failure of the owner to claim such balance within the two year period shall automatically result in a forfeiture of such balance to the municipality. Any interest accrued or earned on such balance while being held in escrow shall belong to and shall be paid to the municipality, whether such balance shall be paid to the owner or forfeited to the municipality.
- (3) Foreclosure due to violation of the regulations governing affordable housing units shall not extinguish the restrictions of the regulations governing affordable housing units as they apply to the low- and moderate-income unit. Title shall be conveyed to the purchaser at the Sheriff's sale, subject to the restrictions and provisions of the regulations governing the affordable housing unit. The owner determined to be in violation of the provisions of this plan and from whom title and possession were taken by means of the Sheriff's sale shall not be entitled to any right of redemption.
- (4) If there are no bidders at the Sheriff's sale, or if insufficient amounts are bid to satisfy the first purchase money mortgage and any prior liens, the municipality may acquire title to the affordable unit by satisfying the first purchase money mortgage and any prior liens and crediting the violating owner with an amount equal to the difference between the first purchase money mortgage and any prior liens and costs of the enforcement proceedings, including legal fees and the maximum resale price for which the affordable unit could have been sold under the terms of the regulations governing affordable housing units. This excess shall be treated in the same manner as the excess that would have been realized from an actual sale as previously described.
- (5) Failure of the low- or moderate-income unit to be either sold at the Sheriff's sale or acquired by the municipality shall obligate the owner to accept an offer to purchase from any qualified purchaser that may be referred to the owner by the

municipality, with such offer to purchase being equal to the maximum resale price of the low- or moderate-income unit as permitted by the regulations governing affordable housing units.

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

**SECTION 2.** Chapter 275, Article II of the Code of the Borough of New Providence shall be repealed and replaced in its entirety to read as follows:

## **Article II Development Fees**

### **§275-22 Purpose**

- A. This section establishes standards for the collection, maintenance, and expenditure of development fees that are consistent with the amended Fair Housing Act (P.L.2024, c.2), N.J.A.C. 5:99, and the Statewide Non-Residential Development Fee Act (C. 40:55D-8.1 through 8.7). Fees collected pursuant to this Ordinance shall be used for the sole purpose of providing very low-, low- and moderate-income housing in accordance with a Court-approved Spending Plan.

### **§275-23 Basic Requirements**

- A. The municipality previously adopted a development fee ordinance, which established the Municipal Affordable Housing Trust Fund.
- B. The municipality shall not spend development fees until the court has approved a plan for spending such fees.

### **§275-24 Residential Development Fees**

#### **A. Imposed fees**

- (1) Within the Borough of New Providence, residential developers, except for developers of the types of development specifically exempted below, shall pay a fee of 1.5% of the equalized assessed value for residential development, provided no increased density is permitted. Development fees shall also be imposed and collected when an additional dwelling unit is added to an existing residential structure; in such cases, the fee shall be calculated based on the increase in the equalized assessed value of the property due to the additional dwelling unit.
- (2) When an increase in residential density is permitted pursuant to a “d” variance granted under N.J.S.A. 40:55D-70d(5), developers shall be required to pay a “bonus” development fee of 6.0% of the equalized assessed value for each additional unit that may be realized, except that this provision shall not be applicable to a development that will include affordable housing. If the zoning on a site has changed during the two-year period preceding the filing of such a variance application, the base density for the purposes of calculating the bonus development fee shall be the highest density permitted by right during the two-year period preceding the filing of the variance application.

