

**BOROUGH OF PENNINGTON
ORDINANCE 2026-12**

**AN ORDINANCE AMENDING CHAPTER 58 OF THE BOROUGH CODE, ENTITLED
“AFFORDABLE HOUSING,” BY SUBSTITUTING A NEW CHAPTER OF THE SAME TITLE**

WHEREAS, for the purpose of Affordable Housing compliance, the Borough seeks to amend Chapter 58 of the Borough Code, entitled “Affordable Housing,” by repealing and replacing in its entirety that Chapter;

NOW, THEREFORE, BE IT ORDAINED, by Mayor and Council of the Borough of Pennington, in the County of Mercer and State of New Jersey, that the text of Chapter 58 of the Borough Code, entitled “Affordable Housing,” shall read as follows:

Chapter 58. Affordable Housing

§ 58-1. Purpose and applicability.

- A. The purpose of this section is to provide for and regulate affordable housing in the Borough of Pennington to address the Borough’s constitutional obligation to provide for its fair share of low- and moderate-income housing as directed by the Administrative Director of the Courts and as stipulated by P.L.2024, c. 2 and N.J.S.A. 52:27D-301 *et seq.* (the amended Fair Housing Act). N.J.A.C. 5:99-1 *et seq.*, as amended and supplemented, establishes procedures to be used by municipalities in addressing and implementing the requirements set forth in the Amended Fair Housing Act. P.L. 2024, c.2, which also established the Affordable Housing Dispute Resolution Program (“Dispute Resolution Program”), and which also provides a new process for municipalities to come into constitutional compliance with their affordable housing obligations. This chapter is intended to assure compliance with the foregoing provisions and with the regulations of the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.1 *et seq.*, as amended and supplemented, including provisions for unit affordability controls as well as eligibility for very low-, low- and moderate-income households. This chapter shall apply except where inconsistent with applicable law.

§ 58-2. Definitions.

- A. The definitions in the Uniform Housing Affordability Controls (UHAC) at N.J.A.C 5:80-26.2 shall be applicable where a term is not defined. In the event of a discrepancy between a definition in this section and UHAC, the current UHAC definition shall be applicable. The following terms, when used in this section, shall have the meanings given in this subsection:

ACT — The Fair Housing Act of 1985, P.L. 1985, c. 222 (N.J.S.A. 52:27D-301 *et seq.*), as amended through P.L. 2024, c.2.

ADAPTABLE — Constructed in compliance with the technical design standards of the Barrier Free Subcode, N.J.A.C. 5:23-7.

ADMINISTRATIVE AGENT — The individual or entity designated by the Borough and approved by the Division as pursuant to N.J.A.C. 5:99-7, responsible for the administration of affordable units in accordance with this section, and as set forth within N.J.S.A. 52:27D-321 and UHAC (N.J.A.C. 5:80-26.1 *et seq.*).

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 AVERAGE — The average percentage of regional median income at which restricted units in an affordable housing development are affordable to low- and moderate-income households.

AFFORDABLE — A sales price or rent level that is within the means of a low- or moderate-income household as defined within N.J.S.A. 52:27D-301 *et seq.* and, in the case of an ownership unit, that the sales price for the unit conforms to the standards set forth in N.J.A.C. 5:80-26.7, as may be amended and supplemented, and, in the case of a rental unit, that the rent for the unit conforms to the standards set forth in N.J.A.C. 5:80-26.13, as may be amended and supplemented.

AFFORDABLE HOUSING DEVELOPMENT — A development included in or approved pursuant to the Housing Element and Fair Share Plan or otherwise intended to address the Borough’s fair share obligation, and includes, but is not limited to, an inclusionary development, a municipal construction project or a 100% affordable development.

AFFORDABLE HOUSING PROGRAM(S) — Any method of creating or preserving actual housing units available to low- and moderate-income households or creating a realistic opportunity for the construction of such units, and any mechanism in a Municipal Fair Share Plan prepared or implemented to address a municipality’s fair share obligation.

AFFORDABLE HOUSING MONITORING SYSTEM or AHMS — The Department of Community Affairs (DCA) or Department’s cloud-based software application, which shall be the central repository for municipalities to use for reporting detailed information regarding affordable housing developments, affordable housing unit completions, and the

collection and expenditures of funds deposited into the municipal affordable housing trust fund.

AFFORDABLE 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.

AGE-RESTRICTED UNIT — A housing unit designed to meet the needs of, and exclusively for, the residents of an age-restricted segment of the population where the adult member of the family who is the head of the household for the purposes of determining income eligibility and rent is a minimum age of either 62 years, or 55 years and meets the provisions of 42 U.S.C. §§ 3601 through 3619, except that due to death, a surviving spouse of less than 55 years of age is permitted to continue to reside in the unit.

AGENCY — The New Jersey Housing and Mortgage Finance Agency established by P.L. 1983, c. 530 (N.J.S.A. 55:14K-1 et seq.).

ALTERNATIVE LIVING ARRANGEMENTS — A structure in which households live in distinct bedrooms, yet share kitchen and plumbing facilities, central heat and common areas. Alternative living arrangements include, but are not limited to: transitional facilities for the homeless; Class A, B, C, D and E boarding homes as regulated by the State of New Jersey Department of Community Affairs; residential health care facilities as regulated by the New Jersey Department of Health; group homes for the developmentally disabled and mentally ill as licensed and/or regulated by the New Jersey Department of Human Services; and congregate living arrangements.

ASSISTED LIVING RESIDENCE — A facility that is licensed by the New Jersey Department of Health and Senior Services to provide apartment-style housing and congregate dining and to assure that assisted living services are available when needed for four or more adult persons unrelated to the proprietor and that offers units containing, at a minimum, one unfurnished room, a private bathroom, a kitchenette and a lockable door on the unit entrance.

BARRIER-FREE ESCROW — The holding of funds collected to adapt affordable unit entrances to be accessible in accordance with N.J.S.A. 52:27D-311a et seq. Such funds shall be held in a municipal affordable housing trust fund pursuant to N.J.A.C. 5:99-2.6.

BOROUGH — The Borough of Pennington, in Monmouth County, New Jersey.

CERTIFIED HOUSEHOLD — A household that has been certified by an administrative agent as a very-low-income household, low-income household or moderate-income household.

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

COAH OR THE COUNCIL — The Council on Affordable Housing, as previously established by the New Jersey Fair Housing Act (N.J.S.A. 52:27D-301 et seq.) or the Superior Court of the State of New Jersey pursuant to the New Jersey Supreme Court case known as "Mount Laurel IV.", abolished effective March 20, 2024 pursuant to Section 3 at through P.L.2024, c.2 (N.J.S.A. 52:27D-304.1).

COMPLIANCE CERTIFICATION — The certification issued to a municipality by the Dispute Resolution Program or by a county-level housing judge pursuant to section 3 at P.L. 2024, c. 2, that protects the municipality from exclusionary zoning litigation, including builder's remedy lawsuits, during the current round of present and prospective need and through July 1 of the year the next affordable housing round begins.

COMPLIANT MUNICIPALITY — A municipality that is in the process of seeking compliance certification pursuant to the directives issued by the Administrative Office of the Courts, has obtained compliance certification, or who has filed for, or has obtained, a Judgment of Compliance, Order for Repose, or other court approval pursuant to the Act.

