BOROUGH OF EAST NEWARK, COUNTY OF HUDSON, STATE OF NEW JERSEY
MINUTES OF THE REGULAR MEETING OF THE MAYOR AND BOROUGH COUNCIL
DATE: FEBRUARY 11, 2026
TIME: 6:30 PM

ORDER OF BUSINESS

CALL MEETING TO ORDER

The Regular Meeting of the Mayor and Council of the Borough of East Newark was called to order at approximately 6:30 P.M., by Borough Clerk Dr. Cosmo A. Cirillo.

PLEDGE OF ALLEGIANCE

MEETING NOTICE STATEMENT - As presiding officer of this Regular Meeting of the Mayor and Council of the Borough of East Newark, held on February 11, 2026 at 6:30 P.M., I do hereby publicly announce, and I direct that this announcement shall be placed in the minutes of this meeting, and that the Notice requirements provided for in the "Open Public Meetings Act" have been satisfied. Notice of this meeting was properly given to the Borough Council by Resolution. Said notice was transmitted by the Borough Clerk to the Observer and Star Ledger and publicly posted on the Borough Website, Municipal Bulletin Board and filed with the office of the Borough Clerk.

ROLL CALL

Present:	Councilman De Oliveira Councilwoman Evaristo Councilman K. Graham Councilman Pinto Councilwoman Zincavage Mayor Grilo
Absent:	Councilman R. Graham
Also in attendance:	Dr. Cosmo A. Cirillo, Borough Clerk Mr. Fred Confessore, Borough Administrator Mr. Michael Cifelli, Esq., Borough Attorney (via teleconference) Dir. James Abbott, Public Safety Capt. Junior Fiori, Officer in Charge Mr. Hiram Gonzalez, CFO

CAUCUS DISCUSSION

A. Covid Update – *Mayor Grilo*
B. Upcoming Events Update – *Mayor Grilo*
C. Grants Update – *Mayor Grilo*
D. Police Department Update – *Capt. Fiori & Dir. Abbott*
E. DPW Update – *Mr. Confessore*
F. Lead Pipe Replacement Update – *Mr. Confessore*

CONSENT AGENDA - RESOLUTIONS

The consent agenda consisted of Resolutions 31-26, 32-26, 33-26, 34-26, 35-26, 36-26, 37-26, 38-26, 39-26, 40-26, 41-26, 42-26, and 43-26.

A motion was made by Councilwoman Evaristo, second by Councilman De Oliveira, to adopt the consent agenda as established. The motion was adopted by the following votes.

Ayes:	De Oliveira; Evaristo; K. Graham; Pinto; Zincavage
Nays:	None
Abstain:	Note* - Councilman K. Graham abstained on Resolutions 31-26 and 35-26
Absent:	R. Graham

A. Resolution 31-26 – Approving the minutes of the January 7, 2026, Sine Die and Reorganization Meeting of the Mayor and Council of the Borough of East Newark

Resolution # 31-26
2-11-2026

BOROUGH OF EAST NEWARK
COUNTY OF HUDSON, STATE OF NEW JERSEY

RESOLUTION APPROVING THE MINUTES OF THE JANUARY 7, 2026, SINE DIE AND REORGANIZATION MEETING OF THE MAYOR AND COUNCIL OF THE BOROUGH OF EAST NEWARK

WHEREAS, copies of the minutes of the following meeting of the Mayor and Council of the Borough of East Newark have been provided to the members of Council and reviewed.

NOW, THEREFORE BE IT RESOLVED by the Mayor and Council of the Borough of East Newark, in the County of Hudson, State of New Jersey that the minutes of the January 7, 2026, Sine Die and Reorganization be and are hereby approved.

B. Resolution 32-26 – Approving the payment of bills and issuance of checks for the period through February 11, 2026, in the amount of $1,035,276.13

Resolution # 32-26
2-11-2026

BOROUGH OF EAST NEWARK
COUNTY OF HUDSON, STATE OF NEW JERSEY

RESOLUTION AUTHORIZING PAYMENT OF BILLS AND THE ISSUANCE OF CHECKS FOR THE PERIOD THROUGH FEBRUARY 11, 2026, IN THE TOTAL AMOUNT OF $1,035,276.13

WHEREAS, certain bills which are contained on the bills list which is annexed hereto and incorporated herein have been submitted to the Borough of East Newark for payment; and

WHEREAS, pursuant to N.J.S.A. 40A:5-16, it has been certified to the governing body that the goods and services for which said bills were submitted have been received by or rendered to the Borough of East Newark; and

WHEREAS, the Chief Financial Officer of the Borough of East Newark has certified to the governing body that there are funds legally appropriated and available in the budget for the payment of said bills and that the said payment will not result in the disbursement of public monies or in the encumbering of same in excess of the 2025 and/or 2026 appropriation for said purpose.

NOW, THEREFORE BE IT RESOLVED by the Mayor and Council of the Borough of East Newark, in the County of Hudson, State of New Jersey, that it hereby authorizes the Chief Financial Officer and the designated signatories to sign checks in payment of the bills set forth in the annexed schedule.

C. Resolution 33-26 – Approving the Hiring of Diane Rizzolo as Part-Time Administrative Assistant

Resolution # 33-26
2-11-2026

BOROUGH OF EAST NEWARK
COUNTY OF HUDSON, STATE OF NEW JERSEY

RESOLUTION APPROVING THE HIRING OF DIANE RIZZOLO AS A PART-TIME ADMINISTRATIVE ASSISTANT

WHEREAS, the Borough has a need to hire a part-time administrative assistant; and

WHEREAS, Diane Rizzolo has applied for the position of part-time administrative assistant and has demonstrated she possesses the qualifications to successfully perform the job functions required; and

WHEREAS, the Mayor and Borough Administrator have recommended the hiring of Diane Rizzolo as part-time administrative assistant.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council for the Borough of East Newark, in the County of Hudson, State of New Jersey, that Diane Rizzolo is hereby appointed as a part-time administrative assistant, retroactive to January 12, 2026, and compensated in accordance with the Borough's salary ordinance.

D. Resolution 34-26 – Authorizing Appointment of James Abbott as Director of Public Safety

Resolution # 34-26
2-11-2026

BOROUGH OF EAST NEWARK
COUNTY OF HUDSON, STATE OF NEW JERSEY

RESOLUTION AUTHORIZING APPOINTMENT OF JAMES ABBOTT AS DIRECTOR OF PUBLIC SAFETY

WHEREAS, in accordance with the Borough of East Newark Municipal Ordinance 3-24, there will be a Director of Public Safety, who shall oversee the Department of Public Safety; and

WHEREAS, the responsibilities and duties of the Director of Public Safety are delineated in Municipal Ordinance 3-24.4; and

WHEREAS, the Borough finds and determines that James Abbott meets and exceeds all the qualification requirements for appointment to said position; and

WHEREAS, based on the foregoing, the governing body of the Borough of East Newark has determined that James Abbott is qualified to serve as the Director of Public Safety for the Borough of East Newark and will be able to perform all the duties of Director of Public Safety;

NOW, THEREFORE BE IT RESOLVED that the Mayor and Council of the Borough of East Newark, in the County of Hudson, State of New Jersey, do hereby approve the hire and appointment of James Abbott as Director of Public Safety retroactive to February 1, 2026 at a salary commensurate with the Borough's Salary Ordinance.

BE IT FURTHER RESOLVED that the Chief Financial Officer certifies that funds are available for the appropriation from Current Fund – Police – Salary and Wages.

E. Resolution 35-26 – Amending Resolution 29-26 Acknowledging Correspondence and Accepting the Election of Officers of the East Newark Volunteer Fire Department for the Year 2026

Resolution # 35-26
2-11-2026

BOROUGH OF EAST NEWARK
COUNTY OF HUDSON, STATE OF NEW JERSEY

AMENDING RESOLUTION 29-26 ACKNOWLEDGING CORRESPONDENCE AND ACCEPTING THE ELECTION OF OFFICERS OF THE EAST NEWARK VOLUNTEER FIRE DEPARTMENT FOR THE YEAR 2026

WHEREAS, the Borough of East Newark is served and protected by the East Newark Volunteer Fire Department, whose officers and members provide essential fire protection and emergency services to the community; and

WHEREAS, correspondence has been received from Captain Louis Carratura advising that the members of the East Newark Volunteer Fire Department have elected their officers for the 2026 calendar year; and

WHEREAS, the officers elected for the East Newark Volunteer Fire Department for 2026 are as follows:

- Chief: Ken Graham
- Deputy Chief: Allen Yudichak
- Captain: Louis Carratura — Defender Hose Company
- Captain: Darren Lasky — Sherman Hook Company
- Lieutenant: Chris Hidrovo — Defender Hose Company
- Lieutenant: Fabio Ruas — Sherman Hook Company
- Lieutenant: Danny Hidrovo — Defender Hose Company
- 2nd Lieutenant Eddie Montalvo — Sherman Hook Company

WHEREAS, with the officers duly elected, the East Newark Volunteer Fire Department is positioned to continue strengthening its operations and advancing the mission of protecting the residents and property of the Borough;

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the Borough of East Newark, County of Hudson, State of New Jersey, that the correspondence from Captain Louis Carratura is hereby acknowledged and the election of the above-named officers of the East Newark Volunteer Fire Department for the year 2026 is accepted.

BE IT FURTHER RESOLVED that this resolution shall take effect immediately upon adoption according to law.

F. Resolution 36-26 – Authorizing Change Order Number 2 Approved by the Municipal Engineer to Shauger Property Services for Lead Service Line Replacement, Phase III and Approve Pay Certificate Number 3

Resolution # 36-26
2-11-2026

BOROUGH OF EAST NEWARK
COUNTY OF HUDSON, STATE OF NEW JERSEY

RESOLUTION AUTHORIZING CHANGE ORDER NUMBER 2 APPROVED BY THE MUNICIPAL ENGINEER TO SHAUGER PROPERTY SERVICES FOR LEAD SERVICE LINE REPLACEMENT, PHASE III AND APPROVE PAY CERTIFICATE NUMBER 3

WHEREAS, by Resolution, the Mayor and Council of the Borough of East Newark ("Borough") awarded a contract to Shauger Property Services, with offices at 429 Dodd Street, East Orange, NJ to perform 2025 Lead Service Line Replacement, Phase III project; and

WHEREAS, the contract amount to perform the Lead Service Line Replacement, Phase III project was awarded at one million, seven hundred thirty-four thousand thirty-five dollars and zero cents ($1,734,035.00); and

WHEREAS, by previous Change Order 1, the total adjusted contract amount was adjusted to $1,732,785.00; and

WHEREAS, during the project, it had been discovered that there was a need to reduce the amount of the contract awarded; and

WHEREAS, Shauger Property Services now submits Change Order Number 2 in the reduced amount of three hundred dollars and zero cents ($300.00); and

WHEREAS, the final award amount to Shauger Property Services is one million, seven hundred thirty-two thousand, four hundred eighty-five dollars and zero cents ($1,732,485.00); and

WHEREAS, Shauger Property Services now submits Pay Certificate Number 3 in the amount of $141,074.72; and

WHEREAS, the Town Engineers have reviewed the invoice and work completed and recommend payment of Pay Certificate No. 3 in the amount of $141,074.72 and certify that the work is within the scope of the original contract.

NOW THEREFORE, BE IT RESOLVED, that Mayor and Council of the Borough of East Newark, County of Hudson, and State of New Jersey, hereby authorize Change Order Number 2 in the reduced amount of three hundred dollars and zero cents ($300.00) to Shauger Property Services for the total contract amount of one million, seven hundred thirty-two thousand, four hundred eighty-five dollars and zero cents ($1,732,485.00) and authorize Pay Certificate No. 3 in the amount of $141,074.72; and

BE IT FURTHER RESOLVED, that notice of this Change Order shall be published and maintained in the Office of the Borough Clerk.

G. Resolution 37-26 – Authorizing the Mayor to Execute a Letter of Intent for the 2026 Hudson County Open Space Trust Fund – Veterans Playground and Waterpark Improvements

Resolution # 37-26
2-11-2026

BOROUGH OF EAST NEWARK
COUNTY OF HUDSON, STATE OF NEW JERSEY

AUTHORIZING THE MAYOR TO EXECUTE A LETTER OF INTENT FOR THE 2026 HUDSON COUNTY OPEN SPACE TRUST FUND – VETERANS PLAYGROUND AND WATERPARK IMPROVEMENTS

WHEREAS, the Hudson County Open Space Trust Fund provides grant funding to support the development, improvement, and preservation of recreational facilities for the benefit of local communities; and

WHEREAS, the Borough of East Newark desires to submit a Letter of Intent to the Hudson County Open Space Trust Fund to formally express its intent to seek funding for the proposed Veterans Playground and Waterpark Improvements.

