AGENDA
Hightstown Borough Council
Special Meeting

March 12, 2026 | 6:00 p.m.
Hightstown Engine Company No. 1
140 North Main Street, Hightstown

PLEASE TURN OFF ALL CELL PHONES DURING YOUR ATTENDANCE AT THIS MEETING TO AVOID SOUNDS/RINGING OR CONVERSATIONS THAT MAY INTERFERE WITH THE RECORDING OR THE ABILITY OF ATTENDEES TO HEAR THE PROCEEDINGS. THANK YOU FOR YOUR COOPERATION.

Meeting called to order by Mayor Susan Bluth

STATEMENT: Adequate notice of this meeting has been given in accordance with the Open Public Meetings Act, pursuant to Public Law 1975, Chapter 231. Said notice was advertised in the Trenton Times and the Trentonian as required by law and is posted on the Hightstown Borough website.

Roll Call

Flag Salute

Approval of Agenda

Public Comment Any person wishing to address Council with his or her comments will have a maximum of three minutes to do so at this time.

Ordinances

2026-04 Final Reading and Public Hearing Ordinance Amending Chapter 28 – Zoning of the Code of the Borough of Hightstown, County of Mercer to Modify the DTC and HC Districts and Locations of the R-MF Districts to Implement Inclusionary Affordable Housing Zoning for the Fourth Round

2026-05 Final Reading and Public Hearing Amending the Zoning Ordinance of the Borough of Hightstown to Repeal and Replace the Affordable Housing procedural and Eligibility Requirements, to Implement the Fourth Round of Affordable Housing in Accordance with the Fair Housing Act of 1985

2026-06 Final Reading and Public Hearing Ordinance Amending the Land Use Procedures Ordinance of the Borough of Hightstown to Revise Mandatory Development Fees, to Implement the Fourth Round of Affordable Housing in Accordance with the Fair Housing Act of 1985

Adjournment

The Borough of Hightstown

156 Bank Street
Hightstown, New Jersey 08520
(609)490-5100 ext. 628
priggio@hightstownborough.com

TO: Mayor & Council

FROM: Peggy Riggio, RMC/CMC
Borough Clerk

DATE: March 10, 2026

RE: Ordinance Referrals from Planning Board

I received referrals from the Planning Board for Ordinances 2026-04; 2026-05 and 2026-06. Both 2026-05 and 2026-06 had a handful of typographical errors which do not significantly change the ordinances. I have went ahead and made the needed corrections.

Borough of Hightstown
Planning Board

156 Bank Street, Hightstown, NJ 08520
(609) 490-5100 Ext 617
Planning@HightstownBorough.com
www.hightstownborough.com

TO: Peggy Riggio, Borough Clerk

FROM: Jane Davis, Planning Board Secretary

SUBJECT: Ordinance 2026-04 – Chapter 28 Amendment – Zoning

DATE: March 10, 2026

At the March 9, 2026, Planning Board meeting, the Board reviewed and discussed Ordinance 2026-04, titled "Amending Chapter 28 – Zoning of the Code of the Borough of Hightstown, County of Mercer, to Modify the DTC and HC Districts and the Location of the R-MF Districts to Implement Inclusionary Affordable Housing Zoning for the Fourth Round."

The Board determined that the Ordinance is consistent with the Master Plan. No public comments were received.

Board members commented that further discussion of the Ordinance should be deferred to a future meeting.

The Board then voted unanimously to refer the Ordinance back to the Council. Please feel free to reach out with any questions or if additional information is needed.

Thank you.

Borough of Hightstown
County of Mercer

Ordinance 2026-04

ORDINANCE AMENDING CHAPTER 28 – ZONING OF THE CODE OF THE BOROUGH OF HIGHTSTOWN, COUNTY OF MERCER TO MODIFY THE DTC AND HC DISTRICTS AND LOCATIONS OF THE R-MF DISTRICTS TO IMPLEMENT INCLUSIONARY AFFORDABLE HOUSING ZONING FOR THE FOURTH ROUND

WHEREAS, the Hightstown Borough Council desires to implement the Housing Element and Fair Share Plan of the municipality for the Fourth Round of affordable housing obligations by modifying certain district regulations in the Zoning Ordinance and Zoning Map to provide the opportunity for affordable housing; and

WHEREAS, it has been determined by Hightstown Borough Council that the implementation of these modifications to the DTC and HC zoning districts and the application of the R-MF in its various sub-zones would effectuate the intent and purpose of the goals and objectives of the Housing Element and Fair Share Plan of the Master Plan of the Borough of Hightstown; and

WHEREAS, the Municipal Land Use Law requires that any amendments or revisions to Hightstown Borough's Zoning Ordinance shall be reviewed by the Planning Board to determine if the amendments or revisions thereto are substantially consistent with the Master Plan of the Borough of Hightstown; and

WHEREAS, the Planning Board of Hightstown adopted a Housing Element and Fair Share Plan, Element of the Master Plan on May 12, 2025 that addresses the municipality's affordable housing obligations in a manner which will promote the public health, safety, morals, and general welfare; and

WHEREAS, the Planning Board of Hightstown adopted the 2025 Amendment to the 2024 Mater Plan Reexamination Report on November 10, 2025 that incorporates the municipality's affordable housing obligations in a manner which will promote the public health, safety, morals, and general welfare; and

WHEREAS, the Municipal Land Use Law at N.J.S.A. 40:55D-62a requires substantial consistency of the provisions regulating zoning and land use with the adopted Land Use Plan Element; and

WHEREAS, the Hightstown Borough Council formally refers this Ordinance to the Planning Board for examination, discussion, and recommendations in accordance with N.J.S.A. 40:55D-26; and

WHEREAS, the adoption of this Ordinance was appropriately noticed pursuant to the Municipal Land Use Law at N.J.S.A. 40:55D-15 and in accordance with N.J.S.A.40:55D-62.1.

NOW, THEREFORE, BE IT ORDAINED, by the Borough Council of the Borough of

Hightstown that the Zoning Ordinance is hereby amended as follows (deletions are shown with ~~strikeout~~, additions are shown with underline):

Section 1. Section 28-3-13, entitled "DTC Downtown Core," of Article 28-3, "Districts Established; Zoning Map," of Chapter 28, "Zoning," of the Borough Code is hereby amended and supplemented as follows:

Chapter 28

Article 28-3. Districts Established; Zoning Map

**§ 28-3-13. DTC Downtown Core. [1991 Code §§ 223-20, 223-21; Ord. No. 93-852; Ord. No. 860;
Ord. No. 2013-13; Ord. No. 2019-13; Ord. No. 2025-07, 6-16-2025]**

A. Purpose and Intent. ~~The purpose and intent is to eliminate the CC-1 Central Commercial District and the CC-2 Central Commercial District and to establish a new district known as the DTC Downtown Core.~~ The purpose and intent of the DTC, Downtown Core Zoning District, is to create a cohesive mixed use district that allows for incremental change to the historic fabric and character of Hightstown by providing for a wide range of uses for the enjoyment of its citizens and visitors thereto while being supportive of the needs of the business community.

~~A.~~B. Permitted uses. In the DTC Downtown Core, the following uses, and no others, shall be permitted:

(1) Principal uses:

(a) Retail sales and services within a completely enclosed building.

(b) Personal and business services within a completely enclosed building.

(c) Offices.

(d) Public facilities, including public parking facilities.

(e) Child-care centers.

(f) Bars and taverns.

(g) Restaurants and other places to eat and drink, but not including establishments with drive-through facilities.

(h) Banks and financial institutions.

(i) Newspaper and other publishing facilities.

(j) Apartment dwellings ~~as upper floor use of buildings containing above permitted principal uses~~ above ground-floor non-residential uses.

(k) Art galleries and artist studios.

(2) Accessory uses and structures:

(a) Signs in accordance with Chapter 29.

(b) Parking facilities not located in front of the building line.

(c) Fences, walls and landscaping.

(d) Amusement machines, subject to the licensing and regulation provisions of Chapter 4, General Licensing, Article 4-7, Amusement Machines, of the Code of the Borough of Hightstown.

(e) Satellite dishes, subject to the restrictions and requirements set forth in § 28-10-19.

(f) Accessory uses and structures customarily incidental and on the same lot as a principal or conditional use.

(3) Conditional uses. The following uses shall be permitted when authorized as a conditional use by the Planning Board when meeting their associated criteria:

(a) Cannabis retail, subject to the following criteria:

[1] Such use shall operate fully within an enclosed building.

[2] Excepting emergency egress doors, each entrance and exit, including loading docks doors, shall be designed to prevent interior air from escaping out of doors unless properly treated as required under § 4-13-6G through air locks, negative pressurization or other means of preventing untreated air from exiting the building.

[3] All criteria set forth in the licensing regulations at § 4-13-6 shall apply.

C. Required Use.

(1) In order to effectuate the purposes of the Borough of Hightstown's constitutional obligation to provide for affordable housing, any site development of Block 39, Lot 28 (140 Mercer Street) that increases the existing square footage in existence as of June 30, 2025, or is a redevelopment of the site, shall include a mixed use building consisting of a non-residential use fronting on Mercer Street and multi-family residential units.

(a) At least twenty percent (20%) of all housing units shall be affordable to low, including very low, and moderate income households as those terms are defined in the Borough's affordable housing regulations, the Uniform Housing Affordability Controls rules (N.J.A.C. 5:80-26.1 et seq.) and the New Jersey Fair Housing Act (N.J.S.A. 52:27D-301 et seq.).

(b) Notwithstanding any other provision herein, the maximum height shall be four (4) stories and fifty-five (55) feet.

(c) The required number of parking spaces on-site shall be one for each studio or one-bedroom unit, one and one-half space for each two-bedroom unit and two spaces for each three-bedroom unit. Non-residential spaces shall be as otherwise required herein.

~~B.~~D. Other restrictions.

(1) Lot area. A lot area of not less than two thousand (2,000) square feet shall be required.

(2) Lot width. A lot width of not less than twenty (20) feet shall be required.

(3) Lot depth. A lot depth of not less than fifty (50) feet shall be required.

(4) Front yard. None shall be required, except that building locations shall comply with Borough requirements for providing adequate sight ~~triangles~~distance at street and driveway intersections.

(5) Side yards. None shall be required, except that building locations shall comply with Borough requirements for providing adequate sight ~~triangles~~distance at street and driveway intersections.

(6) Rear yard; principal buildings. There shall be a rear yard not less than ten (10) feet deep.

(7) Rear yard; accessory buildings. There shall be a rear yard not less than three (3) feet deep behind accessory buildings.

(8) Height. The maximum height shall be three (3) stories or fifty-five (55) feet.

(9) Coverage. No building shall cover more than ninety percent (90%) of the lot area.

(10) Parking. Parking shall be provided in accordance with § 28-10-11. Parking is not required for individual uses situated within three hundred (300) feet of a public facility or designated private parking facility subject, however, to demonstration that the facility has adequate parking to accommodate the individual use while maintaining sufficient parking for existing uses already utilizing the parking facility.

(11) Signs. Signs for individual business establishments shall be permitted in accordance with
~~§~~ 29~~-1-18~~.

E. Additional Requirements.

~~(12)~~1) Sight triangles. The regulations for adequate sight ~~triangles~~ distances at street and driveway intersections shall be in accordance with § 28-10-9.

~~1)~~2) Residential district buffer. For lots which adjoin a residential district, a buffer area of at least ten (10) feet shall be provided, and the buffer area shall be landscaped to provide for continuous, year-round visual screening of the property. The buffer area may contain a fence provided said fence is in accordance with § 28-10-4. The fence shall be provided only to supplement necessary landscaping.

