

Memorandum

To: Borough Council of the Borough of Mountain Lakes

From: Elizabeth Leheny, AICP, PP

Date: January 22, 2026

Re: **Current Status of Mountain Lakes in the Fourth Round of Affordable Housing and Required Next Steps**

INTRODUCTION

The following memo provides a summary to date of Mountain Lakes' participation in the Fourth Round of affordable housing, as well as required next steps to ensure the Borough meets its Fourth Round affordable housing obligations and remains immune from Builders' Remedy lawsuits.¹

AMENDED FAIR HOUSING ACT

In March 2024, the State adopted an Amended Fair Housing Act ("Amended FHA" the "Act") which outlined a statutory affordable housing process with strict deadlines for State agency and municipal compliance.

Pursuant to the Amended FHA, in October 2024, the Department of Community Affairs ("DCA") issued present and prospective affordable housing obligations for each municipality in New Jersey not qualifying as an Urban Aid Municipality. DCA assigned Mountain Lakes a Present Need (Rehabilitation) obligation of 0 units and a Prospective Need (New Construction) obligation of 267 units.

The Amended FHA states that the DCA numbers are non-binding and permits municipalities to propose a different affordable housing obligation. The Act required municipalities to adopt a binding resolution no later than January 31, 2025, as to its obligations. The Borough adopted a resolution by the January 31, 2025 deadline accepting the 0 unit Present Need obligation but countering that the Prospective Need obligation was 146 units.

Fair Share Housing Center ("FSHC") objected to the Borough's calculation of its obligation by the deadline stipulated in the Act of February 28, 2025. Through the month of March 2025, the Borough negotiated with FSHC through the Affordable Housing Dispute Resolution Program (the "Program") before finally settling on a

¹ Builders' Remedy lawsuits allow developers to come to a municipality that has not met its affordable housing obligations, and, essentially, bypass local zoning to develop at densities, setbacks, and heights inconsistent with Borough's zoning in order to provide affordable housing units.

Present Need obligation of 0 units and a Prospective Need obligation of 190 units. The agreed upon obligation numbers were supported by the Program and subsequently the Mount Laurel vicinage judge.

HOUSING ELEMENT AND FAIR SHARE PLAN

The Mountain Lakes Planning Board adopted a Housing Element and Fair Share Plan ("Fair Share Plan" the "Plan") by the June 30, 2025 deadline stipulated in the Amended FHA. In the Plan, the Borough sought a vacant land adjustment ("VLA") indicating that Mountain Lakes did not have enough vacant and/or developable parcels to realistically provide 190 units of affordable housing. A VLA analysis demonstrates a municipality's realistic development potential ("RDP"), which is a number indicating how much of the Prospective Need obligation it can realistically accommodate given the amount of developable land in the municipality.

Due to the fact that the Borough was a Highlands Conforming municipality, the VLA was able to use the Highlands' environmental constraints to indicate that certain parcels in Mountain Lakes were not developable due to wetlands, steep slopes, buffer areas, etc. As a result, the Highlands supported VLA analysis indicated that the Borough's RDP was 0 units.

The difference between the overall Prospective Need Obligation (i.e., 190 units) and the RDP calculated in the VLA (i.e., 0) is called the "unmet need." In other words, a municipality's unmet need is the amount of its obligation that a municipality cannot realistically develop during the ten year compliance period. For Mountain Lakes, the unmet need was 190 units (i.e., $190 - 0 = 190$).

The Amended FHA, requires any municipality that is seeking a vacant land adjustment, to identify parcels likely to redevelop during the Fourth Round to address at least 25 percent of its unmet need. For Mountain Lakes, 25 percent of its unmet need (i.e., 190) is 48 units.

During the preparation of the Housing Element and Fair Share Plan, the Borough was approached by the owner of Block 118.04/Lot 1 (i.e., 49 Bloomfield) to redevelop the existing office building on the site for a townhouse development at 14 dwelling units per acre.

The Borough was obligated to consider the inclusion of this property in its affordable housing planning, in part, because Mountain Lakes was a VLA town. As indicated, a VLA is a demonstration that the municipality does not have available developable land to meet its Prospective Need obligation. However, if a developer comes forward with a development opportunity not considered in the VLA, as was the case at 49 Bloomfield², then, per case law, the proposed development is considered a "changed circumstance" (i.e., the circumstances reported in the VLA have now

² 49 Bloomfield was not part of the VLA because it was a fully developed site.

changed as a parcel not previously included has become available). The case law requires that the municipality must increase its RDP by the amount of development proposed on the “changed circumstances” site and indicate how it will address the changed circumstance.

In other words, if a prospective development would create 15 affordable housing units then the RDP would increase by 15 and the Borough obligation to provide affordable housing units would increase by 15.

Additionally, the Borough needed to consider this site and include the prospective development in the Fair Share Plan to avoid the risk of the developer formally objecting to the Fair Share Plan. This type of objection often results in the municipality being forced by a court to allow the development at densities higher than might be typically acceptable to the municipality.

The Borough agreed in the Housing Element and Fair Share Plan to place 49 Bloomfield in a zoning overlay which would permit a density (i.e., 14 dwelling units per acre) consistent with other affordable housing overlay zones in the Borough which were created as part of the Borough’s Third Round Settlement Agreement with FSHC. At that density, the prospective development can provide 15 affordable housing units. The draft ordinance for 49 Bloomfield will permit a development that can realistically achieve the number of affordable units which will satisfy Fair Share Housing while minimizing the impact on surrounding properties.

FOURTH ROUND SETTLEMENT AGREEMENT

FSHC filed an objection to the Mountain Lakes’ Plan by the August 31, 2025 deadline provided in the Amended FHA. FSHC’s objection indicated that the VLA was too low and that additional overlay zones were needed to provide a realistic opportunity for the development of affordable units.

Over the course of the Fall, the Borough negotiated with FSHC in front of the Program judge and came to a Settlement Agreement in December 2025. FSHC agreed that the Borough’s Prospective Need is 0 units and that the Borough did not have to create any new overlay zones (aside from 49 Bloomfield Avenue). Correspondingly, the Borough agreed to undertake the following compliance mechanisms:

- Adopt an overlay zone for 49 Bloomfield Avenue;
- Increase the maximum permitted density in the existing overlay zones by 2 units; and
- Update its existing Affordable Housing Ordinance, Development Fee Ordinance, and other documents (i.e., affirmative marketing plan and Spending Plan) to be in accordance with the new Uniform Housing Affordability Controls (i.e., NJAC 5:80-26.1) and affordable housing regulations (i.e., NJAC 5:99) which were adopted on December 15, 2025.



DEADLINES

Per the Amended FHA, the Borough must adopt the above compliance items by **March 15, 2026**. If the Borough meets this statutory deadline, it can obtain a judgment of compliance and repose which provides the Borough immunity from Builders' Remedy lawsuits for the remainder of the Fourth Round (i.e., until July 1, 2035). If the Borough does not meet this statutory deadline, the court can take away its "immunity" from Builders Remedy lawsuits.

As such, it is imperative for Mountain Lakes to complete its required compliance mechanisms outlined in the Settlement Agreement by March 15, 2026.

§245-84 Office and Light Industrial OL-2/Multi-Family Affordable Housing Overlay 2

A. Permitted principal, accessory and conditional uses.

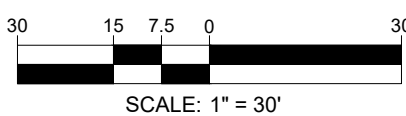
- (1) As set forth under §245-79.
- (2) Multifamily inclusionary development consisting of townhouses and/or stacked townhouses as permitted principal uses with a required set aside for low- and moderate-income households of 20%. Low- and moderate-income units shall comply with the provision of the Borough's Affordable Housing Ordinance. A stacked townhouse is defined as a multi-story residence with two or more units arranged vertically each above the other. No more than two market rate units and no more than three affordable units shall be vertically stacked. Affordable units shall not be permitted within a separate building or buildings but instead shall be interspersed in buildings with market rate units, although buildings with exclusively market rate units shall be permitted. Permitted accessory uses shall include uses which are customarily incidental to the permitted principal use, including but not limited to, indoor and outdoor recreational facilities and related amenities for the exclusive use of residents and guests.

B. Bulk and development standards.

- (1) For permitted uses other than multi-family inclusionary development, as set forth in this chapter for the OL-2 Zone.
- (2) For multifamily inclusionary development, as set forth below:
 - (a) Minimum lot size: 5 acres.
 - (b) Minimum lot frontage: 300 feet.
 - (c) Maximum density: 14 units per gross acre.
 - (d) Maximum building height: three stories, 43.5 feet. Measurements shall be from the first floor elevation at the front door entrance of each townhouse or stacked townhouse unit to the highest point of a sloped roof. Development shall be exempt from measuring to existing (original) grades as defined in **§245-3**, under definitions for "building height (residential zones)", "grade plane" and "story above grade".
 - (e) Minimum setbacks
 - [1] to any RC-3 zone boundary: 50 feet, except that along the common property line shared with Block 118.03, Lot 9 beginning at the northeast corner of said common property line and proceeding in a southerly direction for a distance of 200 feet the minimum setback shall be 75 feet.
 - [2] to the Bloomfield Avenue property line as it exists on the date of adoption of this ordinance: 70 feet.

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- [3] to all other property boundaries: 25 feet, exclusive of patios and decks, however in no event shall the setback be less than 20 feet.
- (f) Maximum building coverage: 25%.
- (g) Maximum improved coverage: 50%
- (h) There shall be no more than twelve (12) units in any building, except that where a building does not include affordable units the maximum number of units shall be ten (10).
- (i) The minimum distance between buildings shall be as follows:
 - [1] Windowless wall to windowless wall: 25 feet.
 - [2] Window wall to windowless wall: 30 feet.
 - [3] Window wall to window wall:
 - [a] Front to front: 70 feet for front-loaded units and 50 feet for rear-loaded units.
 - [b] Rear to rear: 70 feet for rear-loaded units and 50 feet for front-loaded units.
 - [c] End to end: 30 feet.
- (j) Development shall maintain a minimum 20-foot landscaped buffer to the RC-3 zone along the easterly lot line and a minimum 15-foot landscaped buffer along the northerly lot line. Along the southernmost common lot boundary with the RC-3 zone, no such buffer shall be required. Buffers shall consist of either existing vegetation or new plantings, or where appropriate, a combination of existing vegetation and new plantings. A landscape plan encompassing the entire property shall be submitted as part of the development application and shall be subject to Planning Board review and approval.
- (k) No parking shall be located within 25 feet of the RC-3 zone boundary, except that along the southernmost common lot boundary the minimum parking setback shall be 10 feet.
- (l) Parking shall be provided in accordance with New Jersey Residential Site Improvement Standards (RSIS).



Rev. 1/2020

- THIS CONCEPT WAS PREPAREDENTIRELY AND SOLELY BASED UPON INFORMATION IDENTIFIED IN THE PLAN REFERENCES. THE CONCEPT DESCRIBED HEREIN IDENTIFIES A DESIGN CONCEPT RESULTING SOLELY FROM LAYOUT PREFERENCES AND GUIDANCE PROVIDED BY THE OWNER. THE CONCEPT IS NOT A DESIGN, AND THE CONCEPT IS NOT A DESIGN OR ENGINEERING. NO APPLICABLE APPROVALS IS NOT WARRANTED, AND CAN ONLY BE ASSESSED AFTER FURTHER EXAMINATION AND VERIFICATION OF THE CONCEPT. THE CONCEPT IS NOT A DESIGN, AND THE CONCEPT IS NOT A DESIGN OR ENGINEERING.
3. THIS CONCEPTUAL PLAN IS PREPARED FOR CONCEPTUAL PRESENTATION PURPOSES, ONLY, AND IS NOT INTENDED TO AND SHOULD NOT BE UTILIZED AS A ZONING OR CONSTRUCTION DOCUMENT.
4. THIS CONCEPT IS BASED UPON INFORMATION THAT WAS PROVIDED TO THE ENGINEER, AT THE TIME OF THE ENGINEER'S PREPARATION OF THIS CONCEPT PLAN, BY THE OWNER AND OTHERS NOT UNDER ENGINEER'S CONTROL, AND IS NOT A DESIGN. THE ENGINEER HAS CONDUCTED A VISUAL VERIFICATION OF THE INFORMATION PROVIDED TO THE ENGINEER, AND IT IS STRONGLY RECOMMENDED THAT A ZONING CONFERENCE ANALYSIS BE PERFORMED TO DETERMINE AND EVALUATE IF THERE ARE ANY ZONING CONCERNS, CONCURRENCES, CONCERNS OR RESTRICTIONS THAT MAY OR COULD IMPACT THE FEASIBILITY OF THE PROJECT, AS THE OWNER HAS DESCRIBED IT.

PROPOSED UNIT AND PARKING CALCULATION						
	NUMBER OF UNITS	TOTAL NUMBER OF BEDROOMS	RSIS REQUIRED PARKING	TOTAL REQUIRED PARKING SPACES	TOTAL PARKING SPACES PER UNIT	TOTAL SURFACE PARKING
TOWNHOME UNITS	60 UNITS	30 - 2 BEDROOM UNITS 30 - 3 BEDROOM UNITS	2.3 SPACES PER 2 BEDROOM 2.4 SPACES PER 3 BEDROOM	69 SPACES 72 SPACES 141 TOTAL SPACES (INCLUDES GUEST PARKING)	105 SPACES PROVIDED (1 GARAGE & 1 DRIVEWAY PER UNIT)	36 SURFACE SPACES
AFFORDABLE UNITS	15 UNITS (20% AFFORDABLE)	5 - 1 BEDROOM UNITS 7 - 2 BEDROOM UNITS 3 - 3 BED ROOM UNITS	1.8 SPACES PER 1 BEDROOM AH TOWNHOME UNIT 2.3 SPACES PER 2 BEDROOM AH TOWNHOME UNIT 2.4 SPACES PER 3 BEDROOM AH TOWNHOME UNIT	9 SPACES 16.1 SPACES 7.2 SPACES 32.3 SPACES (INCLUDES GUEST PARKING)	0 GARAGE AND 3 DRIVEWAYS SPACES PROVIDED	33 SURFACE SPACES PROVIDED
TOTAL	75 UNITS	N/A	N/A	173.3 SPACES	105 GARAGE AND DRIVEWAY SPACES @9 SURFACE SPACES	

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SITE CIVIL AND CONSULTING ENGINEERING

LAND SURVEYING

PROJECT MANAGEMENT

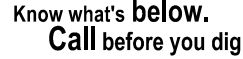
LANDSCAPE ARCHITECTURE

SUSTAINABLE DESIGN

PERMITTING SERVICES

TRANSPORTATION SERVICES

REV	DATE	COMMENT	DRAWN CHECKED
1	09/17/2025	REV. PER TOWN & CLIENT COMMENTS	RJH BAE



NEW JERSEY
YOU MUST CALL 811 BEFORE ANY EXCAVATION
WHETHER IT'S ON PRIVATE OR PUBLIC LAND.
1-800-272-1000
www.nj1-call.org

THIS DRAWING IS NOT INTENDED AS A CONSTRUCTION DOCUMENT


PROJECT No.: NJC240093.00-1
DRAWN BY: R.J.
CHECKED BY: SB/B/BS
DATE: 06/26/2024
CAD I.D.: P-CPTB-PRO

- FOR -

**VISION REAL ESTATE
PARTNERS, LLC**

**PROPOSED
RESIDENTIAL DEVELOPMENT**

**49 BLOOMFIELD AVE
MOUNTAIN LAKES
MORRIS COUNTY, NEW JERSEY**

BOHLER 
BOHLER, LLC
30 INDEPENDENCE BLVD., SUITE 200
WARREN, NJ 07059
Phone: (908) 668-8300
Fax: (908) 754-4401
www.BohlerEngineering.com
NJ CERT. OF AUTHORIZATION NO. 24GA028400090 & M400012

