

The February 23, 2026 meeting was rescheduled to February 25, 2026 due to inclement weather.

**TOWNSHIP OF UPPER
2100 TUCKAHOE ROAD
PETERSBURG, NJ 08270
CAPE MAY COUNTY
MINUTES FOR FEBRUARY 25, 2026**

REGULAR MEETING OF THE TOWNSHIP COMMITTEE – 6:30 P.M.

CALL TO ORDER

SUNSHINE ANNOUNCEMENT

Mayor Corson read the following Open Public meeting notice into the record:
“In compliance with the Open Public Meetings Law, I wish to state that on February 22, 2026, the notice of this rescheduled meeting of the Upper Township Committee was posted on the Upper Township Website, and emailed to the Atlantic City Press, the Ocean City Sentinel-Ledger, the Herald Times and filed with the Township Clerk. Tonight’s meeting is being audio recorded up until the closed session portion of this meeting and will be available on the Upper Township website. I hereby direct that this announcement be made a part of the minutes of this meeting.”

SALUTE TO THE FLAG

MOMENT OF SILENCE AND REFLECTION

ROLL CALL

| | |
|-----------------|---------|
| Tyler Casaccio | Present |
| Victor Nappen | Present |
| Samuel Palombo | Present |
| Zachary Palombo | Present |
| Curtis Corson | Present |

Also present were Municipal Clerk Joanne Herron, Municipal Attorney John Amenhauser, and Chief Financial Officer Barbara Ludy.

APPROVAL OF MINUTES – February 9, 2026 Workshop, Regular, and Closed Session Minutes

Motion by Tyler Casaccio, second by Zachary Palombo, to approve the February 9, 2026 Workshop, Regular, and Closed Session Minutes as submitted. During roll call vote all five Committee members voted in the affirmative.

REPORT OF GOVERNING BODY MEMBERS

Zachary Palombo, Committeeman, gave a brief slide presentation of the 2026 blizzard event in Upper Township and thanked all essential personnel who assisted during the snowstorm and after. He then reported that the School District sent a thank you to the Public Works Department for making it possible for the schools to be open today.

Tyler Casaccio, Committeeman, reported that on February 21st the Township held its second free rabies clinic of 2026 during which 86 dogs and 13 cats were vaccinated, and 34 dog licenses were sold. He thanked the Township, County and State for the tremendous job plowing the roads. He also thanked everyone working together to respond and reach a resident in need of assistance during the storm. Lastly, he thanked all the EMS, Fire Departments and State Police for keeping everyone safe.

Samuel Palombo, Committeeman, thanked Public Works and EMS for their impressive work during the snowstorm. He then reported the Township will hold its Easter Egg Hunt on March 28th at 10:30 am at Amanda's Field. Lastly, he reported that the Recreation Advisory Board meeting was cancelled due to the weather and will be rescheduled at a later date.

Victor Nappen, Deputy Mayor, thanked Public Works and EMS for their hard work.

Curtis Corson, Mayor, stated that Public Works did an amazing job during the snow event, with some employees working 30 hours straight. He then reported that the Township's engineering firm will be conducting a survey of the significant beach erosion that has occurred and will assess and generate a report on the integrity issues of the bulkhead. Next, he reported that he and Committeeman Zach Palombo attended a meeting on February 13th at the beach with representatives from Congressman Van Drew's office, Army Corps of Engineers, and the NJDEP to discuss the beach erosion. He next reported that Public Works will be collecting tree and brush resulting from the recent storm. Information regarding the pickup will be posted on the Township's official website and Facebook. Lastly, he announced a public information meeting will be held March 2, 2026 at 6:00 pm at the Municipal Building regarding the Safe Routes to School project in the Marmora-Beesley's Point section of the Township.

ADMINISTRATOR OVERVIEW

John Amenhauser, Municipal Attorney, reminded everyone that the upcoming initial public comment is only for the Resolutions on the agenda, not the Ordinances which will each have their own public comment period.

PUBLIC COMMENT ON AGENDA ITEMS ONLY – LIMITED TO FIVE (5) MINUTES PER PERSON

Lou Barbato, Petersburg, inquired about item 7 on the agenda, appointing members to the Upper Township Cannabis Subcommittee. It was stated that if the Ordinance allowing a class 5 cannabis license is passed, the Township will later solicit proposals for the license. This Resolution appoints members to an advisory subcommittee to review and evaluate said proposals and give a recommendation to the Township Committee.

Nathalie Neiss, Petersburg, inquired about the credentials or education needed to be on the cannabis subcommittee. It was stated that the appointed members each represent the Township in their official capacities. She next inquired about items 10 and 11 appointing the Superintendent and Assistant Superintendent of Public Works. It was stated that these positions are being filled due to a recent retirement.

CONSENT AGENDA

All Consent Agenda items listed below are routine in nature and will be enacted by one motion. If the Mayor or any Committee member wishes a particular agenda item to be considered separately, it will be removed from the consent agenda and acted on separately.

Motion by Victor Nappen, second by Zachary Palombo, to approve the consent agenda items listed below. During roll call vote all five Committee members present voted in the affirmative.

FILING OF REPORTS BY CONSENT

1. Division of EMS
2. Municipal Court
3. Public Works

RESOLUTIONS TO BE APPROVED BY CONSENT

4. Authorizing the Mayor and Township Clerk to sign a contract with Phoenix Advisors, a Division of First Security Municipal Advisors, Inc., for municipal advisory services.

**TOWNSHIP OF UPPER
CAPE MAY COUNTY
RESOLUTION**

RESOLUTION NO. 069-2026

**RE: AUTHORIZING THE MAYOR AND TOWNSHIP CLERK TO SIGN A CONTRACT WITH
PHOENIX ADVISORS, A DIVISION OF FIRST SECURITY MUNICIPAL ADVISORS, INC.,
FOR MUNICIPAL ADVISORY SERVICES**

WHEREAS, the Township has decided to acquire the services of the firm of Phoenix Advisors, a Division of First Security Municipal Advisors, Inc., (hereinafter “Phoenix Advisors”) as a non-fair and open contract pursuant to the provisions of N.J.S.A. 19:44A-20.5; and

WHEREAS, Phoenix Advisors has submitted a proposal to the Township to provide municipal advisory services; and

WHEREAS, the Township wishes to accept said proposal and to authorize the execution of a contract with Phoenix Advisors; and

WHEREAS, the proposed contract has been reviewed and approved by the Municipal Attorney and will be on record in the office of the Township Clerk and available for public inspection; and

WHEREAS, Phoenix Advisors has completed and submitted a Business Entity Disclosure Certification which certifies that Phoenix Advisors has not made any reportable contributions to a political or candidate committee in the Township that would bar the award of this contract and that the contract will prohibit Phoenix Advisors from making any reportable contributions through the term of the contract; and

NOW, THEREFORE, BE IT RESOLVED by the Township Committee of the Township of Upper, in the County of Cape May and State of New Jersey, as follows:

1. The allegations of the preamble are incorporated herein by this reference.
2. The Mayor and Township Clerk are hereby authorized, directed and empowered to execute a contract with Phoenix Advisors in accordance with the terms and provisions of the Local Public Contracts Law, subject to and in accordance with the limitations imposed herein.
3. This contract shall have a term of one (1) year from date of full execution.
4. This Contract is awarded without competitive bidding as a professional service in accordance with N.J.S.A. 40A:11-5(1)(a) of the New Jersey Local Public Contract Law because Phoenix

Advisors has professional knowledge which is particularly valuable to the Township Committee and this service is acquired as a non-fair and open contract pursuant to N.J.S.A. 19:44A-20.5.

NOTICE OF CONTRACT AWARD

5. The Township Committee of the Township of Upper, State of New Jersey has awarded the contract without competitive bidding as a professional service pursuant to N.J.S.A. 40A:11-5(1)(a) to Phoenix Advisors for municipal advisory services. This contract and the resolution authorizing same shall be available for public inspection in the office of the municipal clerk of the Township of Upper, State of New Jersey.

6. A certificate from the Chief Financial Officer of Upper Township showing the availability of adequate funds for this contract and showing the line item appropriation of the official budget to which this contract will be properly charged has been provided to the governing body and shall be attached to this Resolution and kept in the files of the municipal clerk.

7. The contractor has registered with the State of New Jersey pursuant to c.57, Laws of 2004 and will provide proof of that registration to the Township of Upper.

8. A copy of this Resolution shall be published in the official newspaper of the Township of Upper within ten (10) days from the date of adoption.

9. This Resolution shall be effective as of adoption.

Resolution No. 069-2026

Offered by: Nappen

Seconded by: Z. Palombo

Adopted: February 25, 2026

Roll Call Vote:

| NAME | YES | NO | ABSTAIN | ABSENT |
|------------|-----|----|---------|--------|
| Casaccio | X | | | |
| Nappen | X | | | |
| S. Palombo | X | | | |
| Z. Palombo | X | | | |
| Corson | X | | | |

5. Appointing Thomas G. Smith, Esquire to act as special legal counsel regarding tax court matters and matters in which the regular Township Solicitor may have a conflict of interest.

**TOWNSHIP OF UPPER
CAPE MAY COUNTY
RESOLUTION**

RESOLUTION NO. 070-2026

**RE: APPOINTING THOMAS G. SMITH, ESQUIRE TO ACT AS SPECIAL LEGAL COUNSEL
REGARDING TAX COURT MATTERS AND MATTERS IN WHICH THE REGULAR
TOWNSHIP SOLICITOR MAY HAVE A CONFLICT OF INTEREST**

WHEREAS, the Township requires legal counsel to provide legal services for Tax Court matters and in the event a conflict of interest arises in regard to the services provided by the regular Township Solicitor; and

WHEREAS, a resolution is required authorizing the award of such contract for professional services; and

WHEREAS, the Township has decided to acquire the services of Thomas G. Smith, Esquire as a non-fair and open contract pursuant to the provisions of N.J.S.A. 19:44A-20.5; and

WHEREAS, Thomas G. Smith, Esquire has completed and submitted a Business Entity Disclosure Certification which certifies that Thomas G. Smith, Esquire has not made any reportable contributions to a political or candidate committee in the Township that would bar the award of this contract and that the contract will prohibit Thomas G. Smith, Esquire from making any reportable contributions through the term of the contract; and

NOW, THEREFORE, BE IT RESOLVED by the Township Committee of the Township of Upper, in the County of Cape May and State of New Jersey, as follows:

1. The allegations of the preamble are incorporated herein by this reference.
 2. Thomas G. Smith, Esquire with offices at 2312 New Road, Suite 201, Northfield, New Jersey is hereby appointed Special Legal Counsel to handle Tax Court matters and matters in which the regular Township Solicitor has a conflict of interest as well as other matters directed by the Township Committee.
 3. This contract shall have a term of one (1) year from date of full execution.
 4. This Contract is awarded without competitive bidding as a professional service in accordance with N.J.S.A. 40A:11-5(1)(a) of the New Jersey Local Public Contract Law because Thomas G. Smith, Esquire has professional knowledge as to legal matters which knowledge is particularly valuable to the Township Committee and this service is acquired as a non-fair and open contract pursuant to N.J.S.A. 19:44A-20.5.
- NOTICE OF CONTRACT AWARD**

The Township Committee of the Township of Upper, State of New Jersey has awarded the contract without competitive bidding as a professional service pursuant to N.J.S.A. 40A:11-5(1)(a) to Thomas G. Smith, Esquire for legal services. This contract and the resolution authorizing same shall be available for public inspection in the office of the municipal clerk of the Township of Upper, State of New Jersey.

5. A certificate from the Chief Financial Officer of Upper Township showing the availability of adequate funds for this contract and showing the line item appropriation of the official budget to which this contract will be properly charged has been provided to the governing body and shall be attached to this Resolution and kept in the files of the municipal clerk.

6. The contractor has registered with the State of New Jersey pursuant to c.57, Laws of 2004 and has provided proof of that registration to the Township of Upper.

7. The Mayor and the Township Clerk are hereby authorized and directed to execute, on behalf of the Township of Upper, a Professional Contract with Thomas G. Smith, Esquire in accordance with the terms and provisions of the Local Public Contracts Law, subject to and in accordance with the limitations imposed herein. Upon execution of all parties thereto said contract shall become effective.

8. Notice of this contract award shall be published in the official newspaper of the Township of Upper within ten (10) days from the date of adoption.

9. This Resolution shall be effective as of adoption.

Resolution No. 070-2026

Offered by: Nappen

Seconded by: Z. Palombo

Adopted: February 25, 2026

Roll Call Vote:

| NAME | YES | NO | ABSTAIN | ABSENT |
|------------|-----|----|---------|--------|
| Casaccio | X | | | |
| Nappen | X | | | |
| S. Palombo | X | | | |
| Z. Palombo | X | | | |
| Corson | X | | | |

6. Authorizing execution of an Eighth Amended Memorandum of Understanding for Block 479, Lots 76, 76.01 and 94.01.

**TOWNSHIP OF UPPER
CAPE MAY COUNTY
RESOLUTION**

RESOLUTION NO. 071-2026

RE: AUTHORIZING EXECUTION OF AN EIGHTH AMENDED MEMORANDUM OF UNDERSTANDING FOR BLOCK 479, LOTS 76, 76.01 AND 94.01

WHEREAS, the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1, et seq., as amended and supplemented (the “Redevelopment Law”), provides a process for municipalities to participate in the redevelopment and improvement of areas in need of redevelopment; and

WHEREAS, pursuant to Resolution #30-2021 adopted January 11, 2021, the Township Committee of the Township of Upper (the “Township Committee”), designated Block 479, Lots 76, 76.01, 94.01, 106.02, 107, 107.01, 108, and 108.01 within the Township of Upper, Cape May County, State of New Jersey (the “Township”) as an “Area in Need of Redevelopment” in accordance with the Redevelopment Law (the “Redevelopment Area”); and

WHEREAS, pursuant to Ordinance #001-2021 on January 25, 2021, the Township Committee adopted a redevelopment plan for the Redevelopment Area (the “Redevelopment Plan”), which sets forth, inter alia, the plans for the rehabilitation and redevelopment of the Township; and

WHEREAS, Beesley's Point Development Group, LLC (the “Conditional Redeveloper”) is the owner of property within the Redevelopment Area, known as Block 479, Lots 76.01, and 94.01, and a portion of Block 479, Lot 76 (the “Property”); and

WHEREAS, the Redevelopment Law, specifically N.J.S.A. 40A:12A-8(f), authorizes the Township to arrange or contract with a redeveloper for the planning, construction or undertaking of any project or redevelopment work in an area designated as an area in need of redevelopment; and

WHEREAS, pursuant to Resolution No. 083-2022, the Township and the Conditional Redeveloper entered into a Memorandum of Understanding dated March 28, 2022, in order to exclusively negotiate with Conditional Redeveloper for a period of one hundred and eighty (180) days in an effort to agree upon a Redevelopment Agreement for the rehabilitation and redevelopment of the Property (the “Original MOU”); and

WHEREAS, the Township and Conditional Redeveloper thereafter entered into successive amended Memoranda of Understanding extending the exclusive negotiation period pursuant to the following resolutions:

- First Amended MOU (Resolution No. 269-2022), expiring March 23, 2023;
- Second Amended MOU (Resolution No. 112-2023), expiring September 19, 2023;
- Third Amended MOU (Resolution No. 281-2023), expiring March 17, 2024;
- Fourth Amended MOU (Resolution No. 096-2024), expiring September 13, 2024;
- Fifth Amended MOU (Resolution No. 309-2024), expiring March 12, 2025;
- Sixth Amended MOU (Resolution No. 083-2025), expiring September 8, 2025;
- Seventh Amended MOU (Resolution No. 281-2025), expiring March 7, 2026; and

WHEREAS, the Township continues to have discussions with the Conditional Redeveloper regarding the rehabilitation and redevelopment of the Property and the Township and Conditional Redeveloper have determined that additional time is necessary for negotiation of a Redevelopment Agreement; and

WHEREAS, the MOU provides that the period of time to negotiate can be extended by the Parties’ mutual written agreement; and

WHEREAS, the Township Committee has determined that it is in the best interest of the Township to enter into an Eighth Amended Memorandum of Understanding extending the exclusive negotiation period for an additional one hundred eighty (180) days from the expiration of the Seventh Amended MOU on March 7, 2026, through September 3, 2026.

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and Committee of the Township of Upper, County of Cape May, State of New Jersey as follows:

1. The aforementioned recitals are incorporated herein as though fully set forth at length.
2. The time for exclusive negotiation between the Township of Upper and Beesley's Point Development Group, LLC for the redevelopment of the Property is hereby extended for an additional one hundred and eighty (180) days from the expiration of the Seventh Amended MOU on March 7, 2026, through September 3, 2026.
3. The Township Committee does hereby authorize the Mayor and the Township Clerk to execute the Eighth Amended Memorandum of Understanding between the Township and Conditional Redeveloper evidencing the Parties' agreement to conduct exclusive negotiations toward the formulation of a Redevelopment Agreement for the rehabilitation and redevelopment of the Property.
4. This Resolution shall take effect immediately.