Section 2. Section 28-3-9, entitled "R-MF, Multi-Family District," of Article 28-3, "Districts Established; Zoning Map," of Chapter 28, "Zoning," of the Borough Code is hereby amended and supplemented as follows:

Chapter 28. Zoning

Article 28-3. Districts Established; Zoning Map

§ 28-3-9. R-MF Multifamily District. [1991 Code §§ 233-14, 233-15; Ord. No. 93-852; Ord. No. 2025-05, 5-19-2025; Ord. No. 2025-10, 7-21-2025]

A. Purpose and intent. The purpose and intent of the R-MF Multifamily Residential District is to provide market rate and subsidized affordable housing in the Borough of Hightstown to aid in meeting its constitutional obligation to provide for very low, low and moderate income housing in accordance with the Fair Housing Act (N.J.S.A. 52:27D-301 et seq.). The R-MF District is further divided into subdistricts that apply to specific sites with inclusionary affordable housing in accordance with the objectives of the Housing Plan Element of the Master Plan and implementing resolutions, ordinances, and agreements constituting the Fair Share Plan. The R-MF District provides a compensatory benefit over the preceding zoning district's use and/or intensity standards sufficient to address the affordable housing components of inclusionary development.

B. Permitted uses. In the R-MF Multifamily District, the following uses, and no others, shall be permitted:

(1) Principal uses:

(a) Townhouse dwellings.

(b) Multifamily dwellings.

(c) Municipal purpose.

(2) Accessory uses:

(a) Community center for the use of residents and their guests.

(b) Common recreational facilities for the use and enjoyment of residents and their guests.

(c) Maintenance building.

(d) Management office if located within a community center or building with multifamily dwellings.

(e) Home occupation in accordance with the requirements of § 28-10-7 and in addition to the prohibited uses listed in Subsection C therein, no funeral home, private school or professional office shall be permitted as a home occupation on the premises.

(f) Off-street surface parking; car sheds and detached garages for private residential use, only.

(g) Fences, walls and street furniture.

(h) Signs in accordance with Chapter 9.

(i) Large satellite dish antenna when approved as part of an application for development for providing common service to the residents of a development in accordance with the standards of § 28-10-19.

(j) Small satellite dish antennas in accordance with the standards of § 28-10-19.

(k) Accessory uses on the same lot and customarily incidental to the principal use.

(3) Conditional uses. The following uses shall be permitted when the criteria have been met for the site listed.

(a) Multifamily use with a subdistrict designation of 18 (R-MF18) shall be permitted when the following criteria have been met:

[1] New multifamily dwellings shall be added to the site by additions to the existing building or by the demolition and construction of new buildings in lieu of the construction of additions.

[2] The design of the additions shall have at a minimum a base made of comparable
materials to the exterior of the existing buildings but may differ in the field materials above the base, and shall have a similar roof pitch, and roof design as the existing buildings. Fenestration shall mimic the spacing and opening size, to the degree permissible by the Uniform Construction Code, of the existing window and doors architecture.

[3] At least twenty percent (20%) of all housing units shall be affordable to low, including very low, and moderate income households as those terms are defined in the Borough's affordable housing regulations, the Uniform Housing Affordability Controls rules (N.J.A.C. 5:80-26.1 et seq.) and the New Jersey Fair Housing Act (N.J.S.A. 52:27D-301 et seq.). Such units may be established in existing multifamily units as such dwellings become vacant in a schedule as approved by the Borough's Administrative Agent for affordable housing.

~~[3]~~[4] These conditional use criteria shall not apply to any R-MF18 zoned property that does not contain garden apartments, but shall be considered a principal permitted use.

(b) Uses permitted in § 28-3-15, the DTG Downtown Gateway district, listed as Subsection A(1)(b) through (i) and (k), meeting the following criteria:

[1] Any such use shall front on State Highway 33 (Franklin Street) or County Road 633.

[2] Any such use shall be located on the first floor only of a building.

(c) Uses permitted in § 28-3-14, the Highway Commercial District, listed as Subsection A(1),
(2) and (3).

[1] Any such use shall front on Mercer Street.

(d) Cannabis retail uses permitted subject to the following criteria:

[1] Any such use shall front on State Highway 33 (Franklin Street) or County Road 633.

[2] Any such use shall be located on the first floor only of a building.

[3] Such use shall operate fully within an enclosed building.

[4] Excepting emergency egress doors, each entrance and exit, including loading docks doors, shall be designed to prevent interior air from escaping out of doors unless properly treated as required under § 4-13-6G through air locks, negative pressurization or other means of preventing untreated air from exiting the building.

[5] All criteria set forth in the licensing regulations at § 4-13-6 shall apply.

Section 3. Section 28-3-14, entitled "H-C Highway Commercial District," of Article 28-3, "Districts Established; Zoning Map," of Chapter 28, "Zoning," of the Borough Code is hereby amended and supplemented as follows:

Chapter 28. Zoning

Article 28-3. Districts Established; Zoning Map

**§ 28-3-14. HC Highway Commercial District. [1991 Code §§ 233-24, 233-25; Ord. No. 93-852; Ord.
No. 860; Ord. No. 2013-13; Ord. No. 2014-16; Ord. No. 2019-15; Ord. No. 2023-20, 12-18-2023; Ord.
No. 2025-07, 6-16-2025; Ord. No. 2025-19, 12-15-2025]**

A. Permitted uses. In the HC Highway Commercial District, the following uses, and no others, shall be permitted:

(1) Principal uses.

(a) Any principal use permitted in the DTC Downtown Core.

(b) Retailing and service establishments with incidental outdoor operations.

(c) Movie theater, bowling alley, gymnasiums, tennis centers, roller skating rinks and similar recreational and cultural facilities conducted within an enclosed building.

(d) Lumber yards.

(e) Heating oil distribution facilities.

(f) Motor vehicle body and repair shops, subject to the conditions of § 28-10-13.

(2) Accessory uses and structures.

(a) Off-street parking and loading facilities.

(b) Private garages and storage buildings.

(c) Fences, walls and landscaping.

(d) Amusement machines: as permitted in the DTC Downtown Core District.

(e) Satellite dishes, subject to the restrictions and requirements set forth in § 28-10-19.

(f) Signs in accordance with Chapter 29.

(g) Accessory uses and structures customarily incidental to and on the same lot as a principal or conditional use.

(3) Conditional uses. The following uses shall be permitted when authorized as a conditional use by the Planning Board when meeting their associated criteria:

(a) Cannabis cultivation, manufacturing, wholesaling, distribution or retail, subject to the following criteria:

[1] With the exception of cannabis retail, such use or uses shall be located on a tract of land comprising at least 10 contiguous acres. The vertically integrated operation of cannabis cultivation and cannabis manufacturing shall be permitted on the same tract of land.

[2] Such use shall operate fully within an enclosed building.

[3] Excepting emergency egress doors, each entrance and exit, including loading docks doors, shall be designed to prevent interior air from escaping out of doors unless properly treated as required under § 4-13-6G through air locks, negative pressurization or other means of preventing untreated air from exiting the building.

[4] All criteria set forth in the licensing regulations at § 4-13-6 shall apply.

(b) Subject to approval of the State Cannabis Regulatory Commission, nothing herein shall prohibit multiple licensees within each permitted class from operating simultaneously on the same tract of land, provided that each licensee otherwise satisfies the conditional use criterion herein and any requirements of the state with respect to the co-location of cannabis businesses on the same tract of land or within the same building.

B. Other restrictions.

(1) Lot area. A lot area of not less than 20,000 square feet shall be required.

(2) Lot width. A lot width of not less than 100 feet shall be required.

(3) Lot depth. A lot depth of not less than 200 feet is required.

(4) Front yard. No portion of any building shall be located nearer to any street line that 25

feet, except that projections such as window sills, cornices, cantilevered roofs, open one-story porches, balconies, other roof overhangs, canopies, bay windows and others of the same nature may project not more than five feet into a required front yard. In addition, no building erected on any lot need be set back farther from the street line that the average alignment of existing buildings within 200 feet on each side of the lot and within the same block front and district; however, regardless of the alignment of neighboring buildings, no building erected between two existing buildings on immediately adjacent lots need be set back farther than that of the two buildings which is farther from the street line.

(5) Perimeter setback. A setback of 25 feet from all lot lines other than street lines is required.

(6) Height. The maximum height shall be 2.5 stories, not to exceed 35 feet.

(7) Lot coverage. The total lot coverage of all buildings shall not exceed 30% of the gross lot area, and total lot coverage of all buildings, structures and other lot improvements shall not exceed 70% of the gross lot area.

(8) Parking. See § 28-10-11, Off-Street parking and off-street loading facilities.

(9) Signs.

(a) Freestanding signs shall be permitted for all permitted uses, provided that:

[1] There shall be no more than one sign for each street, other than a residential service street, on which the use fronts.

[2] The total area of such signs shall not exceed 75 square feet, nor shall they exceed a height of 55 feet.

[3] All bare incandescent light sources (neon lights shall not be considered as such) and immediately adjacent reflecting surfaces shall be shielded from view. Flashing, moving, intermittently illuminated advertising devices shall be prohibited.

(b) Signs for individual business establishments in designed shopping centers shall be permitted in addition to the center's sign, provided that:

[1] The total area of all signs shall not exceed two square feet for each foot of building frontage; the maximum shall not exceed 40 square feet.

[2] No sign shall exceed two feet in height.

[3] Such sign shall be applied flat against a wall and shall not project beyond the side or top of the wall to which it is affixed nor more than eight inches in front of such wall.

[4] All bare incandescent light sources (neon lights shall not be considered as such) and immediately adjacent reflecting surfaces shall be shielded from view; flashing, moving, intermittently illuminated signs, reflection signs or signs painted in luminous materials that glow in the dark and advertising devices shall be prohibited.

[5] Not more than one sign shall be permitted for each tenant on the premises on each wall fronting on a street.

(10) Sight triangles. The regulations for sight triangles shall be the same as for the R-1 District.

(11) Landscaping and buffers. All portions of lots not used for buildings, parking or other improvements shall be suitably landscaped with lawns, shrubs and/or trees. Lot lines which abut residential uses or residential district lines shall provide a landscape buffer strip at least 10 feet in width, and the buffer strip shall be suitably landscaped to provide a continuous, year-round, visual screening of the property. The buffer area may contain a fence provided in accordance with § 28-10-5, but the fence shall be provided to only supplement necessary landscaping. A landscaped strip at least five feet in width shall be provided along all street right-of-way lines as a setback for parking of motor vehicles. The landscape strip and any adjoining landscape area of the right-of-way shall be landscaped with suitable shrubbery not exceeding 30 inches in height, street trees and other suitable landscaping improvements.

C. Required Use.

(1) In order to effectuate the purposes of the Borough of Hightstown's constitutional obligation to provide for affordable housing, any site development of Block 61.01, Lots 39, 41-43 (397-415 Mercer Street) that increases the existing square footage in existence as of June 30, 2025, or is a redevelopment of the site, shall include a mixed use building consisting of a non-residential use fronting on Mercer Street and multi-family residential units.

(a) At lease twenty percent (20%) of all housing units shall be affordable to low, including very low, and moderate income households as those terms are defined in the Borough's affordable housing regulations, the Uniform Housing Affordability Controls rules (N.J.A.C. 5:80-26.1 et seq.) and the New Jersey Fair Housing Act (N.J.S.A. 52:27D-301 et seq.).

(b) The maximum residential density shall be eighteen (18) units per acre.

(c) Notwithstanding any other provision herein, the maximum height shall be four (4) stories and fifty-five (55) feet.

~~(a)~~(d) The required number of parking spaces shall be one for each studio or one-bedroom unit, one and one-half space for each two-bedroom unit and two for each three-bedroom unit. Non-residential spaces shall be as otherwise required herein.

Section 4. §28-3-1, Zoning Map, shall be amended to rescind the existing zoning districts and apply the following zoning districts and subdistricts to the tax assessment blocks and lots, and associated half width of streets as appropriate:

R-MF	Block 60; Lots 1-5
R-MF18	Block 24, Lot 9 (278 Monmouth St.)