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

CONTINUUM OF CARE or CoC — One of the 16 local planning bodies in New Jersey that coordinate service providers and other interested parties to prevent and end homelessness, as authorized by subtitle C of title IV of the McKinney-Vento Homeless Assistance Act of 1987, 42 U.S.C. §§ 11431 through 11435.

COUNTY-LEVEL HOUSING JUDGE — A judge appointed pursuant to section 5 of P.L. 2024, c.2 (N.J.S.A. 52:27D-313.2), to resolve disputes over the compliance of municipal fair share affordable housing obligations and municipal fair share plans and housing elements with the Act.

DCA or DEPARTMENT— The State of New Jersey Department of Community Affairs.

DEFICIENT HOUSING UNIT — A housing unit with health and safety code violations that requires the repair or replacement of a major system. A "major system" includes weatherization, roofing, plumbing (including wells), heating, electricity, sanitary plumbing (including septic systems), lead paint abatement and/or load-bearing structural systems.

DEVELOPER — Any person, partnership, association, company or corporation that is the

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

DEVELOPMENT — The division of a parcel of land into two or more parcels, the construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any use or change in the use 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 N.J.S.A. 40:55D-1 et seq.

DEVELOPMENT APPLICATION — The application form and all accompanying documents required by ordinance for approval of a subdivision plat, a site plan, planned development, conditional use, zoning variance, or direction of the issuance of a permit pursuant to N.J.S.A. 40:55D-34 or 40:55D-36.

DISPUTE RESOLUTION PROGRAM - The Affordable Housing Dispute Resolution Program, established pursuant to section 5 of P.L. 2024, c.2 (N.J.S.A. 52:27D-313.2). The Dispute Resolution Program is established within the Judiciary of the State, for the purpose of resolving disputes associated with the Fair Housing Act with respect to municipalities seeking to obtain a certification of compliance of their adopted Housing Element & Fair Share Plan.

DIVISION — The Division of Local Planning Services in DCA.

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

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

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

EXTENSION OF EXPIRING CONTROLS — Extending the deed restriction period on units where the controls will expire in the current round of a housing obligation, so that the total years of a deed restriction is at least 60 years.

FAIR SHARE OBLIGATION or AFFORDABLE HOUSING OBLIGATION — The total of the present need and prospective need as determined by the Affordable Housing Dispute Resolution Program, or a court of competent jurisdiction.

FAIR SHARE PLAN — The plan that describes the mechanisms, strategies and the funding sources, if any, by which the Borough proposes to address its affordable housing obligation as established in the Housing Element, including the draft ordinances necessary to implement that plan, and addresses the requirements of P.L.1985, c.222 (N.J.S.A. 52:27D-301 et seq.).

HOUSING ELEMENT — The portion of the Borough's Master Plan, required by the Municipal Land Use Law ("MLUL"), N.J.S.A. 40:55D-28b(3) and the Act, that includes the information required by N.J.S.A. 52:27D-301 et seq., and establishes the Borough's fair share obligation.

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

HOUSING PROJECT — A project, or distinct portion of a project, which is designed and intended to provide decent, safe, and sanitary dwellings, apartments, or other living accommodations for persons of low- and moderate-income; such work or undertaking may include buildings, land, equipment, facilities, and other real or personal property for necessary, convenient, or desirable appurtenances, streets, sewers, water service, parks, site preparation, gardening, administrative, community, health, recreational, educational, welfare, or other purposes. The term "housing project" may also be applied to the planning of the buildings and improvements, the acquisition of property, the demolition of existing structures, the construction, reconstruction, alteration, and repair of the improvements, and all other work in connection therewith.

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

INCLUSIONARY DEVELOPMENT — A development containing both affordable units

and market-rate units, in which a substantial percentage of the housing units are provided for a reasonable income range of low- and moderate- income households. This term includes, but is not limited to: new construction, the conversion of a nonresidential 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 FOR REPOSE — A determination issued by the Superior Court approving a municipality's fair share plan to satisfy its affordable housing obligation for a particular 10-year round.

LOW-INCOME HOUSEHOLD — A household with a household income equal to 50% or less of the regional median income.

LOW-INCOME UNIT — A restricted unit that is affordable to a low-income household.

MAJOR SYSTEM — The primary structural, mechanical, plumbing, electrical, fire protection, or occupant service components of a building, which include, but are not limited to, weatherization, roofing, plumbing (including wells), heating, electricity, sanitary plumbing (including septic systems), lead paint abatement or load-bearing structural systems.

MARKET-RATE UNITS — Housing not restricted to low- and moderate-income households that may sell or rent at any price.

MODERATE-INCOME HOUSEHOLD — A household with a household income in excess of 50% but less than or equal to 80% of the regional median income.

MODERATE-INCOME UNIT — A restricted unit that is affordable to a moderate-income household.

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

MULTIFAMILY UNIT — A structure containing five or more dwelling units.

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, and oversight of the authorization of individuals being provided access to the AHMS.

MUNICIPAL HOUSING TRUST FUND — A separate, interest-bearing, account held by a municipality for the deposit of development fees, payments in lieu of constructing affordable units on sites zoned for affordable housing, 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 as governed at N.J.A.C. 5:99-2.

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

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

ORDER FOR REPOSE — The protection a municipality has from a builder's remedy lawsuit for a period of time from the entry of a judgment of compliance by the Superior Court. A judgment of compliance often results in an order for repose.

PAYMENT IN LIEU OF CONSTRUCTING AFFORDABLE UNITS — The payment of funds to the municipality by a developer when affordable units are not produced on a site zoned for an inclusionary development.

PRESENT NEED — The number of substandard existing deficient housing units in the municipality currently occupied by low- and moderate-income households, which is calculated pursuant to N.J.S.A. 52:27D-329.1 et seq. Also known as the “rehabilitation obligation.”

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

the controlled sale price exceeds the contract price or, in the absence of a contract price, the appraised value, the price differential is zero dollars.

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

RANDOM SELECTION PROCESS — A lottery process by which currently income-eligible 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.

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 duly adopted regional income limits published annually by the Affordable Housing Professionals of New Jersey or an entity approved by the court.

REGIONAL CONTRIBUTION AGREEMENT or RCA — A contractual agreement, pursuant to the Act, into which two municipalities voluntarily entered into prior to July 18, 2008, to transfer a portion of a municipality's affordable housing obligation to another municipality within its housing region.

REGIONAL MEDIAN INCOME — The median income by household size for an applicable housing region, as calculated annually in accordance with N.J.A.C. 5:80-26.3.

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

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

RESTRICTED UNIT — A dwelling unit, whether a rental unit or ownership unit, that is subject to the affordability controls of N.J.A.C. 5:80-26.1, as amended and supplemented, but does not include a market- rate unit that was financed pursuant to UHORP, MONI, or CHOICE.

UHAC — The Uniform Housing Affordability Controls set forth in N.J.A.C. 5:80-26.1 et seq., as amended and supplemented.

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

VERY-LOW-INCOME HOUSEHOLD — A household with a household income less than or equal to 30% of the regional median income.

VERY-LOW-INCOME UNIT — A restricted unit that is affordable to a very-low-income household.

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

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

WEATHERIZATION — Building insulation (for attic, exterior walls and crawl space), siding to improve energy efficiency, replacement storm windows, replacement storm doors, replacement windows and replacement doors, and is considered a major system for rehabilitation.

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 first non-exempt sale following the expiration of the deed restriction.

§ 58-3. Applicability.