Resolution No. 071-2026

Offered by: Nappen

Seconded by: Z. Palombo

Adopted: February 25, 2026

Roll Call Vote:

| NAME | YES | NO | ABSTAIN | ABSENT |
|------------|-----|----|---------|--------|
| Casaccio | X | | | |
| Nappen | X | | | |
| S. Palombo | X | | | |
| Z. Palombo | X | | | |
| Corson | X | | | |

7. Appointing members to the Upper Township Cannabis Subcommittee.

**TOWNSHIP OF UPPER
CAPE MAY COUNTY
RESOLUTION**

RESOLUTION NO. 072-2026

**RE: APPOINTING MEMBERS TO THE UPPER TOWNSHIP
CANNABIS SUBCOMMITTEE**

WHEREAS, the Township Committee of the Township of Upper desires to create a Cannabis Subcommittee tasked with the review of proposals submitted in connection with a potential Class 5 cannabis license and the formulation of recommendations to the Township Committee; and

WHEREAS, a need exists to appoint suitable persons to this subcommittee;

NOW, THEREFORE, BE IT RESOLVED, by the Township Committee of the Township of Upper, in the County of Cape May and State of New Jersey, as follows:

1. The allegations of the preamble are incorporated herein by this reference.
2. The following persons are hereby appointed to the Upper Township Cannabis Subcommittee:

Curtis Corson, Mayor
 Zachary Palombo, Committeeman
 James Van Zlike, Township Administrator
 John Amenhauser, Municipal Attorney
 Lt. Thomas Campolo, NJSP

3. The foregoing appointees shall constitute the sole members of the Upper Township Cannabis Subcommittee.
4. The Cannabis Subcommittee shall be tasked with reviewing proposals submitted in response to a Request for Proposals for a potential Class 5 cannabis license and making recommendations to the Township Committee; provided, however, that nothing herein shall be construed as authorizing the issuance of a cannabis license or obligating the Township to adopt an ordinance permitting such use.
5. The Township Committee expressly reserves the right to supplement or amend this Resolution at any time it deems appropriate to change the membership or mission of the Upper Township Cannabis Subcommittee.

Resolution No. 072-2026

Offered by: Nappen

Seconded by: Z. Palombo

Adopted: February 25, 2026

Roll Call Vote:

| NAME | YES | NO | ABSTAIN | ABSENT |
|------------|-----|----|---------|--------|
| Casaccio | X | | | |
| Nappen | X | | | |
| S. Palombo | X | | | |
| Z. Palombo | X | | | |
| Corson | X | | | |

8. Authorize payments from the Affordable Housing Trust Fund of Upper Township.

**TOWNSHIP OF UPPER
 CAPE MAY COUNTY
 RESOLUTION**

RESOLUTION NO. 073-2026

**RE: AUTHORIZE PAYMENTS FROM THE
 AFFORDABLE HOUSING TRUST FUND OF UPPER TOWNSHIP**

WHEREAS, the Township of Upper adopted an Affordable Housing Trust Fund Spending Plan (hereinafter “Spending Plan”) on April 30, 2012 pursuant to Resolution No. 105-2012; and

WHEREAS, the Township of Upper replaced this Spending Plan pursuant to Resolution No. 167-2020 adopted on May 26, 2020 and consistent with P.L. 2008, c.46 COAH regulations and the Fair Share Housing Center Settlement Agreement, which was subsequently approved by the Court on June 30, 2020 in connection with the Township’s Declaratory Judgment Action; and

WHEREAS, the Township of Upper’s Affordable Housing Trust Fund collects development fee revenues consistent with the Township of Upper’s development fee ordinance for both residential and non-residential developments in accordance with FHAA’s rules and P.L. 2008, c.46, sections 8 (C. 52:27D-329.2) and 32-28 (C. 40:55D-8.1 through 8.7).; and

WHEREAS, pursuant to the terms of the current Spending Plan, the release of funds requires the adoption by the Township Committee of a resolution; and

WHEREAS, the Township Committee has reviewed the requested release of funds from the Affordable Housing Trust Fund for the specific use set forth herein and has determined it is in the best interest of the Township to authorize the release of payment from said fund.

NOW, THEREFORE, BE IT RESOLVED, by the Township Committee of the Township of Upper, Cape May County, and State of New Jersey, as follows:

1. The allegations of the preamble are incorporated herein by this reference.
2. The Chief Financial Officer is authorized to release the following funds pursuant to the

Township’s Spending Plan:

| | |
|---|-------------|
| Surenian, Edwards, Buzak & Nolan (Affordable Housing Services) | \$ 966.00 |
| The DeWeese Law Firm (Affordable Housing Services) | \$ 200.00 |
| Triad Associates (AA Wait List Rentals/AA/MTA Wait List Maint. Sales/ AA Technical Assistance) | \$ 1,425.00 |

Resolution No. 073-2026

Offered By: Nappen

Seconded By: Z. Palombo

Adopted: February 25, 2026

Roll Call Vote:

| NAME | YES | NO | ABSTAIN | ABSENT |
|------------|-----|----|---------|--------|
| Casaccio | X | | | |
| Nappen | X | | | |
| S. Palombo | X | | | |
| Z. Palombo | X | | | |
| Corson | X | | | |

9. Authorizing the purchase of certain items through the Omnia Partners Cooperative contract with funds from Capital Improvement Bond Ordinance No. 012-2024 in the amount of \$37,678.00.

**TOWNSHIP OF UPPER
CAPE MAY COUNTY
RESOLUTION**

RESOLUTION NO. 074-2026

RE: AUTHORIZING THE PURCHASE OF CERTAIN ITEMS THROUGH THE OMNIA PARTNERS COOPERATIVE CONTRACT WITH FUNDS FROM CAPITAL IMPROVEMENT BOND ORDINANCE NO. 012-2024 IN THE AMOUNT OF \$37,678.00

WHEREAS, it is necessary for the Township of Upper to make certain capital purchases; and

WHEREAS, the Township Committee has determined that a purchase from a national cooperative contract will result in cost savings after all factors have been considered; and

WHEREAS, N.J.S.A. 52:34-6.2 allows the Township of Upper to utilize national cooperative contracts as a method of procurement; and

WHEREAS, the Township Committee adopted the 2024 Capital Improvement Bond Ordinance No. 012-2024 on July 8, 2024; and

WHEREAS, the Township's Qualified Purchasing Agent has reviewed and approved the quotes for replacement and installation of security cameras at various Township buildings and locations from Safeware, Inc. of Lanham, Maryland through Omnia Partners Contract No. 4400008468; and

WHEREAS, Safeware, Inc. has completed and submitted a Business Entity Disclosure Certification which certifies that Safeware, Inc. has not made any reportable contributions to a political or candidate committee in the Township in the previous one year, and that their contract will prohibit Safeware, Inc. from making any reportable contributions through the term of their contract; and

WHEREAS, the Chief Financial Officer of the Township has certified the availability of funds to allow the award of contract for the purchase herein authorized and has certified that adequate funds have been appropriated for these purposes from Capital Improvement Bond Ordinance No. 012-2024; and

WHEREAS, the Chief Financial Officer has confirmed that the Township has complied with N.J.S.A. 52:34-6.2 as well as all other legal requirements for this method of procurement.

NOW, THEREFORE, BE IT RESOLVED by the Township Committee of the Township of Upper, in the County of Cape May and State of New Jersey, as follows:

1. The allegations of the preamble are incorporated herein by this reference.
2. The Township Committee of the Township of Upper, County of Cape May, New Jersey hereby authorizes the replacement and installation of security cameras at various Township buildings and

locations from Safeware, Inc. of Lanham, Maryland in the amount of **\$37,678.00** with funds from 2024 Capital Improvement Bond Ordinance No. 012-2024 through Omnia Partners Contract No. 4400008468.

3. The Chief Financial Officer is hereby authorized, directed and empowered to execute any and all necessary documents in order to implement the intent of this Resolution. Resolution No. 074-2026

Offered By: Nappen Seconded By: Z. Palombo

Adopted: February 25, 2026

Roll Call Vote:

| NAME | YES | NO | ABSTAIN | ABSENT |
|------------|-----|----|---------|--------|
| Casaccio | X | | | |
| Nappen | X | | | |
| S. Palombo | X | | | |
| Z. Palombo | X | | | |
| Corson | X | | | |

10. Appointing James M. Jones as Superintendent of Public Works.

**TOWNSHIP OF UPPER
CAPE MAY COUNTY
RESOLUTION**

RESOLUTION NO. 075-2026

RE: APPOINTING JAMES M. JONES AS SUPERINTENDENT OF PUBLIC WORKS

WHEREAS, a need exists to fill a pending vacancy in the Department of Public Works;
and

WHEREAS, the Township Committee has duly considered the matter and has determined that James M. Jones possesses all of the requisite qualifications, and is a competent, fit and suitable person for appointment as Superintendent of Public Works pursuant to N.J.S.A. 40A:9-154.5 and in accordance with the New Jersey Civil Service unclassified position; and

NOW THEREFORE BE IT RESOLVED, by the Township Committee of the Township of Upper, in the County of Cape May and State of New Jersey, as follows:

1. The allegations of the preamble are incorporated herein by this reference.
2. James M. Jones is hereby appointed as Superintendent of Public Works, effective March 1, 2026, at a salary of \$120,000.00 in accordance with the Salary Ordinance.

3. James M. Jones shall continue to serve in his duly appointed titles as Municipal Emergency Management Coordinator at an annual stipend of \$14,100.00 and Deputy Right to Know Director at an annual stipend of \$1,000.00, in accordance with the Salary Ordinance.

4. All Township officials and officers are hereby authorized and empowered to take all action deemed necessary or advisable to carry into effect the intent and purpose of this Resolution.

Resolution No. 075-2026

Offered by: Nappen

Seconded by: Z. Palombo

Adopted: February 25, 2026

Roll Call Vote:

| NAME | YES | NO | ABSTAIN | ABSENT |
|------------|-----|----|---------|--------|
| Casaccio | X | | | |
| Nappen | X | | | |
| S. Palombo | X | | | |
| Z. Palombo | X | | | |
| Corson | X | | | |

11. Appointing Nicholas Mason as Assistant Public Works Superintendent.

**TOWNSHIP OF UPPER
CAPE MAY COUNTY
RESOLUTION**

RESOLUTION NO. 076-2026

**RE: APPOINTING NICHOLAS MASON AS
ASSISTANT PUBLIC WORKS SUPERINTENDENT**

WHEREAS, a need exists to fill a pending vacancy in the Department of Public Works;
and

WHEREAS, the Township Committee has duly considered the matter and has determined that Nicholas Mason possesses all of the requisite qualifications, and is a competent, fit and suitable person for appointment as Assistant Public Works Superintendent; and

WHEREAS, this appointment is subject to review and approval by the New Jersey Civil Service Commission; and

NOW THEREFORE BE IT RESOLVED, by the Township Committee of the Township of Upper, in the County of Cape May and State of New Jersey, as follows:

1. The allegations of the preamble are incorporated herein by this reference.

2. Nicholas Mason is hereby provisionally appointed as Assistant Public Works Superintendent, subject to Civil Service review and approval, effective March 1, 2026, at a salary of \$95,000.00 in accordance with the Salary Ordinance.

3. All Township officials and officers are hereby authorized and empowered to take all action deemed necessary or advisable to carry into effect the intent and purpose of this Resolution.

Resolution No. 076-2026

Offered by: Nappen

Seconded by: Z. Palombo

Adopted: February 25, 2026

Roll Call Vote:

| NAME | YES | NO | ABSTAIN | ABSENT |
|------------|-----|----|---------|--------|
| Casaccio | X | | | |
| Nappen | X | | | |
| S. Palombo | X | | | |
| Z. Palombo | X | | | |
| Corson | X | | | |

ORDINANCES

Please note that any public comment made during public hearings on the below ordinances shall be limited to a maximum of five (5) minutes per speaker. Speakers providing comments that are general in nature and/or do not pertain specifically to the ordinance that is being considered for adoption by the Township Committee may be stopped and asked to instead provide their comments during the general public comment session at the end of the meeting.

12. Public hearing and final adoption of Ordinance No. 001-2026 RE: AN ORDINANCE AMENDING CHAPTER 20, ZONING, OF THE CODE OF UPPER TOWNSHIP TO CREATE A CANNABIS OVERLAY ZONE WITHIN THE CM2 ZONING DISTRICT AND TO ALLOW CLASS 5 CANNABIS RETAIL SALES WITHIN THE CANNABIS OVERLAY DISTRICT.

Mayor Corson read the following statement:

Before we open the floor for public comment on this item, I want to set a few baseline rules so everyone understands how this portion of the meeting will run.

Each speaker will have up to five minutes. Please address your comments to the Committee as a whole. This is not a debate or back-and-forth, but an opportunity for residents to have their perspectives formally entered into the record.

We also want to be clear that the Committee has not approached this issue lightly. This topic has involved significant research, legal review, and discussion, including analysis of state regulations, experiences in neighboring municipalities, and guidance from professionals in planning and public safety.

In weighing this ordinance, the Committee considered several key factors:

- 1. The need for responsible, sustainable revenue to support township services and limit the burden on taxpayers**
- 2. The reality that cannabis is already legal in New Jersey and available through delivery, whether we take local action**
- 3. The proposed location's distance from residential areas**
- 4. Data from neighboring towns showing no meaningful correlation between regulated cannabis businesses and increased crime**

Public input is an important part of this process, and tonight's comments will help inform the Committee as we continue our deliberations. We ask that everyone remain respectful so all voices can be heard.

The Municipal Attorney then gave a brief summary of Ordinance 001-2026, and Mayor Corson then opened the public hearing. During the public hearing portion there were the following speakers:

Diane Leo, Marmora, spoke in opposition to the Ordinance.

Niles Webb, Marmora, spoke in opposition to the Ordinance.

Lou Barbato, Petersburg, spoke in opposition to the Ordinance.

Kristin Myers, Tuckahoe, spoke in opposition to the Ordinance.

Anna Nistorenko, Ocean View, spoke in opposition to the Ordinance.

Carol Sabo, West Cape May, spoke in favor of a cannabis dispensary.

George Irwin, prior Seaville resident, Cannabis Stop organization, spoke in favor of a cannabis dispensary, but not the Ordinance as written.

Nathalie Neiss, Petersburg, spoke in opposition to the Ordinance.

William Brewer, Osprey Point, spoke in opposition to the Ordinance.

Joe Kelly, Strathmere, co-owner of Insa Coastline Dispensary, spoke in favor of allowing a dispensary in Upper Township, but opposed the Ordinance as written, and requested that it be made part of the record that a letter was submitted to the Township outlining those objections.

Carrie Faulk, Ocean City, spoke in opposition to the Ordinance.

Glenn Faulk, Ocean City, spoke in opposition to the Ordinance.

Liz Nicolletti, Ocean City, spoke in opposition to the Ordinance.

Amanda Ablet, Estell Manor, spoke in opposition to the Ordinance.

Spencer Belles, Marmora, spoke in favor of the Ordinance.

Nathalie Neiss, Petersburg, questioned the notice advertisement of the rescheduled meeting due to the recent storm. It was stated that the notice of the cancelled and rescheduled meeting is in compliance with the Open Public Meeting Act.

There being no more speakers, Mayor Corson then closed the public hearing. Motion by Zachary Palombo, second by Victor Nappen, to adopt Ordinance No. 001-2026. During roll call vote all five Committee members voted in the affirmative.