Borough of Hightstown
County of Mercer Ordinance 2026-04

§ 28-3-2. Zoning Map. [1991 Code § 233-5; Ord. No. 2000-29; Ord. No. 2002-05; Ord. No. 2003-29;
Ord. No. 2005-07; Ord. No. 2019-15; Ord. No. 2020-02]

The boundaries of the districts are hereby established as shown on the Zoning Map, Borough of Hightstown, Mercer County, New Jersey, dated ~~June 2020~~November 2025, which, with all explanatory matter thereon, is hereby adopted and made a part of this chapter by reference. Such map shall be kept on file in the offices of the Borough Clerk for the use and benefit of the public.

Section 5. Continuation. In all other respects, the Zoning Ordinance of the Borough of Hightstown shall remain unchanged.

Section 6. Severability. If any portion of this Ordinance is for any reason held to be unconstitutional or invalid by a court of competent jurisdiction, such decision shall not affect the validity of this Ordinance as a whole, or any other part thereof. Any invalidation shall be confined in its operation to the section, paragraph, sentence, clause, phrase, term, or provision or part there of directly involved in the controversy in which such judgment shall have been rendered.

Section 7. Interpretation. If the terms of this Ordinance shall be in conflict with those of another Ordinance of the Code of the Borough of Hightstown, then the restriction which imposes the greater limitation shall be enforced.

Section 8. Repealer. All ordinances or parts of ordinances which are inconsistent with the provisions of this Ordinance are hereby repealed to the extent of such inconsistency only.

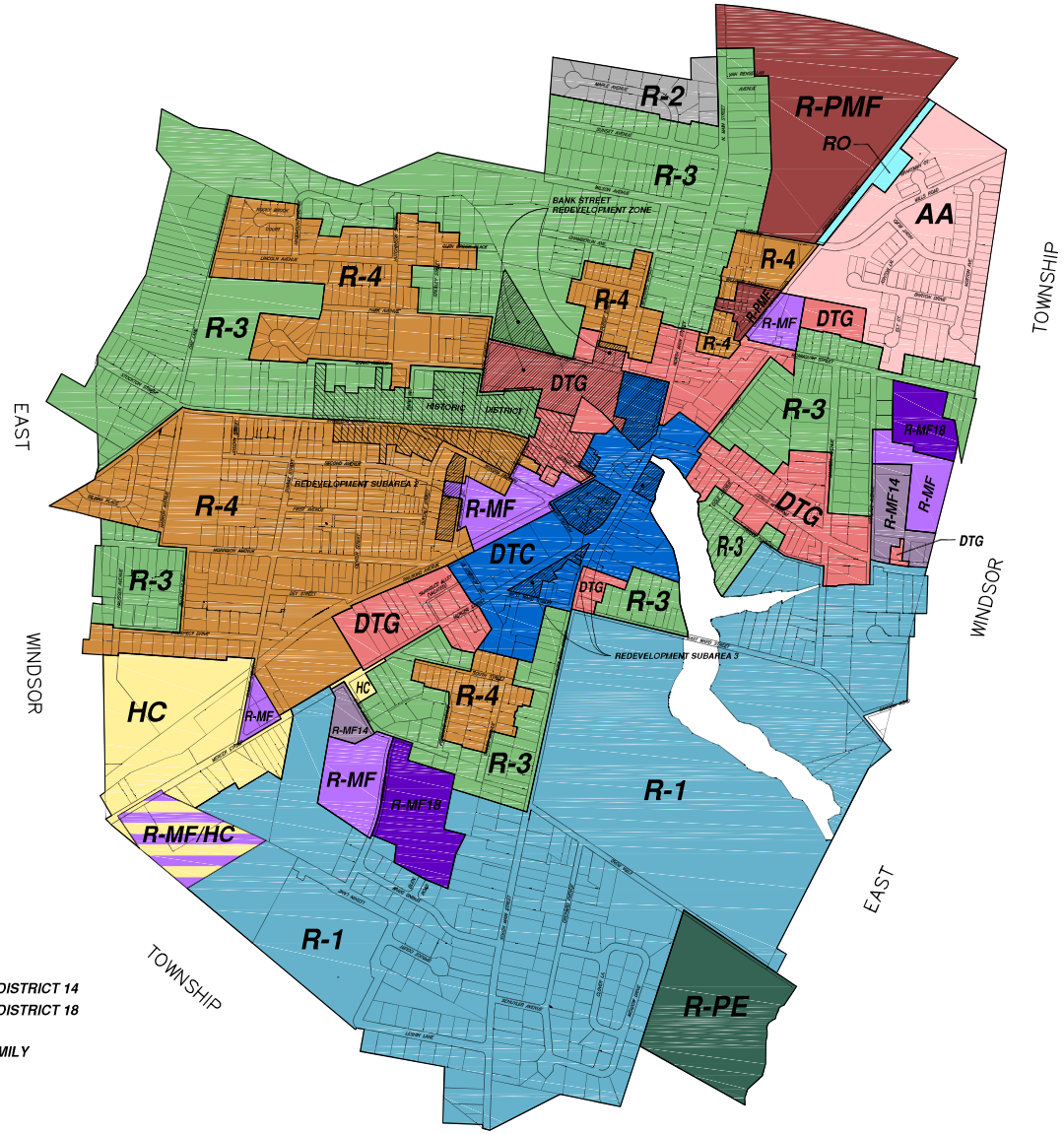
Section 9. Enactment. This Ordinance shall take effect upon the filing thereof with the Mercer County Planning Board after final passage, adoption, and publication by the Borough Clerk of the Borough of Hightstown in the manner prescribed by law.

Section 10. Continuation and codification. This ordinance shall be a part of the "Revised General Ordinances of the Borough of Hightstown," as through codified and fully set forth herein. The Borough Clerk shall have this ordinance codified and incorporated in the official copies of the Borough Code. The Borough Clerk and Borough Attorney are authorized and directed to change any chapter, article and/or section number of the "Revised General Ordinances of the Borough of Hightstown," in the event that the codification of this ordinance reveals that there is a conflict between the numbers and the existing Code, and in order to avoid confusion and accidental repeal of existing provisions not intended to be repealed.

INTRODUCED: March 2, 2026

ADOPTED: SCHEDULED FOR PUBLIC HEARING MARCH 12, 2026

MARGARET RIGGIO BOROUGH CLERK	SUSAN BLUTH MAYOR



ZONES

	R-1	RESIDENTIAL- SINGLE FAMILY
	R-2	RESIDENTIAL- SINGLE FAMILY
	R-3	RESIDENTIAL- SINGLE FAMILY
	R-4	RESIDENTIAL- SINGLE FAMILY
	R-MF	RESIDENTIAL- MULTI- FAMILY
	R-MF14	RESIDENTIAL- MULTI- FAMILY SUB-DISTRICT 14
	R-MF18	RESIDENTIAL- MULTI- FAMILY SUB-DISTRICT 18
	R-PE	RESIDENTIAL- PLANNED ELDERLY
	R-PMF	RESIDENTIAL- PLANNED MULTI- FAMILY
	DTG	DOWNTOWN GATEWAY
	DTC	DOWNTOWN CORE
	HC	HIGHWAY COMMERCIAL
	RO	RESEARCH OFFICE
	AA	ACTIVE ADULT AGE RESTRICTED SINGLE FAMILY
	R-MF/HC	HIGHWAY COMMERCIAL
		BANK STREET REDEVELOPMENT ZONE
		REDEVELOPMENT SUBAREA 2
		REDEVELOPMENT SUBAREA 3
		HISTORIC DISTRICT

N

ZONING MAP

HIGHTSTOWN BOROUGH

MERCER COUNTY, NEW JERSEY

NOVEMBER 2025

GRAPHIC SCALE

400 0 200 400 800 1600

(IN FEET)
1 inch = 400 ft.

Roberts
ENGINEERING GROUP LLC
Women Business Enterprise Certified
CERTIFICATE OF AUTHORIZATION: 24GA28139100
1670 Whitehorse-Hamilton Square Rd.
Hamilton, New Jersey 08690
609-586-1941 fax 609-586-1943
www.RobertsEngineeringGroup.com

Borough of Hightstown
Planning Board

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(609) 490-5100 Ext 617
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TO: Peggy Riggio, Borough Clerk

FROM: Jane Davis, Planning Board Secretary

SUBJECT: Ordinance 2026-05 – Affordable Housing Procedural & Eligibility Requirements

DATE: March 10, 2026

At the March 9, 2026, Planning Board meeting, the Board reviewed and discussed Ordinance 2026-05 "Amending the Zoning Ordinance of the Borough of Hightstown to repeal and replace the Affordable Housing Procedural and Eligibility Requirements, to implement the Fourth Rounf of Affordable Housing in Accordance with the Fair Housing Act of 1985." No public comments were received.

The Board offered the following comments:

Error to be addressed by Council prior to approval:

- **Page 35, 28-17-13(E):** The last sentence incorrectly references the Moorestown Department of Community Development. It should read: "Both rehabilitation manuals shall be available for public review in the Hightstown Borough Construction Office."

Minor typographical errors to be corrected after Council approval:

- **Page 13, first line:** "firm" should be corrected to "form"
- **Page 24, item J (2) (a):** The last line appears to be missing a word. The text reads: "price for a is the most recent non-exempt purchase price." It may be intended to read: "price for a unit is the most recent non-exempt purchase price."
- **Page 32, item (2) (g):** A word appears to be missing at the end of the sentence. The text reads: "Restricted units must be of the same unit type as market-rate units within the same". It may be intended to read: "...within the same development."

The Board voted unanimously to refer the Ordinance back to Council. Please feel free to reach out with any questions or if additional information is needed.

Thank you.

Borough of Hightstown
County of Mercer Ordinance 2026-05

ORDINANCE AMENDING THE ZONING ORDINANCE OF THE BOROUGH OF HIGHTSTOWN TO REPEAL AND REPLACE THE AFFORDABLE HOUSING PROCEDURAL AND ELIGIBILITY REQUIREMENTS, TO IMPLEMENT THE FOURTH ROUND OF AFFORDABLE HOUSING IN ACCORDANCE WITH THE FAIR HOUSING ACT OF 1985

WHEREAS, the New Jersey Supreme Court and New Jersey Legislature have recognized and mandated in So. Burl. Co. NAACP v. Mount Laurel, 92 N.J. 158 (1983) ("Mount Laurel II") and the Fair Housing Act, N.J.S.A. 52:27D-301, et seq. ("FHA") that every municipality in New Jersey has an affirmative obligation to facilitate the provision of low and moderate income housing; and

WHEREAS, the Mayor and Borough Council of the Borough of Hightstown are desirous of ensuring the proper implementation of the Fair Housing Act and associated rules through the adoption of land use regulations by the governing body; and

WHEREAS, the Borough of Hightstown desires to implement policies established by the New Jersey Legislature in P.L. 2024, c. 2 amending the Fair Housing Act to foster affordable housing opportunities for the production of dwellings and their occupancy by low and moderate income households; and

WHEREAS, the Mayor and Borough Council of the Borough of Hightstown recognize the need to amend the Affordable Housing Procedural and Eligibility Requirements within the Zoning Ordinance of the Borough of Hightstown to implement the Fourth Round Housing Element and Fair Share Plan; and

WHEREAS**,** the Borough Council formally refers this Ordinance to the Planning Board for examination, discussion, and recommendations in accordance with N.J.S.A. 40:55D-26; and

NOW THEREFORE, BE IT ORDAINED by the Borough Council of the Borough of Hightstown, Mercer County, New Jersey, as follows:

Section 1. Article 28-2, entitled, Definitions and Word Usage, of the Zoning Ordinance of the Borough of Hightstown, shall be amended by eliminating [thus], modifying or adding the following definitions:

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

ADAPTABLE: Constructed in compliance with the technical design standards of the barrier-free subcode adopted by the Commissioner of Community Affairs pursuant to the "State Uniform Construction Code Act," N.J.S.A. 52:27D-119 et seq. and in accordance with the provisions of N.J.S.A. 52:27D-123.15.