B.A. BOHLER

PROFESSIONAL ENGINEER:
NEW JERSEY LICENSE No. 47421
NEW YORK LICENSE No. 088514-1
PENNSYLVANIA LICENSE No. 077368
CONNECTICUT LICENSE No. 26039
DELAWARE LICENSE No. 17111
OHIO LICENSE No. 78297

SHEET TITLE:

**STACKED
TOWNHOME
CONCEPT
PLAN**

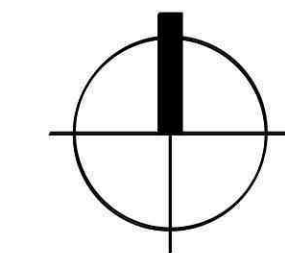
SHEET NUMBER:

C-01

REVISION 1 - 09/17/2025

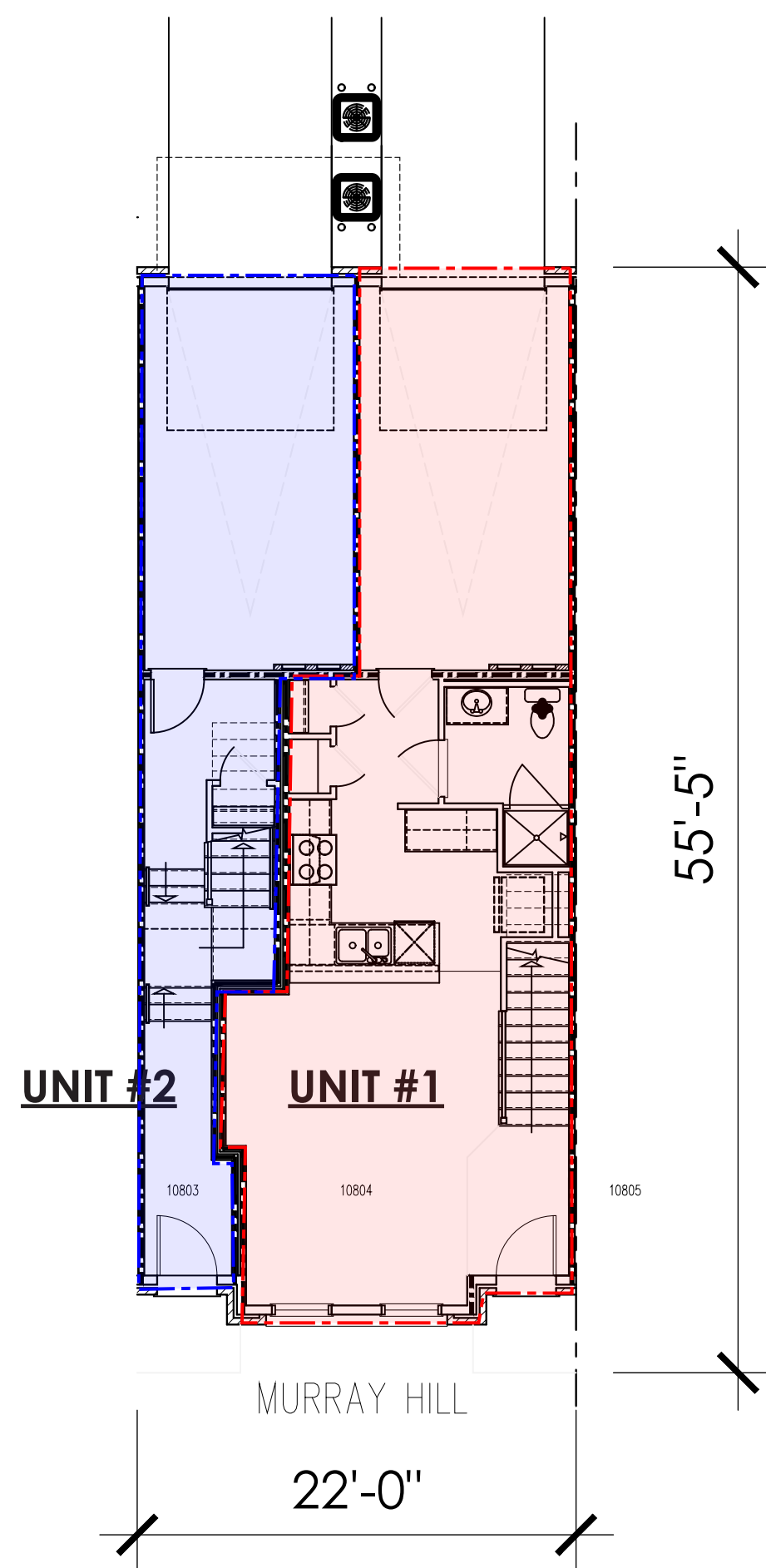


BUILDING SECTION - MARKET RATE TYPICAL STACKED TOWNHOME UNIT

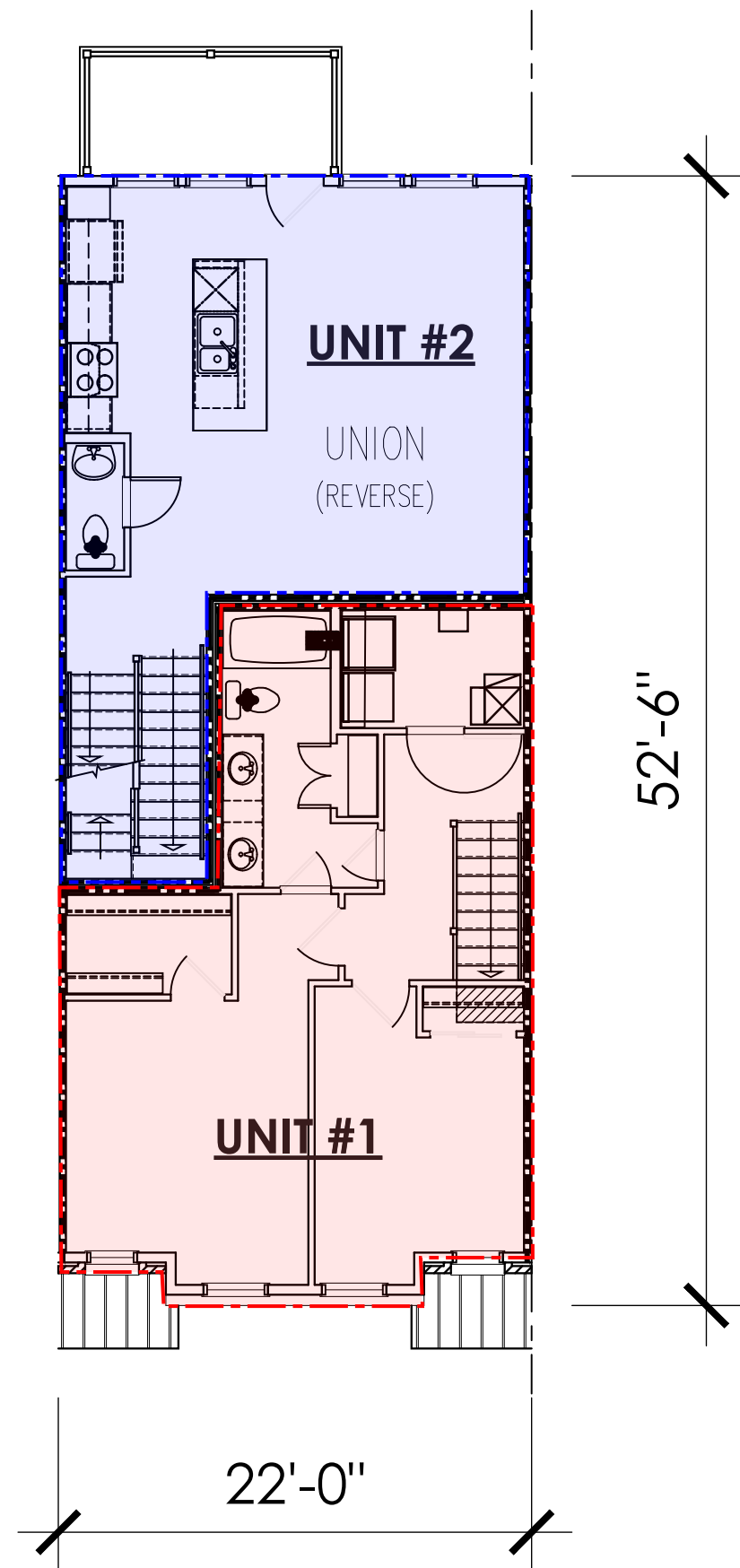


SCALE: 1/8"=1'-0"
CONCEPT SECTION
 DATE: 11/14/2025

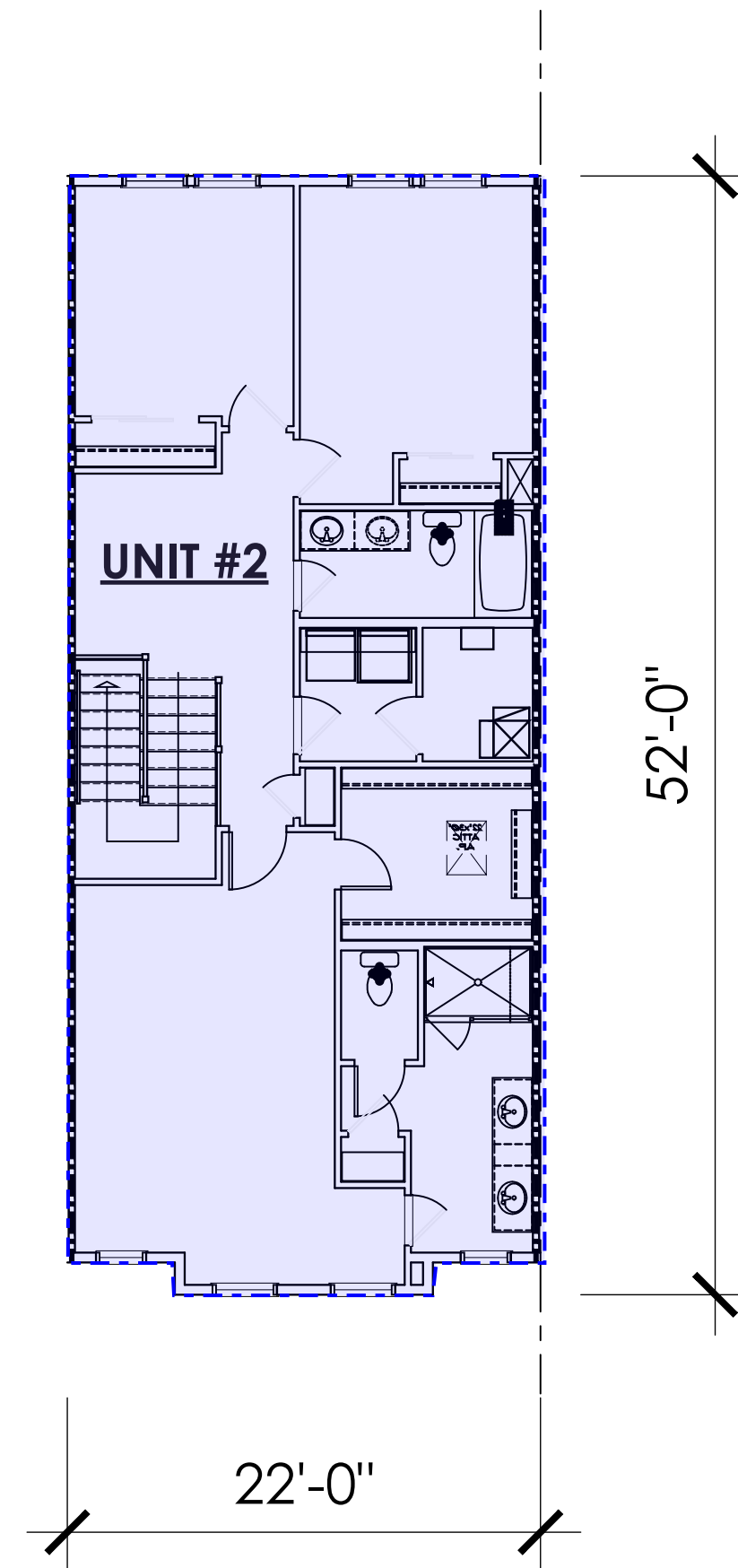
MARKET RATE 22'-0" INTERIOR STACKED TOWNHOME LAYOUT - TWO UNITS



01 - GROUND FLOOR PLAN
SCALE: 1/8" = 1'-0"
0 4' 8' 16'



02 - SECOND FLOOR PLAN
SCALE: 1/8" = 1'-0"
0 4' 8' 16'

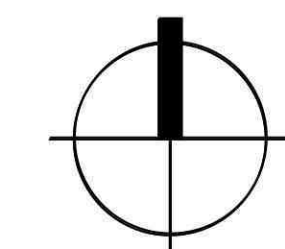


03 - THIRD FLOOR PLAN
SCALE: 1/8" = 1'-0"
0 4' 8' 16'

