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BOROUGH OF HIGH BRIDGE
HUNTERDON COUNTY

ORDINANCE NO. 2026-004

AN ORDINANCE TO DELETE CHAPTER 104 "AFFORDABLE HOUSING", TO DELETE AND REPLACE ARTICLE V "AFFORDABLE HOUSING" OF CHAPTER 145 "LAND USE AND DEVELOPMENT", AND TO DELETE ARTICLE VA "MUNICIPAL HOUSING LIAISON", VB "ADMINISTRATIVE AGENT" AND VC "AFFIRMATIVE MARKETING REQUIREMENTS OF CHAPTER 145 "LAND USE AND DEVELOPMENT" TO UPDATE THE BOROUGH'S AFFORDABLE HOUSING ORDINANCE IN ACCORDANCE WITH THE DECEMBER 2025 UNIFORM HOUSING AFFORDABILITY CONTROLS, DECEMBER 2025 N.J.A.C. 5:99 REGULATIONS, AND THE AMENDED FAIR HOUSING ACT

WHEREAS, the Borough of High Bridge filed a Declaratory Judgment Action on January 24, 2025 seeking a certification of compliance with the Fair Housing Act; and

WHEREAS, High Bridge Planning Board adopted the 2025 Housing Element & Fair Share Plan for the Fourth Round on June 16, 2025, which was duly endorsed by the Borough Council, and timely filed with the Affordable Housing Dispute Resolution Program; and

WHEREAS, the Borough has entered into a Consent Order with Fair Share Housing Center that requires all of the implementing documents, including an Affordable Housing Ordinance, to be adopted by March 15, 2026; and

WHEREAS, new N.J.A.C. 5:99 regulations new Uniform Affordability Housing Controls rules were adopted in December of 2025; and

WHEREAS, the Borough seeks to delete and replace its existing Affordable Housing Ordinance to reflect the new regulations.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Borough Council that:

SECTION 1. The Borough Code, Chapter 104 "Affordable Housing" is deleted in its entirety.

SECTION 2. The Borough Code, Chapter 145 "Land Use and Development", Article V "Affordable Housing" is deleted in its entirety and replaced as follows:

ARTICLE V AFFORDABLE HOUSING

§145-501 Introduction and applicability.

A. This Article of the Code sets forth regulations regarding the very low-, low- and moderate-income housing units in the Borough of High Bridge 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 Article 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.

C. The High Bridge 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 Article 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) Nothing hereinto shall be interpreted to deprive the Borough of any rights, including the right to seek approval of any waivers permitted under UHAC or other relevant sources of law.

(2) The provisions of this Article 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.

(3) This Article 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.

(4) 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.

(5) Highlands Affordable Housing Ordinance.

(a) Any development consisting of five or more newly constructed residential units shall reserve for occupancy at least 20 percent (20%) of the residential units constructed for low- or moderate-income households.

(b) Development exempt from the Highlands Act is not exempt from the 20% reservation requirement.

(c) In the event that the affordable housing obligation of an inclusionary development results in a fraction of less than 0.5 units the developer may either round up and provide the extra affordable unit or pay the subsidy payment described in subsection (5) below. Inclusionary developments that result in an affordable housing obligation fraction of 0.5 units or greater shall round up and provide the additional affordable unit.

(d) A minimum of 13% of the affordable units shall be reserved for very-low-income households pursuant to section 7 of P.L.2008, c.46 (C.52:27D-329.1).

(e) No density bonus or presumptive density increase over existing zoning shall be required to be granted by the municipality for the construction of the affordable housing units on site. Density bonuses or presumptive density increases may be provided through Fair Share Plans and implementing ordinances to address affordable housing needs of the municipality where inclusionary housing projects are selected as a compliance mechanism by the municipality.

(f) Municipalities shall provide for the local review of the required 20% set aside of affordable units to be provided by requiring the submission of an Affordable Housing Production Plan in accordance with the following:

[1] An Affordable Housing Production Plan shall detail all issues related to affordable units and must be submitted to the municipality's Development Review Board at the time application is made for any development requiring affordable housing pursuant to this Article.

[2] The Affordable Housing Production Plan shall be a condition of the completeness determination and is hereby added to the submission requirements checklist for any new residential development or major residential subdivision proposing five or more new units.