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and Council of the Borough of East Newark, County of Hudson, State of New Jersey that:

1. The Mayor is hereby authorized to execute a Letter of Intent for the 2026 Hudson County Open Space Trust Fund to seek funding for improvements to the Veterans Playground and Waterpark.

2. The Mayor, Borough Administrator, and other appropriate officials are authorized to take all necessary actions to facilitate the submission of the Letter of Intent and any subsequent grant application for this project.

H. Resolution 38-26 – Authorizing the Mayor to Execute a Letter of Intent for the 2026 Hudson County Open Space Trust Fund – Veterans Soccer Field Improvements

Resolution # 38-26
2-11-2026

BOROUGH OF EAST NEWARK
COUNTY OF HUDSON, STATE OF NEW JERSEY

AUTHORIZING THE MAYOR TO EXECUTE A LETTER OF INTENT FOR THE
2026 HUDSON COUNTY OPEN SPACE TRUST FUND –
VETERANS SOCCER FIELD IMPROVEMENTS

WHEREAS, the Hudson County Open Space Trust Fund provides grant funding to support the development, improvement, and preservation of recreational facilities for the benefit of local communities; and

WHEREAS, the Borough of East Newark desires to submit a Letter of Intent to the Hudson County Open Space Trust Fund to formally express its intent to seek funding for the proposed Veterans Soccer Field Improvements.

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and Council of the Borough of East Newark, County of Hudson, State of New Jersey that:

1. The Mayor is hereby authorized to execute a Letter of Intent for the 2026 Hudson County Open Space Trust Fund to seek funding for improvements to the Veterans Soccer Field.

2. The Mayor, Borough Administrator, and other appropriate officials are authorized to take all necessary actions to facilitate the submission of the Letter of Intent and any subsequent grant application for this project.

I. Resolution 39-26 – Authorizing the Mayor to Execute a Letter of Intent for the 2026 Hudson County Open Space Trust Fund – Riverfront Park Improvements

Resolution # 39-26
2-11-2026

BOROUGH OF EAST NEWARK
COUNTY OF HUDSON, STATE OF NEW JERSEY

AUTHORIZING THE MAYOR TO EXECUTE A LETTER OF INTENT FOR THE
2025 HUDSON COUNTY OPEN SPACE TRUST FUND –
RIVERFRONT PARK IMPROVEMENTS

WHEREAS, the Hudson County Open Space Trust Fund provides grant funding to support the development, improvement, and preservation of recreational facilities for the benefit of local communities; and

WHEREAS, the Borough of East Newark desires to submit a Letter of Intent to the Hudson County Open Space Trust Fund to formally express its intent to seek funding for the proposed Riverfront Park Improvements.

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and Council of the Borough of East Newark, County of Hudson, State of New Jersey that:

1. The Mayor is hereby authorized to execute a Letter of Intent for the 2026 Hudson County Open Space Trust Fund to seek funding for improvements to the Riverfront Park.

2. The Mayor, Borough Administrator, and other appropriate officials are authorized to take all necessary actions to facilitate the submission of the Letter of Intent and any subsequent grant application for this project.

J. Resolution 40-26 – Authorizing Application to the New Jersey Department of Community Affairs for the 2026 Local Recreation Improvement Grant – Veterans Playground and Waterpark Improvements

Resolution # 40-26
2-11-2026

BOROUGH OF EAST NEWARK
COUNTY OF HUDSON, STATE OF NEW JERSEY

AUTHORIZING APPLICATION TO THE NEW JERSEY DEPARTMENT OF COMMUNITY AFFAIRS FOR THE 2026 LOCAL RECREATION IMPROVEMENT GRANT – VETERANS PLAYGROUND AND WATERPARK IMPROVEMENTS

WHEREAS, the Borough of East Newark desires to apply for and obtain a grant from the New Jersey Department of Community Affairs for a maximum of $1,000,000 to carry out a project that includes dry and wet structures, rubber flooring and floor leveling.

BE IT RESOLVED, that the Borough of East Newark does hereby authorize the application for such a grant; and, recognizes and accepts that the Department may offer a lesser or greater amount and therefore, upon receipt of the grant agreement from the New Jersey Department of Community Affairs, does further authorize the execution of any such grant agreement; and also, upon receipt of the fully executed agreement from the Department, does further authorize the expenditure of funds pursuant to the terms of the agreement between the Borough of East Newark and the New Jersey Department of Community Affairs.

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and Council of the Borough of East Newark, County of Hudson, State of New Jersey that:

1. The Mayor, Borough Administrator, and other appropriate Borough officials are authorized to sign said application documents and to take all necessary actions to facilitate the submission of the application and any subsequent grant application for this project.

K. Resolution 41-26 – Authorizing Application to the New Jersey Department of Community Affairs for the 2026 Local Recreation Improvement Grant – Veterans Soccer Field Improvements

Resolution # 41-26
2-11-2026

BOROUGH OF EAST NEWARK
COUNTY OF HUDSON, STATE OF NEW JERSEY

AUTHORIZING APPLICATION TO THE NEW JERSEY DEPARTMENT OF COMMUNITY AFFAIRS FOR THE 2026 LOCAL RECREATION IMPROVEMENT GRANT – VETERANS SOCCER FIELD IMPROVEMENTS

WHEREAS, the Borough of East Newark desires to apply for and obtain a grant from the New Jersey Department of Community Affairs for a maximum of $60,000 to carry out a project that includes netting, lighting and scoreboard.

BE IT RESOLVED, that the Borough of East Newark does hereby authorize the application for such a grant; and, recognizes and accepts that the Department may offer a lesser or greater amount and therefore, upon receipt of the grant agreement from the New Jersey Department of Community Affairs, does further authorize the execution of any such grant agreement; and also, upon receipt of the fully executed agreement from the Department, does further authorize the expenditure of funds pursuant to the terms of the agreement between the Borough of East Newark and the New Jersey Department of Community Affairs.

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and Council of the Borough of East Newark, County of Hudson, State of New Jersey that:

1. The Mayor, Borough Administrator, and other appropriate Borough officials are authorized to sign said application documents and to take all necessary actions to facilitate the submission of the application and any subsequent grant application for this project.

L. Resolution 42-26 – Authorizing Application to the New Jersey Department of Community Affairs for the 2026 Local Recreation Improvement Grant – Riverfront Park Improvements

Resolution # 42-26
2-11-2026

BOROUGH OF EAST NEWARK
COUNTY OF HUDSON, STATE OF NEW JERSEY

AUTHORIZING APPLICATION TO THE NEW JERSEY DEPARTMENT OF COMMUNITY AFFAIRS FOR THE 2026 LOCAL RECREATION IMPROVEMENT GRANT –

RIVERFRONT PARK IMPROVEMENTS

WHEREAS, the Borough of East Newark desires to apply for and obtain a grant from the New Jersey Department of Community Affairs for a maximum of $120,000 to carry out a project that includes shading upgrades.

BE IT RESOLVED, that the Borough of East Newark does hereby authorize the application for such a grant; and, recognizes and accepts that the Department may offer a lesser or greater amount and therefore, upon receipt of the grant agreement from the New Jersey Department of Community Affairs, does further authorize the execution of any such grant agreement; and also, upon receipt of the fully executed agreement from the Department, does further authorize the expenditure of funds pursuant to the terms of the agreement between the Borough of East Newark and the New Jersey Department of Community Affairs.

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and Council of the Borough of East Newark, County of Hudson, State of New Jersey that:

1. The Mayor, Borough Administrator, and other appropriate Borough officials are authorized to sign said application documents and to take all necessary actions to facilitate the submission of the application and any subsequent grant application for this project.

M. Resolution 43-26 – Authorizing Agreement with LEW Environmental Services for Rental Unit Lead Testing

Resolution # 43-26
2-11-2026

BOROUGH OF EAST NEWARK
COUNTY OF HUDSON, STATE OF NEW JERSEY

RESOLUTION AUTHORIZING AN AGREEMENT WITH LEW ENVIRONMENTAL SERVICES FOR RENTAL UNIT LEAD TESTING

WHEREAS, pursuant to N.J.A.C. 5:28A-1, et seq. (the "Regulations"), the Borough of East Newark (the "Borough") is required to undertake a program of lead testing for all rental units in the Borough unless otherwise exempt; and

WHEREAS, the Regulations permit the Borough to affiliate with a certified third-party lead testing service to carry out the required testing, analysis and certifications; and

WHEREAS, LEW Environmental Services has submitted a proposal, a copy of which is attached hereto and incorporated herein by reference, setting forth the terms and conditions of the lead testing; and

WHEREAS, the Borough will not incur any fee from LEW Environmental, as all fees are billable and payable by the property owner; and

WHEREAS, the Borough Administrator has reviewed the proposal submitted by LEW Environmental and commend the approval of same.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council for the Borough of East Newark, in the County of Hudson, State of New Jersey, that LEW Environmental Services be and hereby is appointed as a designated lead testing services and that the Mayor, Borough Administrator and/or Borough Clerk be and hereby are authorized to execute and attest, respectively, any agreements or contracts with LEW Environmental Services, in accordance with the forgoing terms and in a form acceptable to the Borough Attorney.

ORDINANCES

A. Ordinance 1-2026 – **HEARING AND FINAL ADOPTION** – Ordinance of the Borough of East Newark, County of Hudson, State of New Jersey Amending Chapter 2 Titled "Administration" Specifically by Amending § 2-21.1(F) – to Create a Section Titled "Fire Director"

ORDINANCE NUMBER 01-2026

FIRST READING/
INTRODUCTION: January 5, 2026

SECOND READING/
PUBLIC HEARING/
ADOPTION: February 11, 2026

ORDINANCE

BOROUGH OF EAST NEWARK
COUNTY OF HUDSON, STATE OF NEW JERSEY

ORDINANCE OF THE BOROUGH OF EAST NEWARK AMENDING CHAPTER 2 TITLED "ADMINISTRATION" SPECIFICALLY BY AMENDING § 2-21.1(F) – TO CREATE A SECTION TITLED "FIRE DIRECTOR"

§ 2-21.1.f FIRE DIRECTOR.

1. Position Created.

There is hereby created the administrative position of Fire Director of the Borough of East Newark. The position of Fire Director may be in addition to or in lieu of the position of Fire Chief as determined by the Mayor and Council

2. Appointment, Term.

The Fire Director shall be appointed by the Mayor and Borough Council. All employees not affiliated with, or members of a labor union shall be deemed "employees at will," employed at the will of the Borough of East Newark, with employment for no definite or established length of time, and subject to termination at any time, for any reason, or for no reason at all, consistent with law and Borough of East Newark's ordinances, regulations and policies.

3. Qualifications.

Any person seeking appointment to the position of Fire Director shall demonstrate to the Mayor and Borough Council that he or she is qualified for the position by virtue of training or experience. By way of example and not limitation, such person may have prior fire department experience and/or supervisory and administrative experience in either the public or private sector.

4. Duties.

The duties of the Fire Director shall include, but not be limited to, the following:

a. Exercising full control over the Fire Department seeing, among other things, to the proper enforcement of any rules and/or regulations adopted by the Mayor and Borough Council, which shall be deemed the appropriate authority under law.

b. Reporting, from time to time, to the Mayor and Borough Council such matters related to the Fire Department as may require their attention.

c. Interviewing candidates for appointment to and/or promotion in the Fire Department and making recommendations for such appointment and/or promotion to the Mayor and Borough Council, which shall determine and make all appointments and promotions.

d. Bringing charges, when appropriate, against any member of the Fire Department and, pending a hearing on those charges before an appropriate authority, suspend the charged member, with or without pay, if the Director deems such a suspension necessary to the good order and discipline of the Fire Department.

e. Developing programs of continuing education for the members of the Fire Department to insure the highest level of training for the members of the Department.

f. Establishing and maintaining communications with schools and public and private associations to help such schools and associations understand and cooperate in the public safety effort of the community.

g. Establishing performance criteria for the members of the Fire Department and periodically evaluating the members under the established criteria.

h. Working with the Chief Financial Officer of the Borough of East Newark to establish the annual operating budget for the Fire Department.

i. Ensuring that each member of the Fire Department has the required training and associated certifications in order to function as a volunteer firefighter in general and to ensure that any firefighter assigned to perform specialized tasks has the requisite training and certification to perform their assigned specialized tasks.

j. Performing such other duties as may be required as part of the general duties of the Fire Director or as may be reasonably requested by the Mayor and Borough Council.

6. Part-Time or Full-Time Position.

The position of Fire Director may be deemed a part-time position calling for approximately 20 hours per week or a full-time position calling for approximately 40 hours per week, to be established within the discretion of the Mayor and Borough Council.

7. Salary.

The annual salary of the first Fire Director shall be established by the Mayor and Borough Council. Thereafter the annual salary shall be as set forth in the salary ordinance of the Borough of East Newark.

A motion was made by Councilwoman Evaristo, second by Councilwoman Zincavage, to open the public hearing. The motion was adopted by the following votes.