 **CONCEPT SITE PLAN**
DATE: 11/14/2025

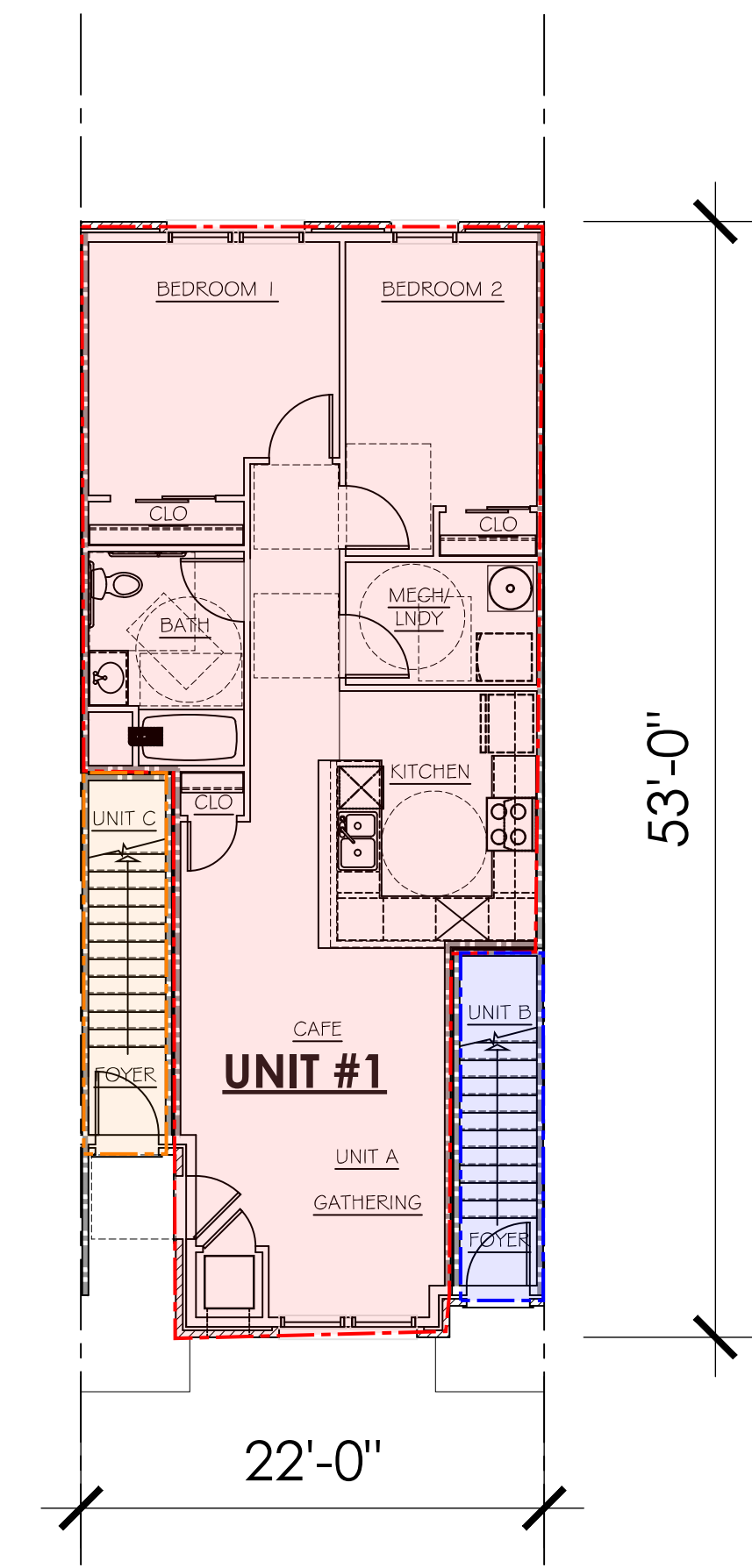


BUILDING SECTION - AFFORDABLE INTERIOR STACKED TOWNHOME UNIT

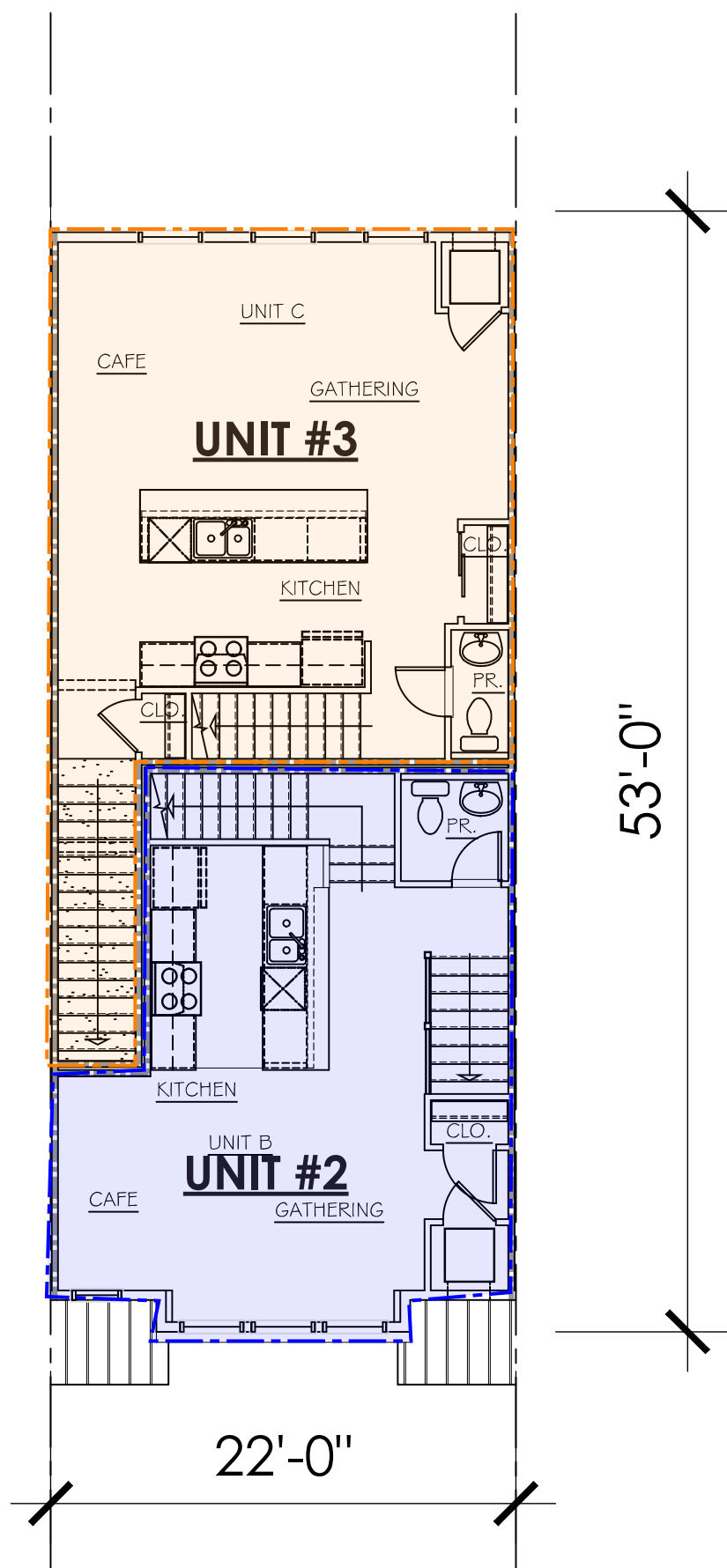


SCALE: 1/8"=1'-0"
CONCEPT SECTION
 DATE: 11/14/2025

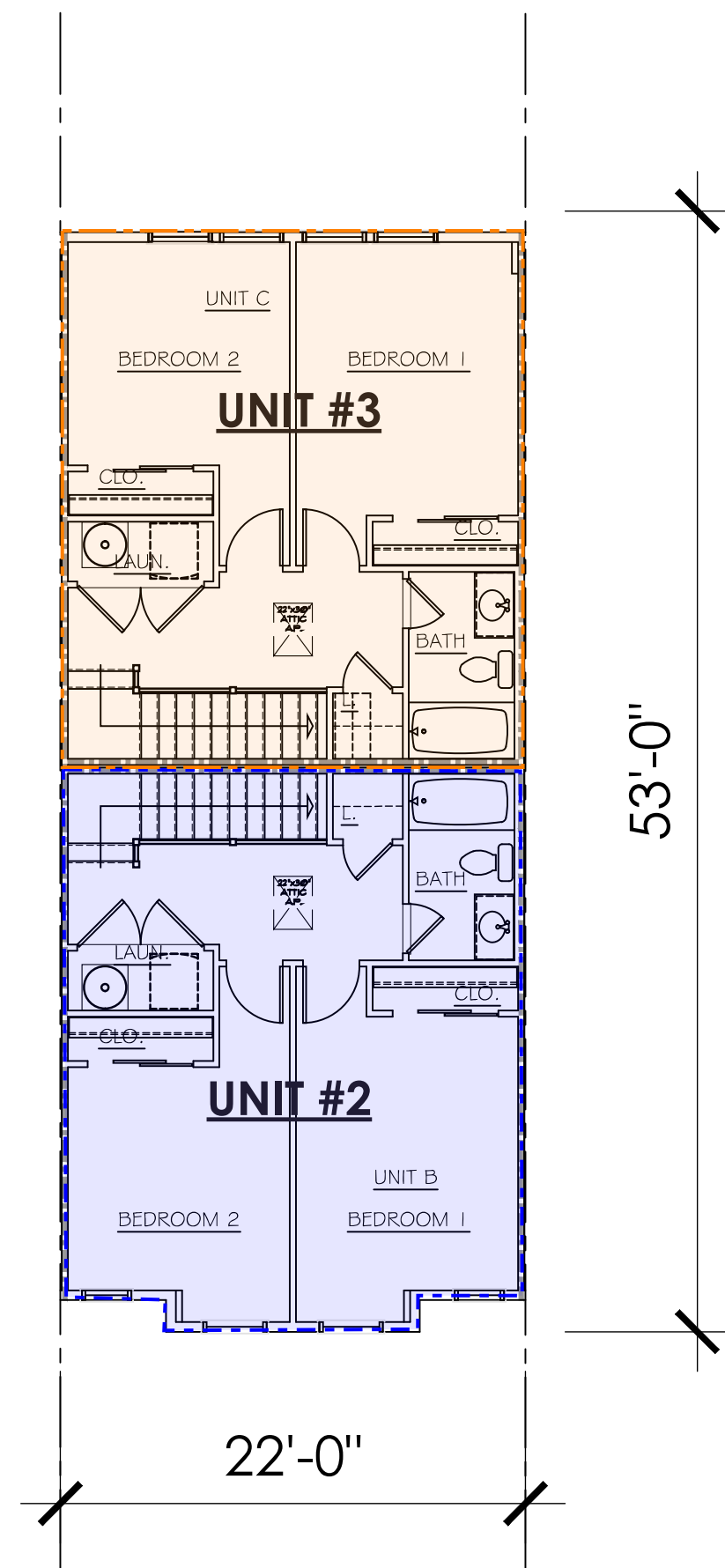
AFFORDABLE 22'-0" INTERIOR STACKED TOWNHOME LAYOUT - THREE UNITS



01 - GROUND FLOOR PLAN
SCALE: 1/8" = 1'-0"
0 4' 8' 16'



02 - SECOND FLOOR PLAN
SCALE: 1/8" = 1'-0"
0 4' 8' 16'



03 - THIRD FLOOR PLAN
SCALE: 1/8" = 1'-0"
0 4' 8' 16'

CONCEPT SITE PLAN
DATE: 11/14/2025



BUILDING HEIGHT DIAGRAM

DATE: 11/14/2025

ORDINANCE ##-26
AMENDING CHAPTERS 245-82 AND 245-83
OF THE CODE OF THE BOROUGH OF MOUNTAIN LAKES, NEW JERSEY

§ 245-82. Office and Light Industrial Zone OL-1/Multifamily Affordable Housing Overlay.

A. Permitted principal, accessory and conditional uses.

(1) As set forth under § 245-79.

(2) Multifamily inclusionary development consisting of townhouses and/or multifamily dwelling units as permitted principal uses with a required set-aside for low- and moderate-income households of 20%. Low- and moderate-income units shall comply with the provisions of Article XVII of this chapter (i.e., Affordable Housing Ordinance). Permitted accessory uses shall include uses which are customarily incidental to the permitted principal use, including, but not limited to, indoor and outdoor recreational facilities and related amenities for the exclusive use of residents and guests. B. Bulk and development standards.

(1) For permitted uses other than multifamily inclusionary development, as set forth in this chapter for the OL-1 Zone.

(2) For multifamily inclusionary development, as set forth below.

(a) Minimum lot size: three acres.

(b) Minimum lot frontage: 250 feet.

(c) Maximum density: 16 units per gross acre.

(d) Maximum building height: three stories/40 feet.

(e) Minimum front yard setback: 75 feet.

(f) Minimum side yard setback: 50 feet.

(g) Minimum rear yard setback: 75 feet.

(h) Maximum building coverage: 25%.

(i) Maximum improved coverage: 50%.

(j) There shall be no more than eight townhouse units in any building.

(k) There shall be no more than 16 units in any two-story multifamily building and no more than 24 units in any three-story building.

(l) The minimum distance between buildings shall be as follows:

[1] Windowless wall to windowless wall: 25 feet.

[2] Window wall to windowless wall: 30 feet.

[3] Window wall to window wall:

[a] Front to front: 75 feet.

[b] Rear to rear: 50 feet.

[c] End to end: 35 feet.

- (m) Development shall maintain a minimum fifty-foot landscaped buffer to any residential zone boundary line which shall consist of either existing vegetation or new plantings, or where appropriate, a combination of existing vegetation and new plantings.
- (n) No parking area shall be located within 50 feet of a front lot line or within 25 feet of any other lot line.
- (o) Parking shall be provided in accordance with New Jersey Residential Site Improvement Standards (RSIS).

§ 245-83. Office and Light Industrial OL-2/Multifamily Affordable Housing Overlay. A.

Permitted principal, accessory and conditional uses.

(1) As set forth under § 245-79.

(2) Multifamily inclusionary development consisting of townhouses and/or multifamily dwelling units as permitted principal uses with a required set-aside for low- and moderate-income households of 20%. Low- and moderate-income units shall comply with the provisions of Article XVII of this chapter (i.e., Affordable Housing Ordinance). Permitted accessory uses shall include uses which are customarily incidental to the permitted principal use, including, but not limited to, indoor and outdoor recreational facilities and related amenities for the exclusive use of residents and guests. B. Bulk and development standards.

- (1) For permitted uses other than multifamily inclusionary development, as set forth this chapter for the OL-2 Zone.
- (2) For multifamily inclusionary development, as set forth below.
 - (a) Minimum lot size: three acres.
 - (b) Minimum lot frontage: 250 feet.
 - (c) Maximum density: 16 units per gross acre.
 - (d) Maximum building height: three stories/40 feet.
 - (e) Minimum front yard setback: 75 feet.
 - (f) Minimum side yard setback: 50 feet.
 - (g) Minimum rear yard setback: 75 feet.
 - (h) Maximum building coverage: 25%.

- (i) Maximum improved coverage: 50%.
- (j) There shall be no more than eight townhouse units in any building.
- (k) There shall be no more than 16 units in any two-story multifamily building and no more than 24 units in any three-story building.
- (l) The minimum distance between buildings shall be as follows:
 - [1] Windowless wall to windowless wall: 25 feet.
 - [2] Window wall to windowless wall: 30 feet.
 - [3] Window wall to window wall:
 - [a] Front to front: 75 feet.
 - [b] Rear to rear: 50 feet.
 - [c] End to end: 35 feet.
- (m) Development shall maintain a minimum fifty-foot landscaped buffer to any residential zone boundary line which shall consist of either existing vegetation or new plantings, or where appropriate, a combination of existing vegetation and new plantings.
- (n) No parking area shall be located within 50 feet of a front lot line or within 25 feet of any other lot line.
- (o) Parking shall be provided in accordance with New Jersey Residential Site Improvement Standards (RSIS).

ORDINANCE #-26
AMENDING CHAPTER 245, ARTICLE XVII
AFFORDABLE HOUSING

OF THE CODE OF THE BOROUGH OF MOUNTAIN LAKES, NEW JERSEY

§ 245-123. Purpose.

- A. This article sets forth regulations regarding the low- and moderate-income housing units in the Borough consistent with the provisions known as the "Substantive Rules of the New Jersey Council on Affordable Housing," N.J.A.C. 5:99 et seq., the Uniform Housing Affordability Controls ("UHAC"), N.J.A.C. 5:80-26.1 et seq., and the Borough's constitutional obligation to provide a fair share of affordable housing for low- and moderate income households.
- B. This article is intended to assure that very low-, low- and moderate-income units ("affordable units") are created with controls on affordability over time and that low- and moderate-income households shall occupy these units. This article shall apply except where inconsistent with applicable law.
- C. The Mountain Lakes Planning Board has adopted a Housing Element and Fair Share Plan pursuant to the Municipal Land Use Law at N.J.S.A. 40:55D-1 et seq. The Fair Share Plan has been endorsed by the governing body. The Fair Share Plan describes the ways the Borough of Mountain Lakes shall address its fair share for low- and moderate-income housing as determined by the Superior Court and documented in the Housing Element.
- D. This article implements and incorporates the Fair Share Plan and addresses the requirements of N.J.S.A. 52:27D-301 et seq. and N.J.A.C. 5:99, as may be amended and supplemented.
- E. The Borough shall file monitoring reports as set forth in N.J.S.A. 52:27D-329.2 and N.J.S.A. 52:27D-329.4, and as set forth at N.J.A.C. 5:99-5.

§ 245-124. Monitoring and reporting requirements.

The Borough of Mountain Lakes shall comply with the following monitoring and reporting requirements regarding the status of its implementation of its Court-approved Housing Element and Fair Share Plan and N.J.A.C. 5:99.