[3] The Affordable Housing Production Plan shall include at a minimum the anticipated bedroom distribution, income split, anticipated administrative entity, tenure, maintenance obligations and any other information pertinent to the creation and long-term support of the affordable housing units.

[4] All Affordable Housing Production Plans shall be the subject of review by the municipality's Planning, Zoning, or Land Use Board for consistency with these guidelines, the Regional Master Plan, and the municipality's certified Housing Element and Fair Share Plan.

[5] Compliance with the Regional Master Plan, the Fair Housing Act and the Affordable Housing Production Plan shall be a condition of any local approval.

[6] Any approval shall be accompanied by a requirement for a development agreement between the applicant and the municipality.

[7] The development agreement shall detail the responsibilities of all parties and shall include the phasing plan for the construction and occupancy of the affordable housing units.

(6) Fractional units and subsidy payments.

(a) In the event that the affordable housing obligation of an inclusionary development results in a fraction of 0.5 or more, the developer shall round up and provide the additional unit. If the affordable housing obligation results in a fraction of less than 0.5, the developer may round up and provide the extra affordable unit or shall make a subsidy payment to cover such fraction.

(b) The subsidy payment for High Bridge shall be $247,200 for 2026. The subsidy payment shall increase by 3% each year. To calculate the subsidy payment the developer shall multiply the fraction by the payment. For example, a fraction of 0.4 triggered in 2026 would require a payment of $98,880. The payment shall be made to the Borough's Affordable Housing Trust Fund.

§145-502 **Definitions.**

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

95/5 RESTRICTION

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.

ACCESSORY APARTMENTS

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

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

ADAPTABLE

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

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

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

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

The actual undertaking of Affirmative Marketing activities in furtherance of each project with very low- low- and moderate-income units.

AFFORDABILITY ASSISTANCE

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

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

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

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"

The dispute resolution program established pursuant to N.J.S.A. 52:27D-313.2.

AFFORDABLE HOUSING MONITORING SYSTEM OR "AHMS"

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"

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

A housing unit proposed or developed pursuant to the Act, including units created with municipal affordable housing trust funds.

AGE-RESTRICTED HOUSING

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

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

ASSISTED LIVING RESIDENCE

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

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

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

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

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

COAH OR THE COUNCIL

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

The Commissioner of the Department of Community Affairs.

COMPLIANCE CERTIFICATION

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

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

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

The State of New Jersey Department of Community Affairs.

DEFICIENT HOUSING UNIT

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

The New Jersey Department of Community Affairs.

DEVELOPER

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

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

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

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

The Division of Local Planning Services within the Department of Community Affairs.

EMERGENT OPPORTUNITY

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"

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

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

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

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

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

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

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

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

GREEN BUILDING STRATEGIES

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

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

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

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

A geographic area established pursuant to N.J.S.A. 52:27D-304.2b.

INCLUSIONARY DEVELOPMENT

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

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

A household with a household income equal to 50 percent or less of the regional median income.

LOW-INCOME UNIT

A restricted unit that is affordable to a low-income household.

MAJOR SYSTEM

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

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

MODERATE-INCOME HOUSEHOLD

A household with a household income in excess of 50 percent but less than 80 percent of the regional median income.

MODERATE-INCOME UNIT

A restricted unit that is affordable to a moderate-income household.

MONI

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

MUNICIPAL HOUSING LIAISON OR "MHL"

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

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

An ordinance adopted by the governing body of a municipality that authorizes the collection of development fees.

NEW CONSTRUCTION

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

An account established pursuant to N.J.S.A. 52:27D-320.

NEW JERSEY HOUSING RESOURCE CENTER OR HOUSING RESOURCE CENTER

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.

NON-EXEMPT SALE

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

An organization granted nonprofit status in accordance with section 501(c)(3) of the Internal Revenue Code.

NON-RESIDENTIAL DEVELOPMENT

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

The fee authorized to be imposed pursuant to N.J.S.A. 40:55D-8.1 through 40:55D-8.7.

ORDER FOR REPOSE

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

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

PROSPECTIVE NEED

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

A municipality that meets the criteria established pursuant to N.J.S.A. 52:27D-304.3.c(1).