- A. The provisions of this section 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 Pennington pursuant to the Borough's most recently adopted Housing Element and Fair Share Plan.
- B. The regulations of the Uniform Housing Affordability Controls (UHAC) at N.J.A.C 5:80-26.1 et seq. shall be applicable to such affordable housing units. In the event of a discrepancy between a regulation in this Chapter and UHAC, the applicable UHAC regulation shall be applicable.

§ 58-4. Monitoring and Reporting Requirements.

- A. On or before February 15th of every year, the Borough will electronically enter data into the AHMS system of the Department of Community Affairs of a detailed accounting of all development fees and any other payments into its trust fund that have been collected including residential and non-residential development fees, along with the current balance in the municipality's affordable housing trust fund as well as trust funds expended, including purposes and amounts of such expenditures, in the previous year from January 1st to December 31st.
- B. On or before February 15th of every year, the Borough will electronically enter data into the AHMS system of the Department of Community Affairs of up-to-date municipal information concerning the number of affordable housing units actually constructed, construction starts, certificates of occupancy granted, and the start and expiration dates of deed restrictions. With respect to units actually constructed, the information shall specify the characteristics of the housing, including housing type, tenure, affordability level, number of bedrooms, date, and expiration of affordability controls, and whether occupancy is reserved for families, senior citizens, or other special populations. The Borough shall also include a report on any expression of interest, applications, or pre-applications made under the overlay zones.
- C. For the midpoint realistic opportunity review as of July 1, 2030, pursuant to N.J.S.A. 52:27D-313, the Borough or other interested party may file an action through the Program seeking a realistic opportunity review and shall provide for notice to the public, including a realistic opportunity review of any inclusionary development site as set forth in the adopted HEFSP that has not received preliminary site plan approval prior to the midpoint of the 10-year round. Any such filing shall be through eCourts or any similar system set forth by the Program with notice to any party that has appeared in this matter.

§ 58-5. Monitoring and Reporting Requirements.

- A. The regulations for the Borough's affordable housing overlay zones are set forth in Chapter 215, Article VII of the Borough Code.
- B. The regulations in this Chapter shall apply to the overlay zones in Chapter 215, Article VII of the Borough Code unless said overlay zones specifically state otherwise.

§ 58-6. Alternative Living Arrangements.

- A. The administration of an alternative living arrangement shall be in compliance with N.J.A.C. 5:99, and UHAC, with the following exceptions:
 - (1) Affirmative marketing (N.J.A.C. 5:80-26.16). Unless stated otherwise, supportive housing units, including group homes, must comply with the affirmative marketing requirements of their respective sponsoring programs, where applicable; provided, however, that the units or bedrooms may be affirmatively marketed by the provider in accordance with an alternative plan approved by the Division.
 - (2) Affordability average and bedroom distribution (N.J.A.C. 5:80-26.4), with the exception of supportive housing units whose sponsoring program determines the unit arrangement, where applicable.
- B. With the exception of units established with capital funding through a twenty-year operating contract with the Department of Human Services, Division of Developmental Disabilities, alternative living arrangements shall have at least thirty-year controls on affordability in accordance with UHAC, unless an alternative commitment is approved by the Dispute Resolution Program or the Division.
 - (1) The service provider for the alternative living arrangement shall act as the administrative agent for the purposes of administering the affirmative marketing and affordability requirements for the alternative living arrangement.

§ 58-7. Phasing Schedule for Inclusionary Development.

- A. Inclusionary developments shall adhere to the project phasing requirements as set forth in UHAC, N.J.A.C. 5:80-26.1 *et seq.*, as amended and supplemented.

§ 58-8. New Construction.

- A. The required income and bedroom distributions of affordable housing units, as well as additional applicable standards, shall be as set forth in UHAC, N.J.A.C. 5:80-26.1 *et seq.*, as amended and supplemented.
- B. Low/moderate split and bedroom distribution of affordable housing units:
- (1) The fair share obligation 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. At least 13% of all restricted rental units shall be very-low-income units (affordable to a household earning 30% or less of regional median income). The very-low-income units shall be counted as part of the required number of low-income units within the development.
 - (2) At least 25% of the obligation shall be met through rental units, including at least half in rental units available to families.
 - (3) A maximum of 30% of the Borough's Fourth Round obligation (not inclusive of bonus credits) may be met with age-restricted units. At least half of all affordable units in the Borough's plan shall be available to families.
 - (4) Unless otherwise approved pursuant to 7. below, in each affordable development, the following income distribution requirements must be satisfied by all of the restricted units in the development as well as by, considered in isolation, the restricted units that are age-restricted, the restricted units that are supportive housing, and the restricted units that are neither age-restricted nor supportive housing:
 - (a) At least 50 percent of all restricted units are low-income or very-low-income units;
 - (b) At least 50 percent of all restricted efficiency or one-bedroom units, rounded up or down to the nearest whole number in either direction, are low-income units or very-low-income units;
 - (c) At least 50 percent of all restricted two-bedroom units, rounded up or down to the nearest whole number in either direction, are low-income units or very-low-income units;
 - (d) At least 50 percent of all restricted three-bedroom units are low-income units or very-low-income units;
 - (e) At least 50 percent of all restricted units with four or more bedrooms, rounded up or down to the nearest whole number in either direction, are low-income units or very-low-income units; and
 - (f) Any very-low-income units are 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. For example, if half of the restricted units are two-bedroom units, then half of the very-low-income units should be two-bedroom units.
 - (5) Unless otherwise approved pursuant to 7. below, in each affordable development, restricted units that are not age-restricted or supportive housing must be structured in conjunction with realistic market demands such that:
 - (a) At a minimum, the number of bedrooms within the restricted units equals twice the number of restricted units;
 - (b) Two-bedroom and/or three-bedroom units compose at least 50 percent of all restricted units;
 - (c) No more than 20 percent of all restricted units, rounded up or down to the nearest whole number in either direction, are efficiency or one-bedroom units;
 - (d) At least 30 percent of all restricted units, rounded up or down to the nearest whole number in either direction, are two-bedroom units;
 - (e) At least 20 percent of all restricted units, rounded up or down to the nearest whole number in either direction, are three-bedroom units; and
 - (f) The remainder of the restricted units, if any, are allocated at the discretion

of the developer in accordance with the Borough's Housing Element and Fair Share Plan.

- (6) Unless otherwise approved pursuant to 7. below, in each affordable development, restricted units that are age-restricted or supportive housing, except those supportive housing units whose sponsoring program determines the unit arrangement, must be structured such that, at a minimum, the number of bedrooms within the restricted units equals the number of restricted units. For example, the standard may be met by creating a two-bedroom unit for each efficiency unit. In affordable developments with 20 or more restricted units that are age-restricted or supportive housing, two-bedroom units must compose at least five percent of those restricted units.
- (7) The requirements of 4., 5., and 6. above must be satisfied by all restricted units in the Borough, considered in the aggregate. The individual requirements of 4., 5., and 6. above may be waived or altered for a specific affordable development with written approval from the Division if such waiver or alteration would not result in a material deviation from the municipal housing element and fair share plan. Any waiver or alteration that would result in a material deviation from the municipal housing element and fair share plan must receive written approval from a county-level housing judge.