- A. The Borough shall file monitoring reports by February 15, 2026, and annually, agrees to provide the Department of Community Affairs and to post a copy on the municipal website with a copy of such posting provided to Fair Share Housing Center with an up-to-date municipal status report based on its collection and publication of information concerning the number of affordable of housing units actually constructed, construction starts, certificates of occupancy granted, the start and expiration dates of deed restrictions, and residential and non-residential development fees collected and expended, including purposes and amounts of such expenditures, along with the current balance in the municipality's affordable housing trust funds. 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.

- B. 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 in the housing element and fair share plan 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.

§ 245-125. Definitions.

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

ACCESSORY DWELLING UNITS OR APARTMENT — A residential dwelling unit that provides complete independent living facilities with a private entrance for one or more persons, consisting of provisions for living, sleeping, eating, sanitation, and cooking, including a stove and refrigerator, and is located within a proposed or existing primary dwelling, within an existing or proposed structure that is an accessory to a dwelling on the same lot, constructed in whole or part as an extension to a proposed or existing primary dwelling, or constructed as a separate detached structure on the same lot as the existing or proposed primary dwelling.

ACT — The Fair Housing Act, 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 responsible for the administration of affordability controls with respect to specific restricted units, as designated pursuant to N.J.S.A. 52:27D-321, N.J.A.C. 5:80-26.15 and 5:99-7.

AFFIRMATIVE MARKETING — A regional marketing strategy designed to attract buyers and/or renters of affordable units pursuant to N.J.A.C. 5:80-26.15.

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

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

AFFORDABLE — A sales price or rent within the means of a low- or moderate-income household as defined in N.J.A.C. 5:93-7.4; 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 DEVELOPMENT — A housing development all or a portion of which consists of 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.

AFFORDABLE HOUSING PROGRAM(S) — Any mechanism in a municipal Fair Share Plan prepared or implemented to address a municipality's fair share obligation.

AFFORDABLE UNIT — A housing unit proposed or created pursuant to the Act, 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 through 44) and in, but not of, DCA.

ALTERNATIVE LIVING ARRANGEMENT — A structure in which households live in distinct bedrooms, yet share kitchen and plumbing facilities, central heat and common areas. Alternate 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 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 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 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.

BUILDER'S REMEDY — A court-imposed site-specific relief for a litigant who seeks to build affordable housing for which the court requires a municipality to utilize zoning techniques, such as mandatory set-asides or density bonuses, including techniques that provide for the economic viability of a residential development by including housing that is not for low- and moderate-income households in accordance with N.J.S.A. 52:27D-304.

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.

COAH OR THE COUNCIL — The Council on Affordable Housing, which was established in, but not of, the Department of Community Affairs of the State of New Jersey, that was established under

the New Jersey Fair Housing Act (N.J.S.A. 52:27D-301 et seq.), that was abolished effective March 20, 2024 pursuant to section 3 at P.L. 2024, c.2 (N.J.S.A. 52:27D-304.1).

COMMISSIONER — The Commissioner of the New Jersey Department of Community Affairs.

COMPLIANCE CERTIFICATION — The certification issued to a municipality by a county-level housing judge pursuant to section 3 at P.L. 2024, c. 2, 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 affordable housing round begins, which is also known as a "judgment of compliance" resulting in an "order of repose." The term "compliance certification" includes a judgment of repose granted in an action filed pursuant to section 13 at P.L. 1985, c. 222 (N.J.S.A. 52:27D-313).

CONSTRUCTION — New construction and additions, but does not include alterations, reconstruction, renovations, and repairs as those terms are defined under 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 — 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. Also known as "CoC."

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

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

DEVELOPER — Any person, partnership, association, company or corporation that is the legal or beneficial owner or owners of a lot or any land proposed to be included in a proposed development including the holder of an option to contract or 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.

DISPUTE RESOLUTION PROGRAM — The Affordable Housing Dispute Resolution Program is established pursuant to section 5 of P.L. 2024, c.2 (N.J.S.A. 52:27D-313.2) 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 — 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 of P.L. 1973, c. 123 (N.J.S.A. 54:1-35a through 54:1-35c).

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 OBLIGATION — The total of the present need and prospective need as determined by a court of competent jurisdiction.

FAIR SHARE PLAN — The plan or proposal, with accompanying ordinances and resolutions, by which the Borough 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 Borough proposes to undertake to achieve its fair share of low- and moderate-income housing, as providing in the Borough's 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 ordinance and regulations.

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

HOUSING ELEMENT — The portion of the Borough's Master Plan, required by the Municipal Land Use Law ("MLUL") at N.J.S.A. 40:55D-28.b(3) and the Act, consisting of reports, statements, proposals, maps, diagrams, and text designed to meet the municipality's fair share of its region's present and prospective housing needs, particularly with regard to low- and moderate-income housing, and which sets forth the Borough's present and prospective obligation for affordable housing, determined pursuant to N.J.S.A. 52:27D-304.1.f.

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

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.

INCLUSIONARY DEVELOPMENT — A development containing both affordable units and market rate units. This term includes, but is not necessarily limited to, new construction, the conversion of a nonresidential structure to residential and the creation of new affordable units through the reconstruction of a vacant residential structure.

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

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.

MEDIAN INCOME — The regional median income by household size for the applicable county, as adopted annually by the Affordable Housing Professionals of New Jersey or other entity or approved by the New Jersey Superior Court or the Dispute Resolution Program, as applicable.

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

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

MULTIFAMILY UNIT — A structure containing five (5) or more dwelling units.

MUNICIPAL AFFORDABLE HOUSING TRUST FUND — A separate, interest-bearing account held by a municipality for the deposit of development fees, payments in lieu of constructing affordable units on sites zoned for affordable housing, barrier-free escrow funds, recapture funds, proceeds from the sale of affordable units, rental income, repayments from affordable housing program loans, enforcement fines, unexpended RCA funds remaining from a completed RCA project, application fees, and any other funds collected by the municipality in connection with its affordable housing programs, which shall be used to address municipal low- and moderate-income housing obligations within the time frames established by the Legislature and this chapter.

MUNICIPAL HOUSING LIAISON — 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. Also known as an MHL.

NEW JERSEY AFFORDABLE HOUSING TRUST FUND — An account established pursuant to N.J.S.A. 52:27D-320.

NEW JERSEY 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.

NINETY-FIVE/FIVE OR 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.

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

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

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 applicant households are selected, at random, for placement in affordable housing units such that no preference is given to one applicant over another in the case of a veterans' preference where such an agreement exists; except 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 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/approved regional income limits.

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 may be amended and supplemented, but does not include a market-rate unit financed under UHOP or MONI.

SPECIAL MASTER — An expert appointed by a judge to make sure that judicial orders are followed. A master's function is essentially investigative, compiling evidence or documents to inform some future action by the court.

SPENDING PLAN — A plan to predict funds that will be paid into a municipality's affordable housing trust fund and to allocate how those funds will be spent to advance the interest of low and moderate income households subject to limitations required by law.

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

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

The definitions in the Uniform Housing Affordability Controls (UHAC) at N.J.A.C 5:80-26.2 and N.J.A.C. 5:99 shall be applicable where a term is not defined. In the event of a discrepancy between a definition in this section with UHAC and N.J.A.C. 5:99, the current UHAC or N.J.A.C. 5:99 definition shall be applicable.

§ 245-126. Borough-wide mandatory set-aside.

- A. Any future multifamily residential development providing a minimum of five new housing units or more is required to include an affordable housing set-aside of 20%. This requirement shall not apply to residential expansions, additions, renovations, replacement, or any other type of residential development that does not result in a net increase in the number of dwellings of five or more. 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 Mountain Lakes to grant such rezoning, variance or other relief. No subdivision shall be permitted or approved for the purpose of avoiding compliance with this requirement.
- B. This requirement shall not apply to any sites or specific zones otherwise identified in the Borough's Settlement Agreement with Fair Share Housing Center dated December 11, 2025, or in the Borough's Housing Element and Fair Share Plan, adopted by the Borough Planning Board and endorsed by the Borough Council, for which density and set-aside standards shall be governed by the specific standards set forth therein.

§ 245-127. Accessory apartment program.

Accessory apartments created under this program shall abide by the regulations in this Chapter 245, Article XVIII, Affordable Accessory Apartments.

§ 245-128. Affordability Average; Bedroom Distribution.

A. Affordability Average; Bedroom Distribution.

- (1) The provisions of this section do not apply to prior round units. Instead, prior round units are subject to the applicable grant of substantive certification, judgment of compliance, grant agreement, or other contract, or, if the prior round units are not subject to any grant of substantive certification, judgment of compliance, grant agreement, or other contract, are subject to the provisions at N.J.A.C. 5:80-26.3 that were in effect prior to December 20, 2024 (the effective date of the specially adopted amendments, as promulgated pursuant to P.L. 2024, c. 2 (N.J.S.A. 52:27D-304.1)).
- (2) For the purposes of determining affordability averages and bedroom distributions:
 - (a) Affordability averages and bedroom distributions for small developments, defined as any affordable development with four or fewer restricted units, may be calculated based on the aggregate of all the restricted units within small developments within the municipality. This aggregation affects only the calculations of affordability and bedroom counts for small developments and is not to be construed to require that the restricted units be developed or administered as one affordable development;
 - (b) Bedrooms may be counted as individual units if they are within restricted units that are group homes, other arrangements in which households live in distinct bedrooms and may share kitchen and plumbing facilities, central heat, and common areas, or provider-managed housing; and
 - (c) Unless stated otherwise, non-integer values calculated pursuant to this section are to be rounded up to the nearest whole number. However, non-integer values calculated pursuant to (5)(c), (d), or (e), or (7)(b), (c), or (e) below may be rounded down or up to the nearest whole number in either direction. For example, 33.1901 will typically be rounded up to 34, but may be rounded down

to 33 or up to 34 if calculated pursuant to (5)(c), (d), or (e), or (7)(b), (c), or (e) below.

(3) Rental restricted unit affordability requirements.

- (a) The average rent for all restricted units within each affordable development is affordable to households earning no more than 52 percent of median income;
- (b) The maximum rent for all restricted units within each affordable development is affordable to households earning no more than 60 percent 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; and
- (c) The developers and/or municipal sponsors of restricted rental units shall:
 - [1] Establish at least one rent for each bedroom count for very-low-income, low-income, and moderate-income units;
 - [2] Reserve at least 13 percent of all restricted units within each municipality for very-low-income households, with at least half of such units made available for very-low-income families with children.
 - [3] Nothing in this subsection precludes a municipality from requiring affordable developments to have at least 13 percent of restricted units be affordable to and reserved for very-low-income households.

(4) For-Sale restricted unit affordability requirements.

- (a) The maximum sale price of restricted ownership units within each affordable development must be affordable to households earning no more than 70 percent of regional median income.
 - (b) Each affordable development must achieve an affordability average of no more than 55 percent for restricted ownership units. In achieving this affordability average, units must:
 - [1] Be available for at least three different moderate-income prices within each bedroom count with moderate-income ownership units; and
 - [2] Be available for at least two different low-income prices within each bedroom count with low-income ownership units.
- (5) Unless otherwise approved pursuant to (12) 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 municipality's housing element and fair share plan.
- (6) Unless otherwise approved pursuant to (12) 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 as follows:
- (a) 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.
 - (b) 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) Unless otherwise approved pursuant to (12) below, in each affordable development, the following income distribution requirements must be independently satisfied by 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, as well as by all of the restricted units in the development, considered in the aggregate:
- (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.
- (8) For the purposes of determining bonus credits pursuant to N.J.S.A. 52:27D-311.k(5), the minimum number of three-bedroom units required pursuant to this subchapter is determined by taking 20 percent of the total number of family housing units in the municipal fair share plan and housing element, not by summing up the three-bedroom-unit requirements calculated for each affordable development.
- (9) In determining the initial rents and initial sale prices for compliance with the affordability average requirements for restricted units other than age-restricted units and assisted living facilities, the following standards apply:
 - (a) An efficiency unit is affordable to a one-person household;
 - (b) A one-bedroom unit is affordable to a one-and-one-half-person household;
 - (c) A two-bedroom unit is affordable to a three-person household;
 - (d) A three-bedroom unit is affordable to a four-and-one-half-person household; and
 - (e) A four-bedroom unit is affordable to a six-person household.
- (10) For age-restricted units and assisted living facilities, the following standards apply:
 - (a) An efficiency unit is affordable to a one-person household;
 - (b) A one-bedroom unit is affordable to a one-and-one-half-person household; and
 - (c) A two-bedroom unit is affordable to a two-person household or to two one-person households.
- (11) The provisions of this section, except for (10) above, do not apply to affordable developments financed pursuant to UHORP, MONI, or CHOICE or to assisted living residences, each of which must comply with applicable Agency rules.
- (12) The requirements at (5), (6), and (7) above must be satisfied by all restricted units in the municipality, considered in the aggregate. The individual requirements at (5), (6), and (7) 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. Waivers approved by the Division must be published on a public webpage within 30 days of approval. 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.

B. Occupancy standards.

- (1) Prior round units whose siting and creation are consistent with a prior round development or zoning designation that received COAH or court approval on or before 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, are not subject to the requirements detailed in this subsection. Rather, those prior round units remain subject to the applicable grant of substantive certification, judgment of compliance, grant agreement, or other contract, or, if the prior round units are not subject to any grant of substantive certification, judgment of compliance, grant agreement, or other contract, remain subject to N.J.A.C. 5:80-26.3(f) as it was in effect prior to December 20, 2024. Developments approved as part of a compliance certification or that otherwise contain restricted units subject to the UHAC regulations shall satisfy the following occupancy standards:
 - (a) For any 100-percent affordable development comprising one or more restricted units:
 - [1] 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;
 - [2] Each bedroom in each restricted unit must have at least one window; and
 - [3] Restricted units must include adequate air conditioning and heating;
 - (b) For developments comprising market-rate rental units and restricted rental units:
 - [1] 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;
 - [2] 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;
 - [3] 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;
 - [4] 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;

- [5] Restricted units must include adequate air conditioning and heating and, if market-rate units provide cooling and heating, restricted units must use the same type of cooling and heating sources as market-rate units of the same unit type;
 - [6] Each bedroom in each restricted unit must have at least one window;
 - [7] Restricted units must be of the same unit type as market-rate units within the same building; and
 - [8] Restricted units and bedrooms must be no less than 90 percent of the minimum size prescribed by the Neighborhood Preservation Balanced Housing rules at N.J.A.C. 5:43-2.4;
- (c) For developments containing for-sale units, including those with a mix of rental and for-sale units, (1)(b) above shall govern the rental units, while for-sale units shall adhere to the following:
- [1] 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;
 - [2] 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;
 - [3] Restricted units may be of different housing product types than market-rate units, provided that developments containing market-rate duplexes, townhomes, and/or single-family homes offer restricted housing options that also include duplexes, townhomes, and/or single-family homes;
 - [4] 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;
 - [5] Penthouse and end units may be reserved for market-rate sale, provided that the overall number, value, and distribution of affordable units across the development is not negatively impacted by such reservation(s);
 - [6] 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;
 - [7] Each bedroom in each restricted unit must have at least one window; and
 - [8] Restricted units must include adequate air conditioning and heating;

- (d) If a development comprising market-rate and restricted units is constructed in phases, then:
 - [1] No more than 25 percent of the market-rate units plus one, may be completed prior to the completion of 10 percent of the restricted units;
 - [2] No more than 50 percent of the market-rate units may be completed prior to the completion of 50 percent of the restricted units;
 - [3] No more than 75 percent of the market-rate units may be completed prior to the completion of 75 percent of the restricted units; and
 - [4] No more than 90 percent of the market-rate units may be completed prior to the completion of all of the restricted units.
 - (e) The individual requirements at (1)(a), (b), (c), and (d) above, except for (1)(d)[4] above, may be waived or altered 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. Waivers approved by the Division must be published on a public webpage within 30 days of approval. Any waiver or alteration that would result in a material deviation from the municipal housing element or fair share plan must receive written approval from a county-level housing judge.
- (2) In referring certified households to specific restricted units, the Administrative Agent shall strive, to the extent feasible and without causing an undue delay in occupying the unit, to:
- (a) Ensure each bedroom is occupied by at least one person, except for age-restricted units;
 - (b) Provide a bedroom for every two adult occupants;
 - (c) With regard to occupants under the age of 18, accommodate the household's requested arrangement, except that such arrangement may not result in more than two occupants under the age of 18 occupying any bedroom; and
 - (d) Avoid placing a one-person household into a unit with more than one bedroom.