Ayes:	De Oliveira; Evaristo; K. Graham; Pinto; Zincavage
Nays:	None
Abstain:	None
Absent:	R. Graham

Public Hearing on Ordinance 1-2026: No one wished to be heard.

A motion was made by Councilwoman Zincavage, second by Councilman K. Graham, to close the public hearing and adopt Ordinance 1-2026 on second reading. The motion was adopted by the following votes.

Ayes:	De Oliveira; Evaristo; Pinto; Zincavage
Nays:	None
Abstain:	K. Graham
Absent:	R. Graham

B. Ordinance 2-2026 – **HEARING AND FINAL ADOPTION** – Ordinance of the Borough of East Newark, County of Hudson, State of New Jersey Creating Chapter 13 Titled "Affordable Housing" to Create the Position of the Municipal Housing Liaison for the Borough of East Newark

FIRST READING/
INTRODUCTION: January 5, 2026

SECOND READING/
PUBLIC HEARING/
ADOPTION: February 11, 2026

ORDINANCE

BOROUGH OF EAST NEWARK
COUNTY OF HUDSON, STATE OF NEW JERSEY

ORDINANCE OF THE BOROUGH OF EAST NEWARK CREATING CHAPTER 13 TITLED "AFFORDABLE HOUSING" TO CREATE THE POSITION OF THE MUNICIPAL HOUSING LIAISON FOR THE BOROUGH OF EAST NEWARK

WHEREAS, pursuant to N.J.S.A. 40:48-2, a municipality may make, amend, repeal, and enforce ordinances not contrary to the laws of this State or of the United States, as it may deem necessary and proper for order and protection of persons and property, and for the preservation of the public health, safety and welfare of the municipality and its inhabitants; and

WHEREAS, the Borough of East Newark is a municipality as defined by Title 40 of the New Jersey Statutes; and

WHEREAS, in March 2024, New Jersey enacted significant legislation aimed at reforming the state's affordable housing framework, known as Senate Bill S50 and Assembly Bill A4, which was signed by Governor Murphy on March 20, 2024, representing a major overhaul of how municipalities address their affordable housing obligations under the Mount Laurel Doctrine; and,

WHEREAS, the legislation signed by Governor Murphy on March 20, 2024, formally abolished the Council on Affordable Housing ("COAH") and transferred the responsibilities for affordable housing planning to the Department of Community Affairs ("DCA"); and

WHEREAS, pursuant to P.L. 2024, c.2, the Borough of East Newark is required to appoint a Municipal Housing Liaison for the oversight of administration of the Borough of East Newark's affordable housing program to enforce the requirements of the law and N.J.A.C. 5:80-26.1 et seq.; and

WHEREAS, there exists a need to amend Chapter 13 entitled Affordable Housing to create the position for the appointment of a Municipal Housing Liaison to administer the Borough of East Newark's affordable housing program.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Borough Council of the Borough of East Newark do hereby amend the Ordinance to create the position for the appointment of a Municipal Housing Liaison to administer the Borough of East Newark's affordable housing program:

§ 13-2 Municipal Housing Liaison.

§ 13-2.1 Purpose.

The purpose of this Article is to create the administrative mechanisms needed for the execution of the Borough of East Newark's responsibility to assist in the provision of affordable housing pursuant to the Fair Housing Act of 1985.

§ 13-2.2 Definitions.

As used in this Article, the following terms shall have the meanings indicated:

ADMINISTRATIVE AGENT — Shall mean the entity responsible for administering the affordability controls of some or all units in the affordable housing program for the Borough of East Newark to ensure that the restricted units under administration are affirmatively marketed and sold or rented, as applicable, only to low- and moderate-income households.

MUNICIPAL HOUSING LIAISON — Shall mean the employee charged by the governing body with the responsibility for oversight and administration of the affordable housing program for the Borough of East Newark.

DEPARTMENT OF COMMUNITY AFFAIRS – Shall mean the Department of Community Affairs as established under the laws of the State of New Jersey, which has primary jurisdiction for the administration of housing obligations in accordance with sound regional planning consideration in the State, which shall also include any current or future office, department or body authorized under State Law with primary or concurrent jurisdiction for the administration of housing obligations.

§ 13-2.3 Establishment of Municipal Housing Liaison Position and Compensation: Powers and Duties.

a. Establishment of Position of Municipal Housing Liaison. There is hereby established the position of Municipal Housing Liaison for the Borough of East Newark.

b. Subject to the approval of the Department of Community Affairs ("DCA"), the Municipal Housing Liaison shall be appointed by the governing body and may be a full or part-time municipal employee.

c. The Municipal Housing Liaison shall be responsible for oversight and administration of the affordable housing program for the Borough of East Newark, including the following responsibilities which may not be contracted out, exclusive of item 6 which may be contracted out:

    1. Serving as the Borough of East Newark's primary point of contact for all inquiries from the State, affordable housing providers, Administrative Agents, and interested households;

2. Monitoring the status of all restricted units in the Borough of East Newark's Fair Share Plan;

3. Compiling, verifying, and submitting annual reports as required by the DCA;

4. Coordinating meetings with affordable housing providers and Administrative Agents, as applicable;

5. Attending continuing education opportunities on affordability controls, compliance monitoring, and affirmative marketing as offered or approved by the DCA;

6. If applicable, serving as the Administrative Agent for some or all of the restricted units in the Borough of East Newark as described in Subsection f below.

d. Subject to approval by the DCA, the Borough of East Newark may contract with or authorize a consultant, authority, government or any agency charged by the governing body, which entity shall have the responsibility of administering the affordable housing program of the Borough of East Newark except for those responsibilities which may not be contracted out pursuant to Subsection c above. If the Borough of East Newark contracts with another entity to administer all or any part of the affordable housing program, including the affordability controls and Affirmative Marketing Plan, the Municipal Housing Liaison shall supervise the contracting Administrative Agent.

e. Compensation. Compensation, if any, shall be determined by the governing body at the time of the appointment of the Municipal Housing Liaison.

f. Administrative Powers and Duties Assigned to the Municipal Housing Liaison.

1. Affirmative Marketing.
    a. Conducting an outreach process to insure affirmative marketing of affordable housing units in accordance with the Affirmative Marketing Plan of the Borough of East Newark and the provisions of N.J.A.C. 5:80-26.15; and

    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.

2. 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;

d. Requiring that all certified applicants for restricted units execute a certificate substantially in the form, as applicable, of either the ownership or rental certificates set forth in 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; and

f. Employing the random selection process as provided in the Affirmative Marketing Plan of the Borough of East Newark when referring households for certification to affordable units.

3. Affordability Controls.

a. Furnishing to attorneys or closing agents forms of deed restrictions and mortgages for recording at the time of conveyance of title of each restricted unit;

b. Creating and maintaining a file on each restricted unit for its control period, including the recorded deed with restrictions, recorded mortgage and note, as appropriate;

c. Ensuring that the removal of the deed restrictions and cancellation of the mortgage note are effectuated and properly filed with the appropriate county's register of deeds or county clerk's office after the termination of the affordability controls for each restricted unit;

d. Communicating with lenders regarding foreclosures; and

e. Ensuring the issuance of Continuing Certificates of Occupancy or certifications pursuant to N.J.A.C. 5:80-26.10.

4. Resale and Rental.

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 rental; and

b. Instituting and maintaining an effective means of communicating information to low- and moderate-income households regarding the availability of restricted units for resale or re-rental.

5. Processing Request from Unit Owners.

a. Reviewing and approving requests from owners of restricted units who wish to take out home equity loans or refinance during the term of their ownership;

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 cost of central air-conditioning systems; and

c. Processing requests and making determinations on requests by owners of restricted units for hardship waivers.

6. Enforcement.

a. Securing annually lists of all affordable housing units for which 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. The posting annually in all rental properties, including two-family homes, of a notice as to the maximum permitted rent together with the telephone number of the Administrative Agent where complaints of excess rent can be made;

d. Sending annual mailings to all owners of affordable dwelling units, reminding them of the notices and requirements outlined in N.J.A.C. 5:80-26.18(d)4;

e. Establishing a program for diverting unlawful rent payments to the municipality's affordable housing trust fund or other appropriate municipal fund approved by the DCA;

f. Creating and publishing a written operating manual, as approved by the DCA, setting forth procedures for administering such affordability controls; and

g. Providing annual reports to the DCA as required.

7. The Administrative Agent shall have authority to take all actions necessary and appropriate to carry out its responsibilities hereunder.

8. All or some of the provisions above in Subsection **f** may be specifically delegated at a later date to an approved Administrative Agent as part of a contract.

SECTION TWO

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

SECTION THREE

Repealer. All Ordinances or parts thereof in conflict or inconsistent with this Ordinance are hereby repealed, but only however, to the extent of such conflict or inconsistency, it being the legislative intent that all Ordinances or part of ordinances now existing or in effect unless the same being conflict or inconsistent with any provision of this Ordinance shall remain in effect.

SECTION FOUR

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

SECTION FIVE

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

SUMMARY OF ORDINANCE

This Ordinance amends Chapter 13 to create the position of Municipal Housing Liaison for the oversight of administration of the Borough of East Newark's affordable housing program to enforce the requirements of the law and N.J.A.C. 5:80-26.1 et seq.

A motion was made by Councilman Graham, second by Councilwoman Zincavage, to open the public hearing. The motion was adopted by the following votes.

Ayes:	De Oliveira; Evaristo; K. Graham; Pinto; Zincavage
Nays:	None
Abstain:	None
Absent:	R. Graham

Public Hearing on Ordinance 2-2026: No one wished to be heard.

A motion was made by Councilwoman Zincavage, second by Councilman K. Graham, to close the public hearing and adopt Ordinance 2-2026 on second reading. The motion was adopted by the following votes.

Ayes:	De Oliveira; Evaristo; K. Graham; Pinto; Zincavage
Nays:	None
Abstain:	None
Absent:	R. Graham

C. Ordinance 3-2026 – **INTRODUCTION** – Ordinance Repealing Chapter 32, Entitled "Affordable Housing Development Fees" and Chapter 33-2.1 Entitled "Mandatory Affordable Set-Aside" and Replacing in its Entirety Chapter 32 of the Ordinance of the Borough of East Newark with Chapter 32, Entitled "Affordable Housing Ordinance"

A motion was made by Councilman De Oliveira, second by Councilwoman Evaristo, that this Ordinance be introduced on first reading. The motion was adopted by the following votes.

Ayes:	De Oliveira; Evaristo; K. Graham; Pinto; Zincavage
Nays:	R. Graham
Abstain:	None
Absent:	None

ORDINANCE NUMBER 03-2026

FIRST READING/
INTRODUCTION: February 11, 2026

SECOND READING/
PUBLIC HEARING/
ADOPTION: March 11, 2026

ORDINANCE

BOROUGH OF EAST NEWARK
COUNTY OF HUDSON, STATE OF NEW JERSEY

ORDINANCE REPEALING CHAPTER 32, ENTITLED "AFFORDABLE HOUSING DEVELOPMENT FEES" AND CHAPTER 33-2.1 ENTITLED "MANDATORY AFFORDABLE SET-ASIDE" AND REPLACING IN ITS ENTIRETY CHAPTER 32 OF THE ORDINANCE OF THE BOROUGH OF EAST NEWARK WITH CHAPTER 32, ENTITLED "AFFORDABLE HOUSING ORDINANCE"

WHEREAS, the Borough Council of the Borough of East Newark ("Borough Council"), based upon the recommendation of the Borough's professionals, established Chapter 32 of the Code of the Borough of East Newark (the "Code"), entitled "Affordable Housing Development Fees," by Ordinance No. 17-2025 adopted on December 29, 2025 and amended Chapter 33 of the Code by creating Section 33-2.1, entitled "Mandatory Affordable Set-Aside," by Ordinance No. 16-2025 adopted on December 29, 2025 in furtherance of Resolution #93-25 adopted on June 26, 2025, as directed by the Superior Court and consistent with the New Jersey Fair Housing Act of 1985, N.J.S.A. 52:27D-301 et seq., as amended (the "FHA") and as authorized under Directive #14-24 of the Administrative Office of the Courts, dated December 13, 2024 and supplemented June 23, 2025 (the "Directive"), implementing the Affordable Housing Dispute Resolution Program (the "Program"); and

WHEREAS, pursuant to the Directive, the Borough of East Newark Planning Board (the "Planning Board") adopted a Fourth Round Housing Element and Fair Share Plan ("HEFSP") on June 26, 2025 in accordance with the Municipal Land Use Law, N.J.S.A. 40:55D-1, et seq. (the "MLUL"), and the Borough endorsed the HEFSP by Resolution #93-25 adopted on June 26, 2025; and

WHEREAS, on August 30, 2025, the Fair Share Housing Center ("FSHC") filed a letter pursuant to N.J.S.A. 52:27D-304.1(f)(2)(b) regarding the Borough's HEFSP seeking additional information and is now requiring certain conditions, including the adoption of an Affordable Housing Ordinance, in the form attached hereto, before the HEFSP may be approved by the Program and trial court and receive a Certificate of Compliance from the Program; and

WHEREAS, the Borough, seeking to obtain a Certificate of Compliance from the Program, has determined to repeal Ordinance 16-2025 and Ordinance 17-2025, and replace these previously adopted Ordinances with the Affordable Housing Ordinance attached hereto. This Ordinance shall apply except where inconsistent with applicable law.