ADMINISTRATIVE AGENT: The entity approved by Local Planning Services of DCA responsible for the administration of affordable units, in accordance with N.J.A.C. 5:99-7, and UHAC at N.J.A.C. 5:80-26.15.

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

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

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

AFFORDABLE DWELLING UNIT: A very low, low or moderate income dwelling unit.

~~AFFORDABLE DEVELOPMENT: A housing development all or a portion of which consists of income restricted units.~~

AFFORDABLE HOUSING DEVELOPMENT: A development included in the Housing Element and Fair Share Plan, and includes, but is not limited to, an inclusionary development, a municipal construction project or a 100% affordable development, which may be provided on-site or off-site as the case may be.

AFFORDABLE HOUSING MONITORING SYSTEM OR AHMS: DCA'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 PROGRAM: Any mechanism in a municipal Fair Share Plan prepared or implemented to address a municipality's fair share obligation.

AFFORDABLE RENTAL CHARGES: A monthly rent including utilities charged to an eligible very low, low or moderate income family which shall not exceed 30% of their monthly gross income as calculated by N.J.A.C. 5:93-7.4(f).

AFFORDABLE HOUSING TRUST FUND (MUNICIPAL): 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.

AFFORDABLE HOUSING TRUST FUND (NJ): *See* New Jersey Affordable Housing Trust Fund.

AFFORDABLE UNIT: A housing unit proposed or created pursuant to the Act and approved for crediting by the Court and/or funded through an affordable housing trust fund.

AGENCY: The New Jersey Housing and Mortgage Finance Agency as established in N.J.S.A. 55:14K-1 et seq.

COMMISSIONER: the Commissioner of the Department of Community Affairs.

COMPLIANCE CERTIFICATION: the certification obtained by a municipality pursuant to N.J.S.A. 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 N.J.S.A. 52:27D-313.

CONSTRUCTION: New construction and additions, but does not include alterations, reconstruction, renovations, conversion, relocation, or repairs, as those terms are defined in the State Uniform Construction Code promulgated pursuant to the State Uniform Construction Code Act as codified in N.J.S.A. 52:27D-119 et seq.

DCA: The State of New Jersey Department of Community Affairs

DEPARTMENT (Housing): The New Jersey Department of Community Affairs.

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

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

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

EQUALIZED ASSESSED VALUE or EAV: The assessed value of a property divided by the current average ratio of assessed to true value for the municipality in which the property is situated, as determined in accordance with N.J.S.A. 54:1-35a, -35b, and -35c). Estimates at the

time of building permit may be obtained by the tax assessor using construction cost estimates. Final EAV shall be determined at project completion by the municipal assessor.

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

EXIT SALE: The first authorized non-exempt sale of a restricted unit following the end of the control period, which sale terminates the affordability controls on the unit.

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

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

GREEN BUILDING STRATEGIES: The strategies that minimize the impact of development on the environment, and enhance the health, safety and well-being of residents by producing durable, low-maintenance, resource-efficient housing while making optimum use of existing infrastructure and community services.

HOUSING ELEMENT or HOUSING PLAN ELEMENT: The portion of the Borough's Master Plan, required by the Municipal Land Use Law in N.J.S.A. 40:55D-28b(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.

INCLUSIONARY DEVELOPMENT: A development containing both affordable units and market rate units. This term includes, but is not limited to: new construction, the conversion of a non-residential structure to residential use and the creation of new affordable units through the gut rehabilitation or reconstruction of a vacant residential structure.

JUDGMENT OF COMPLIANCE or JUDGMENT OF COMPLIANCE AND REPOSE: A determination issued by the Superior Court approving a municipality's fair share plan to satisfy its affordable housing obligation for a particular 10-year round.

MIXED USE DEVELOPMENT: Any development that includes both a non-residential development component and a residential development component, and shall include developments for which: (1), there is a common developer for both the residential development

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

MUNICIPAL HOUSING LIAISON or MHL: An appointed municipal employee who is, pursuant to N.J.A.C. 5:99-6, responsible for oversight and/or administration of the affordable units created within the municipality.

NEW JERSEY AFFORDABLE HOUSING TRUST FUND: 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 NJAHTF.

NEW JERSEY HOUSING RESOURCE CENTER or HOUSING RESOURCE CENTER - The online affordable housing listing portal, or its successor, overseen by the Agency pursuant to N.J.S.A. 52:27D-321.3 et seq.

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

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

NON-RESIDENTIAL DEVELOPMENT: Shall include any of the following:

A. 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;

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

C. 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.

PERSON WITH A DISABILITY: A person with a physical disability, infirmity, malformation, or disfigurement which is caused by bodily injury, birth defect, aging, or illness including epilepsy

and other seizure disorders, and which shall include, but not be limited to, any degree of paralysis, amputation, lack of physical coordination, blindness or visual impairment, deafness or hearing impairment, the inability to speak or a speech impairment, or physical reliance on a service animal, wheelchair, or other remedial appliance or device.

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

PRIOR ROUND UNIT: A housing unit that addresses a municipality's fair share obligation from a round prior to the fourth round of affordable housing obligations, including any unit that:

A. Received substantive certification from COAH; or

B. 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; or

C. 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 -A or -B above; or

D. Otherwise addresses a municipality's fair share obligation from a round prior to the fourth round of affordable housing obligations. A unit created after 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 June 30, 2025 (the end of the Third Round), 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.

PROSPECTIVE NEED: A projection of housing needs based on development and growth which is reasonably likely to occur in a region or a municipality, as the case may be, as a result of actual determination of public and private entities. Prospective need shall be determined by the methodology set forth pursuant to N.J.S.A.52:27D-304.2 and -304.3 for the Fourth Round and all future rounds of housing obligations.

RANDOM SELECTION PROCESS: A lottery process by which currently income-eligible applicant-households are selected, at random, for placement in affordable housing units such that

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

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

REGIONAL ASSET LIMIT: The maximum housing value in each housing region affordable to a four-person household with an income at 80% of the regional median as defined by adopted/approved Regional Income Limits.

ROOM: A living room, dining room, recreation room, kitchen or bedroom. Closets, bathrooms, cellars and attics shall be excluded, except where portions of cellars and attics have been improved to meet housing and building code requirements for rooms.

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

SUBSTANTIAL CHANGE: Any increase in an approved structure's bulk or floor area where the result exceeds any of the requirements of the zoning district in which it is located, and where any changes exceed the limitations necessary to qualify as an insubstantial change. An "insubstantial change" means a revision to a preliminary or final plat which does not violate any requirements of the Borough's ordinances, does not alter the amount of lower-income housing or other forms of participating in the lower-income housing program as set forth in the approved development and does not have changes which exceed any of the following: setback in any yard of five feet; seven feet in building height; one percent in the approved floor area ratio; one percent in the approved lot coverage (building, paving and other coverages); five feet in building spacing; three parking spaces; one loading space; five feet in driveway locations; and one percent of the area of the approved site disturbance. A substitution of similar landscaping material, lighting fixture and signage is not a substantial change, provided that there is no change in approved quantities and/or dimensions.

SUPPORTIVE HOUSING HOUSEHOLD: A very low-, low- or moderate-income household certified as income eligible by an administrative agent in accordance with N.J.A.C. 5:80-26.14, in which at least one member is an individual who requires supportive services to maintain housing stability and independent living and who is part of a population identified by federal or state statute,

regulation, or program guidance as eligible for supportive or special needs housing. Such populations include, but are not limited to: persons with intellectual or developmental disabilities, persons with serious mental illness, person with head injuries (as defined in Section 2 of P.L. 1977), persons with physical disabilities or chronic health conditions, persons who are homeless as defined by the U.S. Department of Housing and Urban Development at 24 C.F.R. Part 578, survivors of domestic violence, youth aging out of foster care, and other special needs populations recognized under programs administered by the U.S. Department of Housing and Urban Development, the Low-Income Housing Tax Credit Program, the McKinney–Vento Act, or the New Jersey Department of Human Services. A supportive housing household may include family members, unrelated individuals, or live-in aides, provided that the household meets the income eligibility requirements of this 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: A grant or loan program which provided financial assistance to the development of the unit.

SUPPORTIVE HOUSING UNIT: A restricted rental unit, as defined by N.J.S.A. 34:1B-21.24, that is affordable to very low-, low- or moderate-income households and is reserved for occupancy by a supportive housing household. Supportive housing units are also referred to as permanent supportive housing units.

UNIT: *See* "Dwelling"

UNIT TYPE: The 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.

Section 2. Article 28-17, AFFORDABLE HOUSING PROCEDURAL AND ELIGIBILITY REQUIREMENTS, of the Zoning Ordinance of the Borough of Hightstown, shall be replaced in its entirety, as follows:

28-17 AFFORDABLE HOUSING PROCEDURAL AND ELIGIBILITY REQUIREMENTS

28-17-1 Purpose and General Provisions.

A. This chapter is designed to implement the Borough's adopted housing element and fair share plan for low- and moderate-income housing adopted pursuant to the New Jersey Fair Housing Act (N.J.S.A. 52:27D-301 et seq.) (the "Act"); the Uniform Housing

Affordability Controls (N.J.A.C. 5:80-26.1 et seq.) ("UHAC"); statutorily upheld existing regulations of the now-defunct Council on Affordable Housing ("COAH") at N.J.A.C. 5:93 and -5:97, and judicial decisions, as they may be amended or superseded. This Chapter is designed to ensure that affordable housing created under the Fair Housing Act is occupied by low- and moderate-income households for the appropriate period of time with controls on affordability over time and that very low- low- and moderate-income households shall occupy these units pursuant to statutory requirements.. All words, phrases, and terms not otherwise defined herein shall have the same meanings and usages as in the Act and UHAC. This chapter provides rules for the establishment and administration of affordability controls on each income restricted dwelling unit for which the Borough receives credit.

B. 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 it may be amended and supplemented.

C. Master Plan Consistency. The Planning Board has adopted a Housing Element and Fair Share Plan ("HEFSP") pursuant to the Municipal Land Use Law at N.J.S.A. 40:55D-28. 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 Plan Element.

D. The provisions of this Article shall apply to all affordable housing developments and affordable housing units that currently exist and that are proposed to be created within the Borough of Hightstown pursuant to the Borough's most recently adopted Housing Element and Fair Share Plan, as well as any future, unanticipated developments meeting the parameters herein. All developers with sites identified for affordable housing pursuant to the most recent Housing Element and Fair Share Plan adopted by the Planning Board and Borough Council of Hightstown, according to their respective duties, shall provide affordable housing units in accordance with the plan. All development that falls within the time period of the present round of affordable housing obligation shall construct units or pay a development fee in accordance with this Article.

E. Projects receiving federal Low Income Housing Tax Credit financing and are proposed for credit shall comply with the low/moderate split and bedroom distribution requirements, maximum initial rents and sales prices requirements, affirmative fair marketing requirements of UHAC at N.J.A.C. 5:80-26.16 and the length of the affordability controls applicable to such projects shall be not less than a 30-year compliance period plus a 15-year extended-use period, for a total of not less than 45 years.

F. All new construction units shall be adaptable in conformance with N.J.S.A. 52:27D-311a and -311b and all other applicable law.

28-17-2 Affordable Housing Required.

A. Any residential development approved by the Planning Board of the Borough of

Hightstown, including those developments consisting in whole or in part of beds counted as a residential dwelling, shall set aside dwelling units for persons of low and moderate income as defined in this Article, except for development within a redevelopment district. Affordable housing within a redevelopment district shall be as established in a redevelopment agreement between the Borough and the redeveloper. Unless otherwise stated or as may be required within specific zoning districts, the minimum set aside shall be 15% of the total number of units if the affordable units will be for rent and 20% of the total number of units if the affordable units will be for sale. In assisted living residence developments, the set-aside shall be a minimum of 10% of the total number of units. At least half of all affordable units shall be affordable to low or very low income households. Except when part of a larger development of a tract zoned or otherwise permitted to be developed at a residential density of 6 units per acre or more, developments of single-family detached and/or duplex or two-family dwellings shall be exempt from the inclusionary development requirements of this section, but shall pay an affordable housing development fee. Properties shall not be permitted to be subdivided to avoid compliance with the inclusionary development requirements of this section.