**TOWNSHIP OF UPPER
COUNTY OF CAPE MAY
O R D I N A N C E**

ORDINANCE NO. 001-2026

RE: AN ORDINANCE AMENDING CHAPTER 20, ZONING, OF THE CODE OF UPPER TOWNSHIP TO CREATE A CANNABIS OVERLAY ZONE WITHIN THE CM2 ZONING DISTRICT AND TO ALLOW CLASS 5 CANNABIS RETAIL SALES WITHIN THE CANNABIS OVERLAY DISTRICT

WHEREAS, on November 3, 2020, registered New Jersey voters approved by a ratio of 67.08% voting in favor of legalizing recreational cannabis and 32.9% voting against, Public Question No. 1, which amended the New Jersey Constitution to allow for the legalization of recreational cannabis for adults at least twenty-one (21) years of age; and

WHEREAS, in the Township of Upper, a majority of the registered voters voted in favor of legalizing recreational cannabis in the State of New Jersey; and

WHEREAS, February 22, 2021, New Jersey Governor Philip Murphy signed the ‘New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act’ (the “Act”), N.J.S.A. 24:6I-1 et seq., into law, thereby effectively legalizing cannabis throughout the State of New Jersey; and

WHEREAS, the Act legalized the recreational use of cannabis and established a comprehensive regulatory and licensing scheme for the creation of a commercial cannabis industry within the state of New Jersey and specifically created six (6) distinct classes of commercial cannabis licenses related to growing, processing, distributing, wholesale, delivery, and retail uses; and

WHEREAS, the Act expressly authorized Municipalities the right to prohibit and/or permit the operation of any one or more classes of cannabis licenses, with the exception of the right of an outside delivery service to deliver cannabis within the jurisdiction of the municipality; and

WHEREAS, through the adoption of Ordinance 011-2021 on May 10, 2021, the Township of Upper previously enacted and Ordinance prohibiting the operation of any class of cannabis businesses within the Township of Upper’s geographical boundaries and amended Chapter 20, Section 1.5, of the Revised General Ordinances of the Township of Upper to reflect the same; and

WHEREAS, despite the prior adoption of Ordinance 011-2021, the Township of Upper is now permitted to amend Chapter 20 of the Revised General Ordinances of the Township of Upper to permit all or certain classes of cannabis businesses to operate within the Township of Upper upon approval by the Township Committee; and

WHEREAS, Chapter 20, Zoning, of the Municipal Code of the Township of Upper outlines permitted and prohibited land uses throughout the Township of Upper within all existing zoning districts; and

WHEREAS, upon consideration of the overwhelming number of New Jersey voters, specifically the majority of voters within the Township of Upper, who voted to approve Public Question No. 1 on November 3, 2020, the Township Committee of the Township of Upper finds it appropriate to exclusively permit one (1) Class 5 Cannabis Retail License to operate within the boundaries of the Township of Upper and further finds it necessary to amend Chapter 20 of the Municipal Code of the Township of Upper to permit cannabis retail sales within the Township of Upper; and

WHEREAS, The Township Committee of the Township of Upper deems it appropriate to prohibit Class 1 Cannabis Cultivation Licenses; Class 2 Cannabis Manufacturing Licenses; Class 3 Cannabis Wholesaler Licenses; Class 4 Cannabis Distributor Licenses; and Class 6 Cannabis Delivery Licenses for deliveries not conducted by a licensed Class 5 Cannabis Retail Sales licensee, throughout the Township of Upper.

NOW, THEREFORE, BE IT ORDAINED AND ENACTED by the Township Committee of the Township of Upper, County of Cape May, and State of New Jersey that Chapter 20, Zoning, of the Municipal Code of the Township of Upper, be and hereby is amended as follows:

SECTION 1. The following subsections of **Chapter 20, Zoning**, are hereby added and/or amended as follows:

§ 20-1.5(b)(2) – Prohibited Uses shall be amended to read as follows: “Drug paraphernalia shop, commonly referred to as “head” shops, except persons registered with the State Health Commissioner or

referred to in N.J.S.A. 24:21-10, and also exempting any Class 5 Cannabis Retail licensee lawfully operating a cannabis retail sales facility within the Township of Upper.

§ 20-1.5(b)(4) - **Prohibited Uses** is amended to delete the entirety of the existing Code section and to replace the Code section as follows: “Prohibited uses shall also include the following classes of cannabis licenses created pursuant to the New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act, set forth at N.J.S.A. 24:6I-1, *et seq.*;

Class 1 Cannabis Cultivation Licenses;

Class 2 Cannabis Manufacturing Licenses;

Class 3 Cannabis Wholesaler Licenses;

Class 4 Cannabis Distributor Licenses; and

Class 6 Cannabis Delivery Licenses for deliveries not conducted by a licensed Class 5 Cannabis Retail Sales licensee.

Nothing contained herein shall prohibit the delivery of cannabis items and related supplies by an approved and licensed cannabis delivery service.”

SECTION 2. § 20-2.1 - **Definitions** shall be amended to add the following:

CANNABIS

“Cannabis” means all part of the plant *Cannabis sativa* L., whether growing or not, the seeds thereof, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds, except those containing resin extracted from the plant, which are cultivated and, when applicable, manufactured in accordance with the New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act, P.L.2021, c.16 (C. 24:6L-1, *et seq.*) for use in cannabis products, and medical cannabis intended for consumption by registered qualifying patients pursuant to the Jake Honig Compassionate Use Medical Cannabis Act, P.L.2009, c.307 (C.24:6I-1, *et al.*) and P.L.2015, c.158 (C.18A:40-12.22, *et al.*); but shall under no circumstance include marijuana as defined in N.J.S. 2C:35-27 and applied to any offense set forth in Chapter 35, 35A, and 36, of Title 2C of the New Jersey Statutes, or P.L.2001, c.114 (C.2C:35B-1, *et seq.*), or marihuana as defined in section of P.L.1970, c.226 (C.24:21-2) and applied to any offense set forth in the “New Jersey Controlled Dangerous Substances Act,” P.L.1970, c.226 (C.24:21-1, *et al.*); or hemp or a hemp product cultivated, handled, processed, transported, or sold pursuant to the “New Jersey Hemp Farming Act,” P.L.2019, c.238 (C.4:28-6, *et al.*)

CANNABIS DELIVERY SERVICE

Any licensed person or entity that provides courier services for consumer purchases of cannabis items and related supplies fulfilled by a cannabis retailer in order to make deliveries of the cannabis items and related supplies to that consumer, and which services include the ability of a consumer to purchase the cannabis items directly through the cannabis delivery service, which, after presenting the purchase order to the cannabis retailer for fulfillment, is delivered to that consumer. Cannabis Delivery Services shall hold either a Class 5 Cannabis Retail License and maintain required approvals and authorizations outlined within N.J.A.C. 17:30-14.8 and N.J.S.A. 24:6I-44, or a Class 6 Cannabis Delivery license.

CANNABIS RETAILER

Any licensed person or entity that purchases or otherwise obtains usable cannabis from cannabis cultivators and cannabis items from cannabis manufacturers or cannabis wholesalers and sells these items to consumers from a retail store and may use a cannabis delivery service or a certified cannabis handler for the off-premises delivery of cannabis items and related supplies to consumers. This person or entity shall hold a Class 5 cannabis retail license. The Holder of a Class 5 cannabis retail license shall also be permitted to provide delivery services subject to the provisions of N.J.A.C. 17:30-14.8 and N.J.S.A.

24:6I-44 and subject to obtaining the necessary authorizations and approvals from the New Jersey Cannabis Regulatory Commission.

SECTION 3. § 20-4.23 shall be enacted as follows:

Cannabis Overlay Zone

The Cannabis Overlay Zone shall be located within the CM2 Zoning District and same shall be specifically confined to Block 735, Lot 48; Block 735, Lots 50-52; Block 735, Lot 56; Block 735, Lots 61, 62.01, 62.02, 64, and 65; Block 736, Lots 42-43. The Cannabis Overlay Zone created herein shall be the only zone located within the boundaries of the Township of Upper where Class 5 Cannabis Retail Sales shall be permitted.

A. Purpose.

- (1) The CM2 Cannabis Overlay Zone is hereby enacted order to ensure that class 5 cannabis retail licenses are confined to specific areas of the CM2 Zoning District that are deemed to be appropriate locations for such use.
- (2) The CM2 Cannabis Overlay Zone establishes regulations in an effort to facilitate this type of use while protecting and promoting the general welfare of the community and the quality of life of existing residential and commercial uses located in close proximity to same.

B. Impact on underlying zoning.

- (1) The CM2 Cannabis Overlay Zone shall not replace the existing CM2 zoning regulations.
- (2) Any individual or entity seeking to develop property within the CM2 Cannabis Overlay Zone shall have the option to utilize or develop the property in accordance with the regulations of either the underlying CM2 zone or regulations outlined herein.

C. Permitted Uses.

- (1) All uses deemed to be permitted within the CM2 Zoning District;
- (2) Class 5 Cannabis Retail Stores.

D. Area and Yard requirements.

- (1) The area and bulk requirements of the underlying CM2 zone shall apply to the permitted uses within the CM2 Cannabis Overlay Zone.

E. Additional Requirements.

- (1) There shall be no more than one (1) Class 5 Cannabis Retail License issued in the Cannabis Overlay Zone of the CM2 Zoning District. Cannabis retail stores shall not be permitted within any other zoning district located within the Township of Upper.
- (2) Submission of a license application that is approved by the State of New Jersey and/or State of New Jersey Cannabis Regulatory Commission that permits the individual or entity to engage in the retail sales of cannabis shall be required to be provided to the Township of Upper prior to operation of a Cannabis Retail Store by a licensee.
- (3) Submission of a copy of the application for a Class 5 Cannabis Retail Sales license that was submitted to and approved by the State of New Jersey and/or Cannabis Regulatory Commission, along with all attachments submitted therewith, shall be required to be

provided to the Township of Upper prior to operation of a Cannabis Retail Store by a licensee.

- (4) Compliance with any, and all, requirements that are set forth within the New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act, codified at N.J.S.A. 24:6I-1, et seq.
- (5) Compliance with all the area and bulk requirements of the CM2 Zoning District of the Township of Upper.
- (6) The design of any building must conform to the general character of the area and shall not adversely affect the safe and comfortable enjoyment of property rights in the zone in which it is located. All signage on any Class 5 Cannabis Retail Facility property shall be non-descript and shall not contain any pictorial display of cannabis plants, cannabis leaves, or any other commonly associated cannabis-related items.
- (7) No cannabis retail stores shall be located within 1,000 feet of any residential neighborhood, fire house, school, playground, church, hospital, public building, recreation facility, library, or public institution.
- (8) Hours of operation of any cannabis retail sales facility shall be limited to the hours between 9:00 a.m. and 10:00 p.m., seven days per week.
- (9) Cannabis consumption areas are prohibited on the licensed premises.
- (10) All cannabis delivery vehicles operating within the Township of Upper shall only be permitted to display the name of the Class 5 Cannabis Retail Facility in non-descript black lettering on the front driver's side and/or front passenger side of the delivery vehicle. No colorful and/or descript signage shall be permitted on cannabis delivery vehicles operating within the Township of Upper at any time.
- (11) All other applicable requirements of this Chapter shall be met.
- (12) To the extent that any of the provisions outlined herein are in conflict with rules and regulations promulgated by the New Jersey Cannabis Regulatory Commission, the rules and regulations of the New Jersey Cannabis Regulatory Commission shall govern and control

F. Site Plan Review.

- (1) Cannabis Retail Stores and/or Cannabis Delivery Stores/Services proposed to be located in existing buildings shall be exempt from site plan review provided no expansion or external renovations are proposed to same, except for the installation of an exterior door to the Cannabis Retail Store that is required to be installed pursuant to the requirements of the New Jersey Cannabis Regulatory Commission and CREAMM Act requirements.
- (2) Cannabis Retail Stores and/or Cannabis Delivery Stores/Services proposed to be located in new construction shall require site plan review and approval by the Planning Board of the Township of Upper.

SECTION 4. All other ordinances in conflict or inconsistent with this Ordinance are hereby repealed to the extent of such conflict or inconsistency.

SECTION 5. Should any section, paragraph, sentence, clause or phrase of this Ordinance be declared unconstitutional or invalid for any reason, the remaining portions of this Ordinance shall not be affected

thereby and shall remain in full force and effect, and to this end the provisions of this Ordinance are hereby declared to be severable.

SECTION 6. This Ordinance shall become effective twenty (20) days after final passage and publication according to law.

NOTICE IS HEREBY GIVEN THAT THE FOREGOING ORDINANCE WAS INTRODUCED FOR FIRST READING AT A MEETING OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF UPPER HELD ON THE 12TH DAY OF JANUARY, 2026 AT THE TOWNSHIP HALL, AND WAS TAKEN UP FOR CONSIDERATION AS TO FINAL ADOPTION AT A PUBLIC HEARING OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF UPPER HELD ON THE 25TH DAY OF FEBRUARY, 2026 AT 6:30 P.M. AT THE TOWNSHIP HALL, PETERSBURG, NEW JERSEY, AT WHICH TIME SAID ORDINANCE WAS ADOPTED.

JOANNE R. HERRON, TOWNSHIP CLERK
TOWNSHIP OF UPPER

13. Public hearing and final adoption of Ordinance No. 002-2026 RE: AN ORDINANCE AMENDING CHAPTER 4, GENERAL LICENSING, OF THE CODE OF UPPER TOWNSHIP, IN ORDER TO ESTABLISH ANNUAL LICENSING AND REGISTRATION FEES IN RELATION TO CANNABIS RETAIL AND DELIVERY BUSINESSES. **The Municipal Attorney gave a brief summary of Ordinance 002-2026. Mayor Corson then opened the public hearing. During the public hearing portion there were the following speakers:**

Nathalie Neiss, Petersburg, spoke in opposition to the Ordinance.

Diane Leo, Marmora, spoke in opposition to the Ordinance.

Lou Barbato, Petersburg, spoke in opposition to the Ordinance.

There being no more speakers, Mayor Corson then closed the public hearing. Motion by Victor Nappen, second by Zachary Palombo, to adopt Ordinance No. 002-2026. During roll call vote all five Committee members voted in the affirmative.

**TOWNSHIP OF UPPER
COUNTY OF CAPE MAY
O R D I N A N C E**

ORDINANCE NO. 002-2026

RE: AN ORDINANCE AMENDING CHAPTER 4, GENERAL LICENSING, OF THE CODE OF UPPER TOWNSHIP, IN ORDER TO ESTABLISH ANNUAL LICENSING AND REGISTRATION FEES IN RELATION TO CANNABIS RETAIL AND DELIVERY BUSINESSES

WHEREAS, pursuant to N.J.S.A. 40:52-1, *et seq.* the Township of Upper is provided with the power to license and regulate commercial activities within its jurisdiction; and

WHEREAS, pursuant to N.J.S.A. 40:52-2, the Township of Upper “may fix the fees for all such licenses, which may be imposed for revenue, and may prohibit all unlicensed persons and places and vehicles, businesses, and occupations from acting, being used, conducted, or carried on” within its jurisdiction; and

WHEREAS, on November 3, 2020, registered New Jersey voters approved, by a ratio of 67.08% voting in favor of legalizing cannabis and 32.92% against, Public Question No. 1, which amended the New Jersey Constitution to allow for the legalization of cannabis for adults at least twenty-one (21) years of age; and

WHEREAS, on February 22, 2021, New Jersey Governor Philip Murphy signed the ‘New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act’ (the “Act”), N.J.S.A. 24:6I-1, *et seq.*, into law, which effectively legalized cannabis throughout the state of New Jersey; and

WHEREAS, the Act legalized the recreational use of cannabis and established a comprehensive regulatory and licensing scheme for the creation of a commercial cannabis industry within the state of New Jersey and by creating six (6) distinct classes of commercial cannabis licenses related to growing, processing, distributing, wholesale, delivery, and retail uses; and

WHEREAS, in light of the overwhelming number of New Jersey voters, specifically voters residing in the Township of Upper, the Township Committee of the Township of Upper finds it appropriate to exclusively permit one (1) Class 5 Cannabis Retail License to operate within the Township of Upper and the Township Committee further finds that it is necessary to amend Chapter 4 of the Code of the Township of Upper pertaining to General Licensing in order to permit said cannabis retail license within the Township of Upper; and

WHEREAS, pursuant to the Act, specifically N.J.S.A. 24:6I-45(c)(2), “a municipality may impose a separate local licensing or endorsement requirement as a part of its restrictions on the number of cannabis establishments, distributors, or delivery services, or their location, manner, or times of operation;” and

WHEREAS, in light of the fact that the Township Committee of the Township of Upper has elected to permit one (1) Class 5 Cannabis Retail License to operate within the Township of Upper, the Township Committee finds it appropriate to promulgate and enact licensing requirements in order to regulate same.

NOW, THEREFORE, BE IT ORDAINED AND ENACTED by the Township Committee of the Township of Upper, County of Cape May, and State of New Jersey as follows:

SECTION 1. Chapter 4, Section 4-7, is hereby enacted to incorporate a new section titled “Cannabis Retail Licenses”, which shall read as follows:

Chapter 4-7.1 - Cannabis Retail Licenses. Businesses approved by the Township of Upper and the New Jersey Cannabis Regulatory Commission to be engaged in the sale of cannabis items within the Township of Upper shall pay an annual licensing fee as follows:

- (1) Class 5 Cannabis Retail Licenses: \$7,500.00.

Chapter 4-7.2 – Required License Renewal Date. Licensed cannabis retail businesses shall be required to renew their annual license on or before December 1st of each calendar year in which the license is active.