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 2(a) through 2(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 paragraphs b(1) through b(4) 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 the Borough has collected funds from the developer sufficient to make 10 percent 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 Borough's Affordable Housing Trust Fund sufficient to install accessible entrances in 10 percent of the affordable units that have been constructed with adaptable entrances.
 - [3] The funds deposited under Subsection (f)[2] above shall be used by the Borough 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 for the conversion from adaptable to accessible entrances to the Construction Official of the Borough.
 - [5] Once the Construction Official has determined that the design plan to convert the unit entrances from adaptable to accessible meet 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 Municipal Chief Financial Officer/Treasurer, who shall ensure that the funds are deposited into the Affordable Housing Trust Fund and appropriately earmarked for use in accordance with the provisions of this subsection.
- (g) Full compliance with the foregoing provisions shall not be required where an entity can demonstrate that it is "site impracticable" to meet the requirements. Determinations of site impracticability shall be in compliance with the Barrier Free Subcode, N.J.A.C. 5:23-7.

§ 245-130. Control periods for restricted ownership units; Capital improvements to and Maintenance of ownership units.

A. Control periods for restricted ownership units.

- (1) Each restricted ownership unit is subject to the affordability controls of this subchapter for a deed-restricted control period. The minimum duration of the control period is:
 - (a) Thirty years for any ownership unit created on or after December 20, 2024;
 - (b) 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;
 - (c) 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; and
 - (d) Governed by the form of UHAC in effect as of December 20, 2004, 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.
- (2) The control period for a restricted ownership unit commences on the date that 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.
- (3) The control period for a restricted ownership unit 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, the restricted ownership unit remains subject to the affordability controls set forth in this subchapter until the owner gives notice of their intent to make an exit sale, at which point:
 - (a) If the municipality exercises the right to extend the affordability controls on the unit pursuant to (8) below, no exit sale occurs and a new control period commences; or
 - (b) If the municipality does not exercise the right to extend the affordability controls on the unit pursuant to (8) below, the affordability controls terminate following the exit sale.
- (4) 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 of the unit, based on the requirements at N.J.A.C. 5:80-26.7, and the non-restricted, fair market value of the unit, based on either an appraisal or the unit's equalized assessed value. Following this determination, 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 and the purchaser's heirs, successors, and assigns to repay a recapture amount at the time of the exit sale.

(a) The recapture note and recapture lien must:

- [1] Be in favor of the Agency, if the unit was financed through UHORP, MONI, or CHOICE, in favor of the State if State funds other than UHORP, MONI, or CHOICE contributed to the financing of the unit, in favor of the nonprofit if the unit was developed by a qualified nonprofit entity without Agency or State funding, and, in all other cases, in favor of the municipality in which the unit is located;
- [2] Be in the applicable forms prescribed at N.J.A.C. 5:80-26 Appendices D-2, L, M, N, O, and Q, incorporated herein by reference;
- [3] In addition to the preliminary recapture amount calculated at initial sale, include the restricted price and the non-restricted, fair market value of the unit at the time of initial sale; and
- [4] Provide that the actual recapture amount will 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.

(b) The recapture lien must provide that:

- [1] The recapture amount be reduced by the cumulative dollar value of capital improvements made after the last non-exempt sale during the control period for improvements and/or upgrades to the unit, as may be approved by the Administrative Agent, excluding capital improvements paid for by the entity favored on the recapture note and recapture lien;
- (5) The lien will remain the entry and enforcement of any judgment of foreclosure on a restricted ownership unit shall not extinguish the affordability controls set forth in this subchapter.
 - (6) All extensions of affordability controls on restricted ownership units must be made according to the requirements of this section to receive credit pursuant to the Act. This requirement applies to extensions of affordability controls on any restricted ownership units currently governed by control periods that commenced prior to November 6, 2025, including all units governed by 95/5 restrictions.
 - (7) Upon termination of affordability controls on a restricted ownership unit, the Administrative Agent shall, within 60 days of termination, execute a release, substantially in the form set forth at N.J.A.C. 5:80-26 Appendix F-1, incorporated herein by reference, of all restriction instruments with respect to the unit. The owner of the restricted unit shall record the release instruments and promptly return the recorded originals to the Administrative Agent. The owner of a unit released from the affordability controls of this subchapter may sell the unit to any purchaser at the fair market price.

B. Capital improvements to ownership units.

- (1) The owner of an ownership unit may apply to the Administrative Agent to recalculate the maximum sale price for the unit to reflect eligible capital improvements made since

they purchased the unit. Eligible capital improvements are limited to those that make the unit suitable for a larger household, that is adding bedrooms and/or bathrooms. However, the maximum sale price of an improved housing unit may not exceed the limits of affordability for the larger household.

- (2) Upon the resale of a restricted ownership unit, all items of property that are permanently affixed to the unit or were included when the unit was initially restricted (for example, refrigerator, range, washer, dryer, dishwasher, or flooring) are 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 signing 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, 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 may 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.
- (3) Capital improvements, 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), approved, in writing, by the Administrative Agent for non-cosmetic replacement of existing items of property or non-cosmetic improvement to the property (for example, replacement of a leaky roof, installation of a solar energy system owned by the homeowner, installation of energy-efficient windows, or replacement of broken appliances with ENERGY STAR-labeled products) shall not cause the maximum sale price to be recalculated, but will be factored into calculating reductions to the recapture amount pursuant to N.J.A.C. 5:80-26.6(d)2i and into calculating adjustments to the maximum sale price pursuant to N.J.A.C. 5:80-26.7(c). Capital improvements are subject to 10-year, straight-line depreciation.

C. Maintenance of restricted ownership units.

- (1) Upon the first transfer of title that follows the expiration of the deed-restricted control period provided pursuant to N.J.A.C. 5:80-26.6, if requested by the Administrative Agent, the owner of a restricted ownership unit shall obtain a Continuing Certificate of Occupancy or a certified statement from the municipal building inspector stating that the unit meets all code standards.

§ 245-131. Price restrictions for ownership units.

- A. The Administrative Agent shall set the initial purchase price for a restricted ownership unit. If the unit is receiving assistance pursuant to the AHTF, the price must be consistent with the AHTF grant agreement.
- B. The initial purchase price for all restricted ownership units is calculated so that the monthly carrying costs of the unit, including principal and interest (based on a mortgage loan equal to 95 percent of the purchase price and the FreddieMac 30-Year Fixed Rate-Mortgage rate of interest), taxes, homeowner and private mortgage insurance, and realistic condominium

or homeowner association fees, do not exceed 30 percent of the eligible monthly income of an appropriate household size as determined pursuant to N.J.A.C. 5:80-26.4; provided, however, that the price is subject to the affordability average requirement at N.J.A.C. 5:80-26.4.

- C. 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. 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); however, the increase for capital improvements may not result in the final maximum resale price exceeding whatever initial purchase price the unit would have if it were being offered for purchase for the first time, calculated pursuant to (2) above. 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, calculated pursuant to (2) above. All adjustments for capital improvements are subject to 10-year, straight-line depreciation.
- D. The Administrative Agent shall approve all resale prices, in writing, and in advance of the resale, to ensure compliance with the foregoing standards. The Administrative Agent may approve an actual resale price that is lower than the maximum resale price for reasons including, but not limited to, home disrepair and market decline, and shall not calculate a resale price lower than the last recorded purchase price unless they determine that the decreased price is a result of such reasons.
- E. 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.

§ 245-132. Buyer income eligibility for ownership units.

- A. Very-low-income ownership units are reserved for households with a household income less than or equal to 30 percent of regional median income. Low-income ownership units are reserved for households with a household income less than or equal to 50 percent of regional median income. Moderate-income ownership units are reserved for households with a household income less than 80 percent of regional median income. For example, a household earning 48 percent of regional median income may qualify for any low-income or moderate-income unit; however, a household earning 53 percent of regional median

income would qualify for a moderate-income unit, but would not qualify for a low-income unit. Notwithstanding the foregoing, the Administrative Agent may 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 low-income purchasers to permit prompt occupancy of the units. In such instances, the purchased unit must be maintained as a low-income unit and sold at a low-income price point such that on the next resale the unit will still be affordable to low-income households and able to be purchased by a low-income household. 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. A certified household that purchases a restricted ownership unit must occupy it as the principal residence and not lease the unit; provided, however, the Administrative Agent may permit the owner of a restricted ownership unit, upon a showing of hardship, to lease the unit to a certified household for a period not to exceed one year.

- B. 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 unit (including principal, interest, taxes, homeowner and private mortgage insurance, and realistic condominium or homeowner association fees, as applicable) does not exceed 35 percent of the household's eligible monthly income. The Administrative Agent, however, may exercise its discretion to certify a low- or moderate-income household as eligible despite the fact that the unit's monthly housing cost would exceed the 35 percent level, if the household obtains a firm mortgage loan commitment at the higher level from a licensed financial institution, under terms consistent with the requirements of the New Jersey Home Ownership Security Act of 2002, N.J.S.A. 46:10B-22 through 35, including certification from a nonprofit counselor approved by HUD or the New Jersey Department of Banking and Insurance that the borrower has received counseling on the advisability of the loan transaction.

§ 245-133. Limitations on indebtedness secured by ownership units; subordination.

- 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, and the owner may not incur any such indebtedness unless and until the administrative agent has determined and confirmed in writing that the proposed indebtedness complies with the provisions of this section.

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

§ 245-134. Control periods for rental units.

- A. Each restricted rental unit is subject to the affordability controls of this subchapter for a deed-restricted control period. The minimum duration of the control period is:
- (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.
- C. 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.
- D. The deeds of all real property that include restricted rental units created or extended pursuant to the existing rules must 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:

- (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:
 - (a) A copy of the filed deed restriction; and
 - (b) 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.

E. 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 municipality 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.

F. A restricted rental unit remains subject to the affordability controls of this subchapter despite the occurrence of any of the following events:

- (1) A sublease or assignment of the lease of the unit;
- (2) A sale or other voluntary transfer of ownership of the unit;

- (3) The entry and enforcement of any judgment of foreclosure or grant of a deed in lieu of foreclosure; or
 - (4) The end of the control period, until the occupant household vacates the unit pursuant to (C)(1) above or is found to be income-ineligible pursuant to (C)(2) above.
- G. A municipality may, in its sole discretion, elect to release any or all of the restricted rental units in a development from the affordability controls of this subchapter prior to the end of the deed-restricted control period if:
- (1) The minimum duration of the control period described at (a) above has fully elapsed by the effective date of release;
 - (2) The municipal election to release the restricted unit(s) from the affordability controls of this subchapter is made pursuant to a municipal ordinance authorizing such elections; and
 - (3) The release is not inconsistent with the municipal housing element and fair share plan.
- H. A municipality may, in its sole discretion, elect to extend the affordability controls of this subchapter on any or all of the restricted rental units in a development; provided that:
- (1) The deed-restricted control period ends:
 - (a) In the current round of housing obligations; or
 - (b) In the next round of housing obligations, if the municipal election to extend affordability controls is made no earlier than two years before the end of the current round of housing obligations;
 - (2) The municipal election to extend the affordability controls is made pursuant to a municipal ordinance authorizing such elections;
 - (3) A new deed restriction is issued, containing 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 that commences a new control period of at least the minimum duration specified at (a)3 above;
 - (4) If the municipality has not received notice of the owner's intent for the affordability controls to be extinguished, the municipality notifies the owner of the development, by certified mail and by email, of its election to extend affordability controls no later than 180 days prior to the execution of a new deed restriction extending affordability controls, except that the notice period may be shortened with consent of the owner;
 - (5) If the municipality has received notice of the owner's intent for the affordability controls to be extinguished, the municipality notifies the owner, by certified mail and by email, of its election to extend affordability controls no later than 180 days after receiving notice of the owner's intent;
 - (6) If permitted by the relevant statute, the municipality grants or extends an agreement for payment in lieu of taxes pursuant to the New Jersey Long Term Tax Exemption Law, N.J.S.A. 40A:20-1 et seq., or pursuant to N.J.S.A. 55:14K-37.b; and

- (7) If seeking bonus credit pursuant to N.J.S.A. 52:27D-311.k(7), to support the preservation of the restricted rental units, the municipality contributes:
- (a) At least \$12,000 per restricted unit (which amount may be adjusted annually in accordance with the maximum annual rent increase determined pursuant to N.J.A.C. 5:80-26.13(b)) from the municipal affordable housing trust fund, if an agreement for payment in lieu of taxes has been granted or extended;
 - (b) At least \$17,500 per restricted unit (which amount may be adjusted annually in accordance with the maximum annual rent increase determined pursuant to N.J.A.C. 5:80-26.13(b)) from the municipal affordable housing trust fund, if no agreement for payment in lieu of taxes has been granted or extended; or
 - (c) Any other assistance not less than the equivalent of \$10,000 per restricted unit (which amount may be adjusted annually in accordance with the maximum annual rent increase determined pursuant to N.J.A.C. 5:80-26.13(b)), if the assistance was approved pursuant to N.J.S.A. 52:27D-329.2(4) as part of the municipality's compliance certification or by DCA, and if the assistance is consistent with the municipality's housing element and fair share plan.
- I. The owner of a restricted rental unit must notify the Administrative Agent and Municipal Housing Liaison, by certified mail and by email, as well as all current tenants, by plain language notice, of any intent for the affordability controls on the unit to be extinguished at the end of the control period no earlier than one year before the end of the control period. Upon receipt of the owner's notice, the municipality has 180 days to extend controls on the unit pursuant to (h) above. Affordability controls shall remain in effect during the 180-day notice period, or, if the owner never provides notice, indefinitely, unless the municipality affirmatively declines to extend affordability controls.
- J. The owner of a 100 percent affordable rental development may elect to extinguish the existing deed restriction and extend the affordability controls of this subchapter on all of the restricted rental units in the development, provided that:
- (a) A refinancing and/or rehabilitation of the property is commenced;
 - (b) A new deed restriction is issued, containing 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 that commences a new control period of at least the minimum duration specified at (a)2 above; and
 - (c) Either of the following is true:
 - [1] The current control period has been in effect for at least 30 years; or
 - [2] The property is participating in a State-administered preservation program that has allowed the refinancing and/or rehabilitation to commence prior to the 30th year of the deed restriction as necessary to preserve affordable housing.
- K. All extensions of affordability controls on restricted rental units must be made according to the requirements of this section to receive credit pursuant to the Act, including any restricted units that is currently governed by control periods that commenced prior to November 6, 2025.