NOW THEREFORE, BE IT ORDAINED by the Mayor and Council of the Borough of East Newark, Hudson County, New Jersey, that Chapter 32, entitled "Affordable Housing Ordinance" is hereby created and Chapter 32, entitled "Affordable Housing Development Fees" and Chapter 33-2.1, entitled "Mandatory Affordable Set-Aside" are hereby repealed and replaced in their entirety to include the provisions addressing East Newark's constitutional obligation to provide for its fair share of very-low-, low-, and moderate-income housing, as directed by the Superior Court and consistent with N.J.A.C. 5:93-1, et seq., as amended and supplemented, N.J.A.C. 5:99, et seq., as amended and supplemented, N.J.A.C. 5:80-26.1, et seq., as amended and supplemented, and the FHA.

Section 1. Chapter 32, entitled "Affordable Housing Ordinance" is hereby created to read as follows:

A. Introduction & Applicability

1. This section of the Code sets forth regulations regarding the very low-, low- and moderate-income housing units in Borough of East Newark 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").
2. This Ordinance is intended to ensure that very low-, low- and moderate-income units ("affordable units") are created with controls on affordability over time and that very low-, low- and moderate-income households shall occupy these units pursuant to statutory requirements. This Ordinance shall apply to all inclusionary developments, individual affordable units, and 100% affordable housing developments except where inconsistent with applicable law. Low-Income Housing Tax Credit financed developments shall adhere to the provisions set forth below in item 5.c. below.
3. The Borough of East Newark Planning Board has adopted a HEFSP pursuant to the Municipal Land Use Law at N.J.S.A. 40:55D-1, et seq. The Fair Share Plan describes the ways the municipality shall address its fair share of very low-, low- and moderate-income housing as approved by the Superior Court and documented in the Housing Element.
4. This Ordinance implements and incorporates the relevant provisions of the HEFSP and addresses the requirements of 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.
5. Applicability

(i) The provisions of this Ordinance shall apply to all affordable housing developments and affordable housing units that currently exist and that are proposed to be created pursuant to the Borough's most recently adopted HEFSP.

(ii) This Ordinance shall apply to all developments that contain very low-, low- and moderate-income housing units included in the Borough's HEFSP, including any unanticipated future developments that will provide very low-, low- and moderate-income housing units.

(iii) 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.

B. Definitions

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

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

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

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

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

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

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

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

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

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

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

"Affordable housing development" means a development included in the Borough’s Housing Element and Fair Share Plan, and includes, but is not limited to, an inclusionary

development, a Borough sponsored affordable housing project, or a 100 percent affordable development. This includes developments with affordable units on-site, off-site, or provided as a payment in-lieu of construction only if such a payment-in-lieu option has been previously approved by the Program or Superior Court as part of the HEFSP. Payments in lieu of construction were invalidated per P.L. 2024, c.2.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“Deficient housing unit” means a housing unit with health and safety code violations that require the repair or replacement of a major system. A major system includes weatherization, roofing, plumbing (including wells), heating, electricity, sanitary plumbing (including septic systems), lead paint abatement and/or load bearing structural systems.

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

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

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

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

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

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

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

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

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

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

"Exclusionary zoning litigation" means litigation challenging the fair share plan, housing element, ordinances, or resolutions that implement the fair share plan or housing element of a municipality based on alleged noncompliance with the Act or the Mount Laurel doctrine, which litigation shall include, but shall not be limited to, litigation seeking a builder's remedy.

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

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

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

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

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

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

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

"Housing element" means the portion of the Borough’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 Borough’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 Borough’s present and prospective obligation for affordable housing, determined pursuant to subsection f. at N.J.S.A. 52:27D-304.1.

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

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

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

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

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

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

"Mixed use development" means any development that includes both a non-residential development component and a residential development component, and shall include developments for which: (1)there is a common developer for both the residential development component and the non-residential development component, provided that for purposes of this definition, multiple persons and entities 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" means a household with a household income in excess of 50 percent but less than 80 percent of the regional median income.

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

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

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

"Municipal affordable housing trust fund" means a separate, interest-bearing account held by the Borough 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 Borough in connection with its affordable housing programs, which shall be used to address municipal low- and moderate-income housing obligations within the time frames established by the Legislature and this chapter.

"Municipal development fee ordinance" means an ordinance adopted by the Governing Body of the Borough that authorizes the collection of development fees.

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

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

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

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

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

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

"Non-residential development" means:

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

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

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

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

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

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

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

“Person with a disability” means a person with a physical disability, infirmity, malformation, or disfigurement which is caused by bodily injury, birth defect, aging, or illness including epilepsy and other seizure disorders, and which shall include, but not be limited to, any

degree of paralysis, amputation, lack of physical coordination, blindness or visual impairment, deafness or hearing impairment, the inability to speak or a speech impairment, or physical reliance on a service animal, wheelchair, or other remedial appliance or device.

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

"Prior round unit" means a housing unit that addresses the Borough'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 the Borough'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 Borough adopts the implementing ordinances and resolutions for the fourth round of affordable housing obligations, whichever occurs sooner; and (2) its siting and creation are consistent with the form of the prior round development plan or zoning designation in effect as of the cutoff date, without any amendment or variance.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“State Development and Redevelopment Plan” or “State Plan” means the plan prepared pursuant to sections 1 through 12 of the “State Planning Act,” P.L.1985, c. 398 (C.52:18A-196 et al.), designed to represent a balance of development and conservation objectives best suited to meet the needs of the State, and for the purpose of coordinating planning activities

and establishing Statewide planning objectives in the areas of land use, housing, economic development, transportation, natural resource conservation, agriculture and farmland retention, recreation, urban and suburban redevelopment, historic preservation, public facilities and services, and intergovernmental coordination pursuant to subsection f. of section 5 of P.L.1985, c. 398 (C.52:18A-200).

“Supportive housing household” means a very low-, low- or moderate-income household certified as income eligible by an administrative agent in accordance with N.J.A.C. 5:80-26.14, in which at least one member is an individual who requires supportive services to maintain housing stability and independent living and who is part of a population identified by federal or state statute, regulation, or program guidance as eligible for supportive or special needs housing. Such populations include, but are not limited to: persons with intellectual or developmental disabilities, persons with serious mental illness, person with head injuries (as defined in Section 2 of P.L. 1977), persons with physical disabilities or chronic health conditions, persons who are homeless as defined by the U.S. Department of Housing and Urban Development at 24 C.F.R. Part 578, survivors of domestic violence, youth aging out of foster care, and other special needs populations recognized under programs administered by the U.S. Department of Housing and Urban Development, the Low-Income Housing Tax Credit Program, the McKinney–Vento Act, or the New Jersey Department of Human Services. A supportive housing household may include family members, unrelated individuals, or live-in aides, provided that the household meets the income eligibility requirements of this subchapter, except that in the case of unrelated individuals not operating as a family unit, income eligibility shall be tested on an individual basis rather than in the aggregate; the unit is leased or sold subject to the affordability controls established herein; and the supportive services available to the household are designed to promote housing stability, independent living, and community integration. The determination of whether unrelated individuals are operating as a family unit shall be made based on the applicant’s self-identification of household members on the affordable housing application.

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

“Supportive housing unit” means a restricted rental unit that is affordable to very low-, low- or moderate-income households and is reserved for occupancy by a supportive housing household. A supportive housing unit is intended to provide long-term, community-based housing for individuals with intellectual or developmental disabilities, as defined at N.J.S.A. 30:6D-25(b). Such units must be leased subject to the affordability controls established herein; remain subject to Affirmative Marketing requirements, household certification, and administrative agent oversight; and may, with the approval of the municipal housing liaison and the administrative agent, be leased either by the bedroom or to a single household in the case of multi-bedroom configurations, provided such arrangement is consistent with the Federal Fair Housing Act (Title VIII of the Civil Rights Act of 1968) and the project’s Affirmative Marketing Program. A supportive housing unit may, with the approval of the administrative agent, be subject to a master lease by an approved supportive housing operator, provided that all subleases are to be certified supportive housing households and

remain fully subject to the affordability controls of this subchapter. Rents for supportive housing units shall not exceed the rent standards established and published by the New Jersey Department of Human Services. Supportive housing units are also referred to as permanent supportive housing units.

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

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

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

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

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

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

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

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

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

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

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

C. Monitoring and Reporting Requirements

1. 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:

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

   (ii) On or before February 15 of each year, the Borough 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 Borough 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.

   (iii) 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.

D. Borough-Wide Mandatory Set-Aside

1. A development, other than single-family family detached, providing a minimum of five new housing units created through any Borough rezoning or Zoning Board action, use or density variance, redevelopment plan, or rehabilitation plan that provides for densities at or above six units per acre, is required to include an affordable housing set-aside of 20%. The 20% set-aside shall be restricted to very-low-, low-, and moderate-income households.
2. Any affordable units generated through such mandatory set-aside shall be subject to all other provisions of this Ordinance.
3. All such affordable units shall be governed by this Ordinance, the controls on affordability, including bedroom distribution, and affirmatively marketed to the housing region in conformance with UHAC (N.J.A.C. 5:80-26.1 et seq.), the NJ Fair Housing Act (N.J.S.A. 52:27D-301 et seq.) any successor regulation, and all other applicable laws. This shall include but is not limited to:

   (i) The requirement that at least thirteen percent (13%) of the affordable units within each bedroom distribution shall be required to be for very low income households earning thirty percent (30%) or less of median income;
   (ii) Appropriate bedroom distribution of 1-, 2-, and 3-bedroom units;
   (iii) Recording of appropriate affordability controls of not less than forty (40) years for rental units and not less than thirty (30) years for sale units;
   (iv) Minimum unit sizes by square footage for affordable housing units;
   (v) The affordable units shall be affirmatively marketed in accordance with UHAC and applicable law. The affirmative marketing shall include the community and regional organizations identified by the Borough, and it shall also include posting of all affordable units on the New Jersey Housing Resource Center website in accordance with applicable law;
   (vi) The affordable units shall be integrated with the market-rate units, and the affordable units shall not be concentrated in separate building(s) or in separate area(s) or floor(s) from the market-rate units. In buildings with multiple dwelling units of similar tenure, this shall mean that the affordable units shall be generally distributed within each

building with market units. The residents of the affordable units shall have full and equal access to all of the amenities, common areas, and recreation areas and facilities as the residents of the market-rate units. The affordable units shall be the same type of housing unit as the market rate units, meaning that a market rate building available to families shall not be developed to provide age-restricted housing units; and

(vii) Construction of the affordable units in inclusionary developments shall be phased in compliance with this N.J.A.C. 5:93-5.6(d).

4. No subdivision shall be permitted or approved for the purpose of avoiding compliance with this requirement. Developers cannot, for example, subdivide a project into two lots and then make each of them a number of units just below the threshold.
5. The mandatory set-aside requirements of this section do not give any developer the right to any rezoning, variance or other relief, or establish any obligation on the part of the Borough to grant such rezoning, variance or other relief.
6. This Borough-wide mandatory set-aside requirement does not apply to any sites or specific zones otherwise identified in the HEFSP, for which density and set-aside requirements shall be governed by the specific standards as set forth therein.
7. In the event that the inclusionary set-aside of 20% of the total number of residential units does not result in a full integer, fractions of 0.49 or less may be rounded down and fractions of 0.50 or more shall be rounded up.

E. Affordable Housing Programs

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

(i) 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.

(ii) Both ownership and rental units shall be eligible for rehabilitation funds.

(iii) 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.

(iv) The Borough 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.

(v) The Borough 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 Borough Clerk and on the Borough's affordable housing web page.

(vi) 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.

3. New Construction Programs (per N.J.A.C. 5:93 as may be updated per various sections in N.J.A.C. 5:97 and N.J.S.A. 52:27D-301 et seq.).

(i) 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.

(ii) 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

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

a) Design of 100 percent affordable developments:

   (i) Restricted units must meet the minimum square footage required for the number of inhabitants for which the unit is marketed and the minimum square footage required for each bedroom, as set forth in the Neighborhood Preservation Balanced Housing rules at N.J.A.C. 5:43-2.4.

   (ii) Each bedroom in each restricted unit must have at least one window.

   (iii) Restricted units must include adequate air conditioning and heating.