Chapter 4-7.3 – Cannabis License Application Procedure. The Township of Upper has determined that the issuance of any Class 5 Cannabis Retail License shall be subject to a successful applicant’s proposal that is submitted pursuant to a Request for Proposals (“RFP”) that contains evaluation criteria that is determined to be necessary and appropriate for the awarding of such Class 5 Cannabis Retail License by the Township of Upper, in its sole and absolute discretion. Such RFP evaluation criteria shall be publicly posted on the Township of Upper’s website and shall be made available to any interested member of the general public who requests same.

Chapter 4-7.4 – Cannabis License Application Fee. The Township of Upper has determined that an application fee in the amount of Ten Thousand (\$10,000.00) Dollars shall accompany any application submitted in response to an RFP for the issuance of a Class 5 Cannabis Retail License. The application fee shall be made up of a Five Thousand (\$5,000.00) Dollar non-refundable administrative fee and a Five Thousand (\$5,000.00) Dollar refundable escrow fee that will be returned to any applicants who are not selected for issuance of a Class 5 Cannabis

License. Any successful applicant who receives a Class 5 Cannabis Retail License from the Township of Upper shall not be entitled to a return of the escrow fee.

SECTION 2. All other ordinances in conflict or inconsistent with this Ordinance are hereby repealed to the extent of such conflict or inconsistency.

SECTION 3. Should any section, paragraph, sentence, clause or phrase of this Ordinance be declared unconstitutional or invalid for any reason, the remaining portions of this Ordinance shall not be affected thereby and shall remain in full force and effect, and to this end the provision of this Ordinance are hereby declared to be severable.

SECTION 4. This Ordinance shall become effective twenty (20) days after final passage and publication according to law.

NOTICE IS HEREBY GIVEN THAT THE FOREGOING ORDINANCE WAS INTRODUCED FOR FIRST READING AT A MEETING OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF UPPER HELD ON THE 12TH DAY OF JANUARY, 2026 AT THE TOWNSHIP HALL, AND WAS TAKEN UP FOR CONSIDERATION AS TO FINAL ADOPTION AT A PUBLIC HEARING OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF UPPER HELD ON THE 25TH DAY OF FEBRUARY, 2026 AT 6:30 P.M. AT THE TOWNSHIP HALL, PETERSBURG, NEW JERSEY, AT WHICH TIME SAID ORDINANCE WAS ADOPTED.

JOANNE R. HERRON, TOWNSHIP CLERK
TOWNSHIP OF UPPER

14. Public hearing and final adoption of Ordinance No. 003-2026 RE: AN ORDINANCE AMENDING CHAPTER 27, TAXATION, OF THE CODE OF UPPER TOWNSHIP, TO IMPOSE A TRANSFER TAX ON THE SALE OF CANNABIS BY LICENSED BUSINESSES OPERATING WITHIN THE TOWNSHIP OF UPPER. **The Municipal Attorney gave a brief summary of Ordinance 003-2026. Mayor Corson then opened the public hearing. During the public hearing portion there were the following speakers:**

Anna Nistorenko, Ocean View, spoke in opposition to the Ordinance.

Nathalie Neiss, Petersburg, spoke in opposition to the Ordinance.

Carol Sabo, West Cape May, spoke in favor of the Ordinance.

Diane Leo, Marmora, spoke in opposition to the Ordinance.

Amy Serra, Petersburg, spoke in opposition to the Ordinance.

Lou Barbato, Petersburg, spoke in opposition to the Ordinance.

There being no more speakers, Mayor Corson then closed the public hearing. Motion by Zachary Palombo, second by Victor Nappen, to adopt Ordinance No. 003-2026. During roll call vote all five Committee members voted in the affirmative.

**TOWNSHIP OF UPPER
COUNTY OF CAPE MAY
O R D I N A N C E**

ORDINANCE NO. 003-2026

RE: AN ORDINANCE AMENDING CHAPTER 27, TAXATION, OF THE CODE OF UPPER TOWNSHIP, TO IMPOSE A TRANSFER TAX ON THE SALE OF CANNABIS BY LICENSED BUSINESSES OPERATING WITHIN THE TOWNSHIP OF UPPER

WHEREAS, on November 3, 2020, registered New Jersey voters approved, by a ratio of 67.08% voting in favor of legalizing cannabis and 32.92% against, Public Question No. 1, which amended the New Jersey Constitution to allow for the legalization of cannabis for adults at least twenty-one (21) years of age; and

WHEREAS, in the Township of Upper, a majority of registered voters voted in favor of legalizing cannabis in the State of New Jersey; and

WHEREAS, on February 22, 2021, New Jersey Governor Philip Murphy signed the ‘New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act’ (the “Act”), N.J.S.A. 24:6I-1 et seq., into law effectively legalizing cannabis throughout the State of New Jersey; and

WHEREAS, the Act legalized the recreational use of cannabis and established a comprehensive regulatory and licensing scheme for the creation of a commercial cannabis industry within the state of New Jersey and specifically created six (6) distinct classes of commercial cannabis licenses related to growing, processing, distributing, wholesale, delivery, and retail uses; and

WHEREAS, pursuant to Section 40 of the Act, N.J.S.A. 40:48I-1, a municipality is permitted to enact a local Ordinance levying a cannabis transfer tax and user tax on the retail sales of cannabis or cannabis items by a cannabis establishment that is limited to 1% of wholesale activities and 2% of cultivation, processing, and retail activities; and

WHEREAS, the Act further provides that any municipal ordinance imposing a transfer tax shall also include provisions for imposing a user tax, at the equivalent rates outlined above, on any concurrent license holder operating under more than one class of cannabis license; and

WHEREAS, the Township Committee of the Township of Upper has elected to enact a cannabis transfer tax and user tax as permitted under the Act in order to avail itself of the opportunity to enhance the Township’s revenue stream for the benefit and general welfare of its residents.

NOW, THEREFORE, BE IT ORDAINED AND ENACTED by the Township Committee of the Township of Upper, County of Cape May, and State of New Jersey that Chapter 27, Taxation, of the Code of the Township of Upper, be and hereby is amended as follows:

SECTION 1. Chapter 27, Taxation, Article II, Cannabis Transfer and User Tax, is hereby enacted as follows:

§ 27-2.1 Purpose.

The purpose of this chapter is to impose a tax on the sale of cannabis or cannabis products by licensed commercial cannabis businesses operating in the Township of Upper pursuant to the New Jersey Cannabis Regulatory, Enforcement Assistance and Marketplace Modernization Act, to specify the type of tax and rate of tax to be levied and the method of collection, and to comply with all requirements for the imposition of a transfer or user tax pursuant to State law. This chapter is enacted solely to raise revenue and not for purposes of regulation. This chapter does not authorize the conduct of any business or activity in the Township of Upper but provides for the taxation of such businesses or activities as they occur.

§ 27-2.2 Definitions.

The terms and definitions enumerated in Chapter 20 of the Township Code and the definitions set forth within N.J.S.A. 24:6I-33 are hereby incorporated by reference as if more fully set forth at length herein. For the purpose of this Chapter, words and phrases herein shall have the same meanings as codified under state law, N.J.S.A. 40:48I-1(d), and any amendments or supplements thereto, and the rules and regulations of the Cannabis Regulatory Commission. In the event of a conflict in the meaning of words or phrases as between the Township of Upper Municipal Code

and the foregoing laws or regulations of the State of New Jersey concerning legal cannabis, State law or regulations shall govern and control.

§ 27-2.3 Imposition of Cannabis Transfer Tax and User Tax.

The Township of Upper hereby imposes and shall collect certain local option taxes on cannabis business activity as follows:

- A. A municipal transfer tax is hereby imposed on the receipts of each sale by a licensed cannabis business operating in the Township of Upper at the rate of two (2%) percent of the receipts from the sale of cannabis and/or cannabis-related items from one cannabis establishment to another cannabis establishment and two percent (2%) of the receipts from the sale of cannabis and/or cannabis-related items by a Cannabis Retailer to retail consumers who are twenty-one (21) years of age or older.
- B. A municipal user tax is hereby imposed, at the equivalent transfer tax rates, on any concurrent license holder operating more than one cannabis establishment. The user tax shall be imposed on the value of each transfer or use of cannabis or cannabis-related items not otherwise subject to the transfer tax imposed pursuant to this section, from the license holder's establishment that is located in the municipality to any of the other license holder's establishments, whether located in the municipality or another municipality.

§ 27-2.4 Payment of Taxes.

All revenues collected pursuant to this section shall be remitted to the Chief Financial Officer of the Township of Upper in the manner provided by this Ordinance. The taxes imposed by this section shall be computed and paid for each calendar month. Said taxes are due and payable to the Chief Financial Officer on or before the twentieth (20th) day of the succeeding month.

§ 27-2.5 Disposition of Tax Proceeds

For all revenues collected by the Township of Upper pursuant to Section 2.3, above, the Township of Upper shall be required to disperse all such funds into the following accounts held by the Township of Upper in the following increments:

- Township of Upper Reserve Fund for Beach Replenishment (33.33%)
- Township of Upper General Fund (33.34%)
- Township of Upper Recreation Trust Fund from Donations (33.33%)

§ 27-2.6 Administration.

- A. The Chief Financial Officer of the Township of Upper is hereby authorized and empowered to administer, regulate, and collect payment of all taxes imposed by this Ordinance.
- B. The Chief Financial Officer of the Township of Upper may order an audit of any taxpayer under this chapter for the purpose of ascertaining the correctness or completeness of any return or payment.

§ 27-2.7 Penalties.

- A. The payment of delinquent taxes or transfer fees imposed by this Ordinance shall be enforced in the same manner as provided for delinquent real property taxes.
- B. In the event that the transfer tax or user tax imposed by this Ordinance is not paid as and when due by a cannabis establishment, the unpaid balance, and any interest accruing thereon, shall be a lien on the parcel of real property comprising the cannabis establishment's premises in the same manner as all other unpaid municipal taxes, fees, or other charges. The lien shall be superior and paramount to the interest in the parcel of any owner, lessee, tenant, mortgagee, or other person, except the lien of municipal taxes, and

shall be on a parity with and deemed equal to the municipal lien the parcel for unpaid property taxes due and owing in the same year.

- C. In the event that a lien is imposed on a delinquent taxpayer pursuant to this section, the Township of Upper shall file in the office of the Upper Township Tax Collector a statement showing the amount and due date of the unpaid balance and identifying the lot and block number of the parcel of real property that comprises the delinquent cannabis establishment's premises. The lien shall be enforced as a municipal lien in the same manner as all other municipal liens are enforced.

SECTION 2. All other ordinances in conflict or inconsistent with this Ordinance are hereby repealed to the extent of such conflict or inconsistency.

SECTION 3. Should any section, paragraph, sentence, clause or phrase of this Ordinance be declared unconstitutional or invalid for any reason, the remaining portions of this Ordinance shall not be affected thereby and shall remain in full force and effect, and to this end the provision of this Ordinance are hereby declared to be severable.

SECTION 4. This Ordinance shall become effective twenty (20) days after final passage and publication according to law.

NOTICE IS HEREBY GIVEN THAT THE FOREGOING ORDINANCE WAS INTRODUCED FOR FIRST READING AT A MEETING OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF UPPER HELD ON THE 12TH DAY OF JANUARY, 2026 AT THE TOWNSHIP HALL, AND WAS TAKEN UP FOR CONSIDERATION AS TO FINAL ADOPTION AT A PUBLIC HEARING OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF UPPER HELD ON THE 25TH DAY OF FEBRUARY, 2026 AT 6:30 P.M. AT THE TOWNSHIP HALL, PETERSBURG, NEW JERSEY, AT WHICH TIME SAID ORDINANCE WAS ADOPTED.

JOANNE R. HERRON, TOWNSHIP CLERK
TOWNSHIP OF UPPER

- 15. Public hearing and final adoption of Ordinance No. 004-2026 RE: BOND ORDINANCE PROVIDING FOR VARIOUS 2026 CAPITAL IMPROVEMENTS BY AND IN THE TOWNSHIP OF UPPER, IN THE COUNTY OF CAPE MAY, STATE OF NEW JERSEY; APPROPRIATING \$5,143,000 THEREFOR AND AUTHORIZING THE ISSUANCE OF \$4,898,094 BONDS OR NOTES OF THE TOWNSHIP TO FINANCE PART OF THE COST THEREOF. **During the public hearing portion there were no speakers. Motion by Zachary Palombo, second by Tyler Casaccio, to adopt Ordinance No. 004-2026. During roll call vote all five Committee members voted in the affirmative.**

**TOWNSHIP OF UPPER
COUNTY OF CAPE MAY
O R D I N A N C E**

BOND ORDINANCE NUMBER 004-2026

BOND ORDINANCE PROVIDING FOR VARIOUS 2026 CAPITAL IMPROVEMENTS BY AND IN THE TOWNSHIP OF UPPER, IN THE COUNTY OF CAPE MAY, STATE OF NEW JERSEY; APPROPRIATING \$5,143,000 THEREFOR AND AUTHORIZING THE ISSUANCE OF \$4,898,094 BONDS OR NOTES OF THE TOWNSHIP TO FINANCE PART OF THE COST THEREOF

BE IT ORDAINED AND ENACTED BY THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF UPPER, IN THE COUNTY OF CAPE MAY, STATE OF NEW JERSEY (not less than two-thirds of all members thereof affirmatively concurring), **AS FOLLOWS:**

SECTION 1. The improvements or purposes described in Section 3 of this bond ordinance are hereby authorized as general improvements or purposes to be undertaken by the Township of Upper, in the County of Cape May, State of New Jersey (the "Township"). For the said improvements or purposes stated in Section 3, there is hereby appropriated the aggregate sum of \$5,143,000, which sum includes \$244,906 as the aggregate amount of down payments for said improvements or purposes as required by the Local Bond Law, N.J.S.A. 40A:2-1 et seq. (the "Local Bond Law"). Said down payments are now available therefor by virtue of appropriations in a previously adopted budget or budgets of the Township for down payment or for capital improvement purposes.

SECTION 2. For the financing of said improvements or purposes described in Section 3 hereof and to meet the part of said \$5,143,000 appropriation not provided for by application hereunder of said down payment, negotiable bonds of the Township are hereby authorized to be issued in the principal amount of \$4,898,094 pursuant to the Local Bond Law. In anticipation of the issuance of said bonds and to temporarily finance said improvements or purposes, negotiable notes of the Township in a principal amount not exceeding \$4,898,094 are hereby authorized to be issued pursuant to and within the limitations prescribed by the Local Bond Law.

SECTION 3. (a) The improvements hereby authorized and purposes for the financing of which said obligations are to be issued include, but are not limited to, the following:

| <u>Description</u> | <u>Appropriation</u> | <u>Authorization</u> | <u>Down Payment</u> | <u>Useful Life</u> |
|---|----------------------|----------------------|---------------------|--------------------|
| (i) <u>Municipal Buildings and Grounds</u> – Various Improvements And Renovations To Municipal Buildings And Grounds Including, But Not Limited To, Reconstruction Of Township Skate Park And Fitness Court And Acquisition And Installation Of Lighting For Amanda’s Field; | \$1,500,000 | \$1,428,571 | \$71,429 | 8.66 years |
| (ii) <u>Roadway and Engineering Improvements</u> - Improvements To Roadways In And Throughout The Township, Which Improvements Shall Include, But Not Be Limited | \$2,213,000 | \$2,107,619 | \$105,381 | 19.91 years |

| <u>Description</u> | <u>Appropriation</u> | <u>Authorization</u> | <u>Down Payment</u> | <u>Useful Life</u> |
|--|---------------------------|---------------------------|-------------------------|--------------------|
| To, As Applicable, Excavation, Milling, Paving, Reconstruction And Boxing Out And Resurfacing Or Full Depth Pavement Replacement, And Where Necessary, The Sealing Of Pavement Cracks, And Associated Repairing And/OR Installation Of Curbs, Curb Ramps, Sidewalks, Driveway Aprons, Resetting Of Utility Castings And Drainage Improvements, Roadway Painting, And Aesthetic Improvements; Preliminary Costs Related To Beach Patrol Headquarters Including, But Not Limited To, Architectural Design; | | | | |
| (iii) <u>Public Works Department</u> – Acquisition Of Various Equipment Including, But Not Limited To, A Street Sweeper, Dump Trucks With Plows And Spreaders And Pick-Up Trucks With And Without Plows; | \$1,380,000 | \$1,314,285 | \$65,715 | 12.06 years |
| (iv) <u>Public Safety Department</u> – Acquisition, And Installation, As Applicable, Of Various Equipment Including, But Not Limited To, Radio Equipment. | \$50,000 | \$47,619 | \$2,381 | 5.00 years |
| TOTALS | <u>\$5,143,000</u> | <u>\$4,898,094</u> | <u>\$244,906</u> | |

(b) All such improvements or purposes set forth in Section 3(a) shall include, but are not limited to, as applicable, all engineering, architectural and design work, title searches, surveying, construction planning, preparation of plans and specifications, permits, bid documents, construction inspection and contract administration, and also shall include all work, materials, equipment, accessories, labor and appurtenances necessary therefor or incidental thereto.