C. Accessibility requirements:

- (1) The first floor of all restricted townhouse dwelling units and all restricted units in all other multistory buildings shall be subject to the technical design standards of the Barrier Free Subcode, N.J.A.C. 5:23-7, and the following:
- (2) All restricted townhouse dwelling units and all restricted units in other multistory buildings in which a restricted dwelling unit is attached to at least one other dwelling unit shall have the following features:
 - (a) An adaptable toilet and bathing facility on the first floor; and
 - (b) An adaptable kitchen on the first floor; and
 - (c) An interior accessible route of travel on the first floor; and
 - (d) An adaptable room that can be used as a bedroom, with a door or the casing for the installation of a door, on the first floor; and
 - (e) If not all of the foregoing requirements in Subsection b2(a) through (d) can be satisfied, then an interior accessible route of travel must be provided between stories within an individual unit; but if all of the terms of Subsection b2(a) through (d) above have been satisfied, then an interior accessible route of travel shall not be required between stories within an individual unit; and
 - (f) An accessible entranceway as set forth at P.L. 2005, c. 350 (N.J.S.A. 52:27D-311a et seq.) and the Barrier Free Subcode, N.J.A.C. 5:23-7, or evidence that Pennington 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 person with disabilities 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 Borough of Pennington's 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 under Subsection b2(f)(2) above shall be used by the Borough of Pennington 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 a design plan and cost estimate to the Construction Official of the Borough of Pennington for the conversion of 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 Borough's Affordable Housing Trust Fund in care of the Borough Chief Financial Officer, who shall ensure that the funds are deposited into the Affordable Housing Trust Fund and appropriately

earmarked.

- [6] Full compliance with the foregoing provisions shall not be required where an entity can demonstrate that it is "site impracticable" to meet the requirements. Determinations of site impracticability shall be in compliance with the Barrier Free Subcode, N.J.A.C. 5:23-7.

D. Design:

- (1) In inclusionary developments, low- and moderate-income units shall be integrated with the market units, 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 as per N.J.A.C. 5:80-26.5.
- (2) The occupancy standards set forth at N.J.A.C. 5:80-26.5 shall be applicable regarding the design of proposed affordable housing developments.

E. Maximum rents and sales prices:

- (1) In establishing rents and sales prices of affordable housing units, the administrative agent shall follow the procedures set forth in UHAC, utilizing the most recently published regional weighted average of the uncapped Section 8 income limits published by HUD.
- (2) The maximum rent for restricted rental units within each affordable development shall be affordable to households earning no more than 60% of regional median income; however, municipalities may permit a maximum rent affordable to households earning no more than 70 percent of regional median income for moderate-income units within affordable developments where very-low-income units compose at least 13 percent of the restricted units. In such developments, the number of units with rent affordable to households earning 70 percent of regional median income may not exceed the number of very-low-income units in excess of 13 percent of the restricted units. The average rent for restricted rental units shall be affordable to households earning no more than 52% of regional median income.
- (3) The developers and/or municipal sponsors of restricted rental units shall establish at least one rent for each bedroom type for very-low-income, low-income and moderate-income units, provided that at least 13% of all restricted rental units shall be affordable to very-low-income households (earning 30% or less of the regional median household income), with at least half of such units made available for very-low-income families with children. Such very-low-income units shall be counted toward the minimum 50% low-income requirement to be made available for occupancy by low-income households to address the Borough's prospective need obligation. Nothing in this subsection precludes the Borough from requiring affordable developments to have at least 13 percent of restricted units be affordable to and reserved for very-low-income households.
- (4) The maximum sales price of restricted ownership units within each affordable development shall be affordable to households earning no more than 70% of regional median income, and each affordable development must achieve an affordability average of 55% for restricted ownership units; in achieving this affordability average, moderate-income ownership units must be available for at least three different sales prices for each bedroom type, and low-income ownership units must be available for at least two different sales prices for each bedroom type.
- (5) In determining the initial sales prices and rent levels for compliance with the affordability average requirements for restricted units other than assisted living facilities and age-restricted developments, the following standards shall be used:
 - (a) A studio or efficiency unit shall be affordable to a one-person household;
 - (b) A one-bedroom unit shall be affordable to a one-and-one-half-person household;
 - (c) A two-bedroom unit shall be affordable to a three-person household;
 - (d) A three-bedroom unit shall be affordable to a four-and-one-half-person household; and
 - (e) A four-bedroom unit shall be affordable to a six-person household.
- (6) In determining the initial sales prices and rents for compliance with the affordability average requirements for restricted units in assisted living facilities and age-restricted developments, the following standards shall be used:
 - (a) A studio or efficiency unit shall be affordable to a one-person household;
 - (b) A one-bedroom unit shall be affordable to a one-and-one-half-person

household; and

- (c) A two-bedroom unit shall be affordable to a two-person household or to two one-person households.

- (7) The initial purchase price for all restricted ownership units shall be calculated so that the monthly carrying cost of the unit, including principal and interest (based on a mortgage loan equal to 95% of the purchase price and the Freddie Mac 30-Year Fixed Rate-Mortgage rate of interest), taxes, homeowner and private mortgage insurance and realistic condominium or homeowner association fees, do not exceed 30% of the eligible monthly income of the appropriate size household as determined under N.J.A.C. 5:80-26.4, 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.
- (8) The administrative agent shall set the initial rent for a restricted rental unit. The initial rent for a restricted rental unit shall be calculated so as not to exceed 30% of the eligible monthly income of the appropriate size household as determined under N.J.A.C. 5:80-26.4, as may be amended and supplemented; provided, however, that the rent shall be subject to the affordability average requirement of N.J.A.C. 5:80-26.4, as may be amended and supplemented. For assisted living units, the combined cost of rent, food, and services may not exceed 80 percent of the eligible monthly income of the appropriate household size as determined pursuant to N.J.A.C. 5:80-26.4.
- (9) The maximum resale price for a restricted ownership unit, if the resale occurs prior to the one-year anniversary of the date on which title to the unit was first transferred to a certified household, is the initial purchase price. 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. 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." The maximum allowable rent increase for the year will be effective as of the same date as the regional median income limits determined pursuant to N.J.A.C. 5:80-26.3. This rent increase may not exceed five percent in any one year and notice thereof must be filed with the administrative agent. Rents for units constructed pursuant to low-income housing tax credit regulations shall be indexed pursuant to the regulations governing low-income housing tax credits.

§ 58-9. Utilities.

- A. Affordable units shall utilize the same type of cooling and heating sources as market units within an inclusionary development.
- B. Tenant-paid utilities included in the utility allowance shall be set forth in the lease and shall be consistent with the utility allowance approved by DCA for its Section 8 program. For units constructed with State funding, an alternate utility allowance approved by DCA or the Agency must be used. For units that receive ENERGYSTAR certification, a utility allowance calculated according to an energy consumption model provided by an energy consultant with an active registration with the New Jersey Board of Public Utilities must be used, subject to approval by the administrative agent.

§ 58-10. Occupancy Standards.

- A. The occupancy standards set forth at N.J.A.C. 5:80-26.5 shall be applicable.
- B. In referring certified households to specific restricted units, the administrative agent shall, to the extent feasible and without causing an undue delay in the occupancy of a unit, strive to:
- (1) Provide at least one occupant for each bedroom, except for age-restricted 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.

§ 58-11. Control Periods for Restricted Ownership Units and Enforcement Mechanisms.