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

   (i) Restricted units must use the same building materials and architectural design elements (for example, plumbing, insulation, or siding) as market-rate units of the same unit type (for example, flat or townhome) within the same development, except that restricted units and market-rate units may use different interior finishes. This shall apply to prior round units.

   (ii) Restricted units and market-rate units within the same affordable development must be sited such that restricted units are not concentrated in less desirable locations.

   (iii) Restricted units may not be physically clustered so as to segregate restricted and market-rate units within the same development or within the same building, but must be interspersed throughout the development, except that age-restricted and supportive housing units may be physically clustered if the clustering facilitates the provision of on-site medical services or on-site social services. Prior round affordable units shall be integrated with market rate units to the extent feasible.

   (iv) Residents of restricted units must be offered the same access to communal amenities as residents of market-rate units within the same affordable development. Examples of communal amenities include, but are not limited to, community pools, fitness and recreation centers, playgrounds, common rooms and outdoor spaces, and building entrances and exits. This shall apply to prior round units.

   (v) Restricted units must include adequate air conditioning and heating and must use the same type of cooling and heating sources as market-rate units of the same unit type. This shall apply to prior round units.

   (vi) Each bedroom in each restricted unit must have at least one window.

   (vii) Restricted units must be of the same unit type as market-rate units within the same building.

   (viii) Restricted units and bedrooms must be no less than 90 percent of the minimum size prescribed by the Neighborhood Preservation Balanced Housing rules at N.J.A.C. 5:43-2.4.

c) Design of developments containing for-sale units, including those with a mix of rental and for-sale units. Restricted rental units shall meet the requirements of section b above. Restricted sale units shall comply with the below:

(i) Restricted units must use the same building standards as market-rate units of the same unit type (for example, flat, townhome, or single-family home), except that restricted units and market-rate units may use different interior finishes. This shall apply to prior round units.

(ii) Restricted units may be clustered, provided that the buildings or housing product types containing the restricted units are integrated throughout the development and are not concentrated in an undesirable location or in undesirable locations. Prior round affordable units shall be integrated with market rate units to the extent feasible.

(iii) Restricted units may be of different unit housing product types than market-rate units, provided that there is a restricted option available for each market rate housing type. Developments containing market-rate duplexes, townhomes, and/or single-family homes shall offer restricted housing options that also include duplexes, townhomes, and/or single-family homes. Penthouses and higher priced end townhouses may be exempt from this requirement. The proper ratio for restricted to market-rate unit type shall be subject to municipal ordinance or, if not specified, shall be determined at the time of site plan approval.

(iv) Restricted units must meet the minimum square footage required for the number of inhabitants for which the unit is marketed and the minimum square footage required for each bedroom, as set forth in the Neighborhood Preservation Balanced Housing rules at N.J.A.C. 5:43-2.4.

(v) Penthouse and end units may be reserved for market-rate sale, provided that the overall number, value, and distribution of affordable units across the development is not negatively impacted by such reservation(s).

(vi) Residents of restricted units must be offered the same access to communal amenities as residents of market-rate units within the same affordable development. Examples of communal amenities include, but are not limited to, community pools, fitness and recreation centers, playgrounds, common rooms and outdoor spaces, and building entrances and exits. This shall apply to prior round units.

(vii) Each bedroom in each restricted unit must have at least one window; and

(viii) Restricted units must include adequate air conditioning and heating.

4. Utilities.

(i) Affordable units shall utilize the same type of cooling and heating source as market-rate units within the affordable housing development.

(ii) 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).

5. Low/moderate split and bedroom distribution.

(i) 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.

(ii) In each affordable housing development, at least 50% of the restricted units within each bedroom distribution rounded up to the nearest whole number shall be very low- or low-income units. The Borough of East Newark has chosen to allow rounding.

(iii) 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.

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

a) At a minimum, the number of bedrooms within the restricted units equals twice the number of restricted units;

b) Two-bedroom and/or three-bedroom units compose at least 50 percent of all restricted units;

c) The combined number of efficiency and one-bedroom units shall be no greater than 20%, rounded down, of the total number of low- and moderate-income units. The Borough of East Newark has chosen to allow rounding.

d) At least 30% of all low- and moderate-income units, rounded up, shall be two-bedroom units. The Borough of East Newark has chosen to allow rounding.

e) At least 20% of all low- and moderate-income units, rounded up, shall be three-bedroom units. The Borough of East Newark has chosen to allow rounding.

f) The remaining units may be allocated among two- and three- bedroom units at the discretion of the developer.

(v) Affordable housing developments that are age-restricted or supportive housing, except those supportive housing units whose sponsoring program determines the unit arrangements, shall be structured such that, at a minimum, the number of bedrooms shall equal the number of age-restricted or supportive housing low- and moderate-income units within the inclusionary development. Supportive housing units whose sponsoring program determines the unit arrangement shall comply with all requirements of the sponsoring program. The standard may be met by having all one-bedroom units or by having a two-bedroom unit for each efficiency unit. In affordable housing developments with 20 or more restricted units that are age-restricted or supportive housing, two-bedroom units must comprise at least 5% of those restricted units.

6. Accessibility requirements.

(i) 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.

(ii) Notwithstanding the exemption for townhouse dwelling units in the barrier free subcode, the first floor of all townhouse dwelling units and of all other multifloor dwelling units that are attached to at least one other dwelling unit shall be subject to the technical design standards of the barrier free subcode and shall include the following features:

a) An adaptable toilet and bathing facility on the first floor;

b) An adaptable kitchen on the first floor;

c) An interior accessible route of travel however an interior accessible route of travel shall not be required between stories;

d) An adaptable room that can be used as a bedroom, with a door, or the casing for the installation of a door that is compliant with the Barrier Free Subcode, on the first floor;

e) If not all of the foregoing requirements in ii(a) through ii(d) above 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:

i. 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.

ii. 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.

iii. 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.

iv. 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.

v. 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.

7. Accessory Apartment program (per N.J.A.C. 5:93-5.9 as may be updated per various sections in N.J.A.C. 5:97-6.8).
   (i) An accessory apartment program shall provide low- and moderate-income units or may be limited to only low- or only moderate-income units .
   (ii) Per N.J.A.C. 5:97-6.8(c)1, at the time of initial occupancy of the unit and for at least ten years thereafter, the accessory apartment shall be rented only to income eligible households consistent with the income category and rent structure of the unit.
   (iii) Rents of accessory apartments shall be established using the same methodology of affordable rental units discussed herein.
   (iv) There shall be a recorded deed or declaration of covenants and restrictions applied to the property upon which the accessory apartment is located running with the land and limiting its subsequent rental for the duration of the control period.
   (v) The municipal accessory apartment program shall not restrict the number of bedrooms in any accessory apartment.
   (vi) Per N.J.A.C. 5:97-6.8(b)2, the municipality shall provide a minimum of $25,000 per unit to subsidize the creation of each low-income accessory apartment or $20,000 per unit to subsidize the creation of each moderate-income accessory apartment. Subsidy may be used to fund actual construction costs and/or to provide compensation for reduced rental rates.

F. Market to Affordable program (per N.J.A.C. 5:97-6.9).
   1. The market to affordable program permits the purchase or subsidization of unrestricted units through a mortgage write-down provided to an income-certified buyer or through a sale or rental as a low- or moderate-income unit to an income-eligible household. The market to affordable program may produce both low- and moderate-income units.
   2. At the time they are offered for sale or rental, eligible units may be new, pre-owned or vacant.
   3. The units shall be certified to be in sound condition as a result of an inspection performed by a licensed building inspector.
   4. A minimum subsidy of $25,000 per moderate-income unit and/or $30,000 per low-income unit shall be provided, with additional subsidy depending on the market prices or rents in a municipality.
   5. The units shall comply with UHAC with the following exceptions:
      (i) Bedroom distribution (N.J.A.C. 5:80-26.4).
      (ii) Low/moderate income split (N.J.A.C. 5:80-26.4).
   6. Affordability average (N.J.A.C. 5:80-26.4):
      (i) The maximum rent for a moderate-income unit shall be affordable to households earning no more than 60 percent of median income and the maximum rent for a low-income unit shall be affordable to households earning no more than 44 percent of median income; and
      (ii) The maximum sales price for a moderate-income unit shall be affordable to households earning no more than 70 percent of median income and the maximum sales price for a low-income unit shall be affordable to households earning no more than 40 percent of median income.

G. Extension of Controls Program (for ownership units per N.J.A.C. 5:97-6.14 and UHAC at N.J.A.C. 5:80-26.6(h) through (k) and (m); and for rental units per N.J.A.C. 5:97-6.14 and N.J.A.C. 5:80-26.12(h) through (k)).
   1. An extension of affordability controls program is established to maintain and extend the affordability of deed restricted units scheduled to come out of their affordability control period, subject to N.J.A.C. 5:97-6.14 and UHAC, including the following:

(i) The affordable unit meets the criteria for prior cycle (April 1, 1980 - December 15, 1986) or post December 15, 1986 credits set forth in N.J.A.C. 5:97.

(ii) The affordability controls for the unit are scheduled to expire in the current round; or in the next round of housing obligations if the Borough's election to extend controls is made no earlier than one year before the end of the current round;

(iii) The Borough shall obtain a continuing certificate of occupancy or a certified statement from the municipal building inspector stating that the restricted unit meets all code standards.

(iv) If a unit requires repair and/or rehabilitation work in order to receive a continuing certificate of occupancy or certified statement from the municipal building inspector, the Borough shall fund and complete the work.

(v) The Borough shall adhere to the process for extending controls pursuant to UHAC for extending ownership units and rental units, either inclusionary or 100% affordable developments.

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

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

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

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

1. The following provisions shall apply to group homes, residential health care facilities, and supportive shared living housing:
   (i) 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.
   (ii) Housing that is age-restricted shall be included with the maximum number of units that may be age-restricted pursuant to the Act.
   (iii) Occupancy shall not be restricted to youth under 18 years of age.

(iv) 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.

(v) The bedrooms and/or units shall comply with UHAC with the following exceptions:

a) 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;

b) Affordability average and bedroom distribution (N.J.A.C. 5:80-26.4).

(vi) 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.

(vii) 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.

(viii) The following documentation shall be submitted by the sponsor to the municipality prior to marketing the completed units or facility:

a) An Affirmative Marketing Plan in accordance with D1 above; and

b) 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.

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

J. Regional Income Limits.

1. Administrative agents shall use the current regional income limits for the purpose of pricing affordable units and determining income eligibility of households.

2. Regional income limits are based on regional median income, which is established by a regional weighted average of the "median family incomes" published by HUD. The procedure for computing the regional median income is detailed in N.J.A.C. 5:80-26.3.

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

K. Maximum Initial Rents And Sales Prices.

1. In establishing rents and sales prices of affordable housing units, the Administrative Agent shall follow the procedures set forth in N.J.A.C. 5:80-26.4.

2. The average rent for all restricted units within each affordable housing development shall be affordable to households earning no more than 52% of regional median income.

3. The maximum rent for restricted rental units within each affordable housing development shall be affordable to households earning no more than 60% of regional median income.

4. The developers and/or municipal sponsors of restricted rental units shall establish at least one rent for each bedroom type for both low-income and moderate-income units, provided that at least 13% of all low- and moderate-income rental units shall be affordable to households earning no more than 30% of median income. These very low-income units shall be part of the low-income requirement and very-low-income units should be distributed between each bedroom count as proportionally as possible, to the nearest whole unit, to the total number of restricted units within each bedroom count.

5. The maximum sales price of restricted ownership units within each affordable housing development shall be affordable to households earning no more than 70% of median income, and each affordable housing development must achieve an affordability average that does not exceed 55% for all restricted ownership units. In achieving this affordability average, moderate-income ownership units must be available for at least three different prices for each bedroom type, and low-income ownership units must be available for at least two different prices for each bedroom type when the number of low- and moderate-income units permits.

6. The master deeds and declarations of covenants and restrictions for affordable developments may not distinguish between restricted units and market-rate units in the calculation of any condominium or homeowner association fees and special assessments to be paid by low- and moderate-income purchasers and those to be paid by market-rate purchasers. Notwithstanding the foregoing sentence, condominium units subject to a municipal ordinance adopted before December 20, 2004, which ordinance provides for condominium or homeowner association fees and/or assessments different from those provided for in this subsection are governed by the ordinance.

7. In determining the initial sales prices and rents for compliance with the affordability average requirements for restricted family units, the following standards shall be met:

   (i) A studio or efficiency unit shall be affordable to a one-person household;

   (ii) A one-bedroom unit shall be affordable to a one and one-half person household;

   (iii) A two-bedroom unit shall be affordable to a three-person household;

   (iv) A three-bedroom unit shall be affordable to a four and one-half person household; and

   (v) A four-bedroom unit shall be affordable to a six-person household.