(c) The aggregate estimated maximum amount of bonds or notes to be issued for said purposes is \$4,898,094.

(d) The estimated cost of said improvement or purpose is \$5,143,000, the excess thereof over the said estimated maximum amount of bonds or notes to be issued therefor, being the amount of \$244,906, as the down payment for said improvement or purpose.

SECTION 4. In the event the United States of America, the State of New Jersey, the County of Cape May and/or a private entity make a contribution or grant in aid to the Township for the improvements and purposes authorized hereby and the same shall be received by the Township prior to the issuance of the bonds or notes authorized in Section 2 hereof, then the amount of such bonds or notes to be issued shall be reduced by the amount so received from the United States of America, the State of New Jersey, the County of Cape May and/or a private entity. In the event, however, that any amount so contributed or granted by the United States of America, the State of New Jersey, the County of Cape May and/or a private entity shall be received by the Township after the issuance of the bonds or notes authorized in Section 2 hereof, then such funds shall be applied to the payment of the bonds or notes so issued and shall be used for no other purpose. This Section 4 shall not apply, however, with respect to any contribution or grant in aid received by the Township as a result of using funds from this bond ordinance as “matching local funds” to receive such contribution or grant in aid.

SECTION 5. All bond anticipation notes issued hereunder shall mature at such times as may be determined by the Chief Financial Officer of the Township, provided that no note shall mature later than one (1) year from its date unless such bond anticipation notes are permitted to mature at such later date in accordance with applicable law. The notes shall bear interest at such rate or rates and be in such form as may be determined by the Chief Financial Officer. The Chief Financial Officer shall determine all matters in connection with the notes issued pursuant to this bond ordinance, and the signature of the Chief Financial Officer upon the notes shall be conclusive evidence as to all such determinations. All notes issued hereunder may be renewed from time to time in accordance with the provisions of the Local Bond Law. The Chief Financial Officer is hereby authorized to sell part or all of the notes from time to time at public or private sale and to deliver them to the purchaser thereof upon receipt of payment of the purchase price and accrued interest thereon from their dates to the date of delivery thereof. The Chief Financial Officer is directed to report in writing to the governing body at the meeting next succeeding the date when any sale or delivery of the notes pursuant to this bond ordinance is made. Such report must include the principal amount, the description, the interest rate, and the maturity schedule of the notes so sold, the price obtained and the name of the purchaser.

SECTION 6. The Capital Budget or Budgets of the Township are hereby amended to conform with the provisions of this bond ordinance to the extent of any inconsistency herewith. In the event of any such inconsistency, a resolution in the form promulgated by the Local Finance Board showing full detail of the amended Capital Budget or Budgets and capital programs as approved by the Director of the Division of Local Government Services, New Jersey Department of Community Affairs will be on file in the office of the Clerk and will be available for public inspection.

SECTION 7. The following additional matters are hereby determined, declared, recited and stated:

(a) The improvements or purposes described in Section 3 of this bond ordinance are not current expenses and are improvements which the Township may lawfully undertake as general improvements, and no part of the cost thereof has been or shall be specially assessed on property specially benefited thereby.

(b) The average period of usefulness of said improvements or purposes within the limitations of the Local Bond Law, according to the reasonable life thereof computed from the date of the said bonds authorized by this bond ordinance, is 14.37 years.

(c) The Supplemental Debt Statement required by the Local Bond Law has been duly made and filed in the Office of the Clerk of the Township and a complete executed duplicate thereof has been filed in the Office of the Director of the Division of Local Government Services, New Jersey Department of Community Affairs, and such statement shows that the gross debt of the Township as defined in the Local Bond Law is increased by the authorization of the bonds or notes provided for in this bond ordinance by \$4,898,094 and the said bonds or notes authorized by this bond ordinance will be within all debt limitations prescribed by said Local Bond Law.

(d) An aggregate amount not exceeding \$1,028,600 for items of expense listed in and permitted under section 20 of the Local Bond Law is included in the estimated cost indicated herein for the purposes or improvements hereinbefore described.

SECTION 8. The full faith and credit of the Township are hereby pledged to the punctual payment of the principal of and the interest on the bonds or notes authorized by this bond ordinance. The bonds or notes shall be direct, unlimited obligations of the Township, and the Township shall be

obligated to levy *ad valorem* taxes upon all the taxable real property within the Township for the payment of the bonds or notes and the interest thereon without limitation as to rate or amount.

SECTION 9. The Township hereby declares the intent of the Township to issue the bonds or bond anticipation notes in the amount authorized in Section 2 of this bond ordinance and to use proceeds to pay or reimburse expenditures for the costs of the purposes described in Section 3 of this bond ordinance. This Section 9 is a declaration of intent within the meaning and for purposes of Treasury Regulations §1.150-2 or any successor provisions of federal income tax law.

SECTION 10. The Township Chief Financial Officer is hereby authorized to prepare and to update from time to time as necessary a financial disclosure document to be distributed in connection with the sale of obligations of the Township and to execute such disclosure document on behalf of the Township. The Township Chief Financial Officer is further authorized to enter into the appropriate undertaking to provide secondary market disclosure on behalf of the Township pursuant to Rule 15c2-12 of the Securities and Exchange Commission (the "Rule") for the benefit of holders and beneficial owners of obligations of the Township and to amend such undertaking from time to time in connection with any change in law, or interpretation thereof, provided such undertaking is and continues to be, in the opinion of a nationally recognized bond counsel, consistent with the requirements of the Rule. In the event that the Township fails to comply with its undertaking, the Township shall not be liable for any monetary damages, and the remedy shall be limited to specific performance of the undertaking.

SECTION 11. The Township covenants to maintain the exclusion from gross income under section 103(a) of the Code of the interest on all bonds and notes issued under this ordinance.

SECTION 12. This bond ordinance shall take effect twenty (20) days after the first publication thereof after final adoption and approval by the Mayor, as provided by the Local Bond Law.

**ADOPTED ON FIRST READING
DATED: February 2, 2026**

**ADOPTED ON SECOND READING
DATED: February 25, 2026**

16. Introduction and first reading of Ordinance No. 005-2026 RE: AN ORDINANCE OF THE TOWNSHIP OF UPPER, COUNTY OF CAPE MAY, STATE OF NEW JERSEY AMENDING, REVISING AND SUPPLEMENTING CHAPTER 20 ENTITLED “ZONING” OF THE MUNICIPAL CODE BY REPEALING SECTIONS 20-14 THROUGH 20-14.5 AND REPLACING WITH NEW SECTIONS 20-14 THROUGH SECTION 20-14.21 AND REPEALING SECTION 20-15 THROUGH 20-15.10 AND REPLACING WITH SECTION 20-15 THROUGH 20-15.10 AND AMENDING IN PART SECTION 20-4.19 AFFORDABLE ACCESSORY APARTMENTS. **Municipal Attorney provided a brief summary of the Ordinance. Motion by Tyler Casaccio, second by Victor Nappen, to introduce Ordinance 005-2026 with a public hearing and final adoption scheduled for March 9, 2026. During roll call vote all five Committee Members voted in the affirmative.**

**TOWNSHIP OF UPPER
CAPE MAY COUNTY
O R D I N A N C E**

ORDINANCE NO. 005-2026

**AN ORDINANCE OF THE TOWNSHIP OF UPPER, COUNTY OF
CAPE MAY, STATE OF NEW JERSEY AMENDING, REVISING AND SUPPLEMENTING
CHAPTER 20 ENTITLED “ZONING” OF THE MUNICIPAL CODE BY REPEALING
SECTIONS 20-14 THROUGH 20-14.5 AND REPLACING WITH NEW SECTIONS 20-14
THROUGH SECTION 20-14.21 AND REPEALING SECTION 20-15 THROUGH 20-15.10 AND
REPLACING WITH SECTION 20-15 THROUGH 20-15.10 AND AMENDING IN PART
SECTION 20-4.19 AFFORDABLE ACCESSORY APARTMENTS**

WHEREAS, in accordance with N.J.S.A. 52:27D-304.1 et seq., the Governing Body of the Township of Upper intends upon repealing and replacing Chapter 20, Sections 20-14 through 20-14.5 and replacing with new Sections 20-14 through 20-14.21; repealing and replacing Sections 20-15 through 20-15.10 and replacing with new Sections 20-15 through 20-15.11; and amending Section 20-4.19 so as to incorporate and implement its present and prospective Fair Share Plan as provided by the Fair Housing Act, N.J.S.A. 52:27D-301 et al.; and

WHEREAS, on June 30, 2025, the Planning Board of the Township of Upper, Cape May County, State of New Jersey, adopted a Resolution approving a Fourth Round Housing Element of the Master Plan and Fair Share Plan; and

WHEREAS, on July 14, 2025, the Township Governing Body endorsed the Fourth Round Housing Element and Fair Share Plan adopted by the Planning Board; and

WHEREAS, the Governing Body of the Township of Upper intends upon considering the adoption of an Ordinance amending Chapter 20 of the Code of the Township of Upper, to implement the required affordable housing ordinances, development fee ordinances and implementing ordinances, and has introduced on first reading Ordinance 005-2026 and moved to submit the same to the Planning Board of the Township of Upper for consideration and recommendation; and

WHEREAS, the Township Planning Board recommends the adoption of this ordinance pursuant to the approval of the Housing Element and Fair Share Plan and Spending Plan to the Governing Body in accordance with the requirements of N.J.S.A. 40:55D-64. The Planning Board found that the proposed ordinance is consistent with the adopted Master Plan Elements and made a favorable recommendation supporting the ordinance amendments at their March 5, 2026 meeting.

NOW THEREFORE, BE IT ORDAINED by the Township Committee of the Township of Upper, County of Cape May, State of New Jersey that Chapter 20, entitled “Zoning” of the Code of the Township of Upper, be amended, revised and supplemented in accordance with the following:

SECTION 1.: REPEAL SECTIONS 20-14 THROUGH 20-14.5 AND REPLACE WITH NEW SECTIONS 20-14 THROUGH 20-14.21 AS FOLLOWS:

Section 20-14 Affordable Housing

Section 20-14.1 Introduction & Applicability

1. This section of the Code sets forth regulations regarding the very low-, low- and moderate-income housing units in *Township of Upper* 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 percent affordable housing developments except where inconsistent with applicable law. Low-Income Housing Tax Credit financed developments shall adhere to affirmative marketing and random selection procedures set forth in UHAC.
3. The *Township of Upper* 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
 - a. The provisions of this Ordinance shall apply to all affordable housing developments and affordable housing units that are proposed to be created pursuant to the municipality’s most recently adopted HEFSP, unless granted a waiver pursuant to UHAC and approved by the County-level housing judge. All affordable housing units and affordable housing developments that were previously created pursuant to any prior approvals, HEFSP, and/or a Judgment of Compliance and Repose (JOR) shall remain subject to the terms of those prior documents.
 - b. This Ordinance shall apply to all future developments that contain very low-, low- and moderate-income housing units included in the Municipal HEFSP, including any unanticipated future developments that will provide very low-, low- and moderate-income housing units.
 - c. Projects receiving federal Low Income Housing Tax Credit financing shall be required to follow UHAC unless exempt pursuant to N.J.A.C. 5:80-26.1, including but not limited to developments with anticipated funding from the Federal Low-Income Housing Tax Credit (LIHTC) pursuant to Section 42 of the Internal Revenue Code. The developer shall be responsible for administration and affirmative marketing of the affordable units.

Section 20-14.2 Definitions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“Affordable unit” means a housing unit proposed or developed pursuant to the Act, including but not limited to units created with municipal affordable housing trust funds.

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

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

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

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

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

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

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

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

“Commissioner” means the Commissioner of the Department of Community Affairs.

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

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

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

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

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

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

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

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

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

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

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

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

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

construction cost estimates. Final EAV shall be determined at project completion by the municipal assessor.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“Major system” means the primary structural, mechanical, plumbing, electrical, fire protection, or occupant service components of a building which include but are not limited to, weatherization,

roofing, plumbing (including wells), heating, electricity, sanitary plumbing (including septic systems), lead paint abatement or load bearing structural systems.

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

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

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

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

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

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

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

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

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

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

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

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

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

“Non-residential development” means:

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

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

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

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

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

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

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

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

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

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

“Prior round unit” means a housing unit that addresses a municipality’s fair share obligation from a round prior to the fourth round of affordable housing obligations, including any unit that: (1) received substantive certification from COAH; (2) is part of a third-round settlement agreement or judgment of compliance approved by a court of competent jurisdiction, inclusive of units created pursuant to a zoning designation adopted as part of the settlement agreement or judgment of compliance to create a realistic opportunity for development; (3) is subject to a grant agreement or other contract with either the State or a political subdivision thereof entered into prior to July 1, 2025, pursuant to either item (1) or (2) above; or (4) otherwise addresses a municipality’s fair share obligation from a round prior to the fourth round of affordable housing obligations. A unit created after the enactment of P.L. 2024, c. 2 (N.J.S.A. 52:27D-304.1) on March 20, 2024, is not a prior round unit unless: (1) it is created pursuant to a prior round development plan or zoning designation that received COAH or court approval on or before the cutoff date of June 30, 2025, or the date that the municipality adopts the implementing ordinances and resolutions for the fourth round of affordable housing obligations, whichever occurs sooner; and (2) its siting and creation are consistent with the form of the prior round development plan or zoning designation in effect as of the cutoff date, without any amendment or variance.

“Random selection process” means a lottery process by which currently income-eligible applicant-households are selected, at random, for placement in affordable housing units such that no preference is given to one applicant over another, except in the case of a veterans’ preference where such an agreement exists; for purposes of matching household income and size with an appropriately priced

and sized affordable unit; or another purpose allowed pursuant to N.J.A.C. 5:80-26.7(k)3. This definition excludes any practices that would allow affordable housing units to be leased or sold on a first-come, first-served basis.

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

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

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

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

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

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

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

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

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

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

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

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

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

“Supportive housing household” means a very low-, low- or moderate-income household certified as income eligible by an administrative agent in accordance with N.J.A.C. 5:80-26.14, in which at least one member is an individual who requires supportive services to maintain housing stability and independent living and who is part of a population identified by federal or state statute, regulation, or program guidance as eligible for supportive or special needs housing. Such populations include, but are not limited to: persons with intellectual or developmental disabilities, persons with serious mental illness, person with head injuries (as defined in Section 2 of P.L. 1977), persons with physical

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

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

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

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

“Treasurer” means the Treasurer of the State of New Jersey.

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

“UHORP” means the Agency’s Urban Homeownership Recovery Program, as it was authorized by the Agency Board.

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

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

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

“Very-low-income unit” means a restricted unit that is affordable to a very-low-income household. Very-low-income units are a subset of low-income units.

“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.

Section 20-14.3 Municipality-wide Mandatory Set-Aside

1. All new residential construction/development proposing a minimum of five new housing units in any zoning district, whether created through existing zoning; or created through any municipal rezoning; or created through any Zoning Board action including a use or density variance; or created through any redevelopment plan and/or rehabilitation plan, is required to include an affordable housing set-aside of 20 percent.
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 for the controls on affordability, including bedroom distribution, and affirmatively marketed to the housing region in conformance with UHAC at N.J.A.C. 5:80-26.1 et seq., any successor regulation, and all other applicable laws.
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 municipality to grant such rezoning, variance or other relief.
6. This municipality-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. For any such development where the Township's land use ordinances (e.g., zoning or an adopted redevelopment plan) already permitted residential development as of the effective date of the adoption of this section, this requirement shall only apply if the Township permits an increase in approvable and developable gross residential density to beyond the permitted approvable and developable gross residential density as of the effective date of the adoption of this ordinance.
8. In the event that the inclusionary set-aside of 20 percent of the total number of residential units does not result in a full integer, the developer shall choose one of two options for addressing the fractional unit:
 - a. The developer may round the set-aside upward to construct a whole additional affordable unit; or
 - b. If the set-aside includes a fractional unit equal to 0.49 or less, the developer may round the set-aside downward and construct the lesser whole number of affordable units and shall also contribute the fractional subsidy payment (“fractional subsidy payment”) to be made to the municipality and deposited in the municipal Affordable Housing Trust Fund. The fractional subsidy payment amount shall be calculated as the fractional unit multiplied by the base subsidy payment amount currently established by the municipality as the average subsidy reflected in financial pro formas for 100 percent affordable housing or subsidized developments in the municipality or region on file with the municipality. For example, if seven total units are developed at an inclusionary site, a 20 percent set-aside would require 1.4 affordable units. Per the requirements above:

The developer shall round up the 0.4 unit to one whole affordable unit so as to construct a total of two (2) affordable housing units; or The developer shall round the set-aside downward so as to construct only one affordable unit AND shall pay into the municipal

affordable housing trust fund a fractional subsidy payment equal to the dollar amount established by the municipality multiplied by 0.4.