PERSON WITH A DISABILITY

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

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

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

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

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

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

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

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

RECONSTRUCTION

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

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"

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

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

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

RENT

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

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

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

SPENDING PLAN

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

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

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 Article, 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

A grant or loan program which provided financial assistance to the development of the unit.

SUPPORTIVE HOUSING UNIT

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 Article. 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

A 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

The Treasurer of the State of New Jersey.

UHAC

The Uniform Housing Affordability Controls set forth at N.J.A.C. 5:80-26.

UHORP

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

UNIT TYPE

A 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

A household with a household income less than or equal to 30 percent of the regional median income.

VERY-LOW-INCOME HOUSING

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

A restricted unit that is affordable to a very-low-income household.

VETERAN

A veteran as defined at N.J.S.A. 54:4-8.10.

VETERANS' PREFERENCE

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

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.

§145-503 **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 to the Department pursuant to P.L 2024, Chapter 2 and N.J.A.C. 5:99 through the Affordable Housing Monitoring System (AHMS).

(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.

§145-504 **Borough-wide set-aside ordinance.**

A. Any property in the Borough of High Bridge that is currently zoned for nonresidential uses and subsequently receives a zoning change or use variance or approval of a redevelopment plan to permit residential development, or that is currently zoned for residential uses and receives approval for residential development, shall provide an affordable housing set-aside of at least 20% of the residential units constructed, as required for developments located within the jurisdiction of the Highlands Water Protection and Planning Council, pursuant to N.J.S.A. 52:27D-329.9(a), whether the units will be for rent or will be for sale. No property shall be subdivided so as to avoid compliance with this requirement. All affordable units shall be governed by the provisions of this article.

§145-505 A**ffordable 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.

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 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.

§145-506 **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 (2) 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. Penthouses and higher priced end townhouses shall be exempt from this requirement. The proper ratio for restricted to market-rate unit type shall be subject to municipal ordinance or, if not specified, shall be determined at the time of site plan approval.

(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.

(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 or down to the nearest whole number shall be very low- or low-income units.

(3) Within rental developments, of the total number of affordable rental units, at least 13%, rounded up to the nearest whole number, shall be affordable to very low-income households. The very low-income units shall be distributed between each bedroom count as proportionally as possible, to the nearest whole unit, to the total number of restricted units within each bedroom count, and counted as part of the required number of low-income units within the development.

(4) Affordable housing developments that are not age-restricted or supportive housing shall be structured such that:

(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 or rounded up) of the total number of low- and moderate-income units.

(d) At least 30% of all low- and moderate-income units, rounded up or down shall be two-bedroom units.

(e) At least 20% of all low- and moderate-income units, rounded up (r down shall be three-bedroom units.

(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 multi-floor dwelling units that are attached to at least one other dwelling unit shall be subject to the technical design standards of the barrier free subcode and shall include the following features:

(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 (2)(a) through (2)(d) 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. 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] 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.

(i)

(j) The sponsor/owner shall complete annual monitoring as directed by the MHL.

§145-507 **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.

§145-508 **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.

§145-509 **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 3 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 3 comprising Hunterdon, Middlesex, and Somerset 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.

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.

§145-510 **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.

§145-511 **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.

§145-512 **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 Article 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 Article, 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 Article shall remain in effect despite the entry and enforcement of any judgment of foreclosure with respect to price-restricted ownership units.

§145-513 **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 the unit 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.

§145-514 **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.

§145-515 **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).

§145-516 **Control periods for restricted rental units.**

A. Control periods for units that meet the definition of prior round units shall be pursuant to the 2001 UHAC rules originally adopted October 1, 2001, 33 N.J.R. 3432 and shall remain subject to the requirements of this Article 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 Article 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 Article 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.

§145-517 **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 Article.

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.

§145-518 **Tenant income eligibility.**

A. Tenant income eligibility shall be determined pursuant to N.J.A.C. 5:80-26.14, as may be amended and supplemented, and shall be determined as follows:

(1) Very low-income rental units shall be reserved for households with a gross household income less than or equal to 30% of the regional median income by household size.

(2) Low-income rental units shall be reserved for households with a gross household income less than or equal to 50% of the regional median income by household size.

(3) Moderate-income rental units shall be reserved for households with a gross household income less than 80% of the regional median income by household size.