- A. Control periods for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.6,

as may be amended and supplemented and each restricted ownership unit shall remain subject to the requirements of this chapter for a deed-restricted control period. The minimum duration of the control period is:

- (1) Thirty years for any ownership unit created on or after December 20, 2024.
 - (2) Thirty years for any ownership unit receiving an extension of affordability controls on or after December 20, 2024, unless the original term of affordability exceeds 30 years, in which case, the minimum control period for the extension is the number of years, not less than 20 years, that in combination with the original term results in 60 years of affordability.
 - (3) Governed by the grant of substantive certification, judgment of compliance, grant agreement, or other contract for any prior round ownership unit, including all units governed by 95/5 restrictions, sold before December 20, 2024.
 - (4) Governed by the form of UHAC in effect as of December 20, 2024, for any unit sold between December 20, 2004 and December 20, 2024, that is not the subject of a grant of substantive certification, judgment of compliance, grant agreement, or other contract.
- B. The affordability control period for a restricted ownership unit shall commence on the date the initial certified household takes title to the unit, or, if existing affordability controls are being extended, on the effective date of the extension. The date of commencement must be identified in the deed restriction.
- C. For each restricted ownership unit, at initial sale, the administrative agent shall determine a preliminary recapture amount equal to the price differential between the restricted price for the unit, based on the requirements at N.J.A.C. 5:80-26.7, and the nonrestricted, fair market value of the unit based on either an appraisal or the unit's equalized assessed value.
- D. The initial purchaser and each successive purchaser during the control period shall execute and deliver to the administrative agent a recapture note, secured by a recapture lien evidenced by a duly recorded mortgage on the unit, obligating the purchaser (as well as the purchaser's heirs, successors and assigns) to repay a recapture amount at the time of the exit sale. The recapture note and lien must be determined upon exit sale and will be equal to the price differential minus the equity share amount, or another amount determined by an ordinance of the municipal governing body, which must be less than the price differential minus the equity share amount.
- E. The affordability controls set forth in this section and within N.J.A.C. 5:80-26.1 et seq shall remain in effect despite the entry and enforcement of any judgment of foreclosure with respect to restricted ownership units.
- F. A restricted ownership unit shall be required to obtain a continuing certificate of occupancy or a certified statement from the municipal building inspector stating that the unit meets all code standards upon the first transfer of title following the expiration of the deed-restricted control period provided pursuant to N.J.A.C. 5:80-26.6, as may be amended and supplemented.

§ 58-12. Price Restrictions for Restricted Ownership Units, Homeowner's Association Fees and Resale Prices.

- A. Price restrictions for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.7, as may be amended and supplemented, including:
- (1) The initial purchase price 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 foregoing standards.
 - (3) The master deeds and declarations of covenants and restrictions of affordable developments shall provide no distinction between restricted units and market-rate units in the calculation of the condominium or homeowners' association fees and special assessments to be paid by low- and moderate-income purchasers and those paid by market 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.
 - (4) The owners of restricted ownership units may apply to the administrative agent to increase the maximum sales price for the unit to reflect eligible capital improvements completed since they purchased the unit. Eligible capital improvements shall be those that render the unit suitable for a larger household, that is the addition of a bedroom and/or bathroom. See Subsection 23-15(a).

§ 58-12. Buyer Income Eligibility.

- A. Buyer income eligibility for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.8, as may be amended and supplemented. Very-low-income ownership units are reserved for households with a household income less than or equal to thirty (30) percent of regional median income. Low-income ownership units shall be reserved for households with a household income less than or equal to 50% of regional median income and moderate-income ownership units shall be reserved for households with a household income less than or equal to 80% of regional median income.
- B. Notwithstanding the foregoing, however, the administrative agent may, upon approval by the Borough Committee, permit moderate-income purchasers to buy low-income units in housing markets where, as determined by the Division, units are reserved for low-income purchasers, but there is an insufficient number of eligible low-income purchasers to permit prompt occupancy of the units. All such low-income units to be sold to moderate-income households shall retain the required pricing and pricing restrictions for low-income units. 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. Again, all such very-low-income units to be sold to low-income households shall retain the required pricing and pricing restrictions for very-low-income units.
- C. A certified household that purchases a restricted ownership unit must occupy it as the certified household's principal residence and shall not lease the unit; provided, however, that the administrative agent may permit the owner of a restricted ownership unit, upon application and a showing of hardship, to lease the restricted unit to another certified household for a period not to exceed one year.
- D. The administrative agent shall certify a household as eligible for a restricted ownership unit when the household is a low-income household or a moderate-income household, as applicable to the unit, and the estimated monthly housing cost for the particular unit (including principal, interest, taxes, homeowners' and private mortgage insurance and realistic condominium or homeowners' association fees, as applicable) does not exceed 35% of the household's eligible monthly income.

§ 58-13. Limitations on Indebtedness Secured by Ownership Units; Subordinations.

- A. Prior to incurring any indebtedness to be secured by a restricted ownership unit, the owner shall submit to the administrative agent a notice of intent to incur such indebtedness, (for example, a home equity loan or solar loan), in such form and with such documentary support as determined by the administrative agent, for a determination in writing that the proposed indebtedness complies with the provisions of this section, and the administrative agent shall issue such determination prior to the owner incurring such indebtedness.
- B. With the exception of original purchase money mortgages, during a control period, neither an owner nor a lender shall at any time cause or permit the total indebtedness secured by a restricted ownership unit to exceed 95% of the maximum allowable resale price of the unit, as such price is determined by the administrative agent in accordance with N.J.A.C. 5:80-26.7(c).

§ 58-14. Capital Improvements to Ownership Units.

- A. The owners of restricted ownership units may apply to the administrative agent to recalculate the maximum sales price for the unit to reflect eligible capital improvements made since the purchase of the unit. Eligible capital improvements shall be those that render the unit suitable for a larger household, that is, the addition of a bedroom and/or bathroom. In no event shall the maximum sales price of an improved housing unit exceed the limits of affordability for the larger household.
- 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, or flooring) 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. 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, which shall be subject to ten-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 owner 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 resale.

§ 58-15. Control Periods for Restricted Rental Units.