Section 20-14.4 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.” These crediting mechanisms are expressed as way of an example, and the list is non-exhaustive of potential crediting mechanisms, and any crediting requirements shall be pursuant to the regulatory, statutory, or legal requirements detailing the crediting mechanism. While not anticipated, should there be a conflict between this subsection and the regulatory requirements for crediting of the following mechanisms, the pertinent valid regulations shall control.
2. Rehabilitation Programs
3. Accessory Apartment program in accordance with Section 20-4.19 and the following: (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).
 - a. An accessory apartment program shall provide very-low- low- and moderate-income units.
 - b. 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.
 - c. Rents of accessory apartments shall be established using the same methodology of affordable rental units discussed herein.
 - d. 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.
 - e. The municipal accessory apartment program shall not restrict the number of bedrooms in any accessory apartment.
 - f. 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.
4. Market to Affordable program
5. Extension of Controls Program
6. Assisted Living Residence
7. Supportive Housing and Group Homes

Section 20-14.5 New Construction

1. 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.
2. 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 |

3. 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, town homes, 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.
- a. Affordable units shall utilize the same type of cooling and heating source as market-rate units within the affordable housing development.
 - b. 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. (The municipality has chosen to allow rounding)
- a. 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.
 - b. In each affordable housing development, at least 50 percent of the restricted units within each bedroom distribution rounded up or down to the nearest whole number shall be very low- or low-income units.
 - c. Within rental developments, of the total number of affordable rental units, at least 13 percent, rounded up or down 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.
 - d. Affordable housing developments that are not age-restricted or supportive housing shall be structured such that:

- i. At a minimum, the number of bedrooms within the restricted units equals twice the number of restricted units;
 - ii. Two-bedroom and/or three-bedroom units compose at least 50 percent of all restricted units;
 - iii. The combined number of efficiency and one-bedroom units shall be no greater than 20 percent, rounded up or down to the nearest whole number, of the total number of low- and moderate-income units.
 - iv. At least 30 percent of all low- and moderate-income units, rounded up or down to the nearest whole number, shall be two-bedroom units.
 - v. At least 20 percent of all low- and moderate-income units, rounded up rounded up or down to the nearest whole number, shall be three-bedroom units.
 - vi. The remaining units may be allocated among two- and three- bedroom units at the discretion of the developer.
- e. 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 five percent of those restricted units.
6. Accessibility requirements.
- a. 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.
 - b. Notwithstanding the exemption for townhouse dwelling units in the barrier free subcode, the first floor of all town home dwelling units and of all other multi-floor dwelling units that are attached to at least one other dwelling unit shall be subject to the technical design standards of the barrier free subcode and shall include the following features:
 - i. An adaptable toilet and bathing facility on the first floor;
 - ii. An adaptable kitchen on the first floor;
 - iii. An interior accessible route of travel however an interior accessible route of travel shall not be required between stories;
 - iv. 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;
 - v. If not all of the foregoing requirements in b.i. through b.iv. can be satisfied, then an interior accessible route of travel shall be provided between stories within an individual unit; and
 - vi. 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 percent of the adaptable entrances in the development accessible:
 - (a) 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.

- (b) To this end, the builder of restricted units shall deposit funds within the Affordable Housing Trust Fund sufficient to install accessible entrances in 10 percent of the affordable units that have been constructed with adaptable entrances.
 - (c) 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.
 - (d) 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.
 - (e) 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.
- vii. 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.

Section 20-14.6 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.

Section 20-14.7 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 UHAC 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 percent 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 percent of regional median income. The maximum rent may be increased to no more than 70 percent of regional median income for moderate-income units within affordable developments where very-low-income units compose at least 13 percent of the restricted units; however, the number of units with rent affordable to households earning 70 percent of regional median income may not exceed the number of very-low-income units in excess of 13 percent (rounded up) of the restricted units.
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. Very low-income units, if required, should be distributed between each bedroom count as proportionally as possible to the total number of restricted units within each bedroom count, and shall be part of the low-income requirement.
5. The maximum sales price of restricted ownership units within each affordable housing development shall be affordable to households earning no more than 70 percent of median income, and each affordable housing development must achieve an affordability average that does not exceed 55 percent 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:
 - a. A studio or efficiency unit shall be affordable to a one-person household;
 - b. A one-bedroom unit shall be affordable to a one and one-half person household;
 - c. A two-bedroom unit shall be affordable to a three-person household;
 - d. A three-bedroom unit shall be affordable to a four and one-half person household; and
 - e. 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:
 - a. A studio or efficiency unit shall be affordable to a one-person household;
 - b. A one-bedroom unit shall be affordable to a one and one-half person household; and
 - c. 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 percent of the purchase price and the FreddieMac 30-Year Fixed Rate-Mortgage rate of interest), property taxes, homeowner and private mortgage insurance and condominium or homeowner association fees do not exceed 30 percent of the eligible monthly income of the appropriate size household as determined pursuant to N.J.A.C. 5:80-26.7, as may be amended and supplemented; provided, however, that the price shall be subject to the affordability average requirement of N.J.A.C. 5:80-26.4, as may be amended and supplemented.
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 percent of the gross monthly income of a household of the appropriate size whose income is targeted to the applicable percentage of median income for the unit, as determined pursuant to N.J.A.C. 5:80-26.3, as may be amended and supplemented. The rent shall also comply with the affordability average requirement of N.J.A.C. 5:80-26.4, as may be amended and supplemented.
11. At the anniversary date of the tenancy of the certified household occupying a restricted rental unit, following a minimum 90-day notice provided to the occupant household, 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." The maximum allowable rent increase for the year will be effective as of the same date as the regional median income limits determined pursuant to N.J.A.C. 5:80-26.3 and published by the Agency. This rent increase may not exceed five percent in any one year and notice thereof must be filed with the administrative agent. If the landlord has charged a tenant less than the initial maximum allowable rent for a restricted unit, the landlord may, with the approval of the administrative agent, use the maximum allowable rent instead of the current rent in performing this

multiplication to establish the rent for the next tenant under a new lease. LIHTC units are not governed by the provisions of this section, but rather by the provisions of the State's Qualified Allocation Plan, N.J.A.C. 5:80-33.1 through 33.40.

Section 20-14.8 Affirmative Marketing.

1. The municipality shall adopt, by resolution, an Affirmative Marketing Plan, subject to approval of the Superior Court, compliant with N.J.A.C. 5:80-26.16, as may be amended and supplemented.
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, English-speaking ability, marital or familial status, gender, affectional or sexual orientation, disability, age (except for "housing for older persons" as defined at N.J.S.A. 10:5-1 et seq., and age-restricted units as permitted pursuant to 42 U.S.C. §§ 3601 et seq.), number of children, source of lawful income, or any other characteristic described in the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 through 50, 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 6 and is required to be followed throughout the period of deed restriction.
3. The Affirmative Marketing Plan provides the following preferences, provided that units that remain unoccupied after these preferences are exhausted may be offered to households without regard to these preferences.
 - a. Where the municipality has entered into an agreement with a developer or residential development owner to provide a preference for very-low-, low-, and moderate-income veterans who served in time of war or other emergency, pursuant to N.J.S.A. 52:27D-311.j, there shall be a preference for veterans for up to 50 percent of the restricted rental units in a particular project.
 - b. There shall be a regional preference for all households that live and/or work in Housing Region 6 comprising Atlantic Cape May, Cumberland, and Salem Counties.
 - c. Subordinate to the regional preference, there shall be a preference for households that live and/or work in New Jersey.
 - d. With respect to existing restricted units undergoing approved rehabilitation for the purpose of preservation or to restricted units newly created to replace existing restricted units undergoing demolition, a preference for the very-low-, low-, and moderate-income households that are displaced by the rehabilitation or demolition and replacement.
4. The municipality has the ultimate responsibility for adopting the Affirmative Marketing Plan and for the proper administration of the Affirmative Marketing Process, including the marketing of initial sales and rentals and resales and re-rentals. The Administrative Agent designated by the municipality shall implement the Affirmative Marketing Process to ensure the Affirmative Marketing of all affordable units, with the exception of affordable programs that are exempt from Affirmative Marketing as noted herein.
5. 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 should consider the use of language translations where appropriate.
6. 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.
7. 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. The Township may add a list of community and regional organizations to receive

notice of the availability of affordable housing units in addition to the following required entities: Fair Share Housing Center, the New Jersey State Conference of the NAACP, the Latino Action Network, the Mainland/Pleasantville, Mizpah, Atlantic City, and Cape May County Branches of the NAACP, and the Supportive Housing Alliance. Any other entities, including developers or persons or companies retained to implement the Affirmative Marketing Process, shall comply with this paragraph.

8. In implementing the Affirmative Marketing Process, the Administrative Agent shall provide a list of HUD-certified housing counselors or otherwise experienced entities approved by the Division providing counseling services on subjects such as budgeting, credit issues, mortgage qualification, rental lease requirements, and landlord/tenant law.
9. The Affirmative Marketing Process for available affordable units shall begin at least four months (120 days) prior to the expected date of occupancy and may begin before construction commences. For owner-occupied units, affirmative marketing advertising and outreach activities must continue until all of the marketed units have been sold, except that paid advertising may cease when the number of applications received is at least three times the number of units to be sold. For rental units, affirmative marketing advertising and outreach activities must continue, as long as applications are being accepted, except that paid advertising may cease when the number of applications received is at least three times the number of units to be filled.
10. Applications must be accepted for no less than 45 days following the initial advertisement on the New Jersey Housing Resource Center, except for the resale of owner-occupied units, in which case, applications must be accepted for no less than 30 days.
11. The cost to affirmatively market the affordable units shall be the responsibility of the developer, sponsor or owner, with the exception of Affirmative Marketing for resales.

Section 20-14.9 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.

Section 20-14.10 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:
 - a. Ensure each bedroom is occupied by at least one person, except for age-restricted and supportive and special needs housing units;
 - b. Provide a bedroom for every two adult occupants;
 - c. 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
 - d. Avoid placing a one-person household into a unit with more than one bedroom.

Section 20-14.11 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:
 - a. If the municipality exercises the right to extend the affordability controls on the unit, no exit sale occurs and a new control period commences; or
 - b. If the municipality 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 municipality 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.

Section 20-14.12 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:
 - a. The initial purchase price and affordability percentage for a restricted ownership unit shall be set by the Administrative Agent.
 - b. 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.
 - i. 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.
 - ii. 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
 - c. 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:
 - i. those that render the unit suitable for a larger household or the addition of a bathroom.
 - ii. 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);

- d. 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.

Section 20-14.13 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 percent 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 percent of median income and moderate-income ownership units shall be reserved for occupancy by households with a gross household income less than 80 percent of median income.
2. Notwithstanding the foregoing, the Administrative Agent may, upon approval by the municipality, and subject to the Division's approval, permit a moderate-income purchaser to buy a low-income unit if and only if the Administrative Agent can demonstrate that there is an insufficient number of eligible low-income purchasers in the housing region to permit prompt occupancy of the unit and all other reasonable efforts to attract a low-income purchaser, including pricing and financing incentives, have failed. Any such low-income unit that is sold to a moderate-income household shall retain the required pricing and pricing restrictions for a low-income unit. Similarly, the administrative agent may permit low-income purchasers to buy very-low-income units in housing markets where, as determined by the Division, units are reserved for very-low-income purchasers, but there is an insufficient number of very-low-income purchasers to permit prompt occupancy of the units. In such instances, the purchased unit must be maintained as a very-low-income unit and sold at a very-low-income price point such that on the next resale the unit will still be affordable to very-low-income households and able to be purchased by a very-low-income household. A very-low-income unit that is seeking bonus credit pursuant to N.J.S.A. 52:27D-311.k(9) must first be advertised exclusively as a very-low-income unit according to the Affirmative Marketing requirements at N.J.A.C. 5:80-26.16, then advertised as a very-low-income or low-income unit for at least 30 additional days prior to referring any low-income household to the unit.
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 percent of the household's eligible monthly

income; provided, however, that this limit may be exceeded if one or more of the following circumstances exists:

- a. The household currently pays more than 35 percent (40 percent 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;
- b. The household has consistently paid more than 35 percent (40 percent 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
- c. The household is currently in substandard or overcrowded living conditions;
- d. The household documents the existence of assets, within the asset limitation otherwise applicable, with which the household proposes to supplement the rent payments

Section 20-14.14 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 percent 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).

Section 20-14.15 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 percent 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 municipality 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:
 - a. Sublease or assignment of the lease of the unit;
 - b. Sale or other voluntary transfer of the ownership of the unit;

- c. The entry and enforcement of any judgment of foreclosure on the property containing the unit; or
- d. 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.

Section 20-14.16 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.
 - a. 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 five percent 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 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.

Section 20-14.17 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:
 - a. Very low-income rental units shall be reserved for households with a gross household income less than or equal to 30 percent of the regional median income by household size.
 - b. Low-income rental units shall be reserved for households with a gross household income less than or equal to 50 percent of the regional median income by household size.
 - c. Moderate-income rental units shall be reserved for households with a gross household income less than 80 percent 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 percent (40 percent 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:

- a. The household currently pays more than 35 percent (40 percent for households eligible for age-restricted units) of its gross household income for rent, and the proposed rent will reduce its housing costs;
 - b. The household has consistently paid more than 35 percent (40 percent for households eligible for age-restricted units) of eligible monthly income for rent in the past and has proven its ability to pay;
 - c. The household is currently in substandard or overcrowded living conditions;
 - d. The household documents the existence of assets with which the household proposes to supplement the rent payments; or
 - e. 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.

Section 20-14.18 Municipal Housing Liaison.

1. The Municipal Housing Liaison shall be approved by municipal 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:
 - a. 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.
 - b. The oversight of the Affirmative Marketing Plan and affordability controls.
 - c. When applicable, overseeing and monitoring any contracting Administrative Agent.
 - d. Overseeing the monitoring of the status of all restricted units listed in the Fair Share Plan.
 - e. Verifying, certifying and providing annual information within AHMS at such time and in such form as required by the Division.
 - f. Coordinating meetings with affordable housing providers and administrative agents, as needed.
 - g. Attending continuing education opportunities on affordability controls, compliance monitoring, and affirmative marketing as offered or approved by the Division.
 - h. 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.
 - i. Coordinating with the Administrative Agent, municipal attorney and municipal Construction Code Official to ensure that permits are not issued unless the document required in C.8. above has been duly recorded.
 - j. Listing on the municipal website contact information for the MHL and Administrative Agents.

Section 20-14.19 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:

- a. Administrative agent fees related to rental units shall be paid by the developer/owner.
 - b. Administrative agent fees related to initial sale of units shall be paid by the developer.
 - c. Administrative agent fees related to resales shall be paid by the seller of the affordable home.
 - d. Administrative agent fees related to ongoing administration and enforcement shall be paid by the municipality.
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. 5:99-7 and which are described in full detail in the Operating Manual, including those set forth in UHAC, include:
 - a. Attending continuing education opportunities on affordability controls, compliance monitoring, and affirmative marketing as offered or approved by the Division;
 - b. Affirmative marketing:
 - i. Conducting an outreach process to affirmatively market affordable housing units in accordance with the Affirmative Marketing Plan of the municipality and the provisions of N.J.A.C. 5:80-26.16.
 - ii. 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.
 - c. Household certification.
 - i. Soliciting, scheduling, conducting and following up on interviews with interested households.
 - ii. 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;
 - iii. Providing written notification to each applicant as to the determination of eligibility or non-eligibility within five (5) business days of the determination thereof.
 - iv. Requiring that all certified applicants for restricted units execute a certificate substantially in the form, as applicable, of either the ownership or rental certificates set forth in the Appendices J and K of N.J.A.C. 5:80-26.1 et seq.
 - v. 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.
 - vi. Employing a random selection process as provided in the Affirmative Marketing Plan when referring households for certification to affordable units.
 - d. Affordability controls.
 - i. 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.
 - ii. Ensuring that the removal of the deed restrictions and cancellation of the mortgage note are effectuated and filed properly with the County Register of Deeds or County Clerk's office after the termination of the affordability controls for each restricted unit in accordance with UHAC.
 - iii. Communicating with lenders and the Municipal Housing Liaison regarding foreclosures.
 - iv. Ensuring the issuance of Continuing Certificates of Occupancy or certifications pursuant to N.J.A.C. 5:80-26.11.