B. All developers with sites identified for affordable housing pursuant to the most recent Housing Element and Fair Share Plan adopted by the Planning Board and Borough Council of Hightstown, according to their respective duties, shall provide affordable housing units in accordance with the plan. All development, whether residential, commercial, or industrial shall construct units or pay a development fee in accordance with this Article, except as otherwise exempted.

C. This requirement does not give any developer the right to any such rezoning, variance or other relief, or establish any obligation on the part of the Borough of Hightstown to grant such rezoning, variance or other relief.

D. This Borough-wide mandatory set-aside requirement shall not supersede the effects or requirements of any inclusionary overlay zoning districts for any inclusionary multi-family residential development that occurs within the boundaries of those districts.

28-17-3 Borough Municipal Housing Liaison and Administrative Agent.

A. The Borough Council shall yearly appoint a Municipal Housing Liaison and Borough Administrative Agent to monitor sales and resales of affordable housing units, and the leasing of units to tenants, pursuant to N.J.A.C. 5:99-5. The Municipal Housing Liaison may be the Borough Administrative Agent, but is not required to be the same person. The Borough Administrative Agent may be a third party under a contractual agreement with the municipality, provided such agent has the requisite experience as explicated in N.J.A.C. 5:80-26.15 and 5:99-7 in the duties enumerated herein.

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

C. The Municipal Housing Liaison shall be responsible for oversight and administration of the affordable housing program for the Borough of Hightstown and shall undertake the following duties and responsibilities. Such duties and responsibilities shall not be contracted out to the Borough Administrative Agent.

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

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

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

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

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

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

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

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

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

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

D. The Borough Administrative Agent shall monitor the designated Administrative Agent of the developer in the initial sales and rental transactions for low- and moderate-income dwellings in accordance with N.J.A.C. 5:80-26.14, as it may be amended or superseded. The developer's Administrative Agent shall have all of responsibilities as put forth in this rule. The affordability controls set forth in this chapter shall be administered and enforced by the Administrative Agent regardless of association. The primary responsibility of the Administrative Agent shall be to ensure that the restricted units are sold or rented, as applicable, only to very low-, low- and moderate-income households in accordance with the Fair Housing Act.

E. The fees for administrative agents shall be paid as follows:

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

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

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

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

F. The Borough Council shall approve the credentials of any person who is an Administrative Agent by resolution prior to such person engaging in such work in the Borough of Hightstown.

G. The Administrative Agent, whether the Borough Administrative Agent, developer's agent, or a delegated agent, shall have the duties and responsibilities as are set forth below and which shall described in full detail in any necessary Operating Manual, including those set forth in UHAC, including:

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

(2) Affirmative marketing:

(a) Conducting an outreach process to affirmatively market affordable housing units in accordance with the Affirmative Marketing Plan of the municipality and the provisions of N.J.A.C. 5:80-26.16.

(b) Providing counseling, or contracting to provide counseling services, to low- and moderate-income applicants on subjects such as budgeting, credit issues, mortgage qualification, rental lease requirements; and landlord/tenant law.

(3) Household certification.

(c) Soliciting, scheduling, conducting and following up on interviews with interested households.

(d) 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;

(e) Providing written notification to each applicant as to the determination of eligibility or non-eligibility within 5 days of the determination thereof.

(f) 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.

(g) 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.

(h) Employing a random selection process as provided in the Affirmative Marketing Plan when referring households for certification to affordable units.

(4) Affordability controls.

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

(b) Ensuring that the removal of the deed restrictions and cancellation of the mortgage note are effectuated and filed properly with the County Register of Deeds or County Clerk's office after the termination of the affordability controls for each restricted unit in accordance with UHAC.

(c) Communicating with lenders and the Municipal Housing Liaison regarding foreclosures.

(d) Ensuring the issuance of Continuing Certificates of Occupancy or certifications pursuant to N.J.A.C. 5:80-26.11.

(5) Records retention.

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

(b) Records received, retained, retrieved, or transmitted in furtherance of crediting affordable units of a municipality constitute public records of the municipality as defined by N.J.S.A. 47:3-16, and are legal property of the municipality.

(6) Resales and re-rentals.

(a) Instituting and maintaining an effective means of communicating information between owners and the Administrative Agent regarding the availability of restricted units for resale or re-rental.

(b) Instituting and maintaining an effective means of communicating information to very low-, low-, or moderate-income households regarding

the availability of restricted units for resale or re-rental.

(7) Processing requests from unit owners.

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

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

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

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

(8) Enforcement.

(a) Securing annually from the municipality a list of all affordable ownership units for which property tax bills are mailed to absentee owners, and notifying all such owners that they must either move back to their unit or sell it;

(b) Securing from all developers and sponsors of restricted units, at the earliest point of contact in the processing of the project or development, written acknowledgement of the requirement that no restricted unit can be offered, or in any other way committed, to any person, other than a household duly certified to the unit by the Administrative Agent;

(c) Sending annual mailings to all owners of affordable dwelling units reminding them of the notices and requirements outlined in N.J.A.C. 5:80-26.19(d)4;

(d) Establishing a program for diverting unlawful rent payments to the municipal Affordable Housing Trust Fund; and

(e) Creating and publishing a written operating manual for each affordable housing program administered by the Administrative Agent setting forth procedures for administering the affordability controls.

(f) 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.

H. The Municipal Housing Liaison shall supervise the work of the Administrative Agent(s) and shall coordinate his or her activities with the Borough Administrative Agent to ensure the accurate tracking of the progress of the occupancy of affordable housing in the municipality, answer inquiries regarding affordable housing from the public or direct same to the appropriate official or agency, and comply with the affordable housing monitoring and reporting requirements of the state.

I. In order to ensure an orderly transfer of control responsibility from a municipality to an Administrative Agent, from one Administrative Agent to another Administrative Agent, or other transfer, the requirements as set forth in *N.J.A.C.* 5:80-26.18 and N.J.A.C. 5:99-7.4 shall apply as are necessary before or during the transition. The Administrative Agent's enforcement responsibility for implementing such practices and procedures shall not be delegated or otherwise transferred to any other party, except to a successor administrative agent.

J. The Borough Administrative Agent shall keep records of the affirmative marketing activities undertaken in accordance with the affirmative marketing plan established by any developer's Administrative Agent. The records shall include, but not be limited to, the following:

(1) Electronic reporting of affordable housing activity; any required paper forms;

(2) Copies of any press releases, brochures, flyers, print advertisements and application forms used in the affirmative marketing program.

(3) The income and demographic characteristics of each household applying for and occupying income-restricted housing.

(4) An evaluation of any necessary adjustments required to the affirmative marketing program as communicated by the Administrative Agent.

K. An operating manual for each affordable housing program shall be provided by the Borough Administrative Agent or developer's Administrative Agent and approved by the Municipal Housing Liaison prior to being placed into use. Such operating manual shall be a public record.

28-17-4 Affirmative Marketing

A. The municipality shall adopt, by resolution, an Affirmative Marketing Plan, subject to approval of the Superior Court, compliant with N.J.A.C. 5:80-26.16, as may be amended and supplemented.

B. The Affirmative Marketing Plan is a regional marketing strategy designed to attract buyers and/or renters of all majority and minority groups, regardless of race, creed, color, national origin, ancestry, marital or familial status, gender, affectional or sexual orientation, disability, age, or number of children, to housing units which are being marketed by a developer, sponsor or owner of affordable housing. The Affirmative Marketing Plan is

intended to target those potentially eligible persons who are least likely to apply for affordable units in that region. It is a continuing program that directs all marketing activities toward Housing Region 4 and is required to be followed throughout the period of deed restriction.

C. The Affirmative Marketing Plan provides the following preferences, provided that units that remain unoccupied after these preferences are exhausted may be offered to households without regard to these preferences.

(1) Where the municipality has entered into an agreement with a developer or residential development owner to provide a preference for very-low-,low-, and moderate-income veterans who served in time of war or other emergency, pursuant to N.J.S.A. 52:27D-311.j, there shall be a preference for veterans for up to 50 percent of the restricted rental units in a particular project.

(2) There shall be a regional preference for all households that live and/or work in Housing Region 4 comprising Mercer, Monmouth and Ocean Counties.

(3) Subordinate to the regional preference, there shall be a preference for households that live and/or work in New Jersey.

(4) With respect to existing restricted units undergoing approved rehabilitation for the purpose of preservation or to restricted units newly created to replace existing restricted units undergoing demolition, a preference for the very-low-, low-, and moderate-income households that are displaced by the rehabilitation or demolition and replacement.

D. The municipality shall have the ultimate responsibility for adopting the Affirmative Marketing Plan and for the proper administration of the Affirmative Marketing Process, including the marketing of initial sales and rentals and resales and re-rentals. The Administrative Agent designated by the municipality shall implement the Affirmative Marketing Process to ensure the Affirmative Marketing of all affordable units, with the exception of affordable programs that are exempt from Affirmative Marketing as noted herein.

E. The Affirmative Marketing Process shall describe the media to be used in advertising and publicizing the availability of housing. In implementing the Affirmative Marketing Process, the Administrative Agent shall consider the use of language translations where appropriate.

F. Applications for affordable housing or notices thereof, if offered online, shall be available in several locations, including, at a minimum, the County Administration Building and/or the County Library for each county within the housing region; the municipal administration building and municipal library in the municipality in which the units are located; and the developer's rental or sales office. The developer shall mail applications to prospective applicants upon request and shall make applications available through a secure online website address.

G. In addition to other Affirmative Marketing strategies, the Administrative Agent shall provide specific notice of the availability of affordable housing units on the New Jersey Housing Resource Center website. Any other entities, including developers or persons or companies retained to implement the Affirmative Marketing Process, shall comply with this paragraph.

H. In implementing the Affirmative Marketing Process, the Administrative Agent shall provide a list of counseling services to low- and moderate-income applicants on subjects such as budgeting, credit issues, mortgage qualification, rental lease requirements, and landlord/tenant law.

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

J. The cost to affirmatively market the affordable units shall be the responsibility of the developer, sponsor or owner, with the exception of Affirmative Marketing for resales.

28-17-5 Monitoring and Reporting Requirements

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

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

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

D. On or before February 15 of each year, the annual reporting of the status of all affordable housing activity shall be provided to the Department on the AHMS portal, for the previous year from January 1st to December 31st.

28-17-6 Submission of Affordable Housing Plan.

A. The developer of low- and moderate-income housing units shall submit to the Borough Administrative Agent a description of the means to be used to insure that the required low- and moderate-income units are sold or rented only to low- and moderate-income households for a period of not less than 30 years, that such units meet bedroom distribution and phasing requirements, and comports with the requirements of this Article pertaining to

the provisions, leasing, selling and transferring units among eligible low- and moderate-income households.

B. The Affordable Housing Plan shall indicate how the developer will comply with the procedures of this Article for selecting occupants of low- and moderate-income housing and the required affirmative marketing requirements. The requirements for affirmative marketing are found in §28-17-4. Whenever a developer proposes a third party operator or manager of affordable housing units, the Borough Council shall specifically approve such operator and manager. The Borough Council may delegate this approval to the Borough Administrative Agent.

C. The following information shall promptly be provided to the Borough Administrative Agent by the developer or sponsor of any project containing any affordable units' subject to the requirements of this Article, upon the later of either final municipal land use approval or issuance of a grant contract by a governmental authority and no later than 45 days prior to the advertising of the availability of the units. The Administrative Agent will approve or modify the plan within 30 working days of receipt of the plan or within such time as additionally granted by the developer.