- L. For restricted rental units, upon municipal release from the affordability controls of this subchapter pursuant to (g) above, or at the end of the control period, if no extension of affordability controls has occurred:
- (a) The Administrative Agent, within 60 days, shall execute a release, in the form set forth at N.J.A.C. 5:80-26 Appendix F-2, incorporated herein by reference, of all restriction instruments with respect to the unit(s), but providing that each released unit remains subject to the affordability controls of this subchapter until the occurrence of (c)1 or 2 above;
 - (b) The owner of the unit(s) shall record the release instruments and return the recorded originals promptly to the Administrative Agent; and
 - (c) Following the termination of affordability controls on the unit(s), the owner of the unit(s) may lease each unit to any tenant at any rent.

§ 245-135. Price restrictions on rents.

- A. The Administrative Agent shall set the initial rent for a restricted rental unit. If the unit is receiving assistance pursuant to the AHTF, the initial rent must be consistent with the AHTF grant agreement. The initial rent must be calculated so as not to exceed 30 percent of the eligible monthly income of the appropriate household size as determined pursuant to N.J.A.C. 5:80-26.4; provided, however, that the rent is subject to the affordability average requirement at N.J.A.C. 5:80-26.4. 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.
- B. 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. If the landlord has charged a tenant less than the initial maximum allowable rent for a restricted unit, the landlord may, with the approval of the Administrative Agent, use the maximum allowable rent instead of the current rent in performing this multiplication to establish the rent for the next tenant under a new lease. LIHTC units are not governed by the provisions of this section, but rather by the provisions of the State's Qualified Allocation Plan, N.J.A.C. 5:80-33.1 through 33.40.
- C. Approved initial rents are fixed as of the start of the property's initial lease-up. Rent increases may not be implemented during lease-up. Each new, separately financed phase of a project may seek MHL approval to use the then-effective initial rents, provided that the lease-up of the phase will occur at least 12 months after the prior phase was placed in service. Rents may not be increased more than once a year or by more than one increment at one time. Rents may not be increased at the time of a new occupancy if the new occupancy occurs within one year of the last occupancy and prior to the next published increase amount.

- (1) No additional fees, operating costs, or charges may be added to the approved rent (except in the case of units in assisted living residences, for 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. Any fee structure that would remove or limit affordable renters' access to any amenities or services that are required or included for market-rate renters is prohibited. Application fees (including the charge for any credit check) may not exceed five percent of the monthly rent of the applicable restricted unit and are payable to the Administrative Agent to be applied to the costs of administering the controls in this subchapter as applicable to the unit. Fees for truly optional, unit-specific, non-communal items that are charged to market-rate 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 be charged to affordable tenants, if applicable. 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. Fees for other optional, unit-specific, non-communal items may not exceed the amounts charged to market-rate tenants.
 - (2) 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 (c)1 above, may continue until December 20, 2025, or until the occupant household's current lease term expires or that occupant household vacates the unit, whichever occurs later.
- D. A written lease is required for all restricted rental units, except for units in assisted living residences. Final lease agreements are the responsibility of the landlord and the prospective tenant. Tenants are responsible for security deposits and the full amount of the rent as stated in the lease. 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. The landlord shall submit a copy of each lease entered into with a certified household to the Administrative Agent within 10 business days after the execution of each lease.
- E. The lease must specify which tenant-paid utilities are included in the utility allowance. At the time of lease-up, tenants must be provided a copy of the utilities chart that was used to determine the utility allowance. The allowance for utilities must be consistent with one of the following:
- (1) The utility allowance approved by DCA for its Section 8 program;
 - (2) For units constructed with State funding, an alternate utility allowance approved by DCA or the Agency; or
 - (3) 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, subject to approval by the Administrative Agent.

§ 245-136. Tenant income eligibility.

- A. Low-income rental units are reserved for households with household incomes less than or equal to 50 percent of regional median income. Moderate-income rental units are reserved for households with household incomes less than or equal to 80 percent of regional median income. Very-low-income rental units are reserved for households with household incomes less than or equal to 30 percent 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, 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 gross household income for rent, and the proposed rent will reduce its housing costs;
 - (2) The household has consistently paid more than 35% (40% for households eligible for age-restricted units) of eligible monthly income for rent in the past and has proven its ability to pay;
 - (3) The household is currently in substandard or overcrowded living conditions;
 - (4) The household documents the existence of assets with which the household proposes to supplement the rent payments; or
 - (5) The household documents proposed third-party assistance from an outside source such as a family member in a form acceptable to the administrative agent and the owner of the unit.
- C. The applicant shall file documentation sufficient to establish the existence of any of the circumstances in Subsection B(1) through (5) above with the administrative agent, who shall counsel the household on budgeting.

§ 245-137. Municipal Housing Liaison.

- A. Establishment of the Municipal Housing Liaison. The position of Municipal Housing Liaison (MHL) for Mountain Lakes is established by this article. The governing body shall adopt a resolution appointing the MHL who may be a full or part time municipal employee. The MHL shall be approved by the Division. The MHL shall be identified by name and title on the municipal website.
- B. The municipal housing liaison is responsible for oversight and coordination of all the activities of the municipal government as it relates to the creation, preservation, and administration of affordable housing programs, affordable units, and reporting pursuant to the Act and this chapter.
- C. Education Requirements for Municipal Housing Liaisons. All appointed MHL 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. Approved MHL shall earn 20 continuing education requirements over a three-year period. The applicant is responsible for retaining all records of attendance, organization membership, or program participation. The Division shall publish on its Internet website a list of approved courses.

- D. Responsibilities of the Municipal Housing Liaison. The Municipal Housing Liaison shall be responsible for oversight and coordination of all of activities of the municipal government as it relates to the creation, preservation, and administration of affordable housing programs, affordable units and reporting pursuant to the Act and this article.
- (1) Serving as the municipality'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 the municipality's fair share plan;
 - (3) Overseeing and monitoring Administrative Agents within their municipality'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 municipality 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;
 - (5) Verifying, certifying, and providing monitoring and reporting information within the AHMS at such time and in such form as the Division requires;
 - (6) Listing, on the municipal website, contact information for the Administrative Agent for each completed project with an affordable component within the municipality;
 - (7) Overseeing the coordination of meetings with affordable housing providers, developers, municipal officials, and administrative agents, as applicable; and
 - (8) 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 municipality's affordable housing programs and/or affordable units. Administrative Agent.
 - (9)
- E. Access to AHMS. Access to AHMS shall be authorized only by the MHL, 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 MHL with the written approval of the municipality and pursuant to the oversight of the MHL.
- F. Monitoring of the Municipal Housing Liaison. The Division shall monitor the performance of any approved MHL and may revoke said approval, should the Division find that the MHL has failed to administer the municipality'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.
- G. The MHL may also serve as the municipal Administrative Agent. The MHL may serve as the municipality's Administrative Agent pursuant to N.J.A.C. 5:99-7 for some or all of the affordable units in the municipality. 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. If the Municipal Housing Liaison is to perform the duties of an Administrative Agent, the

municipality shall also submit evidence to the Division of the Municipal Housing Liaison's qualifications to successfully manage, including any history of managing affordable housing units, particularly those produced as a result of the Act or through an exclusionary zoning court settlement, which shall include:

- (1) A resume;
 - (2) A statement of qualifications; and
 - (3) A statement of intent to attend initial and continuing education courses authorized by the Division related to the creation, preservation, and administration of affordable housing programs and/or affordable units.
- H. Upon review of the information submitted pursuant to (f) above, the Division may approve or deny the appointment of the MHL to serve dually as the Administrative Agent. The Division shall notify the municipality of its decision, in writing, no later than 45 days after submission. The Division shall, upon notice to the municipality, be entitled to any reasonable extensions of time as the Division deems necessary.
- I. If the Municipal Housing Liaison is to perform the duties of an Administrative Agent, the Municipal Housing Liaison shall also successfully complete the Division's Education Program as described at N.J.A.C. 5:99-9 prior to engaging in any Administrative Agent activities.

§ 245-138. Administrative agent.

- A. Designation of Administrative Agent. The Borough shall designate by resolution of the Borough Council one or more administrative agents to administer the affordable housing program and/or affordable units in accordance with the requirements of the Act, the Program, this article, and the UHAC.
- (1) The Administrative Agent may be the Municipal Housing Liaison, other municipal employee, or a person or entity selected pursuant to the UHAC.
 - (2) The designation of Administrative Agents is subject to review and approval by the Division. An Administrative Agent shall apply to the Division for approval by submitting the following:
 - (a) A valid and current Administrative Agent certificate as required pursuant to N.J.S.A. 52:27D-321;
 - (b) Evidence of satisfactory completion of the Division's Education Program for each individual serving as an Administrative Agent as described at N.J.A.C. 5:99-9;
 - (c) Disclosure of any interest, monetary or otherwise, that may be held by the Administrative Agent, or firm or company for which the Administrative Agent works, and the affordable units being administered and representation that the interest will not compromise the administration of the units;
 - (d) A template of the form of contract to be used between the entity serving as Administrative Agent and its municipal clients;
 - (e) A sample operating manual for each type of program and/or unit the Administrative Agent seeks to administer;

- (f) A statement of intent to attend initial and continuing education courses provided by the Division related to the creation, preservation, and administration of affordable housing programs and/or affordable units; and
 - (g) Such other relevant documents as required by the Division to justify approval as an Administrative Agent.
- (3) If a currently practicing Administrative Agent has not been approved by the Division, the Administrative Agent shall submit all documentation required at (2) above to the Division. If the current Administrative Agent has completed an alternate education program required pursuant to this chapter, proof of completion shall be submitted to the Division with the documentation required in this section.
- B. Monitoring of Administrative Agent(s). 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 municipality'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 municipality to retain a different Administrative Agent. The Division reserves the right to revoke approval of an Administrative Agent for other compelling circumstances.
- C. Education requirements for Administrative Agent(s). All Administrative Agents shall successfully complete the Division's Education Program as described at N.J.A.C. 5:99-9 within the timeframe specified by the Division. If there is a delay in the availability of one or more sessions required to complete the Education Program, the Administrative Agent shall successfully complete the Education Program at the earliest possible time. Approved Administrative Agents shall earn 20 continuing education requirements over a three-year period. The applicant is responsible for retaining all records of attendance, organization membership, or program participation. The Division shall publish on its Internet website a list of approved courses.
- D. Procedures for changing Administrative Agent(s). In order to ensure an orderly transfer of affordable housing administration responsibility from a municipality to an Administrative Agent, from one Administrative Agent to another Administrative Agent, or other transfer, the following minimum requirements are necessary before and during the transition:
 - (1) A letter advising of the change shall be sent to all low- and moderate-income homeowners in the case of affordable ownership units, and to all landlords or their agents in the case of affordable rental units;
 - (2) Hard copy and electronic files, containing, at a minimum, the original deed restriction, repayment mortgage, and mortgage note (if applicable), the application materials, verifications, and certifications of all present owners, pertinent correspondence, any documentation of home improvement, waiver, or other approvals granted by the former Administrative Agent, and other miscellaneous correspondence shall be physically transferred to the custody of the incoming or new Administrative Agent; and
 - (3) The new Administrative Agent shall be provided with:

- (a) A written methodology, such as the operating manual required pursuant to this subchapter, applied in the past and to be applied in the future for a calculation of maximum resale prices and maximum rents;
 - (b) The calculations employed to determine the initial base sales price or initial base rent for each unit;
 - (c) Identification for each unit as to whether categorized as low-income or moderate-income and the range of affordability at which the units was priced;
 - (d) A description of the number of bedrooms and physical layout of each unit;
 - (e) Floor plans;
 - (f) In the case of condominiums and units within a homeowner association, a copy of the master deed and/or public offering statement; and
 - (g) Waiting list materials and pending applications, including contact information for all applicants and current certifications or certifications in progress.
- (4) The municipality shall assume the duties of Administrative Agent by default with respect to any restricted units that are not effectively through the supervision of a competently performing Administrative Agent, as determined by the Department.
- E. Responsibilities of Administrative Agents. 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 UHAC. The Administrative Agent is also responsible for the following:
 - (1) Conducting an outreach process to ensure affirmative marketing of affordable housing units consistent with the municipal Affirmative Fair Marketing Plan in accordance with the provisions of the UHAC at N.J.A.C. 5:80-26.16;
 - (2) Soliciting, scheduling, conducting, and following up on applications and/or interviews with interested households;
 - (3) 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 household;
 - (4) Providing written notification to each applicant as to the determination of eligibility or non-eligibility;
 - (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;
 - (6) Employing a random selection process when referring households for certification to affordable units;
 - (7) 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;

- (8) 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;
- (9) 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;
- (10) Instituting, maintaining, and documenting an effective means of communicating information to 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;
- (11) Sending annual mailings to owners as prescribed for in the UHAC at N.J.A.C. 5:80-26.19;
- (12) Reviewing and approving requests from owners of restricted units who wish to take out home equity loans or refinance during the terms of their ownership;
- (13) Reviewing and approving requests to increase the maximum sales prices from owners of restricted units who wish to make capital improvements that would affect the selling prices of their units. Such authorizations shall be limited to those improvements resulting in additional bedrooms or bathrooms, and the cost of a central air conditioning system installed subsequent to the initial sale of the unit;
- (14) Processing requests and making determinations on requests by owners of restricted units for hardship waivers;
- (15) Communicating with lenders regarding foreclosures;
- (16) Ensuring the issuance of continuing certificates of occupancy or certified statements from municipal building inspectors pursuant to the UHAC at N.J.A.C. 5:80-26.11;
- (17) Notifying the municipality of an owner's intent to sell a 95/5 unit, as defined in the UHAC at N.J.A.C. 5:80-26.2;
- (18) Subject to prior written approval from the Municipal Housing Liaison, ensuring that the removal of deed restrictions and cancellation of mortgages are effectuated and properly filed with the appropriate county's register of deeds or clerk's office after the termination of the affordability controls in this subchapter for each restricted unit;
- (19) Exercising appropriate authority to discharge and release any or all instruments, as set forth in the UHAC appendices establishing affordability controls;
- (20) Providing annual reports, including a detailed description of completed units and any other information necessary for the municipality to produce its status report as required pursuant to N.J.S.A. 52:27D-329.4, to the Municipal Housing Liaison and the Division by February 15 of each calendar year;
- (21) Calculating initial rents or sales prices for affordable units; and
- (22) Such other responsibilities as may be necessary to carry out the provisions of this subchapter.

- F. Operating manual for Administrative Agents. The Administrative Agent shall create and publish in plain English and in such other languages as may be appropriate to serving their respective client base, a written operating manual, as approved by the Municipal Housing Liaison, setting forth procedures for administering such 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 Administrative Agent shall have authority to take all actions necessary and appropriate, as permitted by law, to carry out its responsibilities in this chapter. 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.
- (1) Such process shall require that an applicant household be notified, in writing, of the results of its application for certification within five business days of the Administrative Agent's determination thereof.
 - (2) At the discretion of the Administrative Agent, such process may include either or both an outreach requirement and a face-to-face applicant interview process.
 - (3) The Administrative Agent shall establish and maintain a ready database of applicant households as a referral source for certifications to restricted units, and shall establish written procedures to ensure that selection among applicant households be through the database, and in accordance with a uniformly applied random selection process and all applicable State and Federal laws relating to the confidentiality of applicant records.
- G. 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.

§ 245-139. Affirmative marketing requirements.

- A. Mountain Lakes shall adopt by resolution an affirmative marketing plan, subject to approval of the Division, 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 intended to reach those potentially eligible persons who are least likely to apply for affordable housing units. It is a continuing program that directs all marketing activities toward the housing region in which the municipality is located throughout the control period. The affirmative marketing process is designed to attract buyers and/or renters of all majority and minority groups, regardless of race, creed, color, national origin, ancestry, English-speaking ability, marital or familial status, gender, affectional or sexual orientation, disability, age (except for "housing for older person" as defined at N.J.S.A. 10:5-1 et seq., and age-restricted units as permitted pursuant to 42 U.S.C. §§ 3601 et seq.), number of children, source of lawful income, or any other characteristic described in the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1

through 50. Unless stated otherwise, supportive housing units, including group homes, must comply with the affirmative marketing requirements of their respective sponsoring programs, where applicable.