- e. Records retention.
 - i. 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.
 - ii. Records received, retained, retrieved, or transmitted in furtherance of crediting affordable units of a municipality constitute public records of the municipality as defined by N.J.S.A. 47:3-16, and are legal property of the municipality.
- f. Resales and re-rentals.
 - i. 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.
 - ii. 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.
- g. Processing requests from unit owners.
 - i. 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.
 - ii. 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.
 - iii. Notifying the municipality of an owner's intent to sell a restricted unit.
 - iv. Making determinations on requests by owners of restricted units for hardship waivers.
- h. Enforcement.
 - i. Securing annually from the municipality a list of all affordable ownership units for which property tax bills are mailed to absentee owners, and notifying all such owners that they must either move back to their unit or sell it;
 - ii. 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;
 - iii. 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;
 - iv. Establishing a program for diverting unlawful rent payments to the municipal Affordable Housing Trust Fund; and
 - v. 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.
- i. The Administrative Agent(s) shall, as delegated by the municipality, have the authority to take all actions necessary and appropriate to carry out its/their responsibilities, herein.

Section 20-14.20 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:
 - a. 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.
- b. The total number of units in the project and the number of affordable units.
 - c. 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.
 - d. Floor plans of all affordable units, including complete and accurate identification of all rooms and the dimensions thereof.
 - e. A projected construction schedule.
 - f. The location of any common areas and elevators.
 - g. 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:
- a. 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.
 - b. Provide to the administrative agent a description of any applicable fees.
 - c. Provide to the administrative agent a description of the types of utilities and which utilities will be included in the rent.
 - d. 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.
 - e. Provide to the administrative agent a proposed form of lease for any rental units.
 - f. Ensure that the tenant selection criteria for the applicants for affordable units not be more restrictive than the tenant selection criteria for applicants for non-restricted units.
 - g. 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:
- a. Proposed pricing for all units, including any purchaser options and add-on items.
 - b. Realistic condominium or homeowner association fees and any other applicable fees.
 - c. Estimated real property taxes.
 - d. Sewer, water, trash disposal, and any other utility assessments.
 - e. Flood insurance requirement, if applicable.
 - f. The State-approved planned real estate development public offering statement and/or master deed, where applicable, as well as the full build-out budget.

Section 20-14.21 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 municipality shall have all remedies provided at law or equity, including but not limited to foreclosure, tenant eviction, municipal fines, a requirement for

household recertification, acceleration of all sums due under a mortgage, recoupment of any funds from a sale in the violation of the regulations, injunctive relief to prevent further violation of the regulations, entry on the premises, and specific performance.

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 municipality may take the following action against the owner, developer or tenant for any violation that remains uncured for a period of 60 days after service of the written notice:
 - a. The municipality may file a court action pursuant to N.J.S.A. 2A:58-11 alleging a violation, or violations, of the regulations governing the affordable housing unit. If the owner, developer or tenant is found by the Court to have violated any provision of the regulations governing affordable housing units the owner, developer or tenant shall be subject to one or more of the following penalties, at the discretion of the Court:
 - i. A fine of not more than \$1,000.00 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;
 - ii. 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;
 - iii. 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 municipality shall have the authority to levy fines against the owner of the development for instances of noncompliance with NJHRC advertising requirements (N.J.S.A. 52:27D-321.6.e.(2)), following written notice to the owner. The fine for the first offense of noncompliance shall be \$5,000, the fine for the second offense of noncompliance shall be \$10,000, and the fine for each subsequent offense of noncompliance shall be \$15,000.
4. The municipality may file a court action in the Superior Court seeking a judgment, which would result in the termination of the owner's equity or other interest in the unit, in the nature of a mortgage foreclosure. Any judgment shall be enforceable as if the same were a judgment of default of the first purchase money mortgage and shall constitute a lien against the low- or moderate-income unit.
 - a. Such judgment shall be enforceable, at the option of the municipality, by means of an execution sale by the Sheriff, at which time the affordable unit of the violating owner shall be sold at a sale price which is not less than the amount necessary to fully satisfy and pay off any first purchase money mortgage and prior liens and the costs of the enforcement proceedings incurred by the municipality, including attorney's fees. The violating owner shall have the right to possession terminated as well as the title conveyed pursuant to the Sheriff's sale.
 - b. The proceeds of the Sheriff's sale shall first be applied to satisfy the first purchase money mortgage lien and any prior liens upon the low- or moderate-income unit. The excess, if any, shall be applied to reimburse the municipality for any and all costs and expenses incurred in connection with either the court action resulting in the judgment of violation or the Sheriff's sale. In the event that the proceeds from the Sheriff's sale are insufficient to reimburse the municipality in full as aforesaid, the violating owner shall be personally responsible for the full extent of such deficiency, in addition to any and all costs incurred by the municipality in connection with collecting such deficiency. In the event that a surplus remains after satisfying all of the above, such surplus shall be placed in escrow by the municipality for the owner and shall be held in such escrow for a maximum period of two years or until such earlier time as the owner shall make a claim with the municipality for such. Failure of the owner to claim such balance within the two-year period shall automatically result in a forfeiture of such balance to the municipality. Any interest accrued or earned on such balance while being held in escrow shall belong to and shall be paid to the municipality, whether such balance shall be paid to the owner or forfeited to the municipality.

- c. 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.
 - d. If there are no bidders at the Sheriff's sale, or if insufficient amounts are bid to satisfy the first purchase money mortgage and any prior liens, the municipality may acquire title to the affordable unit by satisfying the first purchase money mortgage and any prior liens and crediting the violating owner with an amount equal to the difference between the first purchase money mortgage and any prior liens and costs of the enforcement proceedings, including legal fees and the maximum resale price for which the affordable unit could have been sold under the terms of the regulations governing affordable housing units. This excess shall be treated in the same manner as the excess that would have been realized from an actual sale as previously described.
 - e. Failure of the low- or moderate-income unit to be either sold at the Sheriff's sale or acquired by the municipality shall obligate the owner to accept an offer to purchase from any qualified purchaser that may be referred to the owner by the municipality, with such offer to purchase being equal to the maximum resale price of the low- or moderate-income unit as permitted by the regulations governing affordable housing units.
 - f. 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(s) to ensure that affordable housing units are administered properly. All affordable units must be occupied within a reasonable amount of time and be re-leased within a reasonable amount of time upon the vacating of the unit by a tenant. If an administrative agent or municipal housing liaison becomes aware of or suspects that a developer, landlord, or property manager has not complied with these regulations, it shall report this activity to the Division. The Division must notify the developer, landlord, or property manager, in writing, of any violation of these regulations and provide a 30-day cure period. If, after the 30-day cure period, the developer, landlord, or property manager remains in violation of any terms of this subchapter, including by keeping a unit vacant, the developer, landlord, or property manager may be fined up to the amount required to construct a comparable affordable unit of the same size and the deed-restricted control period will be extended for the length of the time the unit was out of compliance, in addition to the remedies provided for in this section. For the purposes of this subsection, a reasonable amount of time shall presumptively be 60 days, unless a longer period of time is required due to demonstrable market conditions and/or failure of the municipal housing liaison or the administrative agent to refer a certified tenant.
 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
 - a. Appeals from all decisions of an administrative agent appointed pursuant to this subchapter must be filed, in writing, with the municipal housing liaison. A decision by the municipal housing liaison may be appealed to the Division. A written decision of the Division Director

upholding, modifying, or reversing an administrative agent’s decision is a final administrative action.

SECTION 2.: REPEAL SECTIONS 20-15 THROUGH 20-15.10 AND REPLACE WITH NEW SECTIONS 20-15 THROUGH 20-15.10 AS FOLLOWS:

Section 20-15 Affordable Housing Development Fees

Section 20-15.1 Purpose

1. 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.

Section 20-15.2 Basic Requirements

1. The municipality previously adopted a development fee ordinance, which established the Municipal Affordable Housing Trust Fund.
2. The municipality shall not spend development fees until the court has approved a plan for spending such fees.
3. The definitions under Section 20-14.2 shall apply.

Section 20-15.3 Residential Development Fees

1. Imposed fees
 - a. Residential developers, except for developers of the types of development specifically exempted below, shall pay a fee of 1.5 percent of the equalized assessed value for residential development, provided no increased density is permitted. Development fees shall also be imposed and collected when an additional dwelling unit is added to an existing residential structure; in such cases, the fee shall be calculated based on the increase in the equalized assessed value of the property due to the additional dwelling unit.
 - b. When an increase in residential density is permitted pursuant to a “d” variance granted under N.J.S.A. 40:55D-70d(5), developers shall be required to pay a “bonus” development fee of 6.0 percent 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 percent of the equalized assessed value on the first two units; and the specified higher percentage of 6 percent of the equalized assessed value for the two additional units, provided zoning on the site has not changed during the two-year period preceding the filing of such a variance application.

2. Eligible exactions, ineligible exactions and exemptions for residential development
 - a. Affordable housing developments, developments where the developer is providing for the construction of affordable units elsewhere in the municipality, and developments where the developer has made an eligible payment in lieu of on-site construction of affordable units, if permitted by ordinance, or by agreement with the municipality and if approved by a municipality prior to the statutory elimination of payments in-lieu on March 20, 2024 per P.L.2024, c.2, shall be exempt from development fees.
 - b. Developments that have received preliminary or final site plan approval prior to the adoption of this ordinance and any preceding ordinance permitting the collection of development fees

shall be exempt from the payment of development fees, unless the developer seeks a substantial change in the original approval. Where a site plan approval does not apply, the issuance of a zoning and/or building permit shall be synonymous with preliminary or final site plan approval for the purpose of determining the right to an exemption. In all cases, the applicable fee percentage shall be determined based upon the development fee ordinance in effect on the date that the construction permit is issued.

- c. Development fees shall be imposed and collected when an existing structure undergoes a change to a more intense use 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.
- d. No development fee shall be collected for the demolition and replacement of a residential building resulting from a fire or natural disaster.

Section 20-15.4 Non-Residential Development Fees

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

Section 20-15.5 Collection Procedures

1. Upon the granting of a preliminary, final or other applicable approval for a development, the applicable approving authority shall direct its staff to notify the construction official responsible for the issuance of a building permit.
2. For non-residential developments only, the developer shall also be provided with a copy of Form N-RDF, "State of New Jersey Non-Residential Development Certification/Exemption," to be completed by the developer as per the instructions provided in the Form N-RDF. The construction official shall verify the information submitted by the non-residential developer as per the instructions provided on Form N-RDF. The tax assessor shall verify exemptions and prepare estimated and final assessments as per the instructions provided in Form N-RDF.
3. The construction official responsible for the issuance of a building permit shall notify the tax assessor of the issuance of the first construction permit for a development that is subject to a development fee.
4. Within 90 days of receipt of that notice, the tax assessor shall provide an estimate, based on the plans filed, of the equalized assessed value of the development.
5. The construction official responsible for the issuance of a final certificate of occupancy shall notify the tax assessor of any and all requests for the scheduling of a final inspection on property that is subject to a development fee.
6. Within 10 business days of a request for the scheduling of a final inspection, the tax assessor shall confirm or modify the previously estimated equalized assessed value of the improvements associated with the development; calculate the development fee; and thereafter notify the developer of the amount of the fee.
7. Should the municipality fail to determine or notify the developer of the amount of the development fee within 10 business days of the request for final inspection, the developer may estimate the amount due and pay that estimated amount consistent with the dispute process set forth in Subsection b. of section 37 of P.L.2008, c.46 (N.J.S.A. 40:55D-8.6).
8. Fifty percent (50 percent) 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.

Section 20-15.6 Appeal of development fees

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

Section 20-15.7 Affordable Housing Trust Fund

1. A separate, interest-bearing Municipal Affordable Housing Trust Fund shall be maintained by the chief financial officer of the municipality for the purpose of depositing development fees collected from residential and non-residential developers and proceeds from the sale of units with extinguished controls.
2. The following additional funds shall be deposited in the Municipal Affordable Housing Trust Fund and shall at all times be identifiable by source and amount:

- a. Payments in lieu of on-site construction of an affordable unit,;
 - b. Funds contributed by developers to make 10 percent of the adaptable entrances in a townhouse or other multistory attached dwelling unit development accessible;
 - c. Rental income from municipally operated units;
 - d. Repayments from affordable housing program loans;
 - e. Recapture funds;
 - f. Proceeds from the sale of affordable units; and
 - g. Any other funds collected in connection with the municipal affordable housing program including but not limited to interest earned on fund deposits.
3. The municipality shall provide the Division with written authorization, in the form of a tri-party escrow agreement(s) between the municipality, the Division and the financial institution in which the municipal affordable housing trust fund has been established to permit the Division to direct the disbursement of the funds as provided for in N.J.A.C. 5:99-2.1 et seq.
 4. All interest accrued in the housing trust fund shall only be used on eligible affordable housing purposes approved by the Court.

Section 20-15.8 Use of Funds

1. The expenditure of all funds shall conform to a Spending Plan approved by Superior Court. Funds deposited in the municipal Affordable Housing Trust Fund may be used for any activity approved by the Court to address the fair share obligation and may be set up as a grant or revolving loan program. Such activities include, but are not limited to: preservation or purchase of housing for the purpose of maintaining or implementing affordability controls; housing rehabilitation; new construction of affordable housing units and related costs; accessory apartments; a market-to-affordable program; conversion of existing non-residential buildings to create new affordable units; green building strategies designed to be cost-saving and in accordance with accepted national or state standards; purchase of land for affordable housing; improvement of land to be used for affordable housing; extensions or improvements of roads and infrastructure to affordable housing sites; financial assistance designed to increase affordability; administration necessary for implementation of the Housing Element and Fair Share Plan; and/or any other activity permitted by Superior Court and specified in the approved Spending Plan.
2. Funds shall not be expended to reimburse the municipality or activities that occurred prior to the authorization of a municipality to collect development fees.
3. At least a portion of all development fees collected and interest earned shall be used to provide affordability assistance to very low-, low- and moderate-income households in affordable units included in the municipal Fair Share Plan. A portion of the development fees which provide affordability assistance shall be used to provide affordability assistance to very low-income households.
 - a. Affordability assistance programs may include down payment assistance, security deposit assistance, low-interest loans, rental assistance, assistance with homeowners association or condominium fees and special assessments, infrastructure assistance, and assistance with emergency repairs. The specific programs to be used for affordability assistance shall be identified and described within the Spending Plan.
 - b. Affordability assistance for very low-income households may include producing very low-income units or buying down the cost of low- or moderate-income units in the municipal Fair Share Plan to make them affordable to households earning 30 percent or less of median income.
4. No more than 20 percent of all affordable housing trust funds, exclusive of those collected to fund an RCA prior to July 17, 2008, shall be expended on administration, including, but not limited to, salaries and benefits for municipal employees or consultants' fees necessary to develop or implement a new construction program, prepare and implement a Housing Element and Fair Share Plan, administer an Affirmative Marketing Program and for compliance with the Superior Court and the Program including the costs to the municipality of resolving a challenge.

Section 20-15.9 Ongoing Collection of Fees

1. The ability to impose, collect and expend development fees shall continue so long as the municipality retains authorization from the Court in the form of Compliance Certification or the good faith effort to obtain it.
2. If the municipality fails to renew its ability to impose and collect development fees prior to the expiration of its Judgment of Compliance, 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).

Section 20-15.10 Emergent Affordable Housing Opportunities.