(1) The total number of units in the project, and number of restricted units, broken down by bedroom size, identifying which are low- and which are moderate-income dwellings, and including street addresses of restricted dwellings;

(2) Floor plans of all affordable dwellings, including complete and accurate identification of uses and dimensions of all rooms;

(3) A project map identifying the locations of low- and moderate-income and market dwellings;

(4) A list of project principals or partners, together with a list of all other affordable projects in which they have been involved over the previous five years;

(5) Projected construction schedule;

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

(7) A list of all public funding sources and copies of grant or loan agreements for those sources;

(8) Condominium fees or homeowner association and any other maintenance or other fees;

(9) Estimated real property taxes for sale units;

(10) Sewer, trash disposal and any other utility assessments;

(11) Flood insurance requirement, if applicable;

(12) A description of all HVAC systems;

(13) Location of any common areas and elevators;

(14) Proposed form of lease for any rental units;

(15) The name of the person who will be responsible for official contact with the Borough Administrative Agent for the duration of the project;

(16) The name and qualifications of the developer's administrative agent, if applicable; and

(17) The State-approved Planned Real Estate Development public offering statement and/or master deed where available or applicable.

D. The developer shall submit the affirmative marketing plan to the Borough Administrative Agent at least 45 days prior to the advertising of the availability of the units. The Borough Administrative Agent will approve or modify the plan within 30 working days of receipt of the plan or within such time as additionally granted by the developer.

28-17-7 Regional Income Limits, Maximum Initial Rents and Sales Prices.

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

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

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

D. 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.

E. 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.

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

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

H. The maximum sales price of restricted ownership units within each affordable housing development shall be affordable to households earning no more than 70% of median income, and each affordable housing development must achieve an affordability average

that does not exceed 55% for all restricted ownership units. In achieving this affordability average, moderate-income ownership units must be available for at least three different prices for each bedroom type, and low-income ownership units must be available for at least two different prices for each bedroom type when the number of low- and moderate-income units permits.

I. 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.

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

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

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

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

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

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

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

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

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

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

L. 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 Freddie Mac 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.

M. The initial rent for a restricted rental unit shall be calculated so that the total monthly housing expense, including an allowance for tenant-paid utilities, does not exceed 30 percent of the gross monthly income of a household of the appropriate size whose income is targeted to the applicable percentage of median income for the unit, as determined pursuant to N.J.A.C. 5:80-26.3, as may be amended and supplemented. The rent shall also comply with the affordability average requirement of N.J.A.C. 5:80-26.4, as may be amended and supplemented. The initial rent for a restricted rental unit shall be calculated so the eligible monthly housing expenses/income, including an allowance for tenant-paid utilities does not exceed 30 percent of gross income of and the appropriate household size as determined pursuant to N.J.A.C. 5:80-26.3, as may be amended and supplemented.

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

28-17-8 Low/Moderate Split and Bedroom Distribution and Selection of Occupants.

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% of the restricted units within each bedroom distribution rounded up 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%, rounded up to the nearest whole number, shall be affordable to very low-income households. The very low-income units shall be distributed between each bedroom count as proportionally as possible, to the nearest whole unit, to the total number of restricted units within each bedroom count, and counted as part of the required number of low-income units within the development.

D. Affordable housing developments that are not age-restricted or supportive housing shall be structured such that:

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

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

(3) The combined number of efficiency and one-bedroom units shall be no greater than 20%, rounded down, of the total number of low- and moderate-income units. The municipality has chosen not to allow rounding.

(4) At least 30% of all low- and moderate-income units, rounded up (or down) shall be two-bedroom units. The municipality has chosen to allow rounding.

(5) At least 20% of all low- and moderate-income units, rounded up shall be three-bedroom units. The municipality has chosen not to allow rounding.

(6) 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 5% of those restricted units.

F. The Administrative Agent shall use a random selection process to select occupants of very low-, low- and moderate-income housing.

G. A pool of interested households will be maintained in accordance with the provisions of N.J.A.C. 5:80-26.16.

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

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

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

(3) With regard to occupants under the age of 18, accommodate the household's requested arrangement, except that such arrangement may not result in more than two occupants under the age of 18 occupying any bedroom; and

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

§ 28-17-9 Control Periods for Restricted Ownership Units and Enforcement Mechanisms

A. Control periods for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.6, as may be amended and supplemented, and each restricted ownership unit shall remain subject to the controls on affordability for a period of at least 30 years subject to the requirements of N.J.A.C. 5:80-26.6, as may be amended and supplemented.

B. Rehabilitated housing units that are improved to code standards shall be subject to affordability controls for a period of not less than 10 years (crediting towards present need only).

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

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

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

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

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

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

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

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

I. The affordability controls set forth in this Ordinance shall remain in effect despite the entry

and enforcement of any judgment of foreclosure with respect to price-restricted ownership units.

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

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

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

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

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

(3) The owners of restricted ownership units may apply to the Administrative Agent to increase the maximum sales price for the unit on the basis of anticipated capital improvements. Eligible capital improvements shall be:

(a) those that render the unit suitable for a larger household or the addition of a bathroom.

(b) The maximum resale price may be further increased by an amount up to the cumulative dollar value of approved capital improvements made after the last non-exempt sale for improvements and/or upgrades to the unit, excluding capital improvements paid for by the entity favored on the recapture note and recapture lien described at N.J.A.C. 5:80-26.6(d);

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

B. Upon the resale of a restricted ownership unit, all items of property that are permanently affixed to the unit or were included when the unit was initially restricted (for example, refrigerator, range, washer, dryer, dishwasher, wall-to-wall carpeting) shall be included in the maximum allowable resale price. Other items may be sold to the purchaser at a reasonable price that has been approved by the Administrative Agent at the time of the

signing of the agreement to purchase but shall be separate and apart from any contract of sale for the underlying real estate. The purchase of central air conditioning installed subsequent to the initial sale of the unit and not included in the base price may be made a condition of the unit resale provided the price of the air conditioning equipment, which shall be subject to 10-year, straight-line depreciation, has been approved by the Administrative Agent. Unless otherwise approved by the Administrative Agent, the purchase of any property other than central air conditioning shall not be made a condition of the unit resale. The seller and the purchaser must personally certify at the time of closing that no unapproved transfer of funds for the purpose of selling and receiving property has taken place at the time of or as a condition of resale.

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

D. 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.

E. 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.

F. The Administrative Agent shall certify a household as eligible for a restricted ownership unit when the household is a low-income household or a moderate-income household, as

applicable to the unit, and the estimated monthly housing cost for the particular unit (including principal, interest, property taxes, homeowner and private mortgage insurance and condominium or homeowner association fees, as applicable) does not exceed 35 percent of the household's eligible monthly income; provided, however, that this limit may be exceeded if one or more of the following circumstances exists:

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

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

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

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

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

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

(2) With the exception of original purchase money mortgages, neither an owner nor a lender shall at any time during the control period cause or permit the total indebtedness secured by a restricted ownership unit to exceed 95% of the maximum allowable resale price of that unit, as such price is determined by the Administrative Agent in accordance with N.J.A.C. 5:80-26.7(c).

28-17-10 Rent Restrictions for Rental Units; Leases and Fees.

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

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

C. No additional fees, operating costs, or charges shall be added to the approved rent (except, in the case of units in an assisted living residence, to cover the customary charges for food and services) without the express written approval of the Administrative Agent. Operating costs, for the purposes of this section, include certificate of occupancy fees, move-in fees, move-out fees, mandatory internet fees, mandatory cable fees,

mandatory utility submetering fees, and for developments with more than one and a half off-street parking spaces per unit, parking fees for one parking space per household.

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

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

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

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

H. For any prior round rental unit leased before December 20, 2024, elements of the existing fee structure that are consistent with prior rules, but inconsistent with 5:80-26.13(c)1, may continue until the occupant household's current lease term expires or that occupant household vacates the unit, whichever occurs later.

I. 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% 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% of the regional median income by household size.

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

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

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

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

(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.

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

28-17-11 Responsibilities of Affordable Housing Development Owner.

A. The owner of all developments containing affordable units subject to this subchapter or the assigned management company thereof shall provide to its administrative agent and the Borough Administrative Agent:

(1) The information in §28-17-6.C and any settlement agreement, or other applicable document regulating the location of affordable units. The Administrative Agent shall determine the location of affordable units if not set forth in the site plan approval, settlement agreement, or other applicable document.

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

(3) The breakdown of the affordable units by or identification of affordable unit locations by bedroom count and income level, including street addresses / unit numbers, if subject to the site plan approval, settlement agreement, or other applicable document regulating the breakdown of affordable units. The administrative agent shall determine the bedroom and income distribution if not set forth in the site plan approval, settlement agreement, or other applicable document.

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

(5) A projected construction schedule.

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

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

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

(1) Send to all current tenants in all restricted rental units an annual mailing containing a notice as to the maximum permitted rent and a reminder of the requirement that the unit must remain their principal place of residence, which is defined as residing in the unit at least 260 days out of each calendar year, together with the telephone number, mailing address, and email address of the administrative agent to whom complaints of excess rent can be issued.

(2) Provide to the administrative agent a description of any applicable fees.

(3) Provide to the administrative agent a description of the types of utilities and which utilities will be included in the rent.

(4) Agree and ensure that the utility configuration established at the start of the rent-up process remain unaltered throughout the restricted period.

(5) Provide to the administrative agent a proposed form of lease for any rental units.

(6) Ensure that the tenant selection criteria for the applicants for affordable units remain no more restrictive than the tenant selection criteria for applicants for non-restricted units.

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

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

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

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

(3) Estimated real property taxes.

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

(5) Flood insurance requirement, if applicable.

(6) The State-approved planned real estate development public offering statement

and/or master deed, where applicable, as well as the full build-out budget.

28-17-12 New Construction.

A. Applicability. This section governs the creation of new affordable housing units regardless of the means by which the units are created, whether from ground up construction, alteration of existing residential buildings, conversion of non-residential buildings, or other means.

B. The developer of affordable housing units shall submit an affordable housing plan in accordance with §28-17-6.

C. 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.

D. Completion Schedule/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, as depicted in the following table:

Percentage of Affordable Housing Units Completed	Percentage of Market Housing Units Completed
0%	25%
10%	25% + 1
50%	50%
75%	75%
100%	90%

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

(1) Design of 100 percent affordable developments:

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

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

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

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

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

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

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

(d) Residents of restricted units must be offered the same access to communal amenities as residents of market-rate units within the same affordable

development. Examples of communal amenities include, but are not limited to, community pools, fitness and recreation centers, playgrounds, common rooms and outdoor spaces, and building entrances and exits. This shall apply to prior round units.

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

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

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

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

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

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

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

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

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

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

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

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

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

F. Utilities.

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

(2) Tenant-paid utilities that are included in the utility allowance shall be so stated in the lease and shall be consistent with the utility allowance in accordance with N.J.AC 5:80-26.13(e).

G. Accessibility requirements.

(1) Any new construction shall be adaptable; however, elevators shall not be required in any building or within any dwelling unit for the purpose of compliance with this section. In buildings without elevator service, only ground floor dwelling units shall be required to be constructed to conform with the technical design standards of the barrier free subcode. "Ground floor" means the first floor with a dwelling unit or portion of a dwelling unit, regardless of whether that floor is at grade. A building may have more than one ground floor.

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

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

(b) An adaptable kitchen on the first floor;

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

(d) An adaptable room that can be used as a bedroom, with a door, or the casing

for the installation of a door that is compliant with the Barrier Free Subcode, on the first floor;

(e) If not all of the foregoing requirements in –(2)(a) through –(2)(d) can be satisfied, then an interior accessible route of travel shall be provided between stories within an individual unit; and

(f) An accessible entranceway as set forth in N.J.S.A. 52:27D-311a et seq. and the Barrier Free Subcode, N.J.A.C. 5:23-7, or evidence that the municipality has collected funds from the developer sufficient to make 10% of the adaptable entrances in the development accessible:

[1] Where a unit has been constructed with an adaptable entrance, upon the request of a disabled person who is purchasing or will reside in the dwelling unit, an accessible entrance shall be installed.