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

B. Eligible exactions, ineligible exactions and exemptions for residential development

- (1) Affordable housing developments, developments where the developer is providing for the construction of affordable units elsewhere in the municipality, and developments where the developer has made an eligible payment in lieu of on-site construction of affordable units, if permitted by ordinance, or by agreement with the municipality and if approved by a municipality prior to the statutory elimination of payments in-lieu on March 20, 2024 per P.L.2024, c.2, shall be exempt from development fees.
- (2) Developments that have received preliminary or final site plan approval prior to the adoption of this ordinance and any preceding ordinance permitting the collection of development fees shall be exempt from the payment of development fees, unless the developer seeks a substantial change in the original approval. Where a site plan approval does not apply, the issuance of a zoning and/or building permit shall be synonymous with preliminary or final site plan approval for the purpose of determining the right to an exemption. In all cases, the applicable fee percentage shall be determined based upon the development fee ordinance in effect on the date that the construction permit is issued.
- (3) No development fee shall be collected for the demolition and replacement of a residential building resulting from a fire or natural disaster.
- (4) 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.
- (5) Where there is an improvement to, expansion of, reconstruction, or replacement of an existing residential structure requiring a construction permit, no development fee shall be required to be paid. The construction or improvement of a permitted accessory structure on a lot containing an existing residential structure shall not require the payment of a development fee.
- (6) Developers of houses of worship and other uses that are entitled to exemption from New Jersey real property tax shall be exempt from paying a development fee, provided that such development does not result in the construction of any additional housing or residential units, including assisted living and continuing care retirement communities.

**§275-25 Non-Residential Development Fees**

A. Imposition of fees

- (1) Within all zoning districts, non-residential developers, except for developers of the types of development specifically exempted, shall pay a fee equal to 2.5% of the equalized assessed value of the land and improvements, for all new non-residential construction on an unimproved lot or lots.

- (2) Within all zoning districts, non-residential developers, except for developers of the types of development specifically exempted, shall also pay a fee equal to 2.5% of the increase in equalized assessed value resulting from any additions to existing structures to be used for non-residential purposes.
  - (3) Development fees shall be imposed and collected when an existing structure is demolished and replaced. The development fee of 2.5% shall be calculated on the difference between the equalized assessed value of the pre-existing land and improvements and the equalized assessed value of the newly improved structure; i.e., land and improvements; and such calculation shall be made at the time a final certificate of occupancy is issued. If the calculation required under this section results in a negative number, the non-residential development fee shall be zero.
- B. Eligible exactions, ineligible exactions and exemptions for non-residential development
- (1) The non-residential portion of a mixed-use inclusionary or market-rate development shall be subject to a 2.5% development fee, unless otherwise exempted below.
  - (2) The 2.5% fee shall not apply to an increase in equalized assessed value resulting from alterations, change in use within existing footprint, reconstruction, renovations and repairs.
- C. Non-residential developments shall be exempt from the payment of non-residential development fees in accordance with the exemptions required pursuant to the Statewide Non-Residential Development Fee Act (N.J.S.A. 40:55D-8.1 through 8.7), as specified in Form N-RDF "State of New Jersey Non-Residential Development Certification/Exemption." Any exemption claimed by a developer shall be substantiated by that developer.
- D. A developer of a non-residential development exempted from the non-residential development fee pursuant to the Statewide Non-Residential Development Fee Act shall be subject to the fee at such time as the basis for the exemption no longer applies, and shall make the payment of the non-residential development fee, in that event, within three years after that event or after the issuance of the final certificate of occupancy of the non-residential development, whichever is later.
- E. If a property that was exempted from the collection of a non-residential development fee thereafter ceases to be exempt from property taxation, the owner of the property shall remit the fees required pursuant to this section within 45 days of the termination of the property tax exemption. Unpaid non-residential development fees under these circumstances may be enforceable by the municipality as a lien against the real property of the owner.

### **§275-26 Collection Procedures**

- A. Upon the granting of a preliminary, final or other applicable approval for a development, the applicable approving authority shall direct its staff to notify the construction official responsible for the issuance of a building permit.