- A. Control periods for restricted rental units shall be in accordance with N.J.A.C. 5:80-26.12, as may be amended and supplemented, and each restricted rental unit shall remain subject to the requirements of this section for a deed-restricted control period. The minimum duration of the control period is set forth below. LIHTC units are not governed by the provisions of this section, but rather by the provisions of the State's Qualified Allocation Plan, N.J.A.C. 5:80-33.1 through 33.40.
- (1) Forty years for any rental unit created on or after December 20, 2024;
 - (2) Thirty years for any rental unit in a 100 percent affordable property that, on or after December 20, 2024, elects to extinguish its existing deed restriction to enter into a new deed restriction and commence refinancing and/or rehabilitation for the purpose of preservation;
 - (3) Thirty years for any other rental unit that, on or after December 20, 2024, extends its affordability controls for a new term of affordability, unless the original term of affordability exceeds 30 years, in which case, the minimum control period for the extension is the number of years, not less than 20, that in combination with the original term results in 60 years of affordability;
 - (4) Governed by the grant of substantive certification, judgment of compliance, grant agreement, or other contract for any prior round rental unit that was issued its certificate of occupancy before December 20, 2024; and
 - (5) Governed by the form of UHAC in effect as of December 20, 2004, for any prior round rental unit that was issued its certificate of occupancy between December 20, 2004 and December 20, 2024, and that is not the subject of a grant of substantive certification, judgment of compliance, grant agreement, or other contract.
- B. The control period for the restricted rental unit(s) in a development commences on the first date that a unit is issued a certificate of occupancy following the execution of the deed restriction or, if affordability controls are being extended, on the effective date of the extension. The control period for the restricted rental unit(s) in a development continues until the end date identified in the deed restriction, or until the minimum duration has elapsed if a specific end date cannot be determined according to the terms of the deed restriction. After the end of the control period, each restricted rental unit in the development remains subject to the affordability controls of this subchapter until:
- (1) The occupant household vacates the unit, at which point affordability controls terminate; or
 - (2) The occupant household's household income is found to exceed 80 percent of the regional median income for the relevant household size, after which affordability controls terminate at the later of either the next scheduled lease renewal or in 60 days.
- C. Deeds of all real property that include restricted rental units created or extended pursuant to the existing rules shall contain deed restriction language that conforms with the requirements of this subchapter and is substantially in the form set forth at N.J.A.C. 5:80-26 Appendix E. The deed restriction must meet the following requirements:
- (1) Is to be read in accordance with the requirements of this subchapter, such that any term that directly conflicts with or circumvents the requirements of this subchapter, regardless of intention, is unenforceable, of no legal effect, and contrary to the public policy of the State;
 - (2) Is governed by the requirements of this subchapter regardless of the language ultimately utilized in the recorded deed restriction document;
 - (3) Is severable, such that invalidation of any provision due to inconsistency with these regulations will not terminate the deed restriction, but, rather, will result in the deed restriction being read to include the provision of these regulations with which the original language was inconsistent;
 - (4) Has priority over all mortgages on the property; and
 - (5) Must be filed with the records office of the county in which the unit is located by the developer or owner of the restricted rental units, who then must, no later than 30 days after the commencement of the control period, provide to the administrative agent:
 - i. A copy of the filed deed restriction; and
 - ii. Certification by the preparer of the deed restriction that the deed restriction conforms with all requirements of this subchapter, and that the deed restriction language at N.J.A.C. 5:80-26 Appendix E, has been included therein.

- D. Failure to record a deed restriction does not, under any circumstances, excuse a property from the requirements of this subchapter. If a development is sold by a developer prior to recording the deed restriction, the buyer is not excused from adhering to the requirements of this subchapter and any recourse shall be to recover from the seller rather than seeking to extinguish any affordability controls of the development. Prior to the issuance of any building permit for the construction/rehabilitation of restricted rental units, the developer/owner and the Borough shall record a preliminary instrument in the form set forth at N.J.A.C. 5:80-26 Appendix P-2, incorporated herein by reference that specifies, at a minimum, the total number of rental units to be constructed/rehabilitated, the number of restricted rental units to be constructed/rehabilitated, the anticipated numbers of restricted rental units that will be very-low-income, low-income, and moderate-income, the address(es) and parcel(s) of the property, and the anticipated timeline for completion, including projected phasing. The preliminary instrument must provide that it will be replaced by the recording of a full deed restriction prior to the issuance of the certificate of occupancy, at which point the preliminary instrument will be extinguished. The full deed restriction must be recorded prior to receiving a certificate of occupancy.
- E. A restricted rental unit shall remain subject to the affordability controls of this section and N.J.A.C. 5:80-26.1 et seq. despite the occurrence of any of the following events:
- (1) Sublease or assignment of the lease of the unit;
 - (2) Sale or other voluntary transfer of the ownership of the unit; or
 - (3) The entry and enforcement of any judgment of foreclosure or grant of a deed in lieu of foreclosure on the property containing the unit; or
 - (4) The end of the control period, until the occupant household vacates the unit or is found to be income-ineligible (found to exceed 80 percent of the regional median income for the relevant household size, after which affordability controls terminate at the later of either the next scheduled lease renewal or in 60 days).

§ 58-16. Rent Restrictions for Rental Units; Leases.

- A. A written lease shall be required for all restricted rental units (except for units in assisted living residences), and tenants shall be responsible for security deposits and the full amount of the rent as stated on the lease. Final lease agreements are the responsibility of the landlord and the prospective tenant and all lease provisions must comply with applicable law. The landlord shall provide the administrative agent with sufficient information for preparation of a unit inventory form for entry into the centralized affordable housing unit inventory system. A copy of each lease entered into with a certified household shall be provided to the administrative agent within 10 business days after the execution of each lease.
- B. 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.
- C. Application fees (including the charge for any credit check) shall not exceed 5% of the monthly rent of the applicable restricted unit and shall be payable to the administrative agent to be applied to the costs of administering the controls applicable to the unit as set forth in this section and N.J.A.C. 5:80-26.1 et seq.

§ 58-17. Tenant Income Eligibility.

- A. Tenant income eligibility shall be in accordance with N.J.A.C. 5:80-26.14, as may be amended and supplemented, and shall be determined as follows:
- (1) Very-low-income rental units shall be reserved for households with a household income less than or equal to 30% of regional median income.
 - (2) Low-income rental units shall be reserved for households with a household income less than or equal to 50% of regional median income.
 - (3) Moderate-income rental units shall be reserved for households with a household income less than or equal to 80% of regional median income.
- B. The administrative agent shall certify a household as eligible for a restricted rental unit when the household is a very-low-income household, a low-income household or a moderate-income household, as applicable to the unit, and the rent proposed for the unit does not exceed 35% (40% for age-restricted units) of the household's eligible monthly income as determined pursuant to N.J.A.C. 5:80-26.17, as may be amended and supplemented; provided, however, that this limit may be exceeded if one or more of the following circumstances exists:
- (1) The household currently pays more than 35% (40% for households eligible for age-restricted units) of its household income for rent, and the proposed rent will reduce its housing costs;

- (2) The household has consistently paid more than 35% (40% for households eligible for age-restricted units) of eligible monthly income for rent in the past and has proven its ability to pay;
 - (3) The household is currently in substandard or overcrowded living conditions;
 - (4) The household documents the existence of assets with which the household proposes to supplement the rent payments; or
 - (5) The household documents reliable anticipated third-party assistance from an outside source, such as a family member, in a form acceptable to the administrative agent and the owner of the unit.
- C. The applicant shall file documentation sufficient to establish the existence of the circumstances in Subsections b1 through b5 above with the administrative agent, who shall counsel the household on budgeting.

§ 58-18. Municipal Housing Liaison.