[2] To this end, the builder of restricted units shall deposit funds within the Affordable Housing Trust Fund sufficient to install accessible entrances in 10% of the affordable units that have been constructed with adaptable entrances.

[3] The funds deposited shall be expended for the sole purpose of making the adaptable entrance of an affordable unit accessible when requested to do so by a person with a disability who occupies or intends to occupy the unit and requires an accessible entrance.

[4] The developer of the restricted units shall submit to the Construction Official a design plan and cost estimate for the conversion from adaptable to accessible entrances.

[5] Once the Construction Official has determined that the design plan to convert the unit entrances from adaptable to accessible meets the requirements of the Barrier Free Subcode, N.J.A.C. 5:23-7, and that the cost estimate of such conversion is reasonable, payment shall be made to the Affordable Housing Trust Fund and earmarked appropriately.

(3) The minimum size of affordable housing units, which is necessary to ensure the public health, safety, and welfare of its occupants, shall be as indicated in the following table:

Type of Unit	Minimum Size (gross square feet)
Efficiency	500
One-bedroom	600
Two-bedroom	750
Three-bedroom	900

28-17-13 Rehabilitation Program Requirements.

A. The rehabilitation program shall be designed to renovate deficient housing units occupied or intended to be occupied by very low-, low- and moderate-income households such that, after rehabilitation, these units will comply with the New Jersey State Housing Code pursuant to N.J.A.C. 5:28-1.1 et seq or the Rehabilitation Subcode, N.J.A.C. 5:23-6 to the extent applicable.

B. Both ownership and rental units shall be eligible for rehabilitation funds as set forth in the adopted rehabilitation manuals.

C. All rehabilitated units shall remain affordable to very low-, low- and moderate-income households for a period of 10 years (the control period). For owner-occupied units, the control period shall be enforced with a mortgage and note and for renter-occupied units the control period will be enforced with a deed restriction.

D. The municipality shall dedicate a minimum average hard cost of $10,000 for each unit to be rehabilitated through this program and in addition shall dedicate associated rehabilitation program soft costs such as case management, inspection fees and work write-ups.

E. The municipality shall designate, subject to the approval of the Department, one or more Administrative Agents to administer the rehabilitation program in accordance with this Chapter. The Administrative Agent(s) shall provide rehabilitation manuals for ownership and rental rehabilitation programs. Manuals shall be adopted by resolution of the Borough Council. Both rehabilitation manuals shall be available for public review in the Hightstown Borough Construction Office

F. Households determined to be very low-, low-, or moderate-income may participate in a rehabilitation program. Rehabilitated units shall be exempt from the very low-income requirements, low/mod split, and bedroom distribution requirements of UHAC, but shall be administered in accordance with the following:

(1) If a unit is vacant at the time of rehabilitation, or if a rehabilitated unit becomes vacant and is re-rented before the expiration of the affordability controls, the deed restriction shall require that the unit be rented to a low- or moderate-income household at an affordable rent.

(2) If a rental unit is occupied by a tenant at the time rehabilitation is completed, the rent charged after rehabilitation shall not exceed the lesser of the tenant's current rent or the maximum rent permitted under UHAC.

(3) Rents in rehabilitated units may increase annually based on the standards in UHAC.

(4) At the time of application, applicant households and/or tenant households shall be subject to income eligibility determinations in accordance with UHAC.

28-17-14 **Supportive Housing and Group Homes Program Requirements**.

A. The following provisions shall apply to group homes, residential health care facilities, and supportive shared living housing:

B. Units are 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).

C. Units 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.

D. The unit of credit shall be the bedroom. However, the unit of credit shall be the unit if occupied by a single person or household.

(1) Housing that is age-restricted shall be included with the maximum number of units that may be age-restricted pursuant to the Act.

(2) Occupancy shall not be restricted to youth under 18 years of age.

(3) In affordable developments with 20 or more restricted units that are supportive housing, two-bedroom units must compose at least five percent of those restricted units.

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

(a) Affirmative marketing; however, group homes, residential health care facilities, permanent supportive housing, and supportive shared living housing shall be affirmatively marketed to broadest possible population of qualified individuals with special needs in accordance with a plan approved by the sponsoring program;

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

E. With the exception of units established with capital funding through a 20-year operating contract with the Department of Human Services, Division of Developmental Disabilities, group homes, residential health care facilities, supportive shared living housing and permanent supportive housing shall have the appropriate controls on affordability in accordance with the Act. In the event that a supportive housing provider is unable to record or execute a long-term deed restriction, the units shall be subject to annual recertification by the Municipal Housing Liaison to confirm continued occupancy and compliance with this Section.

F. Objective standards shall be applied in the selection of tenants for supportive housing units and shall be designed to ensure that individuals are not excluded in an arbitrary or capricious manner.

G. The following documentation shall be submitted by the sponsor to the municipality prior to marketing the completed units or facility:

(1) An Affirmative Marketing Plan in accordance with -D(1) above; and

(2) If applicable, proof that the supportive and/or special needs housing is regulated by the New Jersey Department of Health and Senior Services, the New Jersey Department of Human Services or another State agency in accordance with the requirements of this section, which includes validation of the number of bedrooms or units in which low- or moderate-income occupants reside.

H. The sponsor/owner shall complete annual monitoring as directed by the MHL.

28-17-15 Assisted Living Residence Requirements.

In accordance with N.J.A.C. 5:97-6.11, the following requirements shall apply to any assisted living residences (or facilities).

A. An assisted living residence is a facility licensed by the New Jersey Department of Health to provide apartment-style housing and congregate dining and to assure that assisted living services are available. All or a designated number of apartments in the facility shall be restricted to low- and moderate-income households.

B. The unit of credit shall be the apartment. However, a two-bedroom apartment shall be eligible for two units of credit if it is restricted to two unrelated individuals.

C. A recipient of a Medicaid waiver shall automatically qualify as a low- or moderate-income household.

D. Assisted living units shall be considered age-restricted housing shall be included in the accounting of the maximum number of units that may be age-restricted.

E. Low- and moderate-income residents shall not be charged any upfront fees.

F. The units shall comply with UHAC with the following exceptions:

(1) Affirmative marketing (N.J.A.C. 5:80-26.16); provided that the units are restricted to recipients of Medicaid waivers;

(2) The deed restriction may be on the facility, rather than individual apartments or rooms;

(3) Low/moderate income split and affordability average (N.J.A.C. 5:80-26.4); only if all of the affordable units are affordable to households at a maximum of 60 percent of median income; and

G. Tenant income eligibility (N.J.A.C. 5:80-26.14); up to 80 percent of an applicant's gross income may be used for rent, food and services based on occupancy type and the affordable

unit must receive the same basic services as required by the Agency's underwriting guidelines and financing policies. The cost of non-housing related services shall not exceed one and two-thirds times the rent established for each unit.

28-17-16 Effect on Landlord and Tenant Relationship.

A. Nothing in these rules should be construed to limit the rights and duties of the owner and tenant to maintain the dwelling in accordance with all appropriate New Jersey State or municipal construction and property maintenance codes.

B. Notwithstanding anything to the contrary in this Article, any member of a household occupying a dwelling under this Article and subject to the regulations of the Borough of Hightstown is subject to eviction for any reasons allowed under applicable New Jersey law. The provisions of this Article are not intended to confer any additional rights or obligations on property owners or tenants other than those mandated by statute or required by the courts of the State of New Jersey or the duly adopted regulations of any of its agencies.

28-17-17 Enforcement and Violations of Affordable Housing Regulations.

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

B. After providing written notice of a violation to an owner, developer or tenant of an affordable unit and advising the owner, developer or tenant of the penalties for such violations, the municipality may take the following action against the owner, developer or tenant for any violation that remains uncured for a period of 60 days after service of the written notice:

(1) The municipality may file a court action pursuant to N.J.S.A. 2A:58-11 alleging a violation, or violations, of the regulations governing the affordable housing unit. If the owner, developer or tenant is found by the Court to have violated any provision of the regulations governing affordable housing units the owner, developer or tenant shall be subject to one or more of the following penalties, at the discretion of the Court:

(a) A fine of not more than $2,000.00 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;

(b) In the case of an owner who has rented his or her low- or moderate-income

unit in violation of the regulations governing affordable housing units, payment into the Affordable Housing Trust Fund of the gross amount of rent illegally collected;

(c) In the case of an owner who has rented his or her affordable unit in violation of the regulations governing affordable housing units, payment of an innocent tenant's reasonable relocation costs, as determined by the Court.

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

D. The municipality may file a court action in the Superior Court seeking a judgment, which would result in the termination of the owner's equity or other interest in the unit, in the nature of a mortgage foreclosure. Any judgment shall be enforceable as if the same were a judgment of default of the first purchase money mortgage and shall constitute a lien against the low- or moderate-income unit.

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

(2) The proceeds of the Sheriff's sale shall first be applied to satisfy the first purchase money mortgage lien and any prior liens upon the low- or moderate-income unit. The excess, if any, shall be applied to reimburse the municipality for any and all costs and expenses incurred in connection with either the court action resulting in the judgment of violation or the Sheriff's sale. In the event that the proceeds from the Sheriff's sale are insufficient to reimburse the municipality in full as aforesaid, the violating owner shall be personally responsible for the full extent of such deficiency, in addition to any and all costs incurred by the municipality in connection with collecting such deficiency. In the event that a surplus remains after satisfying all of the above, such surplus shall be placed in escrow by the municipality for the owner and shall be held in such escrow for a maximum period of two years or until such earlier time as the owner shall make a claim with the municipality for such. Failure of the owner to claim such balance within the two year period shall automatically result in a forfeiture of such balance to the municipality. Any interest accrued or earned on such balance while being held in escrow shall belong to and shall be paid to the municipality, whether such balance shall be paid to the owner or forfeited to the municipality.

(3) Foreclosure due to violation of the regulations governing affordable housing units shall not extinguish the restrictions of the regulations governing affordable housing units as they apply to the low- and moderate-income unit. Title shall be conveyed to the purchaser at the Sheriff's sale, subject to the restrictions and provisions of the regulations governing the affordable housing unit. The owner determined to be in violation of the provisions of this plan and from whom title and possession were taken by means of the Sheriff's sale shall not be entitled to any right of redemption.

(4) If there are no bidders at the Sheriff's sale, or if insufficient amounts are bid to satisfy the first purchase money mortgage and any prior liens, the municipality may acquire title to the affordable unit by satisfying the first purchase money mortgage and any prior liens and crediting the violating owner with an amount equal to the difference between the first purchase money mortgage and any prior liens and costs of the enforcement proceedings, including legal fees and the maximum resale price for which the affordable unit could have been sold under the terms of the regulations governing affordable housing units. This excess shall be treated in the same manner as the excess that would have been realized from an actual sale as previously described.

(5) Failure of the low- or moderate-income unit to be either sold at the Sheriff's sale or acquired by the municipality shall obligate the owner to accept an offer to purchase from any qualified purchaser that may be referred to the owner by the municipality, with such offer to purchase being equal to the maximum resale price of the low- or moderate-income unit as permitted by the regulations governing affordable housing units.

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

E. It is the responsibility of the municipal housing liaison and the administrative agent(s) to ensure that affordable housing units are administered properly. All affordable units must be occupied within a reasonable amount of time and be re-leased within a reasonable amount of time upon the vacating of the unit by a tenant. If an administrative agent or municipal housing liaison becomes aware of or suspects that a developer, landlord, or property manager has not complied with these regulations, it shall report this activity to the Division. The Division must notify the developer, landlord, or property manager, in writing, of any violation of these regulations and provide a 30-day cure period. If, after the 30-day cure period, the developer, landlord, or property manager remains in violation of any terms of this subchapter, including by keeping a unit vacant, the developer, landlord, or property manager may be fined up to the amount required to construct a comparable affordable unit of the same size and the deed-restricted control period will be extended for the length of the time the unit was out of compliance, in addition to the remedies provided for in this section. For the purposes of this subsection, a reasonable amount of time shall presumptively be 60 days, unless a longer period of time is required due to demonstrable market conditions and/or failure of the municipal housing liaison or

the administrative agent to refer a certified tenant.