- B. For non-residential developments only, the developer shall also be provided with a copy of Form N-RDF, "State of New Jersey Non-Residential Development Certification/Exemption," to be completed by the developer as per the instructions provided in the Form N-RDF. The construction official shall verify the information submitted by the non-residential developer as per the instructions provided on Form N-RDF. The tax assessor shall verify exemptions and prepare estimated and final assessments as per the instructions provided in Form N-RDF.
- C. The construction official responsible for the issuance of a building permit shall notify the tax assessor of the issuance of the first construction permit for a development that is subject to a development fee.
- D. Within 90 days of receipt of that notice, the tax assessor shall provide an estimate, based on the plans filed, of the equalized assessed value of the development.
- E. The construction official responsible for the issuance of a final certificate of occupancy shall notify the tax assessor of any and all requests for the scheduling of a final inspection on property that is subject to a development fee.
- F. Within 10 business days of a request for the scheduling of a final inspection, the tax assessor shall confirm or modify the previously estimated equalized assessed value of the improvements associated with the development; calculate the development fee; and thereafter notify the developer of the amount of the fee.
- G. Should the municipality fail to determine or notify the developer of the amount of the development fee within 10 business days of the request for final inspection, the developer may estimate the amount due and pay that estimated amount consistent with the dispute process set forth in Subsection b. of section 37 of P.L.2008, c.46 (N.J.S.A. 40:55D-8.6).
- H. Fifty percent (50%) of the development fee shall be collected at the time of issuance of the construction permit. The remaining portion shall be collected at the time of issuance of the certificate of occupancy. The developer shall be responsible for paying the difference between the fee calculated at the time of issuance of the construction permit and that determined at the time of issuance of certificate of occupancy.

#### **§275-27 Appeal of Development Fees**

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

Tax Court in accordance with the provisions of the State Tax Uniform Procedure Law, R.S. 54:48-1 et seq., within 90 days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.

### **§275-28 Affordable Housing Trust Fund**

- A. A separate, interest-bearing Municipal Affordable Housing Trust Fund shall be maintained by the chief financial officer of the municipality for the purpose of depositing development fees collected from residential and non-residential developers and proceeds from the sale of units with extinguished controls.
- B. The following additional funds shall be deposited in the Municipal Affordable Housing Trust Fund and shall at all times be identifiable by source and amount:
- (1) Payments in lieu of on-site construction of an affordable unit, where previously permitted by ordinance or by agreement with the municipality and if approved by a municipality prior to the statutory elimination of payments in-lieu on March 20, 2024 per P.L.2024, c.2;
  - (2) Funds contributed by developers to make 10% of the adaptable entrances in a townhouse or other multistory attached dwelling unit development accessible;
  - (3) Rental income from municipally operated units;
  - (4) Repayments from affordable housing program loans;
  - (5) Recapture funds;
  - (6) Proceeds from the sale of affordable units; and
  - (7) Any other funds collected in connection with the municipal affordable housing program including but not limited to interest earned on fund deposits.
- C. The municipality shall provide the Division with written authorization, in the form of a tri-party escrow agreement(s) between the municipality, the Division and the financial institution in which the municipal affordable housing trust fund has been established to permit the Division to direct the disbursement of the funds as provided for in N.J.A.C. 5:99-2.1 et seq.
- D. Occurrence of any of the following deficiencies may result in the Division requiring the forfeiture of all or a portion of the funds in the municipal Affordable Housing Trust Fund:
- (1) Failure to meet deadlines for information required by the Division in its review of a development fee ordinance;
  - (2) Failure to commit or expend development fees within four years of the date of collection in accordance with N.J.A.C. 5:99-5.5;
  - (3) Failure to comply with the requirements of the Non-Residential Development Fee Act and N.J.A.C. 5:99-3;
  - (4) Failure to submit accurate monitoring reports pursuant to this subchapter within the time limits imposed by the Act, this chapter, and/or the Division;

- (5) Expenditure of funds on activities not approved by the Superior Court or otherwise permitted by law;
  - (6) Revocation of compliance certification or a judgment of compliance and repose;
  - (7) Failure of a municipal housing liaison or administrative agent to comply with the requirements set forth at N.J.A.C. 5:99-6, 7, and 8;
  - (8) Other good cause demonstrating that municipal affordable housing funds are not being used for an approved purpose.
- E. All interest accrued in the housing trust fund shall only be used on eligible affordable housing purposes approved by the Court.