- C. The Administrative Agent is responsible for the affirmative marketing of 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 article.
- D. In accordance with N.J.A.C. 5:99-7, the Borough may designate an experienced municipal staff person approved by the Division to be the administrative agent responsible for implementing the affirmative marketing plan. If the municipality does not designate a municipal staff person, it shall contract with other experienced administrative agent(s) approved by the Division to administer the affirmative marketing plan(s). The municipality is ultimately responsible for the proper administration of the affirmative marketing program, including initial sales, rentals, resales, and re-rentals. The municipality shall also ensure that all affordable unit, applicant, sales records, and other relevant files are returned to the municipality for reporting purposes and to aid with future resales.
- E. The affirmative marketing plan shall provide a regional preference for all households that live and/or work in COAH Housing Region 2 comprised of Essex, Morris, Union and Warren Counties.
- F. The Affirmative Marketing Plan and all advertisements for the affordable units, must contain the following information:
 - (1) The name and location of the housing project;
 - (2) An address sufficient to find directions to the housing units;
 - (3) A range of prices or rent for the affordable housing units;
 - (4) The sizes, as measured in number of bedrooms and square footage, of the affordable housing units;
 - (5) The types (that is, family, age-restricted, or supportive) and number of affordable units available;
 - (6) The number of units available to very-low-, low-, and moderate-income households within the pertinent eligible income ranges;
 - (7) The accessibility features, if any, of the affordable housing units;
 - (8) The maximum income permitted to qualify for the affordable housing units;
 - (9) The population(s), if any, given preference in the selection process pursuant to N.J.A.C. 5:80-26.17(k)2;
 - (10) Where applications (paper and online) for the affordable housing units may be found;
 - (11) The expected lease-up/closing date(s) for the affordable housing units;

- (12) A description of the random selection process that will be used to select occupants of affordable housing units and the expected date of the random selection;
 - (13) The business hours when interested households may obtain paper applications for the affordable housing units;
 - (14) Contact information, including an email address and phone number that are regularly monitored by the administrative agent;
 - (15) The name of the sales agent and/or rental manager; and
 - (16) Application fees, if any.
- G. In accordance with the Settlement Agreement [In the Matter of the Application of the Borough of Mountain Lakes, County of Morris, Docket No. MRS-L-244-25] dated December 11, 2025 between the Borough and the Fair Share Housing Center, the Borough shall include in its affirmative marketing plan, pursuant to N.J.A.C. 5:80-26.16, the New Jersey Housing Resource Center, Fair Share Housing Center, Latino Action Network, the New Jersey State Conference of the NAACP, East Orange NAACP, Newark NAACP, Morris County NAACP, Housing Partnership for Morris County, Community Access Unlimited, Inc., Northwest New Jersey Community Action Program, Inc. (NORWESCAP), Homeless Solutions of Morristown, and Supportive Housing Association, and shall, as part of its regional affirmative marketing strategies during its implementation of this plan, provide notice to those organizations of all available affordable housing units. The Borough also agrees to require any other entities, including developers or persons or companies retained to do affirmative marketing, to comply with this section.
- H. The affirmative marketing plan must identify specific strategies and mediums that will be used to advertise available housing units in the region in accordance with the goals and purposes stated at B. above. The plan must include the following:
- (1) The names of specific radio stations, and television stations, and potential paid targeted digital advertising opportunities to be used throughout the housing region;
 - (2) The names of specific newspapers and other publications circulated within the housing region, such as neighborhood-oriented weekly newspapers, religious publications, and organizational newsletters;
 - (3) The names of other publications circulated within the housing region, such as neighborhood oriented weekly newspapers, religious publications and organizational newsletters;
 - (4) The names of specific community and regional organizations that will aid in soliciting low- and moderate-income applicants. Such organizations may include nonprofit, religious, governmental, fraternal, civic, and other organizations;
 - (5) The names of specific internet websites that operate as housing search websites and municipal and county websites where the affordable homes will be advertised;
 - (6) The names of specific social media websites and platforms where advertisements will be posted or linked;

- (7) The locations of public transit stops in the housing region where flyers or other advertisements will be posted; and
 - (8) Other advertising and outreach efforts to groups that are least likely to be reached. If the applicant demonstrates that other advertising and outreach efforts are substantially more effective in reaching the target population than any of the means enumerated at H.(1) through (7) above, the Division may approve a plan that substitutes an equal number of those means.
- I. In implementing the marketing program, the administrative agent shall:
- (1) Post a listing of the available affordable housing units to the New Jersey Housing Resource Center at least 60 days before the random selection process or within one day following the date the owner, developer, property manager, or other administrative entity provides information regarding the application process to prospective applicants or solicits any applications from potential applicants through any other means pursuant to N.J.S.A. 52:27D-321.6. It is the responsibility of the Municipal Housing Liaison, in coordination with the administrative agent(s), to ensure compliance with all provisions of N.J.S.A. 52:27D-321.3 through 321.6;
 - (2) Within one business day of listing the affordable housing units on the New Jersey Housing Resource Center, notify the local Continuum of Care of any supportive housing rental units that are reserved for individuals and families that are homeless and of any permanent supportive housing rental units;
 - (3) Publish at least one advertisement in a regional print or digital newspaper;
 - (4) Advertise the units on at least one housing search website, in addition to the Housing Resource Center;
 - (5) Undertake at least two additional regional marketing strategies using the sources listed at (e)1 through 8 above, with at least one non-digital strategy if the newspaper advertisement was in print, or with at least two non-digital strategies if the newspaper advertisement was digital; and
 - (6) Designate an experienced staff person 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. Alternatively, the administrative agent or municipality may contract with a HUD-certified housing counselor or an otherwise experienced entity approved by the Division to provide such counseling services.
- J. The affirmative marketing process must begin at least four months prior to expected occupancy and may begin before construction commences. All affirmative marketing advertising and outreach activities employed pursuant to I. above must be employed at the start of the marketing program. For for-sale units, affirmative marketing advertising and outreach activities must continue until all of the marketed units have been sold, except that paid advertising may cease when the number of applications received is at least three times the number of units to be sold. For rental units, affirmative marketing advertising and outreach activities must continue, as long as applications are being accepted, except that paid advertising may cease when the number of applications received is at least three times the

number of units to be filled. Applications must be accepted for no less than 45 days following the initial advertisement on the New Jersey Housing Resource Center, except for the resale of for-sale units, in which case, applications must be accepted for no less than 30 days.

- K. No random selection may be conducted prior to 60 days following the initial advertisement on the New Jersey Housing Resource Center.
- L. Applications for affordable housing or notices thereof, if offered online, must be available in multiple locations, including, if they exist, the county administration building and the county library for each county within the housing region, i.e., Housing Region 2 comprised of Essex, Morris, Union, and Warren Counties; the municipal building and the municipal library; and the developer's sales office. The municipality shall post the application links and/or notices of affordable housing either directly on the home page of the municipality's official website or on a landing page directly, clearly, and conspicuously linked to from the home page of the municipality's official website.
- M. The costs of advertising and affirmative marketing of the affordable units shall be the responsibility of the developer, sponsor or owner.
- N. In carrying out the affirmative marketing process, the Administrative Agent shall comply with all provisions of the Fair Chance in Housing Act, N.J.S.A. 46:8-52 through 64.

§ 245-140. Enforcement of affordable housing regulations.

- A. Upon the occurrence of a breach of any of the Covenants governing the affordable unit by the Grantee, or any successor in interest or other owner of the Property, the Administrative Agent, the Municipality, and the State of New Jersey, shall have all remedies provided at law or in equity, including but not limited to forfeiture, foreclosure, a requirement for household recertification, acceleration of all sums due under any mortgage, recoupment of any funds from a sale in the violation of the Covenants, divestment of rent proceeds from illegal rentals, 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 a very low-, low- or moderate-income 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) 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:

- (b) A fine of not more than \$500 or imprisonment for a period not to exceed 90 days, or both. Each and every day that the violation continues or exists shall be considered a separate and specific violation of these provisions and not as a continuing offense;
 - (c) In the case of an owner who has rented his or her very low-, low- or moderate-income unit in violation of the regulations governing affordable housing units, payment into the Mountain Lakes Affordable Housing Trust Fund of the gross amount of rent illegally collected;
 - (d) In the case of an owner who has rented his or her very low-, low- or moderate-income unit in violation of the regulations governing affordable housing units, payment of an innocent tenant's reasonable relocation costs, as determined by the court.
- (2) 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 very low-, low- and moderate-income unit.
- C. Such judgment shall be enforceable, at the option of the municipality, by means of an execution sale by the Sheriff, at which time the very low-, low- and moderate-income 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.
- D. 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 very low-, low- and moderate-income unit. The excess, if any, shall be applied to reimburse the municipality for any and all costs and expenses incurred 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 and to the 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, if any, 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.
- E. Foreclosure by the municipality due to violation of the regulations governing affordable housing units shall not extinguish the restrictions of the regulations governing affordable housing units as the same apply to the very low-, 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.

- F. 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 very low-, low- and moderate-income 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 low- and moderate-income 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 which would have been realized from an actual sale as previously described.
- G. Failure of the very low-, low- and 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 which may be referred to the owner by the municipality, with such offer to purchase being equal to the maximum resale price of the low- and moderate-income unit as permitted by the regulations governing affordable housing units.
- H. The 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.
- I. 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.

ORDINANCE ##-26
AMENDING CHAPTER 65, ARTICLE I
DEVELOPMENT FEES
OF THE CODE OF THE BOROUGH OF MOUNTAIN LAKES, NEW JERSEY

§ 65-1. Purpose.

- A. This article establishes standards for the collection, maintenance, and expenditure of development fees in accordance with and the New Jersey Fair Housing Act (P.L. 2024, c. 2, §30 (N.J.S.A. 52:27D-329.2)); the Statewide Non-Residential Development Fee Act (Sections 32 through 38 of P.L. 2008, c. 46 (C.40:55D-8.1 through C.40:55D-8.7); the Fair Housing Act Regulations (N.J.A.C. 5:99).. Fees collected pursuant to this article shall be used for the sole purpose of providing very low-, low- and moderate-income housing. This article shall be interpreted within the framework of the Fair Housing Act Regulations on development fees and affordable housing trust funds, codified at N.J.A.C. 5:99.
- B. General Requirements for collection of development fees.
- (1) All non-residential development in the State is subject to the Statewide Non-Residential Development Fee Act, N.J.S.A. 40:55D-8.1 through 40:55D-8.7. The Borough shall impose, collect, retain, and expend fees collected from non-residential development in accordance with the Statewide Non-Residential Development Fee Act, N.J.S.A. 40:55D-8.1 through 40:55D-8.7 and this chapter.
 - (2) Non-compliance with the requirements of the Statewide Non-Residential Development Fee Act and this chapter may result in the forfeiture of any or all funds remaining within the Borough's Affordable Housing Trust Fund pursuant to N.J.S.A. 40:55D-8.4 and N.J.A.C. 5:99-5.6. 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.
 - (3) Adoption of the residential development fee ordinance shall authorize the Borough to impose and collect development fees from developers of residential property, in accordance with this chapter and N.J.S.A. 52:27D-329.2.
 - (4) If the municipality fails to maintain its status as a "compliant municipality," then it shall not impose a residential development fee on a development that receives preliminary or final approval after the expiration of the municipality's compliance certification or a judgment of compliance, nor shall the Borough retroactively impose a development fee on such a development should the Borough subsequently come into compliance.
 - (5) All development fees collected shall be deposited and shall be accounted for separately, by payer, source property or development, and date of deposit as set forth at N.J.A.C. 5:99-5.

§ 65-2. Definitions.

In addition to the definitions of terms provided in § 245-125, the following terms, as used in this article, shall have the following meanings:

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.

COAH or THE COUNCIL — The New Jersey Council on Affordable Housing or a successor to be established under state law which has primary jurisdiction for the administration of housing obligations in accordance with sound regional planning consideration in the state.

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

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

EQUALIZED ASSESSED VALUE (EAV) — The value of a property determined by the Municipal Tax Assessor through a process designed to ensure that all property in the municipality is assessed at the same assessment ratio or ratios required by law. Estimates at the time of issuance of a building permit may be obtained utilizing estimates for construction cost. Final equalized assessed value will be determined at project completion by the Municipal Tax Assessor.

NON-RESIDENTIAL DEVELOPMENT —

- (1) 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," P.L. 1975, c. 217 (N.J.S.A. 52:27D-119 et seq.), including any subsequent amendments or revisions thereto;
- (2) Hotels, motels, vacation timeshares, and child-care facilities; and
- (3) 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," P.L. 1986, c. 103 (N.J.S.A. 52:27D-330 et seq.).

NONRESIDENTIAL DEVELOPMENT FEE — The fee authorized to be imposed pursuant to the Statewide Non-Residential Development Fee Act, Sections 32 through 38 of P.L. 2008, c. 46 (N.J.S.A. 40:55D-8.1 through 40:55D-8.7).

RESIDENTIAL DEVELOPMENT FEE — Money paid by a developer for the improvement of residential property as permitted pursuant to N.J.S.A. 52:27D-329.2 and N.J.A.C. 5:99-3.2.

The definitions in the Uniform Housing Affordability Controls (UHAC) at N.J.A.C. 5:80-26.2 and N.J.A.C. 5:99 shall be applicable where a term is not defined. In the event of a discrepancy between a definition in this section or ordinance with UHAC and N.J.A.C. 5:99, the current UHAC or N.J.A.C. 5:99 definition shall be applicable.

§ 65-3. Nonresidential development fees.

Nonresidential development fees shall be collected in accordance with the New Jersey Statewide NonResidential Development Fee Act, N.J.S.A. 40:55D-8.1 through 40:55D-8.8.

A. Imposed fees.

- (1) Non-residential development fees shall be imposed within all zoning districts. Non-residential developers, except for developers of the types of development specifically exempted, shall pay a fee equal to 2.5 percent of the equalized assessed value of the land and improvements for all new nonresidential construction on an unimproved lot or lots, or such other amount pursuant

to the Statewide Non-Residential Development Fee Act, N.J.S.A. 40:55D-8.1 through 40:55D-8.7.