8. In determining the initial rents and sales prices for compliance with the affordability average requirements for restricted units in assisted living facilities and age-restricted and special needs and supportive housing developments, the following standards shall be met:

   (i) A studio or efficiency unit shall be affordable to a one-person household;

   (ii) A one-bedroom unit shall be affordable to a one and one-half person household; and

   (iii) A two-bedroom unit shall be affordable to a two-person household or to two one-person households. Where pricing is based on two one-person households, the developer shall provide a list of units so priced to the Municipal Housing Liaison and the Administrative Agent.

9. The initial purchase price for all restricted ownership units shall be calculated so that the monthly carrying cost of the unit, including principal and interest (based on a mortgage loan equal to 95% 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% of the eligible monthly income of the appropriate size household as determined pursuant to N.J.A.C. 5:80-26.7, as may be amended and supplemented; provided, however, that the price shall be subject to the affordability average requirement of N.J.A.C. 5:80-26.4, as may be amended and supplemented.

10. The initial rent for a restricted rental unit shall be calculated so that the total monthly housing expense, including an allowance for tenant-paid utilities, does not exceed 30% 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% of gross income of and the appropriate household size as determined pursuant to N.J.A.C. 5:80-26.3, as may be amended and supplemented.
11. At the anniversary date of the tenancy of the certified household occupying a restricted rental unit, following proper notice provided to the occupant household pursuant to N.J.S.A. 2A:18-61.1.f, the rent may be increased to an amount commensurate with the annual percentage increase in the Consumer Price Index for All Urban Consumers (CPI-U), specifically U.S. Bureau of Labor Statistics Series CUUR0100SAH, titled "Housing in Northeast urban, all urban consumers, not seasonally adjusted." Rent increases for units constructed pursuant to Low-Income Housing Tax Credit regulations shall be indexed pursuant to the regulations governing Low-Income Housing Tax Credits.

L. Affirmative Marketing.

1. The Borough shall adopt, by resolution, an Affirmative Marketing Plan, subject to approval of the Superior Court, compliant with N.J.A.C. 5:80-26.16, as may be amended and supplemented.
2. The Affirmative Marketing Plan is a regional marketing strategy designed to attract buyers and/or renters of all majority and minority groups, regardless of race, creed, color, national origin, ancestry, marital or familial status, gender, affectional or sexual orientation, disability, age, or number of children, to housing units which are being marketed by a developer, sponsor or owner of affordable housing. The Affirmative Marketing Plan is intended to target those potentially eligible persons who are least likely to apply for affordable units in that region. It is a continuing program that directs all marketing activities toward Housing Region 1 and is required to be followed throughout the period of deed restriction.
3. The Borough 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 Borough 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.
4. 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.

5. 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.
6. 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.
7. 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.
8. The Affirmative Marketing Process for available affordable units shall begin at least four months (120 days) prior to the expected date of occupancy.

M. Selection of Occupants of Affordable Housing Units.

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

N. Occupancy Standards.

1. In referring certified households to specific restricted units, to the extent feasible, and without causing an undue delay in occupying the unit, the Administrative Agent shall strive to:

(i) Ensure each bedroom is occupied by at least one person, except for age-restricted and supportive and special needs housing units;

(ii) Provide a bedroom for every two adult occupants;

(iii) 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

(iv) Avoid placing a one-person household into a unit with more than one bedroom.

O. Control Periods for Restricted Ownership Units and Enforcement Mechanisms.

1. Control periods for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.6, as may be amended and supplemented, and each restricted ownership unit shall remain subject to the controls on affordability for a period of at least 30 years subject to the requirements of N.J.A.C. 5:80-26.6, as may be amended and supplemented.
2. Rehabilitated housing units that are improved to code standards shall be subject to affordability controls for a period of not less than 10 years (crediting towards present need only).

3. The affordability control period for a restricted ownership unit shall commence on the date the initial certified household takes title to the unit. The date of commencement shall be identified in the deed restriction.

4. If existing affordability controls are being extended, the extended control period for a restricted ownership unit commences on the effective date of the extension, which is the end of the original control period.

5. After the end of any control period, the restricted ownership unit remains subject to the affordability controls set forth in this subchapter until the owner gives notice of their intent to make an exit sale, at which point:

   (i) If the Borough exercises the right to extend the affordability controls on the unit, no exit sale occurs and a new control period commences; or

   (ii) If the Borough does not exercise the right to extend the affordability controls on the unit, the affordability controls terminate following the exit sale.

6. Prior to the issuance of any building permit for the construction/rehabilitation of restricted ownership units, the developer/owner and the Borough shall record a preliminary instrument provided by the Administrative Agent.

7. Prior to the issuance of the initial certificate of occupancy for a restricted ownership unit and upon each successive sale during the period of restricted ownership, the Administrative Agent shall determine the restricted price for the unit and shall also determine the nonrestricted, fair market value of the unit based on either an appraisal or the unit's equalized assessed value without the restrictions in place.

8. At the time of the initial sale of the unit and upon each successive price-restricted sale, the initial purchaser shall execute and deliver to the Administrative Agent a recapture note obliging the purchaser, as well as the purchaser's heirs, successors, and assigns, to repay, upon the first non-exempt sale after the unit's release from the restrictions set forth in this Ordinance, an amount equal to the difference between the unit's non-restricted fair market value and its restricted price, and the recapture note shall be secured by a recapture lien evidenced by a duly recorded mortgage on the unit.

9. The affordability controls set forth in this Ordinance shall remain in effect despite the entry and enforcement of any judgment of foreclosure with respect to price-restricted ownership units.

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

1. Price restrictions for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.7, as may be amended and supplemented, including:

   (i) The initial purchase price and affordability percentage for a restricted ownership unit shall be set by the Administrative Agent.

   (ii) The Administrative Agent shall approve all resale prices, in writing and in advance of the resale, to assure compliance with the standards set forth in N.J.A.C 5:80-26.7.

      a) If the resale occurs prior to the one-year anniversary of the date on which title to the unit was transferred to a certified household, the maximum resale price for a is the most recent non-exempt purchase price.

b) If the resale occurs on or after such anniversary date, the maximum resale price is the most recent non-exempt purchase price increased to reflect the cumulative annual percentage increases to the regional median income, effective as of the same date as the regional median income calculated pursuant to N.J.A.C. 5:80-26.3

(iii) 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);

(iv) No increase for capital improvements is permitted if the maximum resale price prior to adjusting for capital improvements already exceeds whatever initial purchase price the unit would have if it were being offered for purchase for the first time at the initial affordability percentage. All adjustments for capital improvements are subject to 10-year, straight-line depreciation.

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

Q. Buyer Income Eligibility.

1. Buyer income eligibility for restricted ownership units shall be established pursuant to N.J.A.C. 5:80-26.17, as may be amended and supplemented, such that very low-income ownership units shall be reserved for occupancy by households with a gross household income less than or equal to 30% of median income, low-income ownership units shall be reserved for occupancy by households with a gross household income less than or equal to 50% of median income and moderate-income ownership units shall be reserved for occupancy by households with a gross household income less than 80% of median income.

2. Notwithstanding the foregoing, the Administrative Agent may, upon approval by the Borough, and subject to the Division's approval, permit a moderate-income purchaser to buy a low-income unit if and only if the Administrative Agent can demonstrate that there

is an insufficient number of eligible low-income purchasers in the housing region to permit prompt occupancy of the unit and all other reasonable efforts to attract a low-income purchaser, including pricing and financing incentives, have failed. Any such low-income unit that is sold to a moderate-income household shall retain the required pricing and pricing restrictions for a low-income unit. Similarly, the Administrative Agent may permit low-income purchasers to buy very-low-income units in housing markets where, as determined by the Division, units are reserved for very-low-income purchasers, but there is an insufficient number of very-low-income purchasers to permit prompt occupancy of the units. In such instances, the purchased unit must be maintained as a very-low-income unit and sold at a very-low-income price point such that on the next resale the unit will still be affordable to very-low-income households and able to be purchased by a very-low-income household. A very-low-income unit that is seeking bonus credit pursuant to N.J.S.A. 52:27D-311.k(9) must first be advertised exclusively as a very-low-income unit according to the Affirmative Marketing requirements at N.J.A.C. 5:80-26.16, then advertised as a very-low-income or low-income unit for at least 30 additional days prior to referring any low-income household to the unit.

3. A certified household that purchases a restricted ownership unit must occupy it as the certified household's principal residence and shall not lease the unit; provided, however, that the Administrative Agent may permit the owner of a restricted ownership unit, upon application and a showing of hardship, to lease the restricted unit to another certified household for a period not to exceed one year.

4. The Administrative Agent shall certify a household as eligible for a restricted ownership unit when the household is a low-income household or a moderate-income household, as applicable to the unit, and the estimated monthly housing cost for the particular unit (including principal, interest, property taxes, homeowner and private mortgage insurance and condominium or homeowner association fees, as applicable) does not exceed 35%of the household's eligible monthly income; provided, however, that this limit may be exceeded if one or more of the following circumstances exists:

   (i) 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;

   (ii) 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

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

   (iv) The household documents the existence of assets, within the asset limitation otherwise applicable, with which the household proposes to supplement the rent payments

R. Limitations on Indebtedness Secured by Ownership Unit; Subordination.

1. Prior to incurring any indebtedness to be secured by a restricted ownership unit, the owner shall apply to the Administrative Agent for a determination in writing that the proposed indebtedness complies with the provisions of this Section, and the Administrative Agent shall issue such determination prior to the owner incurring such indebtedness.

2. With the exception of original purchase money mortgages, neither an owner nor a lender shall at any time during the control period cause or permit the total indebtedness secured by a restricted ownership unit to exceed 95% of the maximum allowable resale price of

that unit, as such price is determined by the Administrative Agent in accordance with N.J.A.C. 5:80-26.7(c).

S. Control Periods for Restricted Rental Units.

1. Control periods for units that meet the definition of prior round units shall be pursuant to the 2001 UHAC rules originally adopted October 1, 2001, 33 N.J.R. 3432 and shall remain subject to the requirements of this Ordinance for a period of at least 30 years as applicable unless otherwise indicated.

2. Other than for prior round units, control periods for restricted rental units shall be in accordance with N.J.A.C. 5:80-26.12, as may be amended and supplemented, and each restricted rental unit shall remain subject to the requirements of this Ordinance for a period of at least 40 years. Restricted rental units created as part of developments receiving 9% Low-Income Housing Tax Credits must comply with a control period of not less than a 30-year compliance period plus a 15-year extended use period for a total of 45 years.

3. 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.

4. 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.

5. Prior to the issuance of any building permit for the construction/rehabilitation of restricted rental units, the developer/owner and the Borough shall record a preliminary instrument provided by the Administrative Agent.

6. 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.

7. A restricted rental unit shall remain subject to the affordability controls of this Ordinance despite the occurrence of any of the following events:

(i) Sublease or assignment of the lease of the unit;

(ii) Sale or other voluntary transfer of the ownership of the unit;

(iii) The entry and enforcement of any judgment of foreclosure on the property containing the unit; or

(iv) 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.

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

1. The initial rent for a restricted rental unit shall be set by the Administrative Agent.

2. A written lease shall be required for all restricted rental units, except for units in an assisted living residence, and tenants shall be responsible for security deposits and the full amount of the rent as stated on the lease. A copy of the current lease for each restricted rental unit shall be retained on file by the Administrative Agent.

3. No additional fees, operating costs, or charges shall be added to the approved rent (except, in the case of units in an assisted living residence, to cover the customary charges for food and services) without the express written approval of the Administrative Agent.

   (i) Operating costs, for the purposes of this section, include certificate of occupancy fees, move-in fees, move-out fees, mandatory internet fees, mandatory cable fees, mandatory utility submetering fees, and for developments with more than one and a half off-street parking spaces per unit, parking fees for one parking space per household.

4. Any fee structure that would remove or limit affordable unit occupant access to any amenities or services that are required or included for market-rate unit occupants is prohibited. Application fees (including the charge for any credit check) shall not exceed 5% of the monthly rent of the applicable restricted unit to be applied to the costs of administering the controls applicable to the unit as set forth in this Ordinance.

5. Fees for unit-specific, non-communal items that are charged to market-rate unit tenants on an optional basis, such as pet fees for tenants with pets, storage spaces, bicycle-share programs, or one-time rentals of party or media rooms, may also be charged to affordable unit tenants, if applicable.

6. Pet fees may not exceed $30.00 per month and associated one-time payments for optional fees pertaining to pets, such as a pet cleaning fee, are prohibited.

7. Fees charged to affordable unit tenants for other optional, unit-specific, non-communal items shall not exceed the amounts charged to market-rate tenants.

8. For any prior round rental unit leased before December 20, 2024, elements of the existing fee structure that are consistent with prior rules, but inconsistent with N.J.A.C. 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.

U. Tenant Income Eligibility.

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

   (i) 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.

   (ii) 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.