### **§275-29 Use of Funds**

- A. The expenditure of all funds shall conform to a Spending Plan approved by Superior Court. Funds deposited in the municipal Affordable Housing Trust Fund may be used for any activity approved by the Court to address the fair share obligation and may be set up as a grant or revolving loan program. Such activities include, but are not limited to: preservation or purchase of housing for the purpose of maintaining or implementing affordability controls; housing rehabilitation; new construction of affordable housing units and related costs; accessory apartments; a market-to-affordable program; conversion of existing non-residential buildings to create new affordable units; green building strategies designed to be cost-saving and in accordance with accepted national or state standards; purchase of land for affordable housing; improvement of land to be used for affordable housing; extensions or improvements of roads and infrastructure to affordable housing sites; financial assistance designed to increase affordability; administration necessary for implementation of the Housing Element and Fair Share Plan; and/or any other activity permitted by Superior Court and specified in the approved Spending Plan.
- B. Funds shall not be expended to reimburse the municipality or activities that occurred prior to the authorization of a municipality to collect development fees.
- C. At least a portion of all development fees collected and interest earned shall be used to provide affordability assistance to very low-, low- and moderate-income households in affordable units included in the municipal Fair Share Plan. A portion of the development fees which provide affordability assistance shall be used to provide affordability assistance to very low-income households.
  - (1) Affordability assistance programs may include down payment assistance, security deposit assistance, low-interest loans, rental assistance, assistance with homeowners association or condominium fees and special assessments, infrastructure assistance, and assistance with emergency repairs. The specific programs to be used for affordability assistance shall be identified and described within the Spending Plan.
  - (2) Affordability assistance for very low income households may include producing very low-income units or buying down the cost of low- or moderate-income units in the municipal Fair Share Plan to make them affordable to households earning 30% or less of median income.

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

#### **§275-30 Monitoring**

- A. On or before February 15 of each year, the municipality shall provide annual electronic data reporting of trust fund activity for the previous year from January 1st to December 31st through the AHMS Reporting System. This reporting shall include an accounting of all Municipal Affordable Housing Trust Fund activity, including the sources and amounts of all funds collected and the amounts and purposes for which any funds have been expended. Such reporting shall include an accounting of development fees collected from residential and non-residential developers, previously eligible payments in lieu of constructing affordable units on site (if permitted by ordinance or by agreement with the municipality prior to the March 20, 2024 statutory elimination per P.L. 2024, c.4), funds from the sale of units with extinguished controls, barrier-free escrow funds, rental income from municipally-owned affordable housing units, repayments from affordable housing program loans, interest and any other funds collected in connection with municipal housing programs, as well as an accounting of the expenditures of revenues and implementation of the Spending Plan approved by the Court.

#### **§275-31 Ongoing Collection of Fees**

- A. The ability to impose, collect and expend development fees shall continue so long as the municipality retains authorization from the Court in the form of Compliance Certification or the good faith effort to obtain it.
- B. If the municipality fails to renew its ability to impose and collect development fees prior to the expiration of its Judgment of Compliance, it may be subject to forfeiture of any or all funds remaining within its Affordable Housing Trust Fund. Any funds so forfeited shall be deposited into the New Jersey Affordable Housing Trust Fund established pursuant to section 20 of P.L.1985, c.222 (C. 52:27D-320).

#### **§275-32 Emergent Affordable Housing Opportunities.**

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

### **SECTION 3. REPEAL OF INCONSISTENT PROVISIONS**

All ordinances or parts thereof in conflict or inconsistent with this Ordinance are hereby repealed, but only to the extent of such conflict or inconsistency, it being the legislative

intent that all such ordinances or part of ordinances now existing or in effect unless the same are in conflict or inconsistent with any provision of this Ordinance shall remain in effect.

**SECTION 4. SEVERABILITY**

The provisions of this Ordinance are declared to be severable and if any section, subsection, sentence, clause or phrase thereof for any reason be held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining sections, subsections, sentences, clauses and phrases of this Ordinance, but shall remaining in effect; it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

**SECTION 5. EFFECTIVE DATE**

This Ordinance shall take effect immediately upon passage and publication as provided by law.

INTRODUCTION: March 10, 2026  
PUBLIC HEARING: March 24, 2026  
ADOPTION: March 24, 2026

BOROUGH OF NEW PROVIDENCE  
COUNTY OF UNION  
STATE OF NEW JERSEY

Attest:

  
\_\_\_\_\_  
Denise Brinkofski, Borough Clerk

  
\_\_\_\_\_  
Allen Morgan, Mayor