B. The Administrative Agent shall certify a household as eligible for a restricted rental unit when the household is a very low-income, low-income or moderate-income household, as applicable to the unit, and the rent proposed for the unit does not exceed 35% (40% for age-restricted units) of the household’s eligible monthly income as determined pursuant to N.J.A.C. 5:80-26.17, as may be amended and supplemented; provided, however, that this limit may be exceeded if one or more of the following circumstances exists:

(1) The household currently pays more than 35% (40% for households eligible for age-restricted units) of its gross household income for rent, and the proposed rent will reduce its housing costs;

(2) The household has consistently paid more than 35% (40% for households eligible for age-restricted units) of eligible monthly income for rent in the past and has proven its ability to pay;

(3) The household is currently in substandard or overcrowded living conditions;

(4) The household documents the existence of assets with which the household proposes to supplement the rent payments; or

(5) The household documents reliable anticipated third-party assistance from an outside source such as a family member in a form acceptable to the Administrative Agent and the owner of the unit.

C. The applicant shall file documentation sufficient to establish the existence of any of the circumstances in B.(1) through B.(5) above with the Administrative Agent, who shall counsel the household on budgeting.

§145-519 **Municipal Housing Liaison.**

A. The Municipal Housing Liaison shall be approved by municipal resolution.

B. The Municipal Housing Liaison shall be approved by the Division, or is in the process of getting approval, and fully or conditionally meets the requirements for qualifications, including initial and periodic training as set forth in in N.J.A.C. 5:99-1 et seq.

C. The Municipal Housing Liaison shall be responsible for oversight and administration of the affordable housing program, including the following responsibilities, which may not be contracted out to the Administrative Agent:

(1) Serving as the primary point of contact for all inquiries from the Affordable Housing Dispute Resolution Program, the State, affordable housing providers, administrative agents and interested households.

(2) The oversight of the Affirmative Marketing Plan and affordability controls.

(3) When applicable, overseeing and monitoring any contracting Administrative Agent.

(4) Overseeing the monitoring of the status of all restricted units listed in the Fair Share Plan.

(5) Verifying, certifying and providing annual information within AHMS at such time and in such form as required by the Division.

(6) Coordinating meetings with affordable housing providers and administrative agents, as needed.

(7) Attending continuing education opportunities on affordability controls, compliance monitoring, and affirmative marketing as offered or approved by the Division.

(8) Overseeing the recording of a preliminary instrument in the form set forth at N.J.A.C. 5:80-26.1 for each affordable housing development.

(9) Coordinating with the Administrative Agent, municipal attorney and municipal Construction Code Official to ensure that permits are not issued unless the document required in C.8. above has been duly recorded.

(10) Listing on the municipal website contact information for the MHL and Administrative Agents.

§145-520 **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. 5:99-7and 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 firm, 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 Article.

(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.

§145-521 **Responsibilities of the owner of a development containing affordable units.**

A. The owner of all developments containing affordable units subject to this Article 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 Article 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 that 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 Article 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.

§145-522 **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 per day or imprisonment for a period not to exceed 90 days, or both, unless otherwise specified below, provided that each and every day that the violation continues or exists shall be considered a separate and specific violation of these provisions and not a continuation of the initial offense;

(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 Article, 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 Article 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 Article, all of the rights and remedies available at law and in equity for the enforcement of this Article, 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 Article 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 3. The Borough Code, Chapter 145 “Land Use and Development”, Article VA “Municipal Housing Liaison”, Article VB “Administrative Agent” and Article VC “Affirmative Marketing” are hereby deleted.

SECTION 4. All ordinances or parts of ordinances inconsistent herewith are hereby repealed as to such inconsistencies.

SECTION 5. If any article, section, subsection, paragraph, phrase, or sentence is for any reason held to be unconstitutional or invalid, said article, section, subsection, paragraph, phrase or sentence shall be deemed separable.

SECTION 6. This Ordinance shall take effect upon final publication as provided by law.