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

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

   (i) 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;

(ii) 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;

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

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

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

3. The applicant shall file documentation sufficient to establish the existence of any of the circumstances in 2.a. through 2.e. above with the Administrative Agent, who shall counsel the household on budgeting.

V. Municipal Housing Liaison.

1. The Municipal Housing Liaison shall be approved by Borough resolution.

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

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

(i) 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.

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

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

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

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

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

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

(viii) 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.

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

(x) Listing on the Borough website contact information for the Municipal Housing Liason and Administrative Agents.

W. Administrative Agent.

1. All municipalities that have created or will create affordable housing programs and/or affordable units shall designate or approve, for each project within its HEFSP, an administrative agent to administer the affordable housing program and/or affordable housing units in accordance with the requirements of the FHA, NJAC 5:99-1 et seq. and UHAC.
2. The fees for administrative agents shall be paid as follows:

(i) Administrative agent fees related to rental units shall be paid by the developer/owner.

(ii) Administrative agent fees related to initial sale of units shall be paid by the developer.

(iii) Administrative agent fees related to resales shall be paid by the seller of the affordable home.

(iv) Administrative agent fees related to ongoing administration and enforcement shall be paid by the developer.

3. An Operating Manual for each affordable housing program shall be provided by the Administrative Agent(s). The Operating Manual(s) shall be available for public inspection in the Office of the Clerk and in the office(s) of the Administrative Agent(s). Operating manuals shall be adopted by resolution of the Governing Body.
4. Subject to the role of the Administrative Agent(s), the duties and responsibilities as are set forth in N.J.A.C. 5:99-7and which are described in full detail in the Operating Manual, including those set forth in UHAC, include:

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

(ii) Affirmative marketing:

a) Conducting an outreach process to affirmatively market affordable housing units in accordance with the Affirmative Marketing Plan of the Borough 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.

(iii) 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.

(iv) 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 Hudson County Register of Deeds or Hudson 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.

(v) 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 the Borough constitute public records of the Borough as defined by N.J.S.A. 47:3-16, and are legal property of the Borough.

(vi) 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.

(vii) Processing requests from unit owners.

a) Reviewing and approving requests from owners of restricted units who wish to refinance or take out home equity loans during the term of their ownership to determine that the amount of indebtedness to be incurred will not violate the terms of this ordinance.

b) Reviewing and approving requests to increase sales prices from owners of restricted units who wish to make capital improvements to the units that would affect the selling price, such authorizations to be limited to those improvements resulting in additional bedrooms or bathrooms and the depreciated cost of central air conditioning systems.

c) Notifying the Borough of an owner's intent to sell a restricted unit.

d) Making determinations on requests by owners of restricted units for hardship waivers.

(viii) Enforcement.

a) Securing annually from the Borough 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 Borough's 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.

(ix) The Administrative Agent(s) shall, as delegated by the Borough, have the authority to take all actions necessary and appropriate to carry out its/their responsibilities, herein.

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

1. The owner of all developments containing affordable units subject to this subchapter or the assigned management company thereof shall provide to the administrative agent:

(i) 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.

(ii) The total number of units in the project and the number of affordable units.

(iii) 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.

(iv) Floor plans of all affordable units, including complete and accurate identification of all rooms and the dimensions thereof.

(v) A projected construction schedule.

(vi) The location of any common areas and elevators.

(vii) The name of the person who will be responsible for official contact with the Administrative Agent for the duration of the project, which must be updated if the contact changes.

2. In addition to A above, the owner of rental developments containing affordable rental units subject to this subchapter or the assigned management company thereof shall:

(i) 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.

(ii) Provide to the Administrative Agent a description of any applicable fees.

(iii) Provide to the Administrative Agent a description of the types of utilities and which utilities will be included in the rent.

(iv) 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.

(v) Provide to the Administrative Agent a proposed form of lease for any rental units.

(vi) 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.

(vii) Strive to maintain the continued occupancy of the affordable units during the entire restricted period.

3. In addition to A, above, the owner of affordable for-sale developments containing affordable for-sale units subject to this subchapter or the assigned management company thereof shall provide the Administrative Agent:

(i) Proposed pricing for all units, including any purchaser options and add-on items.

(ii) Condominium or homeowner association fees and any other applicable fees.

(iii) Estimated real property taxes.

(iv) Sewer, water, trash disposal, and any other utility assessments.

(v) Flood insurance requirement, if applicable.

(vi) The State-approved planned real estate development public offering statement and/or master deed, where applicable, as well as the full build-out budget.

Y. Enforcement of Affordable Housing Regulations

1. Upon the occurrence of a breach of any of the regulations governing the affordable unit by an owner, developer or tenant, the Borough shall have all remedies provided at law or equity, including but not limited to foreclosure, tenant eviction, municipal fines, a requirement for household recertification, acceleration of all sums due under a mortgage, recoupment of any funds from a sale in the violation of the regulations, injunctive relief to prevent further violation of the regulations, entry on the premises, and specific performance.

2. After providing written notice of a violation to an owner, developer or tenant of an affordable unit and advising the owner, developer or tenant of the penalties for such violations, the Borough 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:

(i) The Borough 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 a 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.

3. The Borough shall have the authority to levy fines against the owner of the development for instances of noncompliance with NJHRC advertising requirements (N.J.S.A. 52:27D-321.6.e.(2)), following written notice to the owner. The fine for the first offense of noncompliance shall be $5,000, the fine for the second offense of noncompliance shall be $10,000, and the fine for each subsequent offense of noncompliance shall be $15,000.

4. The Borough 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.

(i) Such judgment shall be enforceable, at the option of the Borough, 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 Borough , 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.

(ii) 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 Borough 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 Borough 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 Borough 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 Borough 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 Borough 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 Borough. Any interest accrued or earned on such balance while being held in escrow shall belong

to and shall be paid to the Borough, whether such balance shall be paid to the owner or forfeited to the Borough.

(iii) 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.

(iv) 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 Borough 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.

(v) Failure of the low- or moderate-income unit to be either sold at the Sheriff's sale or acquired by the Borough shall obligate the owner to accept an offer to purchase from any qualified purchaser that may be referred to the owner by the Borough, 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.

(vi) The affordable unit owner shall remain fully obligated, responsible and liable for complying with the terms and restrictions of governing affordable housing units until such time as title is conveyed from the owner.

5. It is the responsibility of the Municipal Housing Liaison and the Administrative Agent 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 the Administrative Agent or Municipal Housing Liaison becomes aware of or suspects that a developer, landlord, or property manager has not complied with these regulations, it shall report this activity to the Division. The Division must notify the developer, landlord, or property manager, in writing, of any violation of these regulations and provide a 30-day cure period. If, after the 30-day cure period, the developer, landlord, or property manager remains in violation of any terms of this subchapter, including by keeping a unit vacant, the developer, landlord, or property manager may be fined up to the amount required to construct a comparable affordable unit of the same size and the deed-restricted control period will be extended for the length of the time the unit was out of compliance, in addition to the remedies provided for in this section. For the purposes of this subsection, a reasonable amount of time shall presumptively be 60 days, unless a longer period of time is required due to demonstrable market conditions and/or failure of the Municipal Housing Liaison or the Administrative Agent to refer a certified tenant.

6. Banks and other lending institutions are prohibited from issuing any loan secured by owner occupied real property subject to the affordability controls set forth in this subchapter if such loan would be in excess of amounts permitted by the restriction documents recorded

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

7. The Agency and the Department hereby reserve, for themselves and for each Administrative Agent appointed pursuant to this subchapter, all of the rights and remedies available at law and in equity for the enforcement of this subchapter, including, but not limited to, fines, evictions, and foreclosures as approved by a county-level housing judge.

8. Appeals

(i) Appeals from all decisions of the Administrative Agent appointed pursuant to this subchapter must be filed, in writing, with the Municipal Housing Liaison. A decision by the Municipal Housing Liaison may be appealed to the Division. A written decision of the Division Director upholding, modifying, or reversing the Administrative Agent's decision is a final administrative action.

Z. Development Fees.

1. Purpose

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

2. Basic Requirements

A. The Borough previously adopted a development fee ordinance, which established the Municipal Affordable Housing Trust Fund.

B. The Borough shall not spend development fees until the court has approved a plan for spending such fees.

3. Residential Development Fees

A. Imposed fees

i. Within the Borough of East Newark, all 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.

ii. When an increase in residential density is permitted pursuant to a “d” variance granted under N.J.S.A. 40:55D-70d(5), developers shall be required to pay a “bonus” development fee of 6.0% of the equalized assessed value for each additional unit that may be realized, except that this provision shall not be applicable to a development that will include affordable housing. If the zoning on a site has changed during the two-year period preceding the filing of such a variance application, the base density for the purposes of calculating the bonus development fee shall be the highest density permitted by right during the two-year period preceding the filing of the variance application.

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

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

i. Affordable housing developments, developments where the developer is providing for the construction of affordable units elsewhere in the Borough, 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 Borough and if approved by the Borough 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.

ii. 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.

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

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

4. Non-Residential Development Fees

A. Imposition of fees

i. 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.

ii. 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.

iii. Development fees shall be imposed and collected when an existing structure is demolished and replaced. The development fee of 2.5% shall be calculated on the difference between the equalized assessed value of the pre-existing land and improvements and the equalized assessed value of the newly improved structure;

i.e., land and improvements; and such calculation shall be made at the time a final certificate of occupancy is issued. If the calculation required under this section results in a negative number, the non-residential development fee shall be zero.

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

   i. 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.

   ii. The 2.5% fee shall not apply to an increase in equalized assessed value resulting from alterations, change in use within existing footprint, reconstruction, renovations and repairs.

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

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

E. If a property that was exempted from the collection of a non-residential development fee thereafter ceases to be exempt from property taxation, the owner of the property shall remit the fees required pursuant to this section within 45 days of the termination of the property tax exemption. Unpaid non-residential development fees under these circumstances may be enforceable by the municipality as a lien against the real property of the owner.

5. Collection Procedures

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

B. For non-residential developments only, the developer shall also be provided with a copy of Form N-RDF, “State of New Jersey Non-Residential Development Certification/Exemption,” to be completed by the developer as per the instructions provided in the Form N-RDF. The construction official shall verify the information submitted by the non-residential developer as per the instructions provided on Form N-RDF. The tax assessor shall verify exemptions and prepare estimated and final assessments as per the instructions provided in Form N-RDF.

C. The construction official responsible for the issuance of a building permit shall notify the tax assessor of the issuance of the first construction permit for a development that is subject to a development fee.

D. Within 90 days of receipt of that notice, the tax assessor shall provide an estimate, based on the plans filed, of the equalized assessed value of the development.

E. The construction official responsible for the issuance of a final certificate of occupancy shall notify the tax assessor of any and all requests for the scheduling of a final inspection on property that is subject to a development fee.

F. Within 10 business days of a request for the scheduling of a final inspection, the tax assessor shall confirm or modify the previously estimated equalized assessed value of the improvements associated with the development; calculate the development fee; and thereafter notify the developer of the amount of the fee.

G. Should the Borough fail to determine or notify the developer of the amount of the development fee within 10 business days of the request for final inspection, the developer may estimate the amount due and pay that estimated amount consistent with the dispute process set forth in Subsection b. of section 37 of P.L.2008, c.46 (N.J.S.A. 40:55D-8.6).

H. Fifty percent (50%) of the development fee shall be collected at the time of issuance of the construction permit. The remaining portion shall be collected at the time of issuance of the certificate of occupancy. The developer shall be responsible for paying the difference between the fee calculated at the time of issuance of the construction permit and that determined at the time of issuance of certificate of occupancy.

6. Appeal of development fees

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

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

7. Affordable Housing Trust Fund

A. A separate, interest-bearing Municipal Affordable Housing Trust Fund shall be maintained by the Chief Financial Officer of the Borough for the purpose of depositing development fees collected from residential and non-residential developers and proceeds from the sale of units with extinguished controls.

B. The following additional funds shall be deposited in the Municipal Affordable Housing Trust Fund and shall at all times be identifiable by source and amount:

i. Payments in lieu of on-site construction of an affordable unit, where previously permitted by ordinance or by agreement with the Borough and if approved by the

Borough prior to the statutory elimination of payments in-lieu on March 20, 2024 per P.L.2024, c.2;

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

iii. Rental income from Borough operated units;

iv. Repayments from affordable housing program loans;

v. Recapture funds;

vi. Proceeds from the sale of affordable units; and

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

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

D. Occurrence of any of the following deficiencies may result in the Division requiring the forfeiture of all or a portion of the funds in the Borough's Affordable Housing Trust Fund:

i. Failure to meet deadlines for information required by the Division in its review of a development fee ordinance;

ii. Failure to commit or expend development fees within four years of the date of collection in accordance with N.J.A.C. 5:99-5.5;

iii. Failure to comply with the requirements of the Non-Residential Development Fee Act and N.J.A.C. 5:99-3;

iv. Failure to submit accurate monitoring reports pursuant to this subchapter within the time limits imposed by the Act, this Chapter, and/or the Division;

v. Expenditure of funds on activities not approved by the Superior Court or otherwise permitted by law;

vi. Revocation of compliance certification or a judgment of compliance and repose;

vii. Failure of the Municipal Housing Liaison or Administrative Agent to comply with the requirements set forth at N.J.A.C. 5:99-6, 7, and 8;

viii. Other good cause demonstrating that municipal affordable housing funds are not being used for an approved purpose.