F. Banks and other lending institutions are prohibited from issuing any loan secured by owner occupied real property subject to the affordability controls set forth in this subchapter if such loan would be in excess of amounts permitted by the restriction documents recorded in the deed or mortgage book in the county in which the property is located. Any loan issued in violation of this subsection is void as against public policy.

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

H. Appeals. 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 3. Continuation**.** In all other respects, the Zoning Ordinance of the Borough of Hightstown shall remain unchanged.

Section 4. Severability**.** If any portion of this Ordinance is for any reason held to be unconstitutional or invalid by a court of competent jurisdiction, such decision shall not affect the validity of the Zoning Ordinance as a whole, or any other part thereof.

Section 5. Repealer**.** All ordinances or parts of ordinances which are inconsistent with the provisions of this Ordinance are hereby repealed to the extent of such inconsistency only.

Section 6. Enactment. This Ordinance shall take effect upon the filing thereof with the Mercer County Planning Board after final passage, adoption, and publication by the Borough Clerk of the Borough of Hightstown in the manner prescribed by law.

Introduced: March 2, 2026

Adopted: SCHEULED FOR PUBLIC HEARING AND ADOPTION 03/12/2026

MARGARET RIGGIO BOROUGH CLERK	SUSAN BLUTH MAYOR

Borough of Hightstown
Planning Board

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Planning@HightstownBorough.com
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TO: Peggy Riggio, Borough Clerk

FROM: Jane Davis, Planning Board Secretary

SUBJECT: Ordinance 2026-06 – Amending Land Use Procedures

DATE: March 10, 2026

At the March 9, 2026, Planning Board meeting, the Board reviewed and discussed Ordinance 2026-06, titled "Amending the Land Use Procedures Ordinance of the Borough of Hightstown to Revise Mandatory Development Fees, to Implement the Fourth Round of Affordable Housing in Accordance with the Fair Housing Act of 1985."

The Board offered the following comments:

Minor typographical errors to be corrected after Council approval:

- **Page 2, 26-10-2: • Page 2, Section 26-10-2:** The word "have" is missing in the first line. The sentence should read: *"Terms within this Section shall have the meanings…"*

The Board voted unanimously to refer the Ordinance back to Council. Please feel free to reach out with any questions or if additional information is needed.

Thank you.

Borough of Hightstown
County of Mercer Ordinance 2026-06

ORDINANCE AMENDING THE LAND USE PROCEDURES ORDINANCE OF THE BOROUGH OF HIGHTSTOWN TO REVISE MANDATORY DEVELOPMENT FEES, TO IMPLEMENT THE FOURTH ROUND OF AFFORDABLE HOUSING IN ACCORDANCE WITH THE FAIR HOUSING ACT OF 1985

WHEREAS, the New Jersey Supreme Court and New Jersey Legislature have recognized and mandated in So. Burl. Co. NAACP v. Mount Laurel, 92 N.J. 158 (1983) ("Mount Laurel II") and the Fair Housing Act, N.J.S.A. 52:27D-301, et seq. ("FHA") that every municipality in New Jersey has an affirmative obligation to facilitate the provision of low and moderate income housing; and

WHEREAS, the Mayor and Borough Council of the Borough of Hightstown are desirous of ensuring the proper implementation of the Fair Housing Act and associated rules through the adoption of land use regulations by the governing body; and

WHEREAS, the Borough of Hightstown desires to implement policies established by the New Jersey Legislature in P.L. 2024, c. 2 amending the Fair Housing Act to foster affordable housing opportunities for the production of dwellings and their occupancy by low and moderate income households; and

WHEREAS, the Mayor and Borough Council of the Borough of Hightstown recognize the need to amend the Mandatory Development Fee requirements within the Land Use Procedures Ordinance of the Borough of Hightstown to implement the Fourth Round Housing Element and Fair Share Plan; and

WHEREAS, the Borough Council formally refers this Ordinance to the Planning Board for examination, discussion, and recommendations in accordance with N.J.S.A. 40:55D-26; and

NOW THEREFORE, BE IT ORDAINED by the Borough Council of the Borough of Hightstown, Mercer County, New Jersey, as follows:

Section 1. Article 26-10, entitled, Mandatory Development Fees, of the Land Use Procedures Ordinance of the Borough of Hightstown, shall be amended as follows:

Chapter 26. Land Use Procedures

Article 26-10 Mandatory Development Fees

§ 26-10-1 Purpose.

A. This section establishes standards for the collection, maintenance, and expenditure of development fees that are consistent with the amended Fair Housing Act (P.L.2024, c.2), N.J.A.C. 5:99, and the Statewide Non-Residential Development Fee Act (N.J.S.A. 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. The municipality previously adopted a development fee ordinance, which established the Hightstown Borough Affordable Housing Trust Fund.

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

§ 26-10-2 Definitions.

Terms within this Section shall have the meanings assigned to them by §28-2, Definitions and Word Usage, of the Code of the Borough of Hightstown.

§ 26-10-3 Residential Development Fees.

A. Imposition of fees.

(1) Residential developers, except for developers of the types of development specifically exempted below, shall pay a fee of 1.5% of the equalized assessed value for residential development, provided no increased density is permitted. Development fees shall also be imposed and collected when an additional dwelling unit is added to an existing residential structure; in such cases, the fee shall be calculated based on the increase in the equalized assessed value of the property due to the additional dwelling unit.

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

Example: If an approval allows four units to be constructed on a site that was zoned for two units, the fees could equal 1.5% of the equalized assessed value on the first two units; and the specified higher percentage of 6% of the equalized assessed value

for the two additional units, provided zoning on the site has not changed during the two-year period preceding the filing of such a variance application.

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

(1) Affordable housing developments, developments where the developer is providing for the construction of affordable units elsewhere in the municipality, and developments where the developer has made a payment in lieu of on-site construction of affordable units (prior to March 20, 2024 only), or by redevelopment agreement or other agreement with the Borough of Hightstown, shall be exempt from the payment of development fees and in the case of development projects that are the subject of redevelopment agreements, development fee obligations shall be negotiated as part of the redevelopment agreement.

(2) Developments that received preliminary or final site plan or subdivision approval prior to January 1, 2005, shall be exempt from the payment of development fees, unless the developer seeks a substantial change in the original approval. Where a site plan approval does not apply, the issuance of a zoning and/or building permit shall be synonymous with preliminary or final site plan approval for the purpose of determining the right to an exemption. In all cases, the applicable fee percentage shall be determined based upon the development fee ordinance in effect on the date that the construction permit is issued.

(3) Developers who demolish and replace or renovate and re-occupy abandoned housing units shall be exempt from paying development fees, provided the number of housing units on the property does not increase.

(4) Home improvements or expansions shall be exempt from development fees, provided the improvements or expansions do not create any new housing units.

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

§ 26-10-4 Nonresidential development fees.

A. Imposition of fees.

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

(2) Within all zoning districts, nonresidential developers, except for developers of the types of development specifically exempted below, shall also pay a fee equal to 2.5% of the increase in equalized assessed value resulting from any additions to existing structures to be used for nonresidential purposes.

(3) Development fees shall be imposed and collected when an existing structure is demolished and replaced. The development fee of 2.5% shall be calculated on the difference between the equalized assessed value of the pre-existing land and improvements and the equalized assessed value of the newly improved structure; i.e., land and improvements; and such calculation shall be made at the time a final certificate of occupancy is issued. If the calculation required under this article results in a negative number, the nonresidential development fee shall be zero.

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

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

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

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

C. A developer of a nonresidential development exempted from the nonresidential development fee pursuant to the Statewide Nonresidential 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 nonresidential development fee, in that event, within three years after that event or after the issuance of the final certificate of occupancy of the nonresidential development, whichever is later.

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

§ 26-10-5 Appeal of Development Fees.

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

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

§ 26-10-6 Collection Procedures.

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

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

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

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

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

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

G. Should the municipality fail to determine or notify the developer of the amount of the development fee within 10 business days of the request for final inspection, the developer may estimate the amount due and pay that estimated amount consistent with the dispute process set forth in N.J.S.A. 40:55D-8.6.

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

between the fee calculated at the time of issuance of the construction permit and that determined at the time of issuance of certificate of occupancy.

§ 26-10-7. Affordable Housing Trust Fund.

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

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

(1) Payments in lieu of on-site construction of an affordable unit, where previously permitted by ordinance or by agreement with the municipality and if approved by a municipality prior to the statutory elimination of payments in-lieu on March 20, 2024 per P.L.2024, c.2;

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

(3) Rental income from municipally operated units;

(4) Repayments from affordable housing program loans;

(5) Recapture funds;

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

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

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

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

(1) Failure to meet deadlines for information required by the Division in its review of a development fee ordinance;

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

(3) Failure to comply with the requirements of the Non-Residential Development Fee

Act and N.J.A.C. 5:99-3;

(4) Failure to submit accurate monitoring reports pursuant to this subchapter within the time limits imposed by the Act, this chapter, and/or the Division;

(5) Expenditure of funds on activities not approved by the Superior Court or otherwise permitted by law;

(6) Revocation of compliance certification or a judgment of compliance and repose;

(7) Failure of a municipal housing liaison or administrative agent to comply with the requirements set forth at N.J.A.C. 5:99-6, -7, and -8;

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

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

§ 26-10-8 Use of Funds.

A. The expenditure of all funds shall conform to a Spending Plan approved by Superior Court. Funds deposited in the municipal Affordable Housing Trust Fund may be used for any activity approved by the Court to address the fair share obligation and may be set up as a grant or revolving loan program. Such activities include, but are not limited to: preservation or purchase of housing for the purpose of maintaining or implementing affordability controls; housing rehabilitation; new construction of affordable housing units and related costs; accessory apartments; a market-to-affordable program; conversion of existing non-residential buildings to create new affordable units; green building strategies designed to be cost-saving and in accordance with accepted national or state standards; purchase of land for affordable housing; improvement of land to be used for affordable housing; extensions or improvements of roads and infrastructure to affordable housing sites; financial assistance designed to increase affordability; administration necessary for implementation of the Housing Element and Fair Share Plan; and/or any other activity permitted by Superior Court and specified in the approved Spending Plan.

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

C. At least a portion of all development fees collected and interest earned shall be used to provide affordability assistance to very low-, low- and moderate-income households in affordable units included in the municipal Fair Share Plan. A portion of the development fees which provide affordability assistance shall be used to provide affordability assistance to very low-income households.

D. 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.

E. Affordability assistance for very low income households may include producing very low-income units or buying down the cost of low- or moderate-income units in the municipal Fair Share Plan to make them affordable to households earning 30% or less of median income.

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

G. 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 N.J.S.A. 52:27D-320.

H. Emergent Affordable Housing Opportunities. Requests to expend affordable housing trust funds on emergent affordable housing opportunities not included in the municipal fair share plan shall be made to the 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. Continuation**.** In all other respects, the Land Use Procedures Ordinance of the Borough of Hightstown shall remain unchanged.

Section 4. Severability**.** If any portion of this Ordinance is for any reason held to be unconstitutional or invalid by a court of competent jurisdiction, such decision shall not affect the validity of the Land Use Procedures Ordinance as a whole, or any other part thereof.

Section 5. Repealer**.** All ordinances or parts of ordinances which are inconsistent with the provisions of this Ordinance are hereby repealed to the extent of such inconsistency only.

Borough of Hightstown
County of Mercer Ordinance 2026-06

Section 6. Enactment. This Ordinance shall take effect upon the filing thereof with the Mercer County Planning Board after final passage, adoption, and publication by the Borough Clerk of the Borough of Hightstown in the manner prescribed by law.

INTRODUCED: March 2, 2026

ADOPTED: scheduled for public hearing and introduction 03/12/2026

MARGARET RIGGIO MUNICIPAL CLERK	SUSAN BLUTH MAYOR