NOTICE

NOTICE is hereby given that the foregoing Ordinance was introduced to pass on first reading at a regular meeting of the Council of the Borough of High Bridge held on _____, 2026, and ordered published in accordance with the law. Said Ordinance will be considered for final reading and adoption at a regular meeting of the Borough Council to be held on _____, 2026 at 7:30 p.m. or as soon thereafter as the Borough Council may hear this Ordinance at the _____, New Jersey, at which time all persons interested may appear for or against the passage of said Ordinance.

Adam Young
Borough Clerk

Adopted:

_____
Michelle Lee, Mayor
Borough Council

Attest:

_____
Adam Young
Borough Clerk

Introduction: *February 26, 2026*
Publication: *Date*
Planning Board: *Date*
Adoption: *Date*
Publication: *Date*

BOROUGH OF HIGH BRIDGE
HUNTERDON COUNTY

ORDINANCE NO. 2026-005

AN ORDINANCE TO DELETE AND REPLACE SECTION 145-704 "AFFORDABLE HOUSING DEVELOPMENT FEES" OF CHAPTER 145 "LAND USE AND DEVELOPMENT" TO UPDATE THE BOROUGH'S DEVELOPMENT FEE ORDINANCE IN ACCORDANCE WITH THE DECEMBER 2025 N.J.A.C. 5:99 REGULATIONS AND THE AMENDED FAIR HOUSING ACT

WHEREAS, the Borough of High Bridge filed a Declaratory Judgment Action on January 24, 2025 seeking a certification of compliance with the Fair Housing Act, and

WHEREAS, High Bridge Planning Board adopted the 2025 Housing Element & Fair Share Plan for the Fourth Round on June 16, 2025, which was duly endorsed by the Council, and timely filed with the Affordable Housing Dispute Resolution Program; and

WHEREAS, the Borough has entered into a Consent Order with Fair Share Housing Center that requires all of the implementing documents, including a Development Fee Ordinance to be adopted by March 15, 2026; and

WHEREAS, new N.J.A.C. 5:99 regulations were adopted in December of 2025; and

WHEREAS, the Borough seeks to update its existing Development Fee Ordinance to reflect the new regulations.

NOW, THEREFORE BE IT ORDAINED, by the Mayor and Borough Council that:

SECTION 1. The Borough Code, Chapter 145 "Land Use and Development", Article VII "Fees, Guarantees, Inspections and Off-Tract Improvements", Section 145-704 "Affordable housing development fees." be deleted in its entirety and replaced as follows:

§ 145-704 **Affordable housing development fees.**

A. Purpose. This section establishes standards for the collection, maintenance, and expenditure of development fees that are consistent with the amended Fair Housing Act (P.L.2024, c.2), N.J.A.C. 5:99, and the Statewide Non-Residential Development Fee Act (C. 40:55D-8.1 through 8.7). Fees collected pursuant to this Ordinance shall be used for

the sole purpose of providing very low-, low- and moderate-income housing in accordance with a Court-approved Spending Plan.

B. Basic requirements.

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

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

C. Definitions.

(1) The following terms, as used in this section, shall have the following meanings:

AFFORDABLE HOUSING DEVELOPMENT
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.

AFFORDABLE HOUSING MONITORING SYSTEM OR AHMS
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
The non-lapsing, revolving trust fund established in the Department 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.

COAH OR THE COUNCIL
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).

DEPARTMENT
The New Jersey Department of Community Affairs.

DEVELOPER
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 FEE
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.

EQUALIZED ASSESSED VALUE OR EAV
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.

D. Residential development fees.

(1) Imposed fees.

(a) 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.

(b) 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.

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

(a) Affordable housing developments, developments where the developer is providing for the construction of affordable units elsewhere in 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.

(b) 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.

(c) Improvements or additions to existing one- and two-family dwellings on individual lots shall not be required to pay a development fee, but a development fee shall be charged for any new dwelling constructed as a replacement for a previously existing dwelling on the same lot that was or will be demolished, unless the owner resided in the previous dwelling for a period of one year or more prior to obtaining a demolition permit. Where a development fee is charged for a replacement dwelling, the development fee shall be calculated on the increase in the equalized assessed value of the new structure as compared to the previous structure.

(d) No development fee shall be collected for the demolition and replacement of a residential building resulting from a fire or natural disaster.

E. Non-residential development fees.

(1) Imposition of fees.

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

(b) 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.

(c) 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.