- (2) Within all zoning districts, non-residential developers, except for developers of the types of development specifically exempted below, shall also pay a fee equal to 2.5 percent of the increase in equalized assessed value resulting from any additions or alterations to existing structures to be used for nonresidential purposes, or such other amount pursuant to the Non-Residential Development Fee Act, N.J.S.A. 40:55D-8.1 through 40:55D-8.7.
 - (3) Development fees shall be imposed and collected when an existing structure is demolished and replaced. The development fee of 2.5 percent shall be calculated on the difference between the equalized assessed value of the preexisting land and improvement and the equalized assessed value of the newly improved structure, i.e., land and improvements, and such calculation shall be made at the time final certificate of occupancy is issued. If the calculation required under this section results in a negative number, the nonresidential development fee shall be zero.
- B. Eligible exactions, ineligible exactions, and exemptions from non-residential development fees shall be treated as follows:
- (1) A developer of a mixed-use development shall be required to pay the non-residential development fee relating to the non-residential development component of a mixed-use development subject to the provisions at N.J.S.A. 52:27D-329.1 et seq., unless otherwise exempted below.
 - (2) A developer of a non-residential development exempted from the non-residential development fee pursuant to this section shall be subject to that fee at such time as the basis for the exemption no longer applies, and shall make the payment of the non-residential development fee, in that event, within three years after that event or after the issuance of the final certificate of occupancy of the non-residential development, whichever is later.
 - (3) If a property that was exempt from the collection of a non-residential development fee thereafter ceases to be exempt from property taxation, the owner of the property shall remit the fees required pursuant to this section within 45 days of the termination of the property tax exemption. Unpaid non-residential development fees in these circumstances may be enforceable by the municipality as a lien against the real property of the owner.
 - (4) A developer of property that received preliminary site plan approval, pursuant to N.J.S.A. 40:55D-46, or final approval pursuant to N.J.S.A. 40:55D-50 prior to July 17, 2008, and that was subject to the payment of a validly imposed municipal non-residential development fee ordinance shall continue to be subject to the conditions of the municipally imposed fee.
 - (5) The municipality shall not impose a payment in lieu of constructing affordable housing upon a developer of non-residential property as a condition of non-residential development.
 - (6) All non-residential construction of buildings or structures on property used by churches, synagogues, mosques, and other houses of worship, and property used for educational purposes, that are tax-exempt pursuant to N.J.S.A. 54:4-3.6, shall be exempt from the imposition of a non-residential development fee, provided that the property continues to maintain its tax exempt status pursuant to that statute for a period of at least three years from the date of issuance of the certificate of occupancy.
 - (7) Parking lots and parking structures, regardless of whether the parking lot or parking structure is constructed in conjunction with a non-residential development, or whether the parking lot is developed as an independent non-residential development shall be exempt from the imposition of a non-residential development fee.

- (8) Any non-residential development that is an amenity to be made available to the public, including, but not limited to, recreational facilities, community centers, and senior centers that are developed in conjunction with, or funded by, a non-residential developer shall be exempt from the imposition of a non-residential development fee.
- (9) Non-residential construction resulting from a relocation of, or an on-site improvement to, a nonprofit hospital or a nursing home facility shall be exempt from the imposition of a non-residential development fee.
- (10) Non-residential construction connected with the relocation of the facilities of a for-profit hospital shall be subject to the fee authorized to be imposed pursuant to this section to the extent of the increase in equalized assessed valuation.
- (11) Projects determined by the New Jersey Transit Corporation to be consistent with a transit village plan developed by a transit village designated by the New Jersey Department of Transportation shall be exempt from the imposition of a non-residential development fee.

§ 65-4. Residential development fees.

A. Imposed fees.

- (1) Within all zoning districts, developers or owners of new residential development, except for developers of the types of development specifically exempted below and developers of developments that include affordable housing, shall pay a fee equal to 1.5 percent of the equalized assessed value for the new residential development provided no increased density is permitted.
- (2) When an increase in residential density pursuant to N.J.S.A. 40:55D-70d(5) (known as a "d" variance) has been permitted, developers shall be required to pay a "bonus" development fee of 6 percent of the equalized assessed value for each additional unit that may be realized, except that this provision shall not be applicable to a development that will include affordable housing. However, if the zoning on a site has changed during the two-year period preceding the filing of such a variance application, the base density for the purposes of calculating the bonus development fee shall be the highest density permitted by right during the two-year period preceding the filing of the variance application. Example: If an approval allows four units to be constructed on a site that was zoned for two units, the fees could equal 1.5 percent of the equalized assessed value on the first two units, and 6 percent of the equalized assessed value for the two additional units, provided zoning on the site has not changed during the two-year period preceding the filing of such a variance application.
- (3) Developers or owners of any property which has an addition or other improvement to an existing residential structure shall pay a fee of 1% of the equalized assessed value improvement. No fee, however, shall be charged for any addition or improvement to an existing residential structure as long as the addition or improvement does not increase the equalized assessed value of the existing structure (the improvement value only) by more than 50%. The development fee shall be calculated on the increase in the equalized assessed value of the improved structure (improvement value only).

B. Eligible exactions, ineligible exactions, and exemptions from residential development fees shall be treated as follows:.

- (1) Affordable housing developments, affordable housing where the affordable units are being provided elsewhere in the Borough, and developments where the developer has made a payment

in lieu of on-site construction of affordable units shall be exempt from residential development fees.

- (2) Residential development fees may be imposed and collected when an existing structure is expanded, undergoes a change to a more intense use, or is demolished and replaced. The development fee that may be imposed and collected shall be calculated on the increase in the EAV resulting from the expansion, change to a more intense use, or replacement;
- (3) Developments that have received preliminary or final site plan approval prior to the adoption of a municipal development fee ordinance shall be exempt from development fees, unless the developer seeks a substantial change in the approval necessitating an amended preliminary or a new preliminary approval pursuant to N.J.S.A. 40:55D-46.b and 40:55-48.b. Where a site plan approval does not apply, a zoning and/or construction permit shall be synonymous with preliminary or final site plan approval for this purpose.
- (4) Municipal development fee ordinances may exempt or impose lower development fee rates for specific types of residential development, provided each classification of development is addressed consistently. Examples include, but are not limited to, exempting or reducing the fee for improvements where the EAV does not exceed a threshold minimum determined by the municipality, developments with one or two owner-occupied dwelling units, or green buildings;
- (5) A municipality may exempt or reduce fees in specific residential areas or zones in order to promote development in that area. Examples include, but are not limited to, exempting all residential development in a mixed-use zone, residential development within a one-half-mile radius of a train station, or residential development within areas in need of redevelopment pursuant to N.J.S.A. 40:12A-1 et seq.; Residential structures demolished and replaced as a result of fire, flood, or any natural disaster or catastrophe shall be exempt from paying any residential development fee, even if the new structure has an increased EAV as compared to the previous structure.
- (6) Non-profit organizations that have received tax exempt status pursuant to the Internal Revenue Code, providing current evidence of that status is submitted to the municipal clerk, together with a certification that services of the organization are provided at reduced rates to those who establish an inability to pay existing charges, shall be exempted from paying a development fee; and
- (7) Federal, State, county, and local governments shall be exempt from paying a development fee.

§ 65-5. Procedure for collection of development fees.

- 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. The Construction Official responsible for the issuance of a building permit shall notify the local Tax Assessor of the issuance of the first building permit for a development that may be subject to a non-residential development fee.
- C. Within 90 days of receipt of that notice, the Municipal Tax Assessor, based on the plans filed, shall provide an estimate of the equalized assessed value of the development.
- D. The Construction Official responsible for the issuance of a final certificate of occupancy shall notify the local Assessor of any and all requests for the scheduling of a final inspection on property that may be subject to a non-residential development fee.

- E. Within 10 business days of a request for the scheduling of a final inspection, the Municipal Assessor shall confirm or modify the previously estimated equalized assessed value of the improvements of the non-residential development in accordance with the rules adopted by the Treasurer pursuant to N.J.S.A. 54:1-35.35; calculate the development fee pursuant to N.J.S.A. 40:55D-8.1 through 40:55D-8.7; and thereafter notify the developer of the amount of the non-residential development fee.
- F. Should the Borough of Mountain Lakes 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 at N.J.S.A. 40:55D-8.6.b.
- G. The Borough shall collect up to 50 percent of the development fee at the time of issuance of the building permit. The remaining portion shall be collected at, or prior to, the issuance of the certificate of occupancy. Developers shall be notified of the fee by the municipality, including when payment is required to be made, at the time of land use board approval or application for a construction permit. The developer shall be responsible for paying the difference between the fee calculated at issuance of the building permit and that determined at issuance of the certificate of occupancy.
- H. Upon tender of the estimated non-residential development fee, provided the developer is in full compliance with all other applicable laws or rules, the Borough shall issue a final certificate of occupancy for the subject property.
- I. Failure of the Borough to comply with the timeframes or procedures set forth in this section may subject the Borough to penalties imposed by the Commissioner; any penalties so imposed shall be deposited into the New Jersey Affordable Housing Trust Fund established pursuant to N.J.S.A. 52:27D-320.
- J. Appeal of development fees.
 - (1) A developer may challenge residential development fees imposed by filing a challenge with the County Board of Taxation. Pending a review and determination by the Board, collected fees shall be placed in an interest-bearing escrow account by the Borough of Mountain Lakes. 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, N.J.S.A. 54:48-1 et seq., within 90 days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.
 - (2) A developer may challenge nonresidential development fees imposed pursuant to N.J.S.A. 52:27D-329.1 et seq. by filing a challenge with the Director of the Division of Taxation. Collected fees shall be placed in an interest-bearing escrow account by the Borough of Mountain Lakes. The local code enforcement official shall thereafter issue the certificate of occupancy provided that the construction is otherwise eligible for a certificate of occupancy. 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, N.J.S.A. 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.

§ 65-6. Affordable Housing Trust Fund.

- A. General Requirements for Affordable Housing Trust Funds.

- (1) There is hereby created a separate, interest-bearing housing trust fund to be maintained by the municipal treasurer for the purpose of depositing development fees collected from residential and nonresidential developers and proceeds from the sale of units with extinguished controls.
- (2) The municipality shall not spend affordable housing trust funds unless the Program or a court of competent jurisdiction has approved a plan for spending such funds in accordance with N.J.S.A. 52:27D-329.2.a(4) or the Division has approved spending plan expenditures for emergent opportunities to create affordable housing after a municipality has obtained compliance certification in conformance with N.J.A.C. 5:99-4.1.
- (3) The following additional funds shall be deposited in the affordable housing trust fund and shall at all times be identified by source and amount:
 - (a) Payment in lieu of constructing affordable units;
 - (b) Barrier-free escrow funds, recapture funds;
 - (c) Proceeds from the sale of affordable units;
 - (d) Rental income;
 - (e) Repayments from affordable housing program loans;
 - (f) Recaptured funds;
 - (g) Enforcement fines;
 - (h) Unexpended RCA funds remaining from a completed RCA project;
 - (i) Application fees; and
 - (j) Any other funds collected by the municipality in connection with its affordable housing programs.

B. Use of funds for housing activity.

- (1) The expenditure of all funds shall conform to a Spending Plan approved by the Program or court of competent jurisdiction or as approved by the Division as an emergent opportunity to create affordable housing. Such activities include, but are not limited to:
 - (a) A rehabilitation program whose purpose is to renovate deficient housing units that are occupied by low- and moderate-income households, in accordance with the New Jersey State Housing Code, N.J.A.C. 5:28, or the requirements of the Rehabilitation Subcode, N.J.A.C. 5:23-6, as applicable, and costs related to the rehabilitation of the unit. Any recaptured funds from a rehabilitation program shall be deposited into a municipality's affordable housing trust fund and subject to the provisions thereof;
 - (b) New construction of affordable housing units and related development costs; in the case of inclusionary developments, eligible costs shall be prorated based on the proportion of affordable housing units included in the development;

- (c) Creation of a market to affordable program to pay down the cost of unrestricted units and offer them in sound condition, for sale or rent, at affordable prices to low- and moderate-income households to address all or a portion of the affordable housing obligation;
- (d) Extensions or improvements of roads and infrastructure directly serving affordable housing development sites; in the case of inclusionary developments, costs shall be prorated based on the proportion of affordable housing units included in the development;
- (e) Acquisition and/or improvement of land to be used for affordable housing;
- (f) Accessory dwelling units;
- (g) The extension of expiring controls;
- (h) The construction of group homes and supportive and special needs housing;
- (i) Maintenance and repair of affordable housing units;
- (j) To defray the costs of structured parking; in the case of inclusionary developments, eligible costs shall be prorated based on the proportion of affordable housing units included in the development;
- (k) Affordability assistance in accordance with N.J.A.C. 5:99-2.5;
- (l) Repayment of municipal bonds issued to finance low- and moderate-income housing activity;
- (m) Any other activity as specified in the approved spending plan or as approved by the Division as an emergent affordable housing opportunity; or
- (n) Any other activity approved by the Division.

C. Use of funds for administrative expenses.

- (1) No more than 20 percent of all revenues collected from development fees may be expended on administration.
- (2) Administrative expenses may include costs reasonably related to the determination of the fair share obligation and the development of a municipal housing element and fair share plan and may include fees necessary to develop or implement affordable housing programs, an affirmative marketing program, and/or expenses that are reasonably necessary for compliance with the processes of the Program, including, but not limited to, the costs to the municipality of resolving a challenge pursuant to the Program.
- (3) Administrative expenses may also include costs associated with functions carried out in compliance with UHAC, including activities related to the marketing program and waitlist management, administering the placement of occupants in housing units, income qualification of households, monitoring the turnover of sale and rental units, preserving existing affordable housing, and compliance with the Division's monitoring requirements.
- (4) The proportion of a municipal employee's salary related to the MHL administrator functions and fees for required educational programs, may be paid as an administrative expense from the municipal affordable housing trust fund.

D. Use of funds for affordability assistance.

- (1) A municipality shall set aside a portion of all development fees collected and interest earned for the purpose of providing affordability assistance to very-low-, low-, and moderate-income households in affordable units included in the municipality's fair share plan pursuant to N.J.S.A. 52:27D-329.1.
 - (a) Affordability assistance for very-low-income households may include offering a subsidy to developers of inclusionary or 100 percent affordable housing developments or buying down the cost of low- or moderate-income units in a municipal fair share plan to make them affordable to very low-income households, including special needs and supportive housing opportunities.
 - (b) A municipality may contract with a private or public entity to administer any part of its housing element and fair share plan, including the requirement for affordability assistance, or any program or activity for which the municipality expends development fee proceeds.

E. Barrier-free escrow.

- (1) An affordable housing trust fund may include fees collected to adapt affordable unit entrances to be accessible in accordance with the Act and the Barrier Free Subcode, N.J.A.C. 5:23-7. The municipality shall set forth the mechanism by which it will collect and distribute funds intended to convert adaptable entrances in compliance with the technical design standards of the Barrier Free Subcode at N.J.A.C. 5:23-7. Funds collected for this purpose shall at all times be identifiable from other funds. A municipality that collects, or anticipates collecting, funds to adapt affordable unit entrances shall identify the funds on its monitoring report pursuant to N.J.A.C. 5:99-5.

F. Not permitted use of funds.

- (1) Municipal affordable housing trust funds shall not be expended:
 - (a) To reimburse the municipality for activities that occurred prior to the authorization of a municipality to collect development fees;
 - (b) On attorney fees or court costs to obtain a judgment of compliance or order of repose, including any associated administration costs;
 - (c) On any costs in connection with a challenge to a determination of the municipality's fair share obligation; or
 - (d) On any costs in connection with a challenge to the municipality's obligation, housing element, or fair share plan.

G. Monitoring.

- (1) The Borough by February 15, 2026, and annually, shall provide the Department of Community Affairs and to post a copy on the municipal website with a copy of such posting provided to Fair

Share Housing Center with a detailed accounting of all development fees and any other payments into its trust fund that have been collected and expended in the previous year.

- (2) The Borough shall identify the funds on its monitoring report pursuant to N.J.A.C. 5:99-5 and include a plan for the use of the funds in its spending plan pursuant to
- (3) If the Borough fails to provide monitoring information to the Division by February 15th of each year in the form required by the Division pursuant to this subchapter may be subject to enforcement actions by the Division pursuant to N.J.A.C. 5:99-5.6.
- (4) A municipality shall deposit all fees collected, including non-residential or residential development fees, into the municipal affordable housing trust fund.
- (5) Development fees collected by the Borough shall be expended or committed for expenditure within four years of the date of collection. If the Borough fails to expend or commit to expend the amounts collected within four years of the date of collection the Borough shall be required to transfer any unexpended and/or uncommitted revenue collected to the New Jersey Affordable Housing Trust Fund.