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

SECTION 3: AMENDING CHAPTER 20, SECTION 20-4.19 AFFORDABLE ACCESSORY APARTMENTS AS FOLLOWS:

- a. Purpose. The purpose of the Affordable Accessory Apartments is to accommodate the development and conversion of accessory apartments to provide affordable housing in accordance with the Township's Housing Element and Fair Share Plan.
- b. Where Permitted. Affordable Accessory Apartments are provided on Schedule B Commercial and Mixed-Use Districts.
- c. The definitions of Section 20-14.2 shall apply.
- d. Additional Conditions.
 1. The provisions of Section 20-14.5-3 shall apply.
 2. There shall be a recorded deed or declaration of covenants and restrictions applied to the property upon which the "Affordable Accessory Apartment" is located running with the land and limiting its subsequent rental or sale.
 3. No more than 10 units of the Township's Affordable Housing Obligation to produce-"Affordable Accessory Apartments" shall be permitted.
 4. The "Affordable Accessory Apartment" program shall be affirmatively marketed to the Housing Region 6 consisting of Atlantic, Cape May, Cumberland and Salem counties in accordance with the "Affirmative Marketing Plan".
- e. At the end of the required deed restriction, the Township may negotiate with the owner to extend affordability controls subject to the expiration of affordability controls procedures in Section 20-14.5-5.
- f. At the termination of the deed restriction, the affordable accessory apartment will be permitted to be marketed to the general public without affordability controls if the controls are not extended as provided above.
- g. The "Affordable Accessory Apartment" may be a newly created accessory apartment in the Commercial and Mixed-Use District.
- h. Administration of the "Affordable Accessory Apartment" Program shall be in accordance with the following and Sections 20-14 through 20-14.21.
 1. The Township Committee of Upper Township shall designate an administrative entity to administer the "Affordable Accessory Apartment" program in accordance with the following:
 - (a) The administrative entity shall administer the "Affordable Accessory Apartment" program including advertising, income qualifying prospective renters, setting rents and annual rental increases, maintaining a waiting list, distributing the subsidy, securing certificates of occupancy, qualifying properties, handling application forms, filing deed restrictions and monitoring reports, and affirmatively marketing the "Affordable Accessory Apartment" program;
 - (b) The administrative entity shall only deny an application for an accessory apartment if the project is not in conformance with Section 20-14 through 20-14. 21 and/or the provisions of this subsection. All denials shall be in writing with the reasons clearly stated; and
 - (c) Prior to the grant of such subsidy, the property owner shall enter into a written agreement with the Township ensuring that the apartment shall meet the requirements of this subsection and the requirements of Sections 20-14 through 20-14.21.

i. Application Procedures.

1. Each application for the creation of an "Affordable Accessory Apartment" shall submit the following information to the designated administrative entity:
 - (a) A sketch of floor plan(s) showing the location, size and relationship of both the "Affordable Accessory Apartment" and the primary dwelling within the building or in another structure;
 - (b) Rough elevations showing the modification of any exterior building facade to which changes are proposed; and
 - (c) A site development sketch showing the location of the existing dwelling and other existing buildings; all property lines; proposed addition if any, along with the minimum building setback lines; the required parking spaces for both dwelling units and any natural or man-made conditions which might affect construction.

SECTION 4: REPEALER: All ordinances or code provisions or parts thereof inconsistent with this Ordinance are hereby repealed to the extent of such inconsistency.

SECTION 5: 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.

SECTION 6: EFFECTIVE DATE: This ordinance shall take effect upon its passage and publication, as required by law.

SECTION 7: CODIFICATION: This Ordinance shall be codified in the Upper Township Code at the sections referred to above.

NOTICE IS HEREBY GIVEN THAT THE FOREGOING ORDINANCE WAS INTRODUCED FOR FIRST READING AT A MEETING OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF UPPER HELD ON THE 25TH DAY OF FEBRUARY, 2026 AT THE TOWNSHIP HALL, AND WILL BE TAKEN UP FOR CONSIDERATION AS TO FINAL ADOPTION AT A PUBLIC HEARING OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF UPPER TO BE HELD ON THE 9TH DAY OF MARCH, 2026 AT 5:30 P.M. AT THE TOWNSHIP HALL, PETERSBURG, NEW JERSEY.

JOANNE R. HERRON, TOWNSHIP CLERK
TOWNSHIP OF UPPER

17. Introduction and first reading of Ordinance No. 006-2026 RE: AN ORDINANCE AMENDING REVISED GENERAL ORDINANCE CHAPTER 13 (STREETS, SIDEWALKS AND SANITATION) OF THE CODE OF UPPER TOWNSHIP TO ESTABLISH A MAILBOX DAMAGE AND RESTORATION POLICY. **Motion by Zachary Palombo, second by Tyler Casaccio, to introduce Ordinance 006-2026 with a public hearing and final adoption scheduled for March 9, 2026. During roll call vote all five Committee Members voted in the affirmative.**

**TOWNSHIP OF UPPER
CAPE MAY COUNTY
O R D I N A N C E**

ORDINANCE NO. 006-2026

AN ORDINANCE AMENDING REVISED GENERAL ORDINANCE CHAPTER 13 (STREETS, SIDEWALKS AND SANITATION) OF THE CODE OF UPPER TOWNSHIP TO ESTABLISH A MAILBOX DAMAGE AND RESTORATION POLICY

WHEREAS, the Township of Upper performs essential snow removal operations to ensure the safety and mobility of the public during winter weather events; and

WHEREAS, the weight of snow discharge and the operation of heavy machinery in the municipal right of way can occasionally result in damage to mailboxes; and

WHEREAS, the Township Committee desires to establish a uniform and compassionate policy to address such damage while protecting the fiscal interests of the taxpayers.

NOW, THEREFORE, BE IT ORDAINED by the Township Committee, in the Township of Upper, County of Cape May and State of New Jersey, as follows:

SECTION 1. Chapter 13 of the Revised General Ordinances of the Township of Upper, also known as the Code of Upper Township, shall be amended and supplemented as hereinafter provided:

SECTION 13-8 – MAILBOX DAMAGE AND RESTORATION POLICY.

13-8.1 Scope of Liability. The Township of Upper adopts a Total Force liability standard for mailbox damage occurring during official snow removal operations along roadways that are serviced by the Township of Upper during a snow event. This policy shall not extend to damages incurred to properties along County or State roadways that are not caused by the Township of Upper and/or its agents or employees. The Township shall accept responsibility for mailboxes that are either physically struck by municipal equipment or rendered inoperable due to the force and weight of snow that is discharged by municipal equipment.

13-8.2 Eligibility Requirements. To be eligible for remediation under this section, the damaged mailbox must have been installed in accordance with United States Postal Service (USPS) standards regarding required height and required setback from the roadway. Mailboxes that were rotted, unstable, or improperly installed prior to the weather event are not eligible for reimbursement.

13-8.3 Claim Process.

a. Notification: The property owner must notify the Department of Public Works of the damage within 48 hours of the conclusion of the snow event.

b. Inspection: A Public Works representative shall inspect the site within 72 business hours of notification to validate the claim and confirm compliance with installation standards.

13-8.4 Remediation and Reimbursement.

a. Financial Reimbursement: Upon validation of the claim, the Township shall issue a one-time payment of \$50.00 to the property owner of record. This payment is intended to cover the cost of materials for a standard mailbox and post.

b. Annual Limit: Reimbursement is limited to one (1) occurrence per property, per calendar year.

c. Discretionary Installation: In the sole and absolute discretion of the Superintendent of Public Works, the Township may perform the physical installation of a standard mailbox and post for residents who are elderly and/or who possess a physical disability that prevents them from performing the repair. This service is provided on a case-by-case basis and is subject to the availability of Township personnel.

SECTION 2: REPEALER: All Ordinances or parts of Ordinances inconsistent with this Ordinance are hereby repealed to the extent of such inconsistency only.

SECTION 3: EFFECTIVE DATE: This Ordinance shall take effect immediately upon final adoption and publication as required by law.

SECTION 4: SEVERABILITY: If any section, paragraph, subdivision, subsection, clause, or provision of this Ordinance shall be adjudged invalid, such adjudication shall apply only to the section, paragraph, subdivision, subsection, clause, or provision declared invalid and the remainder of this Ordinance shall remain in full force and effect and shall be enforceable.

SECTION 5: CODIFICATION: This Ordinance shall be codified in the Upper Township Code at the sections referred to above.

NOTICE IS HEREBY GIVEN THAT THE FOREGOING ORDINANCE WAS INTRODUCED FOR FIRST READING AT A MEETING OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF UPPER HELD ON THE 25TH DAY OF FEBRUARY, 2026 AT THE TOWNSHIP HALL, AND WILL BE TAKEN UP FOR CONSIDERATION AS TO FINAL ADOPTION AT A PUBLIC HEARING OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF UPPER TO BE HELD ON THE 9TH DAY OF MARCH, 2026 AT 5:30 P.M. AT THE TOWNSHIP HALL, PETERSBURG, NEW JERSEY.

JOANNE R. HERRON, TOWNSHIP CLERK
TOWNSHIP OF UPPER

CORRESPONDENCE

NEW BUSINESS

18. Tuckahoe Volunteer Fire Company request to hold Raffles RA #615 on July 2, 2026, RA #616 on September 17, 2026, and RA #617 on November 19, 2026 at 2170 Route 50, Tuckahoe.
Motion by Victor Nappen, second by Zachary Palombo, to approve the request. During roll call vote all five Committee members voted in the affirmative.

19. Cape Regional Auxiliary request to hold Bingo BA #618 and Raffle RA #619 at the Upper Township Community Center on April 19, 2026. **Motion by Tyler Casaccio, second by Zachary Palombo, to approve the request. During roll call vote all five Committee members voted in the affirmative.**

UNFINISHED BUSINESS

PAYMENT OF BILLS

20. "I hereby move that all claims submitted for payment at this meeting be approved and then incorporated in full in the minutes of this meeting." **Motion by Victor Nappen, second by Zachary Palombo. During roll call vote four Committee members voted in the affirmative. Committeeman Casaccio abstained from voting on PO #26-00245 and #26-00246 and voted in the affirmative on the remaining items.**

Bills approved for payment: **\$339,664.07**

Payroll: **\$225,213.77**

PUBLIC COMMENT – LIMITED TO FIVE (5) MINUTES PER PERSON

Diane Leo, Marmora, stated her disappointment that the cannabis Ordinance was adopted.

Alice March, Strathmere, commented on the importance of attending the Committee meetings and staying informed. She then thanked Public Works for timely snow removal and praised the Township Committee members for all their hard work.

Carrie Faulk, Ocean City, spoke regarding Ordinance 003-2026 and the use of tax money.

Kristen Myers, Tuckahoe, stated her disappointment that the cannabis Ordinance was adopted.

Glen Faulk, Ocean City, stated his disappointment that the cannabis Ordinance was adopted.

Nathalie Neiss, Petersburg, spoke on loss of State aid, and referenced a recent Ocean City Sentinel article, "Trash to Treasure", regarding the lease of the former Butter Road landfill.

Diane Leo, Marmora, spoke on the revenue from the lease of the former Butter Road landfill.

Amy Serra, Petersburg, spoke on revenue received from the use of Township facilities by the Spielberg movie.

CLOSED SESSION

No items for closed session.

RECONVENE PUBLIC PORTION OF MEETING

ADJOURNMENT

There being no further business this evening, the meeting was adjourned at 8:45 P.M., with a motion by Victor Nappen, second by Zachary Palombo, and all five Committee members voting in the affirmative. The next regular Committee meeting is scheduled for March, 2026 at 5:30 P.M.

Minutes prepared by,

Joanne R. Herron, RMC
Township Clerk

Bills

87048 02/25/26 A0075 ADAMS, JOSHUA 63.96 3481

87049 02/25/26 A0091 ATLANTIC CITY ELECTRIC 31,306.67 3481

87050 02/25/26 A0175 Adams Rehmann & Haggan Assoc 420.00 3481

87051 02/25/26 A0191 ACTION UNIFORM CO. LLC 210.00 3481

87052 02/25/26 A0212 ANCERO, LLC 16,797.48 3481

87053 02/25/26 A0235 AMAZON CAPITAL SERVICES, INC. 1,391.16 3481

87054 02/25/26 A0251 ACT ENGINEERS, INC. 873.60 3481

87055 02/25/26 B0032 BLANEY WEINBERG & CURIO PC 280.00 3481

87056 02/25/26 B0090 BROADLEY'S MDI 544.84 3481
87057 02/25/26 B0160 BONNER, ROSEMARY 2,220.00 3481
87058 02/25/26 B0232 BLUE FLAME GAS 614.79 3481
87059 02/25/26 B0270 Bernhardt, William 31.75 3481
87060 02/25/26 B0288 KINGBARNES LLC 1,325.00 3481
87061 02/25/26 B0304 BLUE MOUNTAIN DISTRIBUTORS 327.56 3481
87062 02/25/26 C0068 COMCAST 954.31 3481
87063 02/25/26 C0078 CARTER, EDWARD, SR. 397.97 3481
87064 02/25/26 C0182 CDW GOVERNMENT, INC 8,508.67 3481
87065 02/25/26 C0223 CASA PAYROLL SERVICE 277.80 3481
87066 02/25/26 C0346 CME ASSOCIATES 5,582.25 3481
87067 02/25/26 C0352 COLUMN SOFTWARE, PBC 48.92 3481
87068 02/25/26 C0360 GENRON 720.00 3481
87069 02/25/26 D0040 DELTA DENTAL OF N.J. INC. 5,686.07 3481
87070 02/25/26 D0186 DOCUTREND IMAGING SOLUTIONS 236.88 3481
87071 02/25/26 D0237 KERRY SCALFARO 250.00 3481
87072 02/25/26 D0251 THE DEWEESE LAW FIRM, P.C. 4,220.00 3481
87073 02/25/26 D0252 DEBLASIO & ASSOCIATES PC 5,255.00 3481
87074 02/25/26 E0052 EDWARDS, MATTHEW 164.99 3481
87075 02/25/26 F0053 FORD SCOTT & ASSOCIATES 11,500.00 3481
87076 02/25/26 F0224 FERRIER, SEAN 110.00 3481
87077 02/25/26 F0232 FAMILY AUTO GLASS 550.00 3481
87078 02/25/26 G0006 GARBUTT,PATRICIA A. 2,220.00 3481
87079 02/25/26 G0035 GENRON FIRE PROTECTION 24.90 3481
87080 02/25/26 G0092 GRUND, BARBARA J. 77.98 3481
87081 02/25/26 G0120 PATRICK F. MARTIN 2,083.33 3481
87082 02/25/26 G0169 GROFF TRACTOR MID ATLANTIC LLC 370.16 3481
87083 02/25/26 G0204 GENERAL CODE 3,732.00 3481
87084 02/25/26 H0073 HOME DEPOT CRC/GECF 429.00 3481
87085 02/25/26 K0086 K D NATIONAL FORCE SECURITY 950.00 3481
87086 02/25/26 L0007 LC EQUIPMENT, INC. 2,985.00 3481
87087 02/25/26 L0038 LAYTON, WILLIAM 4,440.00 3481
87088 02/25/26 M0081 MID-ATLANTIC WASTE SYSTEMS 1,498.00 3481
87089 02/25/26 M0277 EQUITABLE FINANCIAL LIFE INS. 198.47 3481
87090 02/25/26 M0345 MAJESTIC OIL 923.73 3481
87091 02/25/26 N0052 NATL ALLIANCE FOR YOUTH SPORTS 298.00 3481
87092 02/25/26 N0143 NATIONAL TIME SYSTEMS 464.95 3481
87093 02/25/26 N0171 NATIONAL HIGHWAY PRODUCTS INC. 1,723.28 3481
87094 02/25/26 N0176 NJ SOLUTIONS JOINT HEALTH 175,833.28 3481
87095 02/25/26 O0014 ATLANTIC SALT, INC. 7,508.04 3481
87096 02/25/26 Q0010 QUINLAN WELL DRILLING LLC 1,800.00 3481
87097 02/25/26 R0030 RIGGINS, INC. 4,229.25 3481
87098 02/25/26 R0076 REGISTRARS' ASSOCIATION N.J. 25.00 3481
87099 02/25/26 R0100 ROBERTS OXYGEN COMPANY, INC. 632.00 3481
87100 02/25/26 R0145 RUDCO PRODUCTS, INC. 420.48 3481
87101 02/25/26 R0147 REVASCENT LLC 994.65 3481
87102 02/25/26 R0149 REMINGTON & VERNICK ENGINEERS 6,290.00 3481
87103 02/25/26 S0113 LAW OFFICES OF THOMAS G SMITH 857.50 3481
87104 02/25/26 S0134 SO. JERSEY GAS COMPANY 9,700.20 3481
87105 02/25/26 S0253 SAMPLE MEDIA, INC. 29.50 3481
87106 02/25/26 T0076 TREASURER, STATE OF N.J. 323.00 3481
87107 02/25/26 T0085 TREASURER, STATE OF NEW JERSEY 505.50 3481
87108 02/25/26 T0159 TRIAD ADVISORY SERVICES, INC. 606.25 3481
87109 02/25/26 U0077 UNITED UNIFORMS LLC 220.00 3481
87110 02/25/26 V0001 VCI EMERGENCY VEHICLE 1,153.47 3481
87111 02/25/26 V0022 VERIZON 604.56 3481
87112 02/25/26 V0025 V.E. RALPH & SON,INC. 567.01 3481
87113 02/25/26 V0052 VIKING TERMITE & PEST CONTROL 66.74 3481
87114 02/25/26 W0135 THE LAW OFFICE OF BRANDON D 1,048.46 3481
87115 02/25/26 X0008 XEROX FINANCIAL SERVICES 2,960.71 3481
Total: \$339,664.07