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

(a) The non-residential portion of a mixed-use inclusionary or market-rate development shall be subject to a 2.5% development fee, unless otherwise exempted below.

(b) 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.

(3) Non-residential developments shall be exempt from the payment of non-residential development fees in accordance with the exemptions required pursuant to the Statewide Non-Residential Development Fee Act (N.J.S.A. 40:55D-8.1 through 8.7), as specified in Form N-RDF "State of New Jersey Non-Residential Development Certification/Exemption." Any exemption claimed by a developer shall be substantiated by that developer.

(4) A developer of a non-residential development exempted from the non-residential development fee pursuant to the Statewide Non-Residential Development Fee Act shall be subject to the fee at such time as the basis for the exemption no longer applies, and shall make the payment of the non-residential development fee, in that event, within three years after that event or after the issuance of the final certificate of occupancy of the non-residential development, whichever is later.

(5) 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.

F. Collection procedures.

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

(2) For non-residential developments only, the developer shall also be provided with a copy of Form N-RDF, “State of New Jersey Non-Residential Development Certification/Exemption,” to be completed 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.

(3) 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.

(4) 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.

(5) 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.

(6) 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.

(7) 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).

(8) 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.

G. Appeal of development fees.

(1) 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.

(2) A developer may challenge non-residential development fees imposed by filing a challenge with the director of the Division of Taxation. Pending a review and determination by the director, which shall be made within 45 days of receipt of the challenge, collected fees shall be placed in an interest-bearing escrow account by the 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.

H. Affordable Housing Trust Fund.

(1) 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.

(2) 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:

(a) 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;

(b) Funds contributed by developers to make 10% of the adaptable entrances in a townhouse or other multistory attached dwelling unit development accessible;

(c) Rental income from municipally operated units;

(d) Repayments from affordable housing program loans;

(e) Recapture funds;

(f) Proceeds from the sale of affordable units; and

(g) Any other funds collected in connection with the municipal affordable housing program including but not limited to interest earned on fund deposits.

(3) The municipality shall provide the Department with written authorization, in the form of a tri-party escrow agreement(s) between the municipality, the Department and the financial institution in which the municipal affordable housing trust fund has been established to permit the Department to direct the disbursement of the funds as provided or in N.J.A.C. 5:99-2.1 et seq.

(4) Occurrence of any of the deficiencies outlined in N.J.A.C. 5:99 may result in the Department requiring the forfeiture of all or a portion of the funds in the municipal Affordable Housing Trust Fund.

(5) All interest accrued in the housing trust fund shall only be used on eligible affordable housing purposes approved by the Court.

I. Use of funds.

(1) 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.

(2) Funds shall not be expended to reimburse the municipality or activities that occurred prior to the authorization of a municipality to collect development fees.

(3) 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.

(a) 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.

(b) 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.

(4) 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.

J. Monitoring.

(1) 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.

K. Ongoing collection of fees.

(1) 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.

(2) If the municipality fails to renew its ability to impose and collect development fees prior to the expiration of its Judgment of Compliance or Compliance Certification, 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).

L. Emergent Affordable Housing Opportunities. Requests to expend affordable housing trust funds on emergent affordable housing opportunities not included in the municipal fair share plan shall be made to the Department 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 2. All ordinances or parts of ordinances inconsistent herewith are hereby repealed as to such inconsistencies.

SECTION 3. If any article, section, subsection, paragraph, phrase, or sentence is for any reason held to be unconstitutional or invalid, said article, section, subsection, paragraph, phrase or sentence shall be deemed separable.

SECTION 4. This Ordinance shall take effect upon final publication as provided by law.

NOTICE

NOTICE is hereby given that the foregoing Ordinance was introduced to pass on first reading at a regular meeting of the Council of the Borough of High Bridge held on _____, 2026, and ordered published in accordance with the law. Said Ordinance will be considered for final reading and adoption at a regular meeting of the Borough Council to be held on _____, 2026 at 7:30 p.m. or as soon thereafter as the Borough Council may hear this Ordinance at the _____, New Jersey, at which time all persons interested may appear for or against the passage of said Ordinance.

Adam Young
Borough Clerk

Adopted:

_____
Michelle Lee, Mayor
Borough Council

Attest:

_____
Adam Young
Borough Clerk

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