- A. As required by UHAC, this section creates the position of Municipal Housing Liaison. Subject to the approval of the Division, the Borough shall appoint a municipal employee by resolution of the governing body or letter from the chief executive, and shall identify the municipal housing liaison by name and title on the municipal website. The Municipal Housing Liaison is responsible for the creation, preservation and administration of the affordable housing programs, affordable units, monitoring and reporting, and, where applicable, supervising any contracted administrative agent to ensure that they execute the practices, procedures, and standards set forth in this subchapter and within N.J.A.C. 5:80-26.1 et seq. The Municipal Housing Liaison shall successfully complete the Division's Education Program as described at N.J.A.C. 5:99-9 within the timeframes specified by the Division before assuming the duties of Municipal Housing Liaison.
- B. The Municipal Housing Liaison shall be responsible for oversight and administration of the affordable housing program for Pennington, including the following responsibilities, which may not be contracted out to the administrative agent:
- (1) Serving as Pennington's primary point of contact for all inquiries from the state, affordable housing providers, administrative agents and interested households;
 - (2) Overseeing the monitoring of and reporting on the status of all proposed and completed affordable housing programs and affordable units in Pennington's Fair Share Plan and ensuring compliance with the requirements of the Amended Fair Housing Act;
 - (3) Overseeing and monitoring administrative agents within the Borough's jurisdiction to ensure compliance with the UHAC;
 - (4) Ensuring that an administrative agent is assigned to administer the sales, rentals, re-sales, and re-rentals of all deed-restricted affordable units in the Borough at all times. For units at the end of their deed-restricted control period, an administrative agent shall be available to administer the sale of all properties until such time of the first authorized non-exempt sale after controls on affordability have been in effect on the unit. Verifying, certifying, and providing monitoring and reporting information within the AHMS at such time and in such form as the Division requires. Access to AHMS shall be authorized only by the municipal housing liaison, or their designee, which shall be a municipal employee. Information regarding specific characteristics of municipal affordable housing projects or programs and the resulting unit completions may be entered into AHMS by a contracted entity other than the municipal housing liaison with the written approval of the Borough and pursuant to the oversight of the municipal housing liaison. Monitoring reports shall include the information described at N.J.A.C. 5:99-5.2 and N.J.A.C. 5:99-5.3. Monitoring reports for each calendar year shall be in the form of a certification specifying that all information provided in the AHMS is complete, accurate, and current through the most recent calendar year and shall be accompanied by a year-end bank or other financial institution statement that will be used to reconcile municipal reporting. Municipal monitoring information certifications shall be submitted by the municipal housing liaison, or their designee, which shall be a municipal employee, through the AHMS, by February 15 of each year for trust fund activity through December 31 of the previous year;
 - (5) Listing, on the municipal website, contact information for the administrative agent for each completed project with an affordable component within the Borough;
 - (6) Overseeing the coordination of meetings with affordable housing providers, developers, municipal officials, and administrative agents, as needed; and
 - (7) Where applicable, providing to an administrative agent a copy of the adopted municipal operating manual(s), housing element and fair share plan, and ordinances relating to the creation and administration of the Borough's affordable housing programs and/or affordable units.

- C. The municipal housing liaison may also serve as the administrative agent pursuant to N.J.A.C. 5:99-7 for some or all of the affordable units in the Borough, subject to the submission of qualifications to the Division, successful completion of the Division's Education Program as described at N.J.A.C. 5:99-9, and approval by the Division. These duties of the municipal housing liaison shall be outlined in the municipal ordinance establishing the position of the municipal housing liaison. All applicable tasks not performed by the municipal housing liaison, shall be contracted to an administrative agent pursuant to N.J.A.C. 5:99-7.
- D. The Division shall monitor the performance of any approved municipal housing liaison and may revoke said approval, should the Division find that the municipal housing liaison has failed to administer the Borough's affordable housing programs and/or affordable units in accordance with the rules of the Division pursuant to N.J.A.C. 5:99-5.6.

§ 58-18. Administrative Agent.

- A. The Borough shall designate or approve, for each affordable housing project or program within its fair share plan, an administrative agent to administer the affordable housing program and/or affordable units in accordance with the requirements of the Amended Fair Housing Act, the Program, this chapter, and the UHAC. The administrative agent may be the municipal housing liaison, the RCA administrator, other municipal employee, or a person or entity selected pursuant to the UHAC. Administrative agents shall be approved through the municipal housing liaison (if the prospective administrative agent is an individual other than the current municipal housing liaison), and designation of administrative agents is also subject to approval by the Division.
- B. Qualified administrative agents shall have been certified as required pursuant to N.J.S.A. 52:27D-321, shall have evidence of satisfactory completion of the Division's Education Program as described at N.J.A.C. 5:99-9; and shall have submitted all other required information to the Division.
- C. The administrative agent shall perform the duties and responsibilities of an administrative agent as set forth at N.J.A.C. 5:99-7 and set forth in UHAC, and in accordance with the requirements of the Fair Housing Act. The Division and the municipal housing liaison shall monitor the performance of all approved administrative agents for compliance with this chapter. In the event the administrative agent does not administer the Borough's affordable housing program and/or affordable units in accordance with the certificate of compliance, municipal ordinance, or the Division's rules, the Division may revoke its approval and/or require the Borough to retain a different administrative agent. The Division reserves the right to revoke approval of an administrative agent for other compelling circumstances.
- D. The primary responsibility of the administrative agent is to ensure that the restricted units under administration are sold or rented, as applicable, only to very-low, low-, and moderate-income households in accordance with the provisions of the UHAC. The administrative agent is also responsible for the following:
 - 1. Affirmative marketing:
 - (1) Conducting an outreach process to affirmatively market affordable housing units in accordance with the Affirmative Marketing Plan of the Borough of Pennington and the provisions of N.J.A.C. 5:80-26.16; and
 - (2) Designate an experienced staff person to provide counseling or contracting to provide counseling services to low- and moderate- income applicants on subjects such as budgeting, credit issues, mortgage qualification, rental lease requirements, and landlord/tenant law.
 - 2. Household certification:
 - (1) Soliciting, scheduling, conducting and following up on applications and/or interviews with interested households;
 - (2) Conducting interviews and obtaining sufficient documentation of gross income and assets upon which to base a determination of income eligibility for a very low-, low- or moderate-income household;
 - (3) Providing written notification to each applicant as to the determination of eligibility or noneligibility;
 - (4) 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 Appendixes J and K of N.J.A.C. 5:80-26.1 et seq.;
 - (5) Creating and maintaining a referral list of eligible applicant households living in the housing region and eligible applicant households with members working in the housing region where the units are located; and
 - (6) Employing a random selection process as provided in the Affirmative Marketing Plan of

the Borough of Pennington when referring households for certification to affordable units. It is noted that supportive housing units, including group homes, must also comply with the selection processes of their respective sponsoring programs, where applicable.

- (7) Subject to the approval of the municipal housing liaison, administrative agents may grant a waiver of the income qualification requirement for units where a buyer has not been identified for an extended period of time and where the administrative agent has developed a set of criteria to determine that a waiver is necessary due to a lack of qualified applicants. This waiver shall not change the deed restriction in any way on the unit and the next sale shall be conducted according to the applicable rules.

3. Affordability controls:

- (1) Furnishing to attorneys or closing agents appropriate forms of deed restrictions and mortgages for recording at the time of conveyance of title of each restricted unit;
- (2) 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;
- (3) Subject to prior written approval from the municipal housing liaison, ensuring that the removal of the deed restrictions and cancellation of the mortgages are effectuated and properly filed with the Monmouth County Register of Deeds or County Clerk's office after the termination of the affordability controls for each restricted unit as set forth in N.J.A.C. 5:80-26.1 et seq;
- (4) Communicating with lenders regarding foreclosures; and
- (5) Ensuring the issuance of continuing certificates of occupancy or certifications from municipal building inspectors, pursuant to N.J.A.C. 5:80-26.11.
- (6) Exercising appropriate authority to discharge and release any or all instruments, as set forth in the UHAC appendices establishing affordability controls;

4. Resales and re-rentals:

- (1) Instituting and maintaining an effective means of communicating information between owners of affordable units and the administrative agent regarding the availability of their restricted units for resale or re-rental; and
- (2) Instituting, maintaining, and documenting an effective means of communicating information to very low-, low- and moderate-income households regarding the availability of restricted units for resale or re-rental, inclusive of listings on the New Jersey Housing Resource Center pursuant to N.J.S.A. 52:27D-321.6;.
- (3) Sending annual mailings to owners as prescribed for in the UHAC at N.J.A.C. 5:80-26.19;

5. Processing requests from unit owners:

- (1) Reviewing and approving requests for determination from owners of restricted units who wish to take out home equity loans or refinance during the term of their ownership that the amount of indebtedness to be incurred will not violate the terms of this section;
- (2) Reviewing and approving requests to increase the maximum 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 installed subsequent to the initial sale of the unit;
- (3) Notifying the Borough of an owner's intent to sell a restricted 95/5 unit, as defined in the UHAC at N.J.A.C. 5:80-26.2 ; and
- (4) Making determinations on requests by owners of restricted units for hardship waivers.