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

8. Use of Funds

A. The expenditure of all funds shall conform to a Spending Plan approved by Superior Court. Funds deposited in the Borough's Affordable Housing Trust Fund may be used for any activity approved by the Court to address the fair share obligation and may be set up as a grant or revolving loan program. Such activities include, but are not limited

to: preservation or purchase of housing for the purpose of maintaining or implementing affordability controls; housing rehabilitation; new construction of affordable housing units and related costs; accessory apartments; a market-to-affordable program; conversion of existing non-residential buildings to create new affordable units; green building strategies designed to be cost-saving and in accordance with accepted national or state standards; purchase of land for affordable housing; improvement of land to be used for affordable housing; extensions or improvements of roads and infrastructure to affordable housing sites; financial assistance designed to increase affordability; administration necessary for implementation of the Housing Element and Fair Share Plan; and/or any other activity permitted by Superior Court and specified in the approved Spending Plan.

B. Funds shall not be expended to reimburse the Borough or activities that occurred prior to the authorization of the Borough to collect development fees.

C. At least a portion of all development fees collected and interest earned shall be used to provide affordability assistance to very low-, low- and moderate-income households in affordable units included in the Borough's 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.

   i. 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.

   ii. 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 Borough's Fair Share Plan to make them affordable to households earning 30% or less of median income.

D. No more than 20% of all affordable housing trust funds, exclusive of those collected to fund an RCA prior to July 17, 2008, shall be expended on administration, including, but not limited to, salaries and benefits for Borough 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 Borough of resolving a challenge.

9. Monitoring

A. On or before February 15 of each year, the Borough 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 Borough 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.

10. Ongoing Collection of Fees

    A. The ability to impose, collect and expend development fees shall continue so long as the Borough retains authorization from the Court in the form of Compliance Certification or the good faith effort to obtain it.

    B. If the Borough fails to renew its ability to impose and collect development fees prior to the expiration of its Judgment of Compliance, it may be subject to forfeiture of any or all funds remaining within its Affordable Housing Trust Fund. Any funds so forfeited shall be deposited into the New Jersey Affordable Housing Trust Fund established pursuant to section 20 of P.L.1985, c.222 (C. 52:27D-320).

11. Emergent Affordable Housing Opportunities. Requests to expend affordable housing trust funds on emergent affordable housing opportunities not included in the Borough's Fair Share Plan shall be made to the Division and shall be in the form of a governing body resolution. Any request shall be consistent with N.J.A.C. 5:99-4.1.

Section 3. Repealer. All ordinances or code provisions or parts thereof inconsistent with this Ordinance are hereby repealed to the extent of such inconsistency.

Section 4. Severability. If any section, subsection, paragraph, sentence or any other part of this Ordinance is adjudged unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remainder of this Ordinance.

D. Ordinance 4-2026 – **INTRODUCTION** – Ordinance of the Borough of East Newark Amending Certain Sub-Chapters of Chapter 24 Titled "Comcast Cablevision Corporation, D/B/A Comcast Cablevision, Franchise Renewal Ordinance" to Establish the Borough's Consent to Comcast's Application for Renewal of Municipal Consent to Construct and Operate a Cable TV System in the Borough of East Newark, County of Hudson

A motion was made by Councilman K. Graham, second by Councilwoman Zincavage, that this Ordinance be introduced on first reading. The motion was adopted by the following votes.

Ayes:	De Oliveira; Evaristo; K. Graham; Pinto; Zincavage
Nays:	R. Graham
Abstain:	None
Absent:	None

FIRST READING/
INTRODUCTION: February 11, 2026

SECOND READING/
PUBLIC HEARING/
ADOPTION: March 11, 2026

ORDINANCE

BOROUGH OF EAST NEWARK
COUNTY OF HUDSON, STATE OF NEW JERSEY

ORDINANCE OF THE BOROUGH OF EAST NEWARK AMENDING CERTAIN SUB-CHAPTERS OF CHAPTER 24 TITLED "COMCAST CABLEVISION CORPORATION, D/B/A COMCAST CABLEVISION, FRANCHISE RENEWAL ORDINANCE" TO ESTABLISH THE BOROUGH'S CONSENT TO COMCAST'S APPLICATION FOR RENEWAL OF MUNICIPAL CONSENT TO CONSTRUCT AND OPERATE A CABLE TV SYSTEM IN THE BOROUGH OF EAST NEWARK, COUNTY OF HUDSON

§ 24-2. DEFINITIONS. [Ord. 5/12/93 § 2]

For the purpose of this ordinance, the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular, include the plural.

APPLICATION — Shall be the Application for Renewal of Municipal Consent filed with the Borough on or about July 17, 2024.

BOARD — Shall mean the Board of Regulatory Commissioners of the State of New Jersey.

BOROUGH — Shall mean the Borough of East Newark, County of Hudson, State of New Jersey, and shall include, as appropriate, the Governing Body of the Borough.

CABLE TELEVISION COMPANY or CATV COMPANY — Shall mean any person owning, controlling, operating, or managing a cable television system. The term "person" as used herein shall be construed, without limiting the generality thereof, to include specifically any agency or instrumentality of this State or of any of its political subdivisions; but this definition shall not include a telephone, telegraph, or electric utility company regulated by the Board in a case where it merely leases or rents or otherwise provides to a CATV Company wires, conduits, cables, or pole space used in the redistribution of television signals to or toward subscribers or customers of such CATV Company.

CABLE TELEVISION SYSTEM or CATV SYSTEM — Shall mean any facility within this State which is operated or intended to be operated to perform the service of receiving and amplifying the signals broadcast by one or more television stations and redistributing such signals by wire, cable, or other device or means for accomplishing such redistribution, to

members of the public who subscribe to such service; or distributing through its facility any television signals, whether broadcast or not; or any part of such facility. The term "facility" as used in this subsection includes all real property, antennas, poles, wires, cables, conduits, amplifiers, instruments, appliances, fixtures, and other personal property used by a CATV Company in providing service to its subscribers and customers.

COMPANY — Shall mean the grantee of rights under this ordinance awarding a Franchise and is known as Comcast Cablevision Corporation, d/b/a Comcast Cablevision.

F.C.C. — Shall mean the Federal Communications Commission.

FEDERAL ACT — Shall mean that Federal statute relating to cable communications commonly known as the Cable Communications Policy Act of 1984, 47 U.S.C. sec. 521 et seq., or as that statute may be amended.

FEDERAL REGULATIONS — Shall mean those Federal regulations relating to cable television service, 47 C.F.R. sec. 76.1 et seq. and, to the extent applicable, any other Federal rules and regulations relating to cable television, including, but not limited to, those described in 47 C.F.R. sec. 76.3, or as such regulations may be amended.

HIGHWAY — As used herein shall mean and include every street, road, alley, thoroughfare, way or place of any kind used by the public or open to use by the public.

PERSON — Shall mean any person, firm, partnership, association, corporation, company, or organization of any kind.

STATE ACT — Shall mean that statute of the State of New Jersey relating to cable television, known as the Cable Television Act, N.J.S.A. 48:5A-1 et seq., or as such State statute may be amended.

STATE REGULATIONS — Shall mean those regulations of the Board relating to cable television, N.J.A.C. 14:17-1.1 et seq. and N.J.A.C. 14:18-1.1 et seq., or as such State regulations may be amended.

SUBSCRIBER REVENUES — Shall mean those revenues derived from all recurring charges in the nature of subscription fees paid by subscribers located within the Borough for cable television reception service for which no separate or additional charge is made — i.e., basic cable service. Subscriber revenues shall not include revenues received as installation charges and fees for reconnections, inspection, repairs, or modifications of any installations. Subscriber revenues shall also not include any revenues received: a) as reimbursement of expense in the operation of any access channels; b) as advertising payments; c) from the leasing of cable channels; and d) from furnishing other communications and nonbroadcast services either directly or as a carrier for another party.

§ 24-7. LOCAL OFFICE; COMPLAINT PROCEDURES. [Ord. 5/12/93 § 7]

a. During the term of this Franchise, the Company shall maintain a local business office or agent for the purpose of receiving and resolving all complaints regarding the quality of service, equipment malfunctions, and similar matters in accordance with N.J.A.C. 14:18-5.1. All complaints shall be received and processed pursuant to N.J.A.C. 14:17-6.5.

b. In addition to the requirement of paragraph a of this subsection, the New Jersey Office of Cable Television (herein, the "OCTV") is hereby designated as the Complaint Officer required by N.J.S.A. 48:5A-26 to receive and act upon complaints by subscribers to cable

television reception service provided pursuant to the Franchise.

§ 24-9. SYSTEM CONSTRUCTION, MAINTENANCE AND PROCEDURES. [Ord. 5/12/ 93 § 9]

a. Franchise Territory. The consent granted under this ordinance shall apply to the entirety of the Borough, and any property hereafter annexed thereto.

b. Facilities and Equipment. In transmitting its television signals to subscribers in the Borough, the Company shall provide a quality of signal not less than that required under prevailing regulatory standards, and shall comply with any requirements imposed by the Federal regulations, and (to the extent not preempted by Federal law) any State regulations relating to technical standards for the transmission of television signals, transmission quality, or facilities and equipment.

c. Extension of Service.

   1. The Company shall be required to provide service to any person's residence or business located in the Borough in accordance with the Company's stated installation charges and line extension policy as set forth in the application or as the same hereafter may be amended.

   2. For purposes of any existing line extension areas, extension of service shall not be required without a subscriber contribution-in-aid-of-construction into any area where there are less than 35 homes per linear mile within 500 feet of the Company's existing cable.

   3. The Company shall cause any and all construction plans relating to work on any extensions of its plans or work which could have a significant impact on public works within the Borough to be filed with the Borough Engineer.

d. Relocation of Poles. In the event that, at any time during the term of this ordinance, the Borough shall elect to alter or change the grade of any street, alley, or other public way, the Company, upon reasonable notice by the Borough, shall remove, relay and relocate its poles, wires, cables, underground conduits, manholes, and other fixtures at the Company's own expense.

e. Temporary Wire Changes. The Company shall, on the request of any person holding a valid building moving permit issued by the Borough, temporarily raise or lower its wires to permit the moving of buildings, machinery or in other similar circumstances, the expense of such temporary removal, raising or lowering of wires shall be paid by the person requesting same, and the Company shall have the authority to require such payment in advance. The Company shall be given not less than 10 days' advance notice to arrange for temporary wire changes.

f. Tree Trimming. The Company shall have the authority to trim trees upon and overhanging streets, highways, alleys, sidewalks, and public places within the Borough so as to prevent the branches of such trees from coming into contact with the wires and cables of the Company. The trimming shall be done in a manner so as to minimize the damage to the tree(s). The Borough's Department of Public Works shall be advised in advance of all projected tree trimming.

g. Compliance With Standards. All facilities and equipment of the Company shall be constructed and maintained in accordance with the requirements and specifications of the applicable ordinance and regulations set forth by the Borough and/or any other local, State or Federal agency.

h. Emergency Uses. The Company shall be required to have the capability to override the audio portion of the system in order to permit the broadcasting of emergency messages by the Borough pursuant to state and federal requirements. The Company shall in no way be held liable for any injury suffered by the Borough or any other person, during an emergency, if for any reason the Borough is unable to make full use of the cable television system as contemplated herein. The Borough shall utilize the state-approved procedures for such emergency uses.

MONTHLY REPORTS

Borough Clerk Dr. Cosmo A. Cirillo indicated that the following reports were on file with the Office of the Borough Clerk and provided in the Council's Meeting packet.

A. Administrator's Report – January 2026
B. Construction Department – January 2026
C. Fire Department – January 2026
D. Health Department – January 2026
E. Police Department – January 2026
F. Senior Department – January 2026

PUBLIC PORTION

No one wished to be heard.

ADJOURNMENT

A motion was made by Councilman K. Graham, second by Councilwoman Evaristo, that this meeting be adjourned. The motion was adopted by the following votes.

Ayes:	De Oliveira; Evaristo; K. Graham; Pinto; Zincavage
Nays:	None
Abstain:	None
Absent:	R. Graham

The Regular Meeting was adjourned at 6:56 P.M.

Respectfully Submitted,

Dr. Cosmo A. Cirillo, RMC
Borough Clerk

Dated: March 11, 2026
Accepted and approved by Council: Resolution #43A-26