6. Enforcement:

- (1) Securing annually from the Borough a list of all affordable housing units for which tax bills are mailed to absentee owners, and notifying all such owners that they must either move back to their unit or sell it;
- (2) 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;
- (3) 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.
- (4) Establishing a program for diverting unlawful rent payments to the Borough's

Affordable Housing Trust Fund; and

- (5) Creating and publishing a written operating manual as set forth at N.J.A.C. 5:99-7.2 in plain English and in such other languages as may be appropriate to serving the respective client base for each affordable housing program, to be approved by the municipal housing liaison. The operating manual, administered by the administrative agent and to be approved by the Borough Council, shall set forth procedures for administering the affordability controls, including procedures for long-term control of restricted units; for enforcing the covenants set forth in the UHAC appendices, consistent with the provisions at N.J.A.C. 5:80-26.19; and for releasing restricted units promptly at the conclusion of applicable control periods. The operating manual shall have a separate and distinct chapter or section setting forth the process for identifying applicant households seeking certification to restricted units, for reviewing applicant household eligibility, and for certifying applicant households in accordance with the household certification and referral requirements set forth at N.J.A.C. 5:80-26.17.

7. Additional responsibilities:

- (1) The administrative agent shall have the authority to take all actions necessary and appropriate, as permitted by law, to carry out its responsibilities as set forth in this chapter, N.J.A.C. 5:99-7, and N.J.A.C. 5:80-26.1 et seq.
- (2) The administrative agent shall prepare annual reports for submission to the Municipal Housing Liaison and the Division by February 15 of each calendar year, including a detailed description of completed units and any other information necessary for the Borough to produce its status report as required pursuant to N.J.S.A. 52:27D-329.4.
- (3) The administrative agent shall attend continuing education sessions on affordability controls, compliance monitoring, and affirmative marketing at least annually and more often as needed.

§ 58-19. Affirmative Marketing Requirements.

- A. The Borough of Pennington shall adopt by resolution an Affirmative Marketing Plan, subject to review by the Division, that is compliant with N.J.A.C. 5:80-26.16, as may be amended and supplemented.
- B. The Affirmative Marketing process 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, English-speaking ability, ancestry, marital or familial status, gender, affectional or sexual orientation, disability, age (except for “housing for older persons” as defined at N.J.S.A. 10:5.1 et seq. and age-restricted units as permitted by 42 U.S.C. § 3601 et seq.), number of children, source of lawful income, or any other characteristic described in the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 through 5.50, to housing units that are being marketed by a developer, sponsor or owner of affordable housing. Unless stated otherwise, supportive housing units must comply with the affirmative marketing requirements of their respective sponsoring programs, where applicable. The Affirmative Marketing process is intended to target those potentially eligible persons who are least likely to apply for affordable units in that region. In addition, as a result of the Borough’s 2026 mediation agreement with FSHC, the Affirmative Marketing Plan shall require the notification to Fair Share Housing Center; New Jersey State Conference of the NAACP; Latino Action Network; STEPS, Ocean, Inc.; the Greater Red Bank, Asbury Park/Neptune, Bayshore, Greater Freehold, Greater Long Branch, and Trenton branches of the NAACP; and the Supportive Housing Association. It is a continuing program that directs marketing activities toward Housing Region 4 and is required to be followed throughout the period of restriction.
- C. The Affirmative Marketing Plan shall provide a regional preference for all households that live and/ or work in Housing Region 4, comprised of Mercer, Monmouth, and Ocean Counties.
- D. The Borough has the ultimate responsibility for adopting the Affirmative Marketing Plan and for the proper administration of the Affirmative Marketing Program, including initial sales and rentals and resales and re-rentals. The administrative agent designated by the Borough of Pennington shall implement the Affirmative Marketing Plan to assure the affirmative marketing of all affordable units, including accepting applications and maintaining a list of applicants for each affordable development. The administrative agent shall document and report the affirmative marketing plan for the Borough and the affirmative marketing activities undertaken for each of the units within their purview to the municipal housing liaison, who shall ensure that developers and administrative agents are marketing units in accordance with the provisions in this section. The marketing of restricted units must be consistent with the affirmative marketing plan adopted by the Borough.
- E. In implementing the Affirmative Marketing Plan, the administrative agent shall designate an experienced staff person to 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. Implementation of the affirmative marketing plan by the administrative agent should also include all other required provisions set forth at N.J.A.C.

5:80-26.16(f).

- F. The Affirmative Marketing Plan shall contain all the components (i.e. housing project information, eligibility/selection criteria, strategies and mediums of advertising, timelines) required as set forth within N.J.A.C. 5:80-26.16, subsections (d) and (e) in particular. In implementing the Affirmative Marketing Plan, the administrative agent shall consider the use of language translations where appropriate.
- G. The affirmative marketing process for available affordable units shall begin at least four months (120 days) prior to the expected date of occupancy and may begin before construction commences. All affirmative marketing advertising and outreach activities utilized must be employed at the start of the marketing program.
- H. Applications for affordable housing shall be available in several locations, including, at a minimum, the County Administration Building and the County Library for each county within the housing region; the municipal administration building and the municipal library in the Borough; and the developer's office. The Borough shall post the application links and/or notices of affordable housing either directly on the home page of the Borough's official website or on a landing page directly, clearly, and conspicuously linked to from the home page of the Borough's official website. Preapplications shall be emailed or mailed to prospective applicants upon request.
- I. The costs of advertising and affirmative marketing of the affordable units shall be the responsibility of the developer, sponsor or owner, which shall be a condition of approval for any such affordable housing application before the Borough's Land Use Board.

§ 58-20. Appeals.

- A. Appeals from all decisions of an administrative agent appointed pursuant to this section and N.J.A.C. 5:80-26.1 et seq. shall 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.

Introduced: _____
Advertised: _____
Public Hearing: _____
Adopted: _____
Published: _____

ATTEST:

APPROVED:

Elizabeth Sterling, Borough Clerk

James Davy, Mayor

**BOROUGH OF PENNINGTON
ORDINANCE 2026-12**

**AN ORDINANCE AMENDING CHAPTER 58 OF THE BOROUGH CODE, ENTITLED
“AFFORDABLE HOUSING,” BY SUBSTITUTING A NEW CHAPTER OF THE SAME TITLE**

RECORD OF COUNCIL VOTE ON INTRODUCTION

COUNCILMAN	AYE	NAY	N.V.	A.B.	COUNCILMAN	AYE	NAY	N.V	A.B.
Angarone	X				Rubenstein	M			
Chandler	X				Stern	S			
Kassler-Taub	X				Valenza	X			

RECORD OF COUNCIL VOTE ON ADOPTION

COUNCILMAN	AYE	NAY	N.V.	A.B.	COUNCILMAN	AYE	NAY	N.V	A.B.
Angarone					Rubenstein				
Chandler					Stern				
Kassler-Taub